



musawah

For Equality in the Family

**THEMATIC REPORT ON MUSLIM FAMILY LAW AND
MUSLIM WOMEN'S RIGHTS IN
SAUDI ARABIA**

69th CEDAW Session

Geneva, Switzerland

February 2018

Musawah

15 Jalan Limau Purut, Bangsar Park, 59000 Kuala Lumpur, Malaysia

Tel: +603 2083 0202 Fax: +603 2202 0303

Email: musawah@musawah.org

Website: www.musawah.org

TABLE OF CONTENTS

A. INTRODUCTION	3
B. LEGAL FRAMEWORK	4
C. KEY ISSUES, LIVED REALITIES, ISLAMIC JURISPRUDENCE AND REFORM.....	8
1. The Male Guardianship System.....	8
2. Reciprocity of rights in marriage.....	12
3. Women's consent and capacity to enter into marriage	15
4. Early and child marriage	17
5. Polygamy	19
5. Divorce rights	21
6. Custody and guardianship of children	24
7. Violence against women	26
8. Nationality	28
 ANNEXE	
Musawah Vision for the Family.....	30

A. INTRODUCTION

Musawah, the global movement for equality and justice in the Muslim family, submits this Thematic Report on concerns related to women's legal equality, personal status, and relevant matters for consideration by the CEDAW Committee in its review of the Government of Saudi Arabia, reporting before the 69th Session of the CEDAW Committee in February 2018.

This is the CEDAW Committee's second engagement with Saudi Arabia, which acceded to CEDAW on February 7th, 2006. Saudi Arabia has a general reservation to CEDAW as follows: "*In case of contradiction between any term of the Convention and the norms of Islamic law, the Kingdom is not under obligation to observe the contradictory terms of the Convention.*" In addition, Saudi Arabia has specific reservations on Articles 9(2) and 29(1) of the Convention.¹

In 2009, Concluding Observations of the CEDAW Committee on Article 16 included for the State party to end the practice of male guardianship over women, enforce a minimum age of marriage of 18 years and end the practice of polygamy. Recommendations were also made to the State to introduce legislative reforms to provide women with equal rights in marriage, divorce, the custody of children and inheritance. However, it is noted that there has been very little progress towards implementation of these recommendations. As this report shows, inequalities in law and practice remain entrenched in Saudi Arabia.

This report examines Saudi Arabia's legal frameworks and practices that enforce *de jure* and *de facto* discrimination against women in the following areas: the guardianship framework; reciprocity of rights in marriage; women's consent and capacity to enter marriage; child and forced marriage; divorce rights; polygamy; custody and guardianship of children; violence against women; and nationality.

The report also contains sections on Positive Developments in Muslim Family Laws, with examples of good and better practices from other Muslim contexts based on Musawah's research and comparative analysis of Muslim family laws and practices in 31 countries.

Musawah hopes that the research, analysis, and recommendations in this report will provide critical information in:

- (1) Highlighting key concerns and identifying gaps in the State party report and the State party's response to the list of issues;
- (2) Providing alternative arguments within Muslim legal theory that challenge the ways the State party uses religion to justify discrimination, including reservations and non-implementation of its international human rights treaty obligations; and
- (3) Suggesting recommendations for reform based on good practices in Muslim contexts.

We hope that the CEDAW Committee will utilise this report as a key resource during its constructive engagement with the State party and identifying follow-up issues in the Concluding Observations.

This report incorporates substantive inputs by Saudi women's rights activists and lawyers, who provided information and insights on the contemporary lived realities of Saudi women. The report was prepared with research and drafting support from the International Human Rights Clinic at Harvard Law School.

¹ United Nations Treaty Collection Website, https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-8&chapter=4&clang=_en

B. LEGAL FRAMEWORK

Basic Law of Governance

Saudi Arabia is a monarchy that defined itself as an Arab Islamic State, with Islam as the religion of the state, and the Qur'an and Prophet's *Sunnah* (traditions) as its Constitution.² Muslims constitute the overwhelming majority of the local Saudi population, consisting of about 85-90% Sunni and 10-15% Shia.³ Saudi Arabia promulgated its Basic Law in 1992. The Basic Law is often referred to as Saudi Arabia's de facto Constitution, and it generally functions as one – codifying a system of governance and basic rights and duties of citizens.⁴

Article 8 of the Basic Law declares the system of governance to be based on justice, *Shura* (consultation), and equality “in accordance with Islamic Shari’ah.”⁵ However, the Basic Law does not protect from discrimination on any specific grounds.

Family matters are addressed in Article 10 of the Basic Law, which states that “the State shall take great pains to strengthen the bonds which hold the family together and to preserve its Arab and Islamic values. Likewise, it is keen on taking good care of all family members and creating proper conditions to help them cultivate their skill and capabilities.”⁶

Discriminatory Legal Framework

The Basic Law does not prohibit discrimination. There is also no comprehensive non-discrimination legislation to date to address this omission in the Basic Law, leaving no legal foundation for equality of the sexes within the legal system. A number of current laws include provisions that discriminate against women. The guardianship framework, discussed in Section C (1) of this report, renders a woman to be a perpetual legal minor and restricts her mobility and ability to access her rights. To name a few examples:

The Civil Status Code includes a number of discriminatory provisions. For example, only a man may register the birth of his children and obtain their official papers.⁷ A man is considered the legal head of the household and is responsible for all civil status transactions related to his wife and family, and a married woman is required to take residency in her husband's home.⁸ These provisions limit the free movement of women and their general independence.

In matters of employment, a guardian's permission is not required for employment. However, the Saudi Labour Law lacks provisions to prohibit gender-based employment discrimination.⁹ On the contrary, article 149 of the Labour Code prohibits employing women in “dangerous and harmful professions,” which are defined in Ministerial Order no. 1/1/2475 to include a number of manufacturing and construction-related jobs.¹⁰ Vocational programmes in the country are acknowledged by the State party to take into account “differences between the sexes,”¹¹ leading to the exclusion of women from certain sectors of the economy. Moreover, article 114 of the Private Sector Labor Regulation prohibits gender mixing in the workplace, thus having the effect of further restricting the ability of women to be employed.¹²

² Saudi Arabia Basic Law (1992), https://www.constituteproject.org/constitution/Saudi_Arabia_2005.pdf, article 1

³ United States CIA Fact Book, <https://www.cia.gov/library/publications/the-world-factbook/geos/sa.html>

⁴ Saudi Arabia Basic Law (1992), https://www.constituteproject.org/constitution/Saudi_Arabia_2005.pdf

⁵ Saudi Arabia Basic Law (1992), https://www.constituteproject.org/constitution/Saudi_Arabia_2005.pdf, article 8

⁶ Saudi Arabia Basic Law, https://www.constituteproject.org/constitution/Saudi_Arabia_2005.pdf, article 10

⁷ Civil Status Code, issued by Royal Order no. m/7 on 20/4/1407 (Hijri), with amendments, Ministry of Interior, https://www.moi.gov.sa/wps/wcm/connect/c152dd004d4bb7bd8debd8bed7ca8368/AR_civil_affairs_system.pdf?MOD=AJPERES&CACHEID=c152dd004d4bb7bd8debd8bed7ca8368, article 32

⁸ Civil Status Code, issued by Royal Order no. m/7 on 20/4/1407 (Hijri), with amendments, Ministry of Interior, https://www.moi.gov.sa/wps/wcm/connect/c152dd004d4bb7bd8debd8bed7ca8368/AR_civil_affairs_system.pdf?MOD=AJPERES&CACHEID=c152dd004d4bb7bd8debd8bed7ca8368, article 30, 91

⁹ Saudi Labor Code, issued Royal Decree no. m/51 on 23/8/1426(Hijri) and last amended on 5/6/1436(Hijri), <https://mlsd.gov.sa/sites/default/files/العمل20%ظام3.pdf>

¹⁰ Ministerial Order 1/1/2475 issued on 10/7/1432 (Hijri), Ministry of Labor, <http://www.wafa.com.sa/photoGallary/author/FTP/0005500055.pdf>, p. 14

¹¹ Replies of Saudi Arabia to the List of Issues and Questions in Relation to the Combined Third and Fourth Periodic Reports of Saudi Arabia, November 7, 2017 (English Translation), p. 19

¹² Private Sector Labor Regulation, Ministry of Labor and Social Development, <https://sd.mlsd.gov.sa/sites/default/files/تنظيم20%لائحة.pdf>

Within the education system, a guardian's permission is not required to enroll in schools and universities. However, in practice many private universities continue to require a guardian's signature as a condition for enrollment. In addition, a guardian's permission is required for a woman to travel and access scholarships for higher education abroad.¹³

The Nationality Act does not allow women to pass their nationality to their foreign spouses nor to their children from a foreign spouse.¹⁴ These children may only obtain Saudi nationality by application and in accordance to strict criteria, as outlined in Section C(8) of this report.¹⁵

Uncodified Personal Status Law

Saudi Arabia is the only country in the Gulf region which does not have a codified personal status law. Family affairs in Saudi Arabia are governed by judicial rulings on a case-by-case basis, where judges have wide discretion to interpret and apply Islamic rulings. In personal status disputes, individual judges apply their interpretations of Islamic law according to the Hanbali school of jurisprudence (*fiqh*).¹⁶ In addition a number of directives by state officials govern certain specific matters, such as marriage to foreigners.¹⁷ The wide discretion granted to judges creates uncertainty and discrepancies in court rulings, and women are often victims to individual judges' abuse of this discretion.¹⁸

While we acknowledge the recent positive initiative to compile and publish a compendium of judicial decisions, with a section that the State refers to as "the Personal Status Code,"¹⁹ **it is important to note that the publication of judicial decisions alone does not resolve the issue of lack of clarity and certainty of rules governing personal status matters, especially in the absence of a system of binding precedent of judicial decisions.**

In order to ensure effective, uniform, and equal access to justice, it is essential to codify provisions that ensure a woman's equality within the marriage and guarantees her equal right to divorce, custody, guardianship of her children, and protection from spousal abuse. This report highlights key areas where women continue to face discrimination and denial to justice in matters of personal status.

The Saudi Court System

The court system of Saudi Arabia is generally governed by the Judiciary Act.²⁰ The Act organizes family courts, with jurisdiction over disputes related to marriage, divorce, custody, paternity, inheritance, wills and trusts, and any lawsuits arising from personal status issues.²¹ Rulings of family court can be appealed to family status appellate courts.²² Women continue to be excluded from the Saudi judiciary, even though the Judiciary Act does not require judges to be male.²³

¹³ Information received from Saudi advocate, February 2018

¹⁴ Saudi Arabia Nationality Law, issued by Order No. 4 on 25/1/1374(Hijri), http://www.mofa.gov.sa/aboutKingDom/SaudiGovernment/RegimesInKingdom/CivilStatusSystem/Documents/87757_جنسية2.pdf

¹⁵ Saudi Arabia Nationality Law, issued by Order No. 4 on 25/1/1374(Hijri), http://www.mofa.gov.sa/aboutKingDom/SaudiGovernment/RegimesInKingdom/CivilStatusSystem/Documents/87757_جنسية2.pdf ; see also Replies of Saudi Arabia to the List of Issues and Questions in Relation to the Combined Third and Fourth Periodic Reports of Saudi Arabia, November 7, 2017 (English Translation), p. 18

¹⁶ Esther van Eijk, Sharia and National Law in Saudi Arabia, in *Sharia Incorporated: A Comparative Overview of the Legal Systems of Twelve Muslim Countries in Past and Present*, ed. Jan Michiel Otto (Leiden, Netherlands: Leiden University Press, 2010), p. 163, <https://openaccess.leidenuniv.nl/bitstream/ha-dle/1887/21170/file221087.pdf?sequence=1>; OECD Development Centre, Social Institutions and Gender Index: Saudi Arabia, 2013, p. 1, <http://www.genderindex.org/sites/default/files/datasheets/SA.pdf>

¹⁷ Guidelines on a Saudi Man's Marriage to a Non-Saudi Woman and a Saudi Woman's Marriage to a Non-Saudi Man, Ministerial Order no. 6874 issued on 2/12/1422 (Hijri), Ministry of Justice, <https://www.moj.gov.sa/Documents/Regulations/pdf/43.pdf>

¹⁸ Information received from Saudi advocates, February 2018

¹⁹ Replies of Saudi Arabia to the List of Issues and Questions in Relation to the Combined Third and Fourth Periodic Reports of Saudi Arabia, November 7, 2017 (English Translation), p. 23

²⁰ See Saudi Arabia Judiciary Act, issued by Royal Decree no. m/78 on 19/09/1428 (Hijri), <https://www.moj.gov.sa/ar-sa/ministry/Documents/MOJSystems/pdf/1.القضاء20%نظام.pdf>

²¹ Saudi Arabia Judiciary Act, issued by Royal Decree no. m/78 on 19/09/1428 (Hijri), <https://www.moj.gov.sa/ar-sa/ministry/Documents/MOJSystems/pdf/1.القضاء20%نظام.pdf>, article 33

²² Saudi Arabia Judiciary Act, issued by Royal Decree no. m/78 on 19/09/1428 (Hijri), <https://www.moj.gov.sa/ar-sa/ministry/Documents/MOJSystems/pdf/1.القضاء20%نظام.pdf>, article 17

²³ See Saudi Arabia Judiciary Act, issued by Royal Decree no. m/78 on 19/09/1428 (Hijri), <https://www.moj.gov.sa/ar-sa/ministry/Documents/MOJSystems/pdf/1.القضاء20%نظام.pdf>, article 37; information received from Saudi advocates, February 2018

In the absence of a codified personal status law and a system of binding precedent for judicial rulings, judges apply their interpretation of Islamic law, based the jurisprudence of the Hanbali school, applicable to the majority Sunni population. Saudi Arabia's Shi'a minority has its own family courts, geographically limited to the Qatif and Al-Ahsa governorates, where the vast majority of Shi'a live. Similarly, Shi'a judges retain the discretion to interpret and apply the rules of Ja'fari Shi'a jurisprudence to individual cases.²⁴

National Framework for Human Rights and Advancement of Women

Saudi Arabia established a 26-member National Human Rights Commission in 2005, which aims to "protect and enhance human rights according to international standards for human rights in all aspects, and to promote public awareness thereof and participate in ensuring implementation of the same in light of the provisions of *Shari'ah*."²⁵ The Commission may provide an advisory opinion on any bill of law and review current laws with respect to any human rights-related matter.²⁶

The Commission is organized as a stand-alone government entity, which reports directly to the King, and is government-funded and appointed.²⁷

The National Society for Human Rights was also established in 2004, with the stated objectives of protecting and defending human rights, in accordance with Islamic law, the Basic Law, and international conventions and covenants "which do not contradict Islamic laws."²⁸ The Society had 41 founding members, including five women, and was founded by a Royal Decree.²⁹ While it claims to be independent, the Society works and conducts its activities in close coordination with Government ministries, relies on funding by the Ministry of Labor and Social Development, and enjoys royal patronage. The support it receives stands in contrast to the restrictions faced by independent civil society actors, as described below.

Restrictions on Civil Society and Women's Ability to Organize

While there is a legal path for civil society organizations to form and register with the Saudi government, in reality there are a number of legal and social obstacles to independent activism and peaceful assembly.

Civil society organizations are governed by the Civil Associations and Organizations Law, issued in 2015.³⁰ Article 6 of this law provides that the establishment of any civil society organization must be authorized by the Ministry of Labour and Social Development, and article 8 specifies the procedures and requirements for application.³¹ Significantly, the State report indicates that a non-response by the Ministry renders an application approved after the passing of 60 days from the date of submission; however, Saudi women's rights activists maintain that in practice, applications are often delayed by the Ministry of Labour and Social Affairs, and activists are not permitted to legally establish independent associations or operate within Saudi Arabia in absence of government approval.³²

For example, founding members of al-Adalah Center for Human Rights litigated in court for many years to resolve obstacles to obtaining a license.³³ Members of the Association for Civil and Political Rights were convicted of establishing an unlicensed association despite filing for registration.³⁴

²⁴ Information obtained from Saudi advocate, January 2018; USCIF, "Saudi Arabia", *Tier 1: USCIRF-Recommended Countries of Particular Concern*, 2017, p. 6, <http://www.uscifr.gov/sites/default/files/SaudiArabia.2017.pdf>; Saudi Arabia: Shias, Global Security, "<http://www.globalsecurity.org/military/world/gulf/sa-shia.htm>

²⁵ Human Rights Commission Regulation, issued by Council of Ministers Resolution no. 207 issued on 8/8/1426 (Hijri), <http://hrlibrary.umn.edu/research/saudi-arabia/HRC-regulation.html>, article 1

²⁶ Saudi Arabia State Party Report to CEDAW 69th Session, CEDAW/C/SAU/3-4, p. 15

²⁷ Saudi Arabia State Party Report to CEDAW 69th Session, CEDAW/C/SAU/3-4, p. 15; Human Rights Commission Regulation, issued by Council of Ministers Resolution no. 207 issued on 8/8/1426 (Hijri), <http://hrlibrary.umn.edu/research/saudi-arabia/HRC-regulation.html>

²⁸ Human Rights Society, Foundations of the Society, http://nshr.org.sa/en/?page_id=52

²⁹ Royal Decree no. 24/2, issued on 18/1/1825 (Hijri), http://nshr.org.sa/en/?page_id=127

³⁰ Civil Associations and Organizations Law, issued by Order no. 61 on 18/2/1437 (Hijri), <https://sd.mlsd.gov.sa/sites/default/files/الأهلية%20والمؤسسات%20والجمعيات%20تنظيم.pdf>

³¹ Civil Associations and Organizations Law, issued by Order no. 61 on 18/2/1437 (Hijri), <https://sd.mlsd.gov.sa/sites/default/files/الأهلية%20والمؤسسات%20والجمعيات%20تنظيم.pdf>, articles 6, 8

³² Information received from Saudi advocates, January 2018.

³³ Hala Aldosari, *New Saudi Law Maintains State Control Over Civil Society Organizations*, Arab States Institute in Washington, December 27, 2015, <http://www.agsiw.org/new-saudi-law-maintains-state-control-over-civil-society-organizations/>

Article 8(2) of the Law prohibits the establishment of association that may violate Islamic *Shari'ah*, public order, public morals, or national unity, a provision regularly used to restrict civil society's ability to organize.³⁵ Articles 18(3), 19(b), and 23 grant the Minister of Social Affairs the right to interfere in a civil society organization's elections of members, as he may appoint members of his choice or even dissolve an organization based on administrative violations.³⁶ In practice, the Government retains strict control over the establishment of civil society organizations and uses the law to limit the ability of activists, including women's rights activists, to organize and advocate for reform.³⁷

Anti-terrorism regulations are used frequently to arrest activists, including those advocating for women's rights, on charges that range from defaming the reputation of the state, insulting Islam, and disobeying the ruler to using the internet to harm the unity and stability of the state.³⁸ This inhibits women's ability to advocate, and women's demands are frequently silenced by the state and religious scholars, and accused of contravening religion and harming society.³⁹

Moreover, there is very little transparency as to why applications to establish civil society organizations are denied, and why certain women's rights activists are targeted despite frequent statement by public officials endorsing women's rights and progress. Women who choose to pursue their right to independence and autonomy or use the internet to express their grievances are often targeted, harassed, or even arrested.⁴⁰ These practices have a chilling effect on women's rights activism and has obstructed the development of a robust civil society within Saudi Arabia.

Need for Greater Transparency

There is a general lack of transparency with respect to information and data related to the enforcement and implementation of laws in Saudi Arabia, particularly with respect to discriminatory provisions against women. Publication of data is necessary to track and monitor the treatment of women in the legal system, as well as the impact of recent legal reforms on the realization of women's rights and equality in Saudi Arabia.

For example, Saudi activists point to the lack of information on court decisions affecting women. Beyond publishing a compiled compendium of cases, it is important to synthesize and make available concrete information to monitor indicators such as length of court proceedings, rulings in divorce proceedings, bases for granting divorce, outcomes of custody disputes, as well as information on trends in domestic violence and other rights violations.

³⁴ Hala Aldosari, *New Saudi Law Maintains State Control Over Civil Society Organizations*, Arab States Institute in Washington, December 27, 2015, <http://www.agsiw.org/new-saudi-law-maintains-state-control-over-civil-society-organizations/>

³⁵ Information received from Saudi advocates, January 2018

³⁶ Civil Associations and Organizations Law, issued by Order no. 61 on 18/2/1437 (Hijri), <https://sd.mlsd.gov.sa/sites/default/files/الأهلية%20والمؤسسات%20الجمعيات%20تنظيم.pdf>, articles 8(2), 18(3), 19(b)

³⁷ Hala Aldosari, *New Saudi Law Maintains State Control Over Civil Society Organizations*, Arab States Institute in Washington, December 27, 2015, <http://www.agsiw.org/new-saudi-law-maintains-state-control-over-civil-society-organizations/>; information received from Saudi advocates, January 2018. See also *Saudi Arabia: New Terrorism Regulations Assault Rights*, Human Rights Watch, March 20, 2014, <https://www.hrw.org/news/2014/03/20/saudi-arabia-new-terrorism-regulations-assault-rights>

³⁸ Hala Aldosari, *Beyond Islamists and Autocrats: Saudi Arabia's Virtual Quest for Citizenship and Identity*, Washington Institute for Near East Policy (2016), <http://www.washingtoninstitute.org/uploads/Documents/pubs/BeyondIslamists-Aldosari.pdf>

³⁹ Information received from Saudi advocate, January 2018

⁴⁰ Information received from Saudi advocate, January 2018

C. KEY ISSUES, LIVED REALITIES, ISLAMIC JURISPRUDENCE AND REFORM

1. THE MALE GUARDIANSHIP SYSTEM

CRITICAL INFORMATION

The male guardianship framework in Saudi Arabia places a woman in the position of a legal minor, regardless of her age. A woman remains under the guardianship of her father until marriage, when her husband becomes her guardian.⁴¹ If a woman is divorced or if a guardian passes away, a new male guardian – generally the next male relative in line – is appointed. Guardianship may revert to a woman's younger brother or son, and it is not uncommon for a widowed mother to seek the permission of her son to travel.⁴²

The guardianship system impacts significantly a woman's ability to access her rights. Women may be denied opportunities to travel, work, pursue a higher education, access medical procedures, obtain a passport, or even exit a correctional facility or a shelter without her guardian's approval.⁴³ Within marriage, the husband is considered the head of the household, with guardianship authority over his wife and children and significant control over her choices.

Saudi women's rights activists have consistently called upon the government to abolish the male guardianship system. In September 2016, an unprecedented petition calling for an end to the male guardianship system was presented to the Royal Court after gaining thousands of signatures by Saudi women and men.⁴⁴ The Royal Court did not respond, and in turn, activists faced hostile reactions by prominent clerics in Saudi Arabia. Grand Mufti Sheikh Abdul Aziz Al-Sheikh proclaimed the call for reform to be a "crime against the religion of Islam and an existential threat to Saudi society."⁴⁵ Notwithstanding restrictions on civil society and independent activism, Saudi women continue to advocate for their equality using online petitions and social media.⁴⁶

In recent years, the government of Saudi Arabia has taken several positive steps towards easing the restrictions of the male guardianship system, including abolishing the requirement of guardian approval for women to be employed.⁴⁷ In April 2017, a Royal Order was issued instructing all government agencies not to require a woman to obtain a guardian's permission as a condition to provide services or conduct proceedings, *except where justified* by a legal basis in accordance with Islamic *Shari'ah*.⁴⁸ The Royal Order does not specify the government services or proceedings for which a basis exists for an exception. And although it mandates that all government agencies clarify within three months from the date of the issuance of the order – the services that require a guardian's permission, no such list has been published.⁴⁹

Moreover, the Royal Order fails to penalize entities that still require a guardian's permission. A guardian's permission continues to be required for a woman in order to obtain a passport, travel abroad, and access government scholarship for higher education.⁵⁰

⁴¹ Civil Status Code, issued by Royal Order no. m/7 on 20/4/1407 (Hijri), with amendments, Ministry of Interior, https://www.moi.gov.sa/wps/wcm/connect/c152dd004d4bb7bd8debddbed7ca8368/AR_civil_affairs_system.pdf?MOD=AJPERES&CACHEID=c152dd004d4bb7bd8debddbed7ca8368, article 91

⁴² Human Rights Watch, *Boxed in: Women and Saudi Arabia's Male Guardianship System*, 2016, p. 22, https://www.hrw.org/sites/default/files/report_pdf/saudiarabia0716web.pdf

⁴³ Information received from Saudi advocates, January 2018

⁴⁴ Josie Ensor, *Saudis File First-Ever Petition to End Male Guardianship*, Telegraph, September 26, 2016, <http://www.telegraph.co.uk/news/2016/09/26/saudis-file-first-ever-petition-to-end-male-guardianship/>

⁴⁵ Josie Ensor, *Saudis File First-Ever Petition to End Male Guardianship*, Telegraph, September 26, 2016, <http://www.telegraph.co.uk/news/2016/09/26/saudis-file-first-ever-petition-to-end-male-guardianship/>

⁴⁶ Information received from Saudi advocates, February 2018

⁴⁷ Human Rights Watch, *Boxed In: Women and Saudi Arabia's Male Guardianship System*, 2016, p. 19, https://www.hrw.org/sites/default/files/report_pdf/saudiarabia0716web.pdf

⁴⁸ Royal Order no. 33222, issued 21/7/1438 (Hijri), <https://www.alarabiya.net/ar/saudi-today/2017/05/04/بإتاحة يوجه سلمان الملك/الامر ولي موافقة دون للمرأة الخدمات>

⁴⁹ Information received from Saudi Advocates, February 2017; Royal Order no. 33222, issued 21/7/1438 (Hijri), <https://www.alarabiya.net/ar/saudi-today/2017/05/04/بإتاحة يوجه سلمان الملك/الامر ولي موافقة دون للمرأة الخدمات>

⁵⁰ Information received from Saudi Advocates, February 2018

The impact of the guardianship system on a woman's ability to enter into marriage and to be treated as an equal within marriage is detailed in sections C(2) and C(3) of this report. Meanwhile, the following examples highlight some of the major impediments raised by the guardianship system to women's ability to access her rights:

(I) Access to Identification and Government Services

In 2013, the Council of Ministers issued a decision requiring Saudi women to obtain national identity cards and removing the formal requirement for guardian approval in order to apply.⁵¹ However, applying for an identity card requires a woman to present either a passport – which she cannot obtain without a guardian's permission – or be accompanied by a male guardian to confirm her identity.⁵²

Further, a married woman is required to present a family card to receive a national identity card, whereas the family card may only be obtained by a husband, according to the Civil Status Code.⁵³ And while the Shura (Consultative) Council has approved a proposal to amend the Civil Status Law that would allow women to obtain family cards, this proposal has not been processed or released for discussions or implementation in the Council.⁵⁴ Furthermore, the Civil Status Code continued to prevent women from being designated as heads of the household, registering the birth of their children, or updating information on family cards.⁵⁵

The Supreme Judicial Council issued a circular in February 2014 permitting women to attend court hearings once they present their national identity cards, removing the requirement to be identified in court by two males.⁵⁶ In practice, however, court officials often do not implement these guidelines, and some courts continue to require a woman to bring forth two males to identify her.⁵⁷ As any two males may serve as "identifiers," there exists a business for male identifiers who loiter around the courts offering this service to women, often in exchange for sums of money, typically SAR 200 (US\$53).⁵⁸

Access to government services continues to be obstructed by the practice of relying on male identification to confirm a woman's identity. Although women are required to obtain their national identification cards and are permitted to access courts and government services without covering their faces, access to these rights is inconsistent through different regions of Saudi Arabia and varies depending on the views of individual judge and official.⁵⁹ Similarly, while by law women can sign contracts and buy and rent real property, this right is often restricted by officials who continue to require a man's presence or signature as a guarantor.⁶⁰

(II) Access to Higher Education

A guardian's permission is not required by law for a woman to enroll in a school or higher education institutions. Nonetheless, several universities continue to require a guardian's signature before a woman can be enrolled, and there are no legal penalties for this violation.⁶¹

⁵¹ Council of Ministers Orders with Respect to Requiring Saudi Women to Obtain a National Identity Card, Al-Riyadh Newspaper, March 26, 2013, <http://www.alriyadh.com/820546>

⁵² February 2018; Procedures for Obtaining a National Identity Card for Women, Ministry of Interior, https://www.moi.gov.sa/wps/portal/Home/sectors/civilaffairs/contents/!ut/p/z0/04_Sj9CPykssy0xPLMnMz0vMAfljo8ziDTxNTDwMTYy8LUwC3AwcA428nB2dPY3cfc31gxOL9L30o_ArApqSmVVYGOWoH5Wcn1eSWIGiH5GcWZaZo5CYIpaYVWSSa oDGLU4tKstMTi1WMNQvyHYPBwB0wHxz/

⁵³ Civil Status Code, issued by Royal Order no. m/7 on 20/4/1407 (Hijri), with amendments, Ministry of Interior, https://www.moi.gov.sa/wps/wcm/connect/c152dd004d4bb7bd8debdbdbed7ca8368/AR_civil_affairs_system.pdf?MOD=AJPERES&CACHEID=c152dd004d4bb7bd8debdbdbed7ca8368, article 28, 50

⁵⁴ Hala Aldosari, *Family Identification Documents for Saudi Women: An Identity Dilemma*, March 2, 2016, <http://www.agsiv.org/family-identification-documents-for-saudi-women-an-identity-dilemma/>

⁵⁵ Civil Status Code, issued by Royal Order no. m/7 on 20/4/1407 (Hijri), with amendments, Ministry of Interior, https://www.moi.gov.sa/wps/wcm/connect/c152dd004d4bb7bd8debdbdbed7ca8368/AR_civil_affairs_system.pdf?MOD=AJPERES&CACHEID=c152dd004d4bb7bd8debdbdbed7ca8368, article 32.

⁵⁶ Human Rights Watch, *Boxed In: Women and Saudi Arabia's Male Guardianship System*, 2016, p. 62, https://www.hrw.org/sites/default/files/report_pdf/saudiarabia0716web.pdf

⁵⁷ Human Rights Watch, *Boxed In: Women and Saudi Arabia's Male Guardianship System*, 2016, p. 62, https://www.hrw.org/sites/default/files/report_pdf/saudiarabia0716web.pdf; information received from Saudi advocates, February 2018

⁵⁸ Information obtained from Saudi advocates, January 2018

⁵⁹ Information obtained from Saudi advocates, January 2018

⁶⁰ Information obtained from Saudi advocates, January 2018

⁶¹ Information obtained from Saudi advocates, January 2018

Moreover, many higher educational institutions continue to require a guardian's permission as a condition for a female student's participation in extracurricular activities, joining vocational training programmes, traveling on university trips, joining sports activities, or even exiting university premises— including in major institutions such as King Abdul Aziz and King Saud Universities, although the latter recently eased some restrictions on female students.⁶²

The Saudi Government funds women's education abroad through the King Abdullah Scholarship Programme. However, the Ministry of Education continues to require a woman to obtain a guardian's signature before she is allowed to accept a scholarship to study abroad.⁶³ The Ministry also requires that a male guardian or mahram (close male relative) accompanies her for the duration of her studies abroad, creating an onerous burden that hinders a woman's ability to pursue higher educational opportunities.⁶⁴

(III) Access to Employment

The Labour Code does not require a guardian's permission for a woman to work. However, the Code does not penalize requiring a guardian's permission and many employers in the private and public sectors continue to require it as a condition for a woman's employment.⁶⁵ Alternatively, other employers may ask a woman to present a family card, as an indirect means of ensuring a husband's consent in the case of married woman.⁶⁶

The guardianship framework places restrictions on a woman's mobility, which can also interfere significantly with her ability to seek employment. A guardian has the power to prevent a woman from travelling, and even from leaving the house, and can file a criminal complaint on grounds of 'disobedience,' which is treated as a crime for which women are detained and interrogated, to prevent a woman from going to work.⁶⁷

(IV) Access to Healthcare

In 2012, the Ministry of Health approved a regulation to allow female patients above 18 years old to sign their own admission and release forms without male guardian.⁶⁸ However, it is reported that many facilities continue to require the signature of a male guardian before a woman can be admitted into or released from healthcare facilities, without penalty.⁶⁹

A guardian's control of a woman's healthcare choices is enforced by the applied norms of gender segregation in medical facilities. Guardians can and often do demand that women be treated only by same-sex health professionals, and there are no legal measures to penalize withholding care due to a guardian's objection.⁷⁰ In addition, health laws forces women to obtain consent of their husbands for life saving abortion, against the state-issued religious edict permitting this procedure without a guardian's permission, when deemed medically necessary by three medical experts.

The Ministry of Health Manual for Medical Practitioners continues to prioritize the prevention of gender-mixing over women's healthcare needs. Article 3(a) of the Manual states that "men should not examine women, and vice versa, unless it is not possible to find an alternative technician of the same sex as the patient to perform the tasks needed."⁷¹ This has serious practical implications for women trying to access competent and timely health care.

⁶² See, for example, guardian permission forms at King Saud University, <https://sciences.ksu.edu.sa/ar/node/1342>

⁶³ Human Rights Watch, *Boxed In: Women and Saudi Arabia's Male Guardianship System*, 2016, p. 24-25, https://www.hrw.org/sites/default/files/report_pdf/saudi-arabia0716web.pdf; information received from Saudi advocates, January 2018

⁶⁴ Human Rights Watch, *Boxed In: Women and Saudi Arabia's Male Guardianship System*, 2016, p. 24-25, https://www.hrw.org/sites/default/files/report_pdf/saudi-arabia0716web.pdf; information received from Saudi advocates, January 2018.

⁶⁵ Saudi Labor Code, issued Royal Decree no. m/51 on 23/8/1426(Hijri) and last amended on 5/6/1436(Hijri), https://mlsd.gov.sa/sites/default/files/العمل%20نظام_3.pdf; information from Saudi advocate, January 2018.

⁶⁶ Human Rights Watch, "Boxed in: Women and Saudi Arabia's Male Guardianship System", 2016, p. 71, https://www.hrw.org/sites/default/files/report_pdf/saudi-arabia0716web.pdf

⁶⁷ Information received from Saudi advocates, February 2018

⁶⁸ Hala Aldosari, "The Effect of Gender Norms on Women's Health in Saudi Arabia", May 2, 2017, p.6 http://www.agsiw.org/wp-content/uploads/2017/05/Aldosari_Womens-Health_Online-1.pdf

⁶⁹ Hala Aldosari, *The Effect of Gender Norms on Women's Health in Saudi Arabia*, May 2, 2017, p.6, http://www.agsiw.org/wp-content/uploads/2017/05/Aldosari_Womens-Health_Online-1.pdf

⁷⁰ Hala Aldosaria, *The Effect of Gender Norms on Women's Health in Saudi Arabia*, May 2, 2017, pp.6-7, http://www.agsiw.org/wp-content/uploads/2017/05/Aldosari_Womens-Health_Online-1.pdf

⁷¹ Hala Aldosaria, *The Effect of Gender Norms on Women's Health in Saudi Arabia*, May 2, 2017, pp.6-7, http://www.agsiw.org/wp-content/uploads/2017/05/Aldosari_Womens-Health_Online-1.pdf

(V) Freedom of Movement

Restrictions to women's freedom of movement apply both to traveling abroad as well as movement within the country. As mentioned above, a woman cannot apply for a passport or travel outside the country without her guardian's approval. Upon obtaining a passport, a woman must secure her guardian's written permission in order to leave the country. This is typically done during the passport application process, where a guardian may provide written permission for a woman to use the passport to leave the country and such permission may be valid for one trip, for travel over a certain period of time, or until expiry of the passport.⁷²

Furthermore, a woman can be prevented from leaving her home without her guardian's permission and courts regularly uphold a guardian's "right to obedience."⁷³ In turn, this prevents women from effectively enjoying other rights such as education and employment. If a woman is incarcerated, she may only be released from prison to the custody of a male guardian, who is required to sign her exit form, regardless of her age. In cases where a male guardian refuses to receive a woman after completion of her sentence, a social services reconciliation committee intervenes to convince the guardian. In cases where the reconciliation process fails or if a woman does not have a consenting guardian to receive her, she most often remains in prison or is referred to a state-run shelter, with no option to live on her own.⁷⁴ This is not based in law but continues to be the practice.⁷⁵

Right to Drive: While women currently are not permitted to drive in Saudi Arabia, a Royal Order was issued in September 2017 authorizing the enactment of the provision of the Traffic Act and its implementing regulations – which permit the issuance of driving licenses to males and females alike, in a notable step forward.⁷⁶

The Royal Order sets June 24, 2018 as the date of implementation of the Traffic Act "in accordance with the approved *Shari'ah* and regulations and completion of what is required by it."⁷⁷ The State Replies to the List of Issues provide that driving licenses will be issued to men and women alike.⁷⁸ It is not clear, however, what the term "approved *Shari'ah* and regulations" denotes in the Royal Order, and whether a guardianship permission or other specific conditions will be required for women in order to access the right to drive.

⁷² Information received from Saudi advocates, February 2018

⁷³ Human Rights Watch, *Boxed In: Women and Saudi Arabia's Male Guardianship System*, 2016, p. 26, https://www.hrw.org/sites/default/files/report_pdf/saudi-arabia0716web.pdf.

⁷⁴ *After the Lapse of Their Sentences: Guardians Refuse to Receive Saudi Female Prisoners*, Laha Magazine, April 25, 2015, <http://www.lahamag.com/article/44644-استلامهن-أهلهم-يرفض-سعوديات-سجينات-العقوبة-مدة-انقضاء-بعد-44644>

⁷⁵ Information received from Saudi advocates, February 2018; *Saudi Arabia Studies a Law that Prevents an Imprisoned Woman's Guardian from Denying Her*, Al-Arabiya, November 5, 2013, <https://www.alarabiya.net/ar/saudi-today/2013/11/05/السعودية-ابنته-إنكار-من-المواطن-يمنع-قانون-تدرس-السعودية>.html

⁷⁶ Saudi Arabia: Royal Decree Allows Women to Be Issued Driving Licenses, Library of Congress, September 26, 2017, <http://www.loc.gov/law/foreign-news/article/saudi-arabia-royal-decree-allows-women-to-be-issued-driving-licenses/>

⁷⁷ English Translation of the Royal Order: <http://www.spa.gov.sa/viewstory.php?lang=en&newsid=1671331>

⁷⁸ Replies of Saudi Arabia to the List of Issues and Questions in Relation to the Combined Third and Fourth Periodic Reports of Saudi Arabia (Addendum), November 7, 2017 (English Translation), pp. 4, 23

RECOMMENDATIONS

We recommend the CEDAW committee to urge the State party to abolish the male guardianship system for adult women; and specifically:

- Introduce comprehensive anti-discrimination legislation to prohibit gender-based discrimination, particularly with respect to education, employment, and access to government and private services and programmes.
- Amend the Civil Status Code to remove all discriminatory provisions.
- Codify regulations to permit women to obtain passports, travel, and obtain scholarships to study abroad without a guardian's permission.
- Codify penalties for the discriminatory practice of requiring guardianship permission as a condition for women to access any service or programme.
- Codify procedures for the release of women from prisons and correctional facilities to ensure women can be released without a guardian's involvement.
- Ensure that no discriminatory restrictions are in place to a woman's ability to obtain a driver's license.
- Abolish restrictions against gender-mixing in hospitals and other institutions, and instead leave the matter to the free choice of each individual.
- Ensure that women have the right to choose their residence and that claims of disobedience by guardians are not used to subject women to the arbitrary detention.

2. EQUALITY AND RECIPROCITY OF RIGHTS IN MARRIAGE

CRITICAL INFORMATION

According to the Saudi State party report to the CEDAW Committee, a woman has rights equivalent to those of a man during marriage: she has the right to choose her husband and a marriage cannot be contracted without her full and free will. It further stated that a woman shares the same duties of a man, except those rights and duties dictated by the nature of each of them, such as financial maintenance which is the “duty of a husband and the right of a woman”.

CEDAW/C/SAU/3-4

The framework of the marriage system in Saudi Arabia is based on the twin legal concept of male authority (*qiwamah*) and guardianship (*wilayah*) over women. This marriage framework is based on reciprocal rights (as opposed to equal rights) between the two spouses, whereby a woman is expected to obey the husband in return for financial maintenance and protection. A woman is placed under the guardianship of her husband upon signature of the marriage contract,⁷⁹ and is compelled by law to take residency in her husband's home.⁸⁰

The inequality in the marriage framework is particularly severe in Saudi Arabia because the male guardianship system is deeply rooted and extremely restrictive in practice, and results in women being controlled by their husbands in almost all aspects of their lives.

A husband can prevent his wife from work, education, availing health services, and even from leaving the house.⁸¹ A husband can also file a complaint in court on the basis of disobedience, and as a result a woman may be denied financial support until she returns to the marital home.⁸² A woman may stipulate conditions in the marriage contract to secure certain rights, such as education or work, but there is no penalty if the husband breaches a condition except by a judge's discretion. Court cases are often lengthy, with uncertain outcomes.⁸³

⁷⁹ Information received from Saudi advocates, February 2018

⁸⁰ Civil Status Code, issued by Royal Order no. m/7 on 20/4/1407 (Hijri), with amendments, Ministry of Interior, https://www.moi.gov.sa/wps/wcm/connect/c152dd004d4bb7bd8debd8bed7ca8368/AR_civil_affairs_system.pdf?MOD=AJPERES&CACHEID=c152dd004d4bb7bd8debd8bed7ca8368, article 30

⁸¹ Information received from Saudi advocates, February 2018

⁸² Information received from Saudi advocates, February 2018

⁸³ Information received from Saudi advocates, February 2018

MUSAWAH JUSTIFICATION FOR REFORM

The concept of male authority (*qiwamah*) and guardianship (*wilayah*) over women plays a central role in institutionalising, justifying and sustaining a patriarchal model of families in Muslim contexts.

Musawah believes that several verses in the Qur'an that dwell on the values of love, compassion, closeness, and mutual protection between women and men and the general principles of equality and justice should form the basis of marriage and family in Islam.

QUR'AN PROMOTES JUSTICE, EQUALITY AND COMPASSION

- Reforming discriminatory Muslim family laws in order to ensure betterment of women is not against Islam – it is in fact consistent with Qur'anic principles of justice ('*adl*), equality (*musawah*), dignity (*karamah*), and love and compassion (*mawaddah wa rahmah*).
- The Qur'an introduced numerous reforms to existing cultural practices relating to the financial rights of women, including allowing women to own, inherit and dispose property. This was the beginning of a trajectory of reform which, if carried forward 1400 years later to reflect changing times and contexts, should lead to the elimination of the legal logic of male guardianship, and to the introduction of equality in all areas.

CONTEMPORARY LIVED REALITIES DEMONSTRATES NEED FOR REFORM

- Women's lives and stories reveal that laws based on male authority and guardianship over women are untenable, unjust and discriminatory.
- In reality today, who fail to provide do not lose their authority over women, and women who financially provide for the family do not enjoy corollary rights and privileges.
- Far from creating harmony in marriage, these laws are the main causes of marital breakdown and violence against women and thus there is urgent need for reforms.

Saudi Arabia should take steps to reform its laws in order to achieve gender equality and justice for all citizens. The Government should take measures towards law and practice that guarantees that Muslim women and men have equal rights with regard to marriage.

RECOMMENDATIONS

We recommend the CEDAW committee to urge the State party to:

- Codify a Personal Status Law that ensures equal rights and responsibilities in marriage, within a framework that recognizes marriage as a partnership of equals.
- Consider Family Codes in other Muslim contexts such as Morocco, Algeria, and Turkey as examples for codifying a family law that promotes equality in the Muslim family.
- Reform the marriage contract and publish a list of permissible conditions for women to include in the contract order to protect their rights during and after marriage.

EQUALITY OF SPOUSES IN MARRIAGE

POSITIVE DEVELOPMENTS IN MUSLIM FAMILY LAW GLOBALLY

ALGERIA

Under the Constitution and the Civil Code, the family is based on equality between spouses

TURKEY

The Family Code requires each spouse to cohabit in harmony, mutual respect and kindness, contribute jointly to the preservation of the family's interests, the protection of their children and the provision of a sound education for them and mutually agree in the management of the family's affairs, including the spacing of births.

MOROCCO

The Family Code (Moudawana) recognises marriage as a partnership of equals and specifies the 'mutual rights and duties' between spouses which includes: (i) cohabitation, mutual respect, affection and the preservation of the family interest; (ii) both spouses assuming the responsibility of managing and protecting household affairs and the children's education; and (iii) consultation on decisions concerning the management of family affairs.

TOOLS FOR REFORMING MUSLIM FAMILY LAW

In addition to human rights instruments, juristic tools and concepts exist within Islamic legal theory that can be used to reform discriminatory Muslim laws:

First, there is a distinction between what the State party calls *Shari'ah*, the revealed way, and *fiqh* - jurisprudence and human understanding of the *Shari'ah*. Much of what is deemed to be 'Islamic law' by the State party, and what is practiced in its family courts today are in fact, *fiqh* - jurisprudence. **It is not divine law. It is human-made, fallible and changeable.**

Second, Muslim jurists have always considered legal rulings related to marriage and family as social and contractual matters, not spiritual or devotional matters. As such these rulings have always been open to reform, **given changing times and circumstances.**

Third, diversity of opinion has always been accepted and celebrated in the Muslim legal tradition. This led to multiple schools of law, with Kuwait following a particularly school of jurisprudence. Principles such as ***maslahah* (public interest)**, and ***istihsan* (choosing the best opinion among many)** must be used to meet the demands of equality and justice today.

Fourth, laws or amendments introduced in the name of *Shari'ah* and Islam must reflect the values of **equality, justice, love, compassion and mutual respect** among all human beings. These values exist in the Qur'an and the Muslim legal tradition, and they correspond with contemporary human rights principles.

Once a forced marriage is conducted, it is extremely difficult to annul the forced marriages due to an extremely high burden of proof that must be met for a woman to prove absence of consent; for example, a woman must show evidence that she did not attend the wedding ceremony or did not allow the husband to consummate the marriage.⁹⁵ There is no legislation to criminalize forced marriages, nor is there a mechanism to sanction marriage officers who conduct a marriage without a bride's consent.

RECOMMENDATIONS

We recommend the CEDAW committee to urge the State party to:

- Ensure women have an equal right to enter marriage without a guardian's permission and abolish the practice of forcible annulment of marriage.
- Codify a law to criminalize forced marriage and enforce punishments for individuals who plan, conduct, or fail to prevent forced marriages.
- Ensure that the evidentiary standard for making a legal claim for a coercive marriage is reasonable and a woman's testimony under oath is sufficient.
- Permit Saudi men and women to marry foreigners without government interference.
- Train and educate law enforcement officers, judges and, social workers to receive women's complaints and provide them with required legal and social assistance

CAPACITY TO ENTER MARRIAGE	POSITIVE DEVELOPMENTS IN MUSLIM FAMILY LAW GLOBALLY
WOMEN'S EQUAL CAPACITY TO ENTER INTO MARRIAGES	<p>AFGHANISTAN, BAHRAIN (Shia), EGYPT, IRAQ, MOROCCO, TUNISIA, TURKEY: The consent of a marital guardian (<i>wali</i>) is not required for adult brides and grooms.</p>
	<p>BANGLADESH, PAKISTAN, SRI LANKA: The consent of a <i>wali</i> is not required for Hanafi women who have reached puberty.</p>
	<p>ALGERIA, BAHRAIN, BRUNEI, INDONESIA, IRAQ, JORDAN, LEBANON, MALAYSIA, MOROCCO, OMAN, PAKISTAN, PALESTINE, QATAR, SINGAPORE, TUNISIA, TURKEY, UNITED ARAB EMIRATES: Regardless of their age, both prospective brides and grooms must consent to the marriage. Consequently, forced marriages are prohibited.</p>

⁹⁴ Information received from Saudi advocate, February 2018

⁹⁵ Human Rights Watch, *Boxed In: Women and Saudi Arabia's Male Guardianship System*, 2016, p. 39, https://www.hrw.org/sites/default/files/report_pdf/saudiArabia0716web.pdf

4. EARLY AND CHILD MARRIAGE

CRITICAL INFORMATION

According to the Saudi Arabia State party report, with respect to setting a minimum age of marriage for girls and boys, this matter is being studied currently by the concerned agencies. The implementing regulation of the Law on Child Protection states that “before contracting a marriage, it is mandatory to ensure that marrying a person below 18 years of age would not result in harm to the person and would achieve his best interest, whether a male or a female.” The Kingdom re-emphasized that rulings of Islamic *Shari’ah* relating to personal status matters provide for equality between a man and a woman on the basis of complementarity, or what the CEDAW Committee termed in its General Comment 25 “substantive equality,” which takes into consideration the biological differences between a man and a woman, or equality in outcomes.

CEDAW/C/SAU/3-4

Saudi Arabia acceded to the Convention on the Rights of the Child in 1996, yet there is no legal minimum age for marriage in Saudi Arabia to date.⁹⁶ Young girls in particular are vulnerable to exploitation and child marriage. According to a media report, there were 5,622 marriages involving child brides under the age of 14 in Saudi Arabia in 2012.⁹⁷

The implementing regulation of the Law on Child Protection states that “before contracting a marriage, it is mandatory to ensure that marrying a person below 18 years of age would not result in harm to the person and would achieve his best interest, whether a male or a female.”⁹⁸ Such marriages must be approved by an advisory committee consisting of a group of psychology and health specialists who conduct an examination of each case individually, and interview any girl below 18 in private.⁹⁹ However, the conditions or standards used to determine “harm” or “interests” of a minor are unclear and not specified in the law. According to local advocates, minors are often not interviewed as officials treat this process as optional and advisory in nature.¹⁰⁰ The problem is compounded by statements of prominent clerics in support of child marriage. For example, in 2009, Saudi Arabia’s Grand Mufti, Sheikh Abdul Aziz Al-Sheikh, declared that girls as young as 10 years old were marriageable.¹⁰¹

Nonetheless, it appears that Saudi Arabia is currently considering setting a marriage age of 16 for both sexes, and that this proposal has received support by a majority of Shura Council members most recently in January 2018.¹⁰² While consideration of this matter is a positive development, we urge the State Party to pass legislation prohibiting marriage before reaching the age of 18, in line with its international commitments.

⁹⁶ Saudi Arabia State party report to the Committee of the Rights of the Child, CRC/C/SAU/3-4, 2015, para. 72, <http://www.ohchr.org/EN/HRBodies/CRC/Pages/CRCIndex.aspx#sthash.cDNPOz37.dpuf>

⁹⁷ *More than 5,000 Child Brides in Saudi Arabia*, Gulf News, November 8, 2012, <http://gulfnews.com/news/gulf/saudi-arabia/more-than-5-000-child-brides-in-saudi-arabia-1.1101605>

⁹⁸ Saudi Arabia State party report to the Committee of the Rights of the Child, CRC/C/SAU/3-4, 2015, para. 72, <http://www.ohchr.org/EN/HRBodies/CRC/Pages/CRCIndex.aspx#sthash.cDNPOz37.dpuf>

⁹⁹ Saudi Arabia State party report to the Committee of the Rights of the Child, CRC/C/SAU/3-4, 2015, para. 72, <http://www.ohchr.org/EN/HRBodies/CRC/Pages/CRCIndex.aspx#sthash.cDNPOz37.dpuf>

¹⁰⁰ Information obtained from Saudi advocates, January 2018

¹⁰¹ *Top Saudi Cleric: OK for Young Girls to Wed*, CNN, January 17, 2009, <http://edition.cnn.com/2009/WORLD/meast/01/17/saudi.child.marriage/>

¹⁰² *Majority of Shura Council Members Support Bill on Minors Marriage*, Okaz Newspaper, January 9, 2018, <http://www.okaz.com.sa/article/1604685/القاصرات زواج مشروع ل الشورى أعضاء غالبية تأييد/محليات>

MUSAWAH JUSTIFICATION FOR REFORM

Attempts to set and strictly enforce the minimum age of marriage at 18 for both men and women are often met with resistance from conservative religious authorities, who claim that this is 'un-Islamic.'

NEW HISTORICAL EVIDENCE NOW AVAILABLE

- Commonly, the example of the Prophet Muhammad's marriage to Aishah is used to justify child marriage. The marriage was supposedly consummated when Aishah was nine years old.
- However, there are new studies asserting that Aishah was likely to have been 19 at the time of her marriage (source: <http://www.sistersinislam.org.my/news.php?item.997.41>).
- The question arises as to why the Prophet's marriage to Aishah is used as a model, while his marriage to Khadijah, a widow 15 years older than him, or his marriage to other widows and divorcees, are ignored as exemplary practices.

QUR'AN STATES CONDITION OF PERSON FIT FOR MARRIAGE

- While the Qur'an does not provide any specification for the age of marriage, Surah an-Nisa' 4:6 requires that orphans should be of sound judgment before they marry.
- This indicates that a person must have sufficient judgment and maturity to marry.
- Equating the age of majority with the age of puberty and/or rationality (*baligh*), as is traditionally done, forces adulthood on children under 18, even onto those who start menstruating at the age of nine.
- The onset of puberty is no indication of sufficient maturity for marriage.

RECOMMENDATIONS

We recommend the CEDAW committee to urge the State party to:

- Codify and enforce 18 years of age as an absolute minimum age of marriage for both girls and boys, and remove all legal loopholes that allow for exceptions to this rule.
- Enact strict legislation to criminalize child marriage, ensure a mechanism is in place for raising complaints and codify penalties for planning, conducting, and failing to prevent child marriage.
- Ensure that marriage contractors are educated and informed on the legislation and put in place sanctions for marriage officers who violate legislation prohibiting child marriage.

MINIMUM AGE OF MARRIAGE

POSITIVE DEVELOPMENTS IN MUSLIM FAMILY LAW GLOBALLY

MINIMUM AGE OF MARRIAGE 18 WITH NO EXCEPTIONS

EGYPT

The minimum age for marriage is 18 for both females and males. The registration of the marriage of a person below 18 is prohibited and penalised.

KENYA

The minimum age for marriage is 18 for both females and males. Any person who marries or knowingly celebrates or witnesses the marriage of a person below 18 commits an offence and will be liable to a penalty (imprisonment, fine or both).

PAKISTAN (Sindh Province):

The minimum age for marriage is 18 for both females and males. The law criminalises and penalises the following: (i) males over 18 who contracts a child marriage; (ii) whoever performs, conducts or directs a child marriage; and (iii) parents or guardians who promote a child marriage, permit it to be solemnised or negligently fail to prevent it from being solemnised.

5. POLYGAMY

CRITICAL INFORMATION

According to the Saudi Arabia State party report, polygamy was permitted by Islamic *Shari'ah* in accordance with specific guidelines, and resolves certain social problems such as widowhood, spinsterhood, and others. Among the guidelines that Islamic *Shari'ah* instituted in the matter of polygamy is justice, which is a fundamental condition for permitting polygamy.

CEDAW/C/SAU/3-4

In Saudi Arabia, a Muslim man may marry up to four wives at one time with very few restrictions. There is no requirement that he seeks permission of the court for or that he informs his existing wife or wives of the new marriage. The only requirement is that he can support all his wives financially and declares that he would treat them equally.¹⁰³ As a result, many women find themselves in polygamous marriages against their will.

A 2016 report found that over half a million Saudi men had more than one wife at a time.¹⁰⁴ While some women may choose to engage in polygamous marriages, the main problem with respect to polygamy in Saudi Arabia is the limited agency of Saudi women in consenting to polygamous marriages. A woman has no legal avenue to prevent her husband from taking additional wives, nor to obtain a divorce upon learning of her husband's subsequent marriage.¹⁰⁵

It is highly uncommon – and perceived as socially unacceptable – for women to stipulate in the marriage contract to prevent polygamy.¹⁰⁶

Temporary (Misyar) Marriages

Misyar marriages, where a wife waives her rights to maintenance, accommodation, and cohabitation with the husband, are legal and common.¹⁰⁷ In 2006, the International Islamic Fiqh Academy issued a *fatwa* (non-binding but authoritative legal opinions or learned interpretations of a qualified Islamic jurist or mufti) permitting *misyar* marriages, provided the bride's guardian and two witnesses are present and the contract is concluded on mutually agreed-upon and binding conditions.¹⁰⁸

In Saudi Arabia, it is reported that divorced mothers sometimes enter into a *misyar* marriage driven by the need for company or a man to administer their affairs without compromising custody of their children.¹⁰⁹ As divorced mothers typically lose custody upon remarriage, *misyar* marriages offer a solution, as they are often unregistered and undocumented. Media reports indicate that *misyar* marriages are on the rise in Saudi Arabia, partially due to their lower costs, as a man is not required

¹⁰³ Information obtained from Saudi advocate, January 2018; OECD Development Centre, Saudi Arabia, Social Institutions and Gender Index, p. 1, <http://www.genderindex.org/sites/default/files/datasheets/SA.pdf>

¹⁰⁴ Over Half Million Saudi Men Engaged in Polygamy, Report Shows, Al-Arabiya, October 25, 2016, <http://english.alarabiya.net/en/variety/2016/10/25/Over-half-million-Saudi-men-engaged-in-polygamy-in-2016-report-shows.html>

¹⁰⁵ Information obtained from Saudi advocate, January 2018

¹⁰⁶ L.L. Wynn, *Marriage Contracts and Women's Rights in Saudi Arabia: Mahr, Shurut, and Knowledge Distribution*, 2008, <https://www.researchgate.net/publication/275644031>

It is common, however, to make a stipulate that the husband permits her to work or pursue an education, Information received from Saudi advocate, January 2018

¹⁰⁷ Maha Yamani, *Polygamy and Law in Contemporary Saudi Arabia* (UK: Ithaca Press, 2008), p. 107; Lynn Welchman, *Women and Muslim Family Laws in Arab States: A Comparative Overview of Textual Development and Advocacy*, (Amsterdam: Amsterdam University Press, 2007), p. 54, <https://goo.gl/AeQSDU>; *Unable to Afford Marriage Expenses, Young Men Go for 'Misyar'*, *Saudi Gazette*, October 29, 2015, <http://saudigazette.com.sa/saudi-arabia/unable-to-afford-marriage-expenses-young-men-go-for-misyar/>

¹⁰⁸ Esther van Eijk, *Sharia and National Law in Saudi Arabia*, in *Sharia Incorporated: A Comparative Overview of the Legal Systems of Twelve Muslim Countries in Past and Present*, ed. Jan Michiel Otto (Leiden, Netherlands: Leiden University Press, 2010), pp. 164-165, https://openaccess.leidenuniv.nl/bitstream/ha_dle/1887/21170/file221087.pdf?sequence=1

¹⁰⁹ Information obtained from Saudi advocate, January 2018; Matt Young, *Rising Number of Spinsters and Divorced Women in Saudi Arabia Leads to Polygamy Push*, New.com, January 11, 2017, <http://www.news.com.au/lifestyle/relationships/marriage/rising-number-of-spinsters-and-divorced-women-in-saudi-arabia-leads-to-polygamy-push/news-story/a5c40bc6bd190db41a72702e87f9eadc>; Esther van Eijk, *Sharia and National Law in Saudi Arabia*, in *Sharia Incorporated: A Comparative Overview of the Legal Systems of Twelve Muslim Countries in Past and Present*, ed. Jan Michiel Otto (Leiden, Netherlands: Leiden University Press, 2010), p. 165, https://openaccess.leidenuniv.nl/bitstream/ha_dle/1887/21170/file221087.pdf?sequence=1

to provide financial maintenance or a place of residence for the wife.¹¹⁰ In turn, women in unregistered *misyar* marriages face risks of abandonment, exploitation, or inability to prove paternity of their children.¹¹¹

MUSAWAH JUSTIFICATION FOR REFORM	
Musawah believes Islam promotes monogamy and only permits polygamy as an alternative in exceptional circumstances. <i>Surah an-Nisa</i> 4:3 in the Qur'an states: 'If you fear that you shall not be able to deal justly with the orphans, marry women of your choice, two, or three, or four; but if you fear that you shall not be able to deal justly [with your wives] then marry only one.... That will be more suitable, to prevent you from doing injustice'.	
QUR'AN PROMOTES MONOGAMY	<ul style="list-style-type: none"> • When the Qur'an was revealed, it imposed limitations upon the pre-Islamic practice of polygamy. • The verse in <i>Surah an-Nisa</i> that allows polygamy if a man can treat all his wives justly was revealed after a battle which had resulted in many men being killed, leaving behind war widows and orphans. • As men were breadwinners in that society, the widows found it difficult to provide for their children. It was in this context that polygamy was tolerated in Islam: to provide for the welfare of widows and the orphaned children.
CHALLENGING POLYGAMY	<ul style="list-style-type: none"> • Polygamy is not an intrinsically 'Islamic' practice, as some Muslims believe. • Polygamy was a practice that existed in various civilizations, religions, and cultures in many parts of the world until it was abolished by law as governments acknowledged the injustices it inflicted on women and children. • Tunisia has forbidden polygamy on the ground that it is impossible for a man to deal justly with more than one wife. Thus, the continuum of reform suggests that polygamy should be even more restricted than it was in the situation discussed in the Qur'an.

RECOMMENDATIONS

We recommend the CEDAW committee to urge the State party to:

- Abolish or restrict the practice of polygamy.
- In absence of a prohibition of polygamy, introduce conditions to minimize harm and injustice—including requiring the written consent of existing wives.
- Introduce polygamy as a ground of judicial divorce.
- Codify legal provisions to ensure that a woman has recourse to court if the husband enters into subsequent marriages without her consent.
- Provide a model, standard marriage contract with options for the couple to prohibit polygamy and for a wife to explicitly enunciate a monogamous marriage.
- Ensure mechanisms exist for a wife to raise complaints of harm that occurs as a result of a polygamous marriage and obtain financial resource or protection of her rights.
- Put in place mechanisms to remedy the underlying causes of *misyar* marriages, and enforce women's rights in all marriages regardless of their type, including the right to financial maintenance, residency, and recognition of her children.

¹¹⁰ *Unable to Afford Marriage Expenses, Young Men Go for 'Misyar'*, Saudi Gazette, October 29, A 2015, <http://saudigazette.com.sa/saudi-arabia/unable-to-afford-marriage-expenses-young-men-go-for-misyar/>

¹¹¹ Information received from Saudi advocates, January 2018

**POLYGAMY
PROHIBITED**



**KYRGYZSTAN, TAJIKISTAN, TUNISIA,
TURKEY, UZBEKISTAN**

COURT AUTHORIZATION AND CONSENT OF EXISTING WIVES NEEDED:

ALGERIA

Polygamous marriages must be authorized by the court and may only be concluded with the agreement of existing wives.

Court permission is only granted if the husband is able to provide justification for entering into multiple marriages as well as proof of his ability to be fair to all wives and meet the necessary conditions of married life with regard to all his marriages.

INDONESIA

Polygamous marriages must be authorized by the court and may only be concluded with the agreement of existing wives.

Court permission is only granted if the husband's existing wife:

- (i) is unable to perform her conjugal duties;
- (ii) suffers from a physical infirmity or an incurable disease; or
- (iii) cannot bear children.

IRAQ (KURDISTAN REGION):

Polygamous marriages must be authorized by the court and may only be concluded with the agreement of the existing wives. Court permission is only granted if certain conditions are met:

- (i) the first wife has to agree before the court to her husband marrying a second wife;
- (ii) if the wife is diagnosed with an incurable disease that prevents sexual intercourse or if the wife is infertile;
- (iii) the man has the financial capacity to support more than one wife;
- (iv) the husband signs a contract promising to deal with both wives fairly and equally in terms of sexual intercourse and other marriage relations;
- (v) the first wife does not have a condition in the marriage contract that the husband will not take a second wife.

A man who concludes a polygamous marriage without the authorization of a judge will be subject to a penalty of imprisonment and fine and judges are prohibited from suspending the penalties.

5. DIVORCE RIGHTS

CRITICAL INFORMATION

Women do not have an equal right to divorce as men. A man may divorce his wife unilaterally with no restrictions (by pronouncing *talaq*), whereas a woman may only obtain divorce through courts based on a limited number of grounds (through *faskh*) or seek redemptive divorce, whereby she pays a mutually-agreed sum of money to the husband in exchange for a final divorce (*khul'*). In the absence of a husband's agreement to a divorce, *faskh* and *khul'* court proceedings can often be lengthy, costly, and entirely subject to a judge's discretion.¹¹²

There is no legal concept of matrimonial assets in Saudi Arabia, and in practice, women often forfeit their financial rights in order to avoid lengthy disputes or delays in obtaining a divorce. In 2008, Saudi women launched a campaign aimed at highlighting the injustices inherent in the divorce system in Saudi Arabia and a set of 73 demands were submitted to the Shura Council, but the issue remains unaddressed, despite continued advocacy by Saudi women's rights activists.¹¹³

Based on academic research, civil society reports, and information on the ground, the following are examples of the challenges that women face in accessing divorce:

¹¹² Information received from Saudi advocates, February 2018.

¹¹³ Haifa Khaled, *A Woman in the Kingdom is of Less Importance than a Traffic Light*, Akhbar, June 24, 2013, <http://akhbaar24.argaam.com/article/detail/139027>

(i) *Talaq* - Unilateral Divorce

A husband holds the exclusive right to unilateral divorce, and he may exercise this right without restrictions and for any reason. This right may be delegated to the wife through a stipulation in the marriage contract, but in practice, such stipulations are uncommon and are considered socially unacceptable and shameful. Many marriage officers refuse to include such a condition in the marriage contract based on the impression that it is un-Islamic. Furthermore, although stipulations in the marriage contract are enforceable under the Hanbali jurisprudence, in practice many conditions are denied enforcement by judges.

According to the Civil Status Code, it is mandatory to register a divorce within two months of its occurrence.¹¹⁴ However, in practice, the deadline for divorce registration is often ignored, and a woman may not even be notified or have knowledge of the divorce until many years later.¹¹⁵ In addition, only a man may register a divorce – primarily the husband or, in his absence, a male relative.¹¹⁶

(ii) *Fasakh* - Judicial Divorce

A woman may obtain divorce through court if she proves harm. A number of grounds may be considered by a court to constitute harm, including a husband's desertion, impotence, loathsome disease, mistreatment, and lack of financial maintenance.¹¹⁷ While one may refer to Hanbali jurisprudence to understand the requirements for *faskh*, ambiguity and uncertainty continue to exist due to the wide discretion practiced by judges in interpreting and applying these requirements, especially in the absence of codified guidelines. *Faskh* decisions are often inconsistent and arbitrary, and it is not uncommon for judges to act in a biased manner and even propose a *khul'* in order to secure financial compensation for the husband.¹¹⁸

Furthermore, judges require women to submit to a reconciliation process prior to issuing a court ruling. Many women report dissatisfaction with this process, which is administered by a religious reconciliation committee, as it delays the divorce proceedings and forces the woman to share intimate details of her marital life with male strangers. Some women have reported that men on these committees sometimes make improper advances or try to minimize women's grievances and simply advise them to be patient and obedient.¹¹⁹

(iii) *Khul'* - Redemptive Divorce

A wife may obtain a *khul'* divorce outside of court by paying a mutually-agreed sum of money to her husband in return for a final and irrevocable divorce. In absence of such agreement by the husband, a wife may bring a case for *khul'* to court, whereby a judge has the discretion to grant or deny the *khul'* and to specify the compensation to be paid by the wife to the husband. In Saudi courts, *khul'* may be granted only if the wife's reasons for seeking a divorce are deemed acceptable by the judge.¹²⁰

There are no codified guidelines on what constitutes acceptable *khul'* reasons, and decisions are made entirely based on the judge's subjective evaluation of the matter. For instance, in 2016, local media reported a case where one judge granted *khul'* to a wife based on the husband's failure to perform his daily prayers, whereas another judge denied a *khul'* petition despite the husband's alleged abuse, cross-dressing, failure to provide financial maintenance, and criminal record, which the latter judge considered inadequate reasons.¹²¹ It is also not uncommon for lawyers to refuse to

¹¹⁴ Civil Status Code, issued by Royal Order no. m/7 on 20/4/1407 (Hijri), with amendments, Ministry of Interior, https://www.moi.gov.sa/wps/wcm/connect/c152dd004d4bb7bd8debdbd7ca8368/AR_civil_affairs_system.pdf?MOD=AJPERES&CACHEID=c152dd004d4bb7bd8debdbd7ca8368, article 46.

¹¹⁵ Information received from Saudi advocates, February 2018.

¹¹⁶ Civil Status Code, issued by Royal Order no. m/7 on 20/4/1407 (Hijri), with amendments, Ministry of Interior, https://www.moi.gov.sa/wps/wcm/connect/c152dd004d4bb7bd8debdbd7ca8368/AR_civil_affairs_system.pdf?MOD=AJPERES&CACHEID=c152dd004d4bb7bd8debdbd7ca8368, article 47.

¹¹⁷ Human Rights Watch, *Boxed In: Women and Saudi Arabia's Male Guardianship System*, 2016, p. 52, https://www.hrw.org/sites/default/files/report_pdf/saudiArabia0716web.pdf

¹¹⁸ Information received from Saudi advocates, February 2018

¹¹⁹ Information received from Saudi advocates, February 2018

¹²⁰ Information received from Saudi advocates, February 2018

¹²¹ *Strangest Khul' Case of a Saudi Woman in Jeddah*, Almowaten.net, February 13, 2016, [http://rotana.net/القاض من بقرار زوجها خلع في تقبل سعودية/](https://www.almowaten.net/2016/02/أغرب حالة أجنبية من سعودية لمواطنة خلع حالة أغرب/ A Saudi Woman Fails to Obtain Khul', Rotana, May 5, 2016, http://rotana.net/القاض من بقرار زوجها خلع في تقبل سعودية/)

bring *khul'* cases if they regard a wife's reasons to be trivial.¹²² It should be noted here that these restrictions to a woman's right to *khul'* are arbitrary practices based neither on law nor Islamic *Shari'ah*.

Given that women must compensate their husbands in order to obtain a *khul'* divorce, this process can be a costly option that is difficult to access by women of lower economic status. It is common for a woman to pay back the full amount of her dowry (*mahr*) and forfeit her financial rights in order to obtain *khul'*, causing a great injustice to a woman and her children following a divorce.¹²³

Finally, the lack of a financial support system or division of assets following a divorce is a significant hurdle limiting women's ability to exit abusive or harmful marriages. Even under the mandated three-month financial maintenance (*nafaqa*) and compensation (*mut'aa*) system, the amount provided to a divorced wife is often arbitrary and limited.¹²⁴

MUSAWAH JUSTIFICATION FOR REFORM	
It is cruel and unjust to continue to allow men the right to divorce their wives at will. Given today's realities and contemporary conceptions of justice, the urgent necessity to provide equal and just grounds for divorce to both men and women must be undertaken.	
QU'RAN PROMOTES JUST & FAIR DIVORCE	<ul style="list-style-type: none"> • The man's unilateral right to divorce his wife at will contradicts Qur'anic teachings, and specifically the message of kindness, justice, fairness and to do what is right and good. • The Qur'an calls on parties to the marriage to 'either hold together on equitable terms (<i>ma'ruf</i>), or separate with kindness (<i>ihsan</i>)' (Surah al-Baqarah 2:229). • The proceedings for arbitration and mediation in Surah an-Nisa' 4:35 place both spouses on an equal footing: 'If you fear a breach between a married couple appoint (two) arbiters, one from among his people, and the other from among her people.'

RECOMMENDATIONS

We recommend the CEDAW committee to urge the State party to:

- Ensure that men and women have equal access to divorce rights.
- Abolish the husband's right to unilateral divorce, and require both the husband and wife to be present at the time of divorce and to sign the divorce papers.
- Codify in law specific grounds for obtaining judicial divorce, and include discord, incompatibility, emotional and sexual abuse, and polygamy as acceptable grounds.
- Codify in law reasonable standards of proof in divorce proceedings.
- Codify guidelines for *khul'* to ensure that judges expediently grant *khul'* based on request by the wife and payment of a reasonable sum, that considers her financial situation.
- Codify guidelines for the determination of financial support granted to a woman after a divorce, and enforce payments in order to protect women's and children's rights.

¹²² *Strangest Khul' Case of a Saudi Woman in Jeddah*, Almowaten.net, February 13, 2016, <https://www.almowaten.net/2016/02/اب زوجها من سعودية لمواطنة خلع حالة اغرب/>

¹²³ Human Rights Watch, *Boxed In: Women and Saudi Arabia's Male Guardianship System*, 2016, p. 52, https://www.hrw.org/sites/default/files/report_pdf/saudiArabia0716web.pdf; Information received from Saudi advocates, February 2018

¹²⁴ Information received from Saudi advocates, February 2018

POSITIVE DEVELOPMENTS IN MUSLIM FAMILY LAW GLOBALLY	
DIVORCE	
EQUAL RIGHT TO DIVORCE	TUNISIA, TURKEY: All divorces must go through the court. The grounds for divorce are equally available to both spouses. Divorce through unilateral repudiation (<i>talaq</i>) by husband is not recognized.
TALAQ DIVORCE	ALGERIA, MAURITANIA: A divorce by way of repudiation by the husband can only be effectuated through the court. BANGLADESH, PAKISTAN The standard marriage form includes a provision on the curtailment of a husband's right to divorce. MOROCCO: Divorce by <i>talaq</i> can only be effectuated under judicial supervision. The wife and children must have received all vested rights before it is authorized.
KHUL' DIVORCE	ALGERIA A wife can obtain a <i>khul'</i> divorce in court without the consent of the husband upon payment of compensation.

6. CUSTODY AND GUARDIANSHIP OF CHILDREN

CRITICAL INFORMATION

Custody of children

Women do not enjoy equal rights to custody and guardianship of their children. As a general rule, a mother has the priority in gaining custody of her children until a daughter turns seven years of age and a son turns nine. Thereafter, custody of daughters is transferred to the father while sons are given the choice of whether to remain with the mother or be moved to the custody of the father.¹²⁵

Based on civil society and media reports as well as information on the ground, some of the issues of concern regarding child custody include:¹²⁶

- Decisions regarding custody vary according to judges' personal views. While some judges decide custody cases on the basis of the best interest of the child, in many instances, the primary concern of judges is that the child be raised in accordance with Islamic faith. Some judges base their rulings upon an evaluation of the "religiosity" of parents, and a mother may lose custody of her children if she remarries, resides with a non-relative, moves to another country, has satellite TV, or even listens to music.¹²⁷
- Judges lack training on social and family welfare, and many cases are decided by granting custody to unfit fathers or paternal grandparents over the claims of a mother. A judge's negative impression of a woman's character, sometimes merely based on the manner of her veiling or ability to answer back, can result in her losing custody.
- Custody court proceedings are often subject to long delays, whereby a woman is forced to endure the hardship of traveling back and forth to court for months or years.

¹²⁵ Human Rights Watch, *Boxed In: Women and Saudi Arabia's Male Guardianship System*, 2016, p. 54, https://www.hrw.org/sites/default/files/report_pdf/saudiArabia0716web.pdf

¹²⁶ Information obtained from Saudi advocate, January 2018; Eleanor Abdella Doumato, Saudi Arabia, in *Women's Rights in the Middle East and North Africa: Progress Amid Resistance*, eds. Sanja Kelly and Julia Breslin (New York, NY: Freedom House; Lanham, MD: Rowman & Littlefield, 2010), p. 10, https://freedomhouse.org/sites/default/files/inline_images/Saudi%20Arabia.pdf; Marian Nihal, *Women Fear Losing Custody of Their Children if They File for Divorce*, Arab News, December 17, 2011, <http://www.arabnews.com/node/401246>

¹²⁷ For more information, see the 30-volume court decisions published by the Ministry of Justice, https://www.moj.gov.sa/ar-sa/ministry/versions/Documents/AhkamGroup_1434/30.pdf; Human Rights Watch, *Boxed In: Women and Saudi Arabia's Male Guardianship System*, 2016, p. 55-56, https://www.hrw.org/sites/default/files/report_pdf/saudiArabia0716web.pdf

- Due to misinformation and lack of transparency on custody rules, many women fear losing their children if they file for a divorce. This leads many women to stay in abusive or harmful marriages or enter into unregistered *misyar* marriages.

Guardianship of Children

A father has priority right over the guardianship of the children. In case of the father's death, guardianship passes to male relatives of the father. The mother may request the right to guardianship, but this can require lengthy hearings and such requests are rarely granted.¹²⁸

According to directives by the Supreme Judicial Council in 2014 and 2015, divorced women with custody can obtain documents and conduct government business for their children. However, despite this positive change, fathers continue to retain guardianship of their children and thus are able to place significant restrictions on custodian mothers. For example:

- Regardless of whether a mother has custody of her children, the father or male guardian of the children determines their place of residency and ability to travel. Although a mother can seek travel permission from a court for her children, such requests are rarely granted and even if granted, such authorizations to travel are typically only be valid for one trip.¹²⁹
- According to the regulations of the Saudi Arabian Monetary Agency (SAMA), a woman is not allowed to open a bank account in the name of her children except with the father's consent, nor is she allowed to conduct any transaction on her child's behalf, even if it is she is the one making the deposit.¹³⁰
- Over 21% of families registered for government social assistance were headed by women as the main providers. Yet, a woman cannot be a head of the household and is therefore unable to take decisions on behalf of children under her custody. According to the Civil Status Law, a woman may be considered head of the household only if her husband dies.¹³¹

RECOMMENDATIONS

We recommend the CEDAW committee to urge the State party to:

- Amend the Civil Status Law to grant equal right to guardianship of children and to grant full guardianship right to the mother if she has been granted custody of the child.
- Ensure there is no gender discrimination in granting of guardianship of children.
- Ensure that the civil registration system treats women and men equally and that women head of the families are given the full authority to exercise their roles.
- Clarify the rules and procedures for deciding custody cases, and codify standards for granting custody based on the best interests of the child.
- Train judges and court officials on new rules and procedures to ensure full and effective implementation, and conduct workshops and campaigns to raise the awareness of women in particular of their rights following a divorce.

¹²⁸ Saudi Women for Reform, Saudi Arabia Shadow Report, Submission to the CEDAW Committee for the 40th Session, 2007, p. 74, http://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/SAU/INT_CEDAW_NGO_SAU_40_10011_E.pdf

¹²⁹ Information obtained from Saudi advocate, January 2018; Immigration and Refugee Board of Canada, "Saudi Arabia: Whether Saudi Arabian laws concerning child custody are applicable to Palestinians in Saudi Arabia, and whether Islamic Law provides that following a divorce a child must live with his or her mother for a period of seven years without contact with the father, after which time the child must be returned to the father," 2002, <http://www.refworld.org/docid/3f7d4e130.html>

¹³⁰ Saudi Women for Reform, Saudi Arabia Shadow Report, Submission to the CEDAW Committee for the 40th Session, 2007, p. 3, http://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/SAU/INT_CEDAW_NGO_SAU_40_10011_E.pdf

¹³¹ Civil Status Code, issued by Royal Order no. m/7 on 20/4/1407 (Hijri), with amendments, Ministry of Interior, https://www.moi.gov.sa/wps/wcm/connect/c152dd004d4bb7bd8debddeb7ca8368/AR_civil_affairs_system.pdf?MOD=AJPERES&CACHEID=c152dd004d4bb7bd8debddeb7ca8368, article 91

GUARDIANSHIP OF CHILD		POSITIVE DEVELOPMENTS IN MUSLIM FAMILY LAW GLOBALLY	
EQUAL RIGHT TO GUARDIANSHIP	INDONESIA, KENYA, SINGAPORE, TURKEY		
	Ultimately, guardianship of children is determined by the courts on the basis of the best interest of the child.		
CUSTODIAN'S GUARDIANSHIP RIGHTS	ALGERIA		
	Upon divorce, a mother can be appointed as guardian of her child if she has been granted custody of the child.		
	BRUNEI		
	A court is mandated to grant the custodian the right to decide all questions relating to the welfare, guidance, upbringing and education of the child subject to what-ever conditions that the court thinks fit to impose.		
	TUNISIA		
	Mothers who have custody of their children also has guardianship rights as regards travel, schooling, and management of finances. The mother has an equal right to supervise the child's affairs.		

7. VIOLENCE AGAINST WOMEN

CRITICAL INFORMATION

Saudi Arabia has no codified Penal Code. The Law on the Protection from Abuse was issued in 2013 and includes a general criminalization on violence within the family as well as penalties for domestic violence that range between one month and one year in prison and/or a fine between SAR 5,000 (US\$1,333) and SAR 50,000 (US\$13,330), with a possibility for judges to multiply the penalties for repeat offenders or apply *Shari'ah*-based penalties.¹³² Article 1 of the Law defines abuse as “any type of exploitation or mistreatment – whether physical, psychological, or sexual – or threat thereof by a person against another, overstepping bounds of the perpetrator’s guardianship, authority, or responsibility”¹³³

While the passing of the Law on the Protection from Abuse was a positive step forward, a number of critical gaps remain. The Law does not criminalize marital rape, nor does it criminalize other acts of abuse, such as deprivation of liberty or restriction of a woman’s right to pursue an education or employment. Moreover, it refers to certain acceptable “bounds” of guardianship, authority, or responsibility that may not be overstepped, without specifying what these are, leaving room for abuse and discretion in enforcement.

This is further compounded by an existing sentiment in Saudi Arabia, including among some social workers, that a guardian has the right to use physical violence to discipline women and children under his guardianship.¹³⁴ Law enforcement officials generally treats domestic violence situations as private, domestic matters, with few legal consequences for the perpetrators, and courts are often lenient in cases when abuse is perpetrated by a male against his female relatives.¹³⁵ Such abuses are enforced by the vague language of the law.

The issue of women leaving the marital home as a result of domestic abuse has come under the spotlight recently as media stories emerged of women fleeing the Kingdom or escaping from their

¹³² Saudi Arabia Law on Protection from Abuse, issued by Order no. 332 of 19/10/1434(Hijri), <https://www.mof.gov.sa/docslibrary/RegulationsInstructions/Documents/الإبذاء%20من%20الحماية%20نظام/الانظمة.pdf>

¹³³ Saudi Arabia Law on Protection from Abuse, issued by Order no. 332 of 19/10/1434(Hijri), <https://www.mof.gov.sa/docslibrary/RegulationsInstructions/Documents/الإبذاء%20من%20الحماية%20نظام/الانظمة.pdf>

¹³⁴ Information received from Saudi advocates, February 2018

¹³⁵ Information received from Saudi advocates, February 2018

husbands while travelling.¹³⁶ However, a large section of society often regards such women as criminals, and there have been a number of cases of women being imprisoned or flogged as a result of running away from domestic abuse.¹³⁷

According to the Ministry of Labor and Social Development, there were 8,016 reported cases of physical and psychological abuse in 2015, most of which involve violence between spouses.¹³⁸ In one major city alone, the Ministry recorded 961 cases of domestic violence in one year, with most cases involving women and children being denied their basic rights to education, health care, or personal identification documents.¹³⁹

Access to Social Services and the Courts

Despite positive legislative developments, women continue to struggle to reach resources and assistance in cases of domestic abuse. Women are often unable to report abuse, and when they do, many are reportedly abused further, tortured, or even killed by their abusive male guardians after contacting authorities.¹⁴⁰ State Social Services often resort to reconciliation after asking guardians to sign pledges to refrain from further use of violence; some women in shelters were coerced by social workers to marry to escape their abuse or to leave the shelters. Shelters are treated as temporary accommodations and women are often asked to find another family member to host them, and often these family members return the women back to their abusers. More shelters are certainly needed, yet civil society organizations have not been allowed to set up licensed shelters to date.

Women fear resorting to courts, as convincing a judge that a guardian is abusive can be a lengthy and culturally difficult process for a woman. A woman must show specifically how she was harmed and even then, judges usually refrain from revoking guardianship unless the guardian is determined to have committed a violation of Islamic law, such as drinking alcohol, even though harming women is prohibited by Islamic *Shari'ah*.¹⁴¹ Women find themselves required to meet a high burden of proof to show abuse, and courts often fail to protect women despite the protections offered by the law.¹⁴² Greater oversight and monitoring is needed to ensure that the Law on the Protection from Abuse is implemented and that women's safety is protected and proper avenues for redress are made available.

RECOMMENDATIONS

We recommend that the CEDAW committee urges the State party to:

- Introduce legislation that explicitly criminalizes all forms of domestic violence and marital rape, with specific punishments in the law and no exceptions.
- Ensure that government provides support services for violence survivors, and allow the establishment of women's shelters by civil society organizations.
- Abolish the criminalization of women based on disobedience charges and the practice of forcible return of women to their abusive guardians.
- Identify and implement protection measures for vulnerable populations, such as minors, incarcerated women, stateless women and foreign women abused by their husbands.
- Train judges and court officials to implement the Law on Protection from Violence and issue clear guidelines on standards of proof and sanctions for abusers, according to the international commitments of the state.
- Conduct awareness campaigns and educational programmes to combat violence against women and raise women's awareness of their legal rights.

¹³⁶ See, for example, Molly Hennessy-Fiske, *For Some Saudi Women Facing Strict Male Authority and Even Abuse, There Is Only Answer: Run*, Los Angeles Times, July 30, 2017, <http://www.latimes.com/world/middleeast/la-fg-saudi-runaways-2017-story.html>; Mona Eltahawy, *Why Saudi Women Are Literally Living the Handmaid's Tale*, New York Times, May 24, 2017, <https://www.nytimes.com/2017/05/24/opinion/why-saudi-women-are-literally-living-the-handmaids-tale.html>

¹³⁷ Information received from Saudi advocates, February 2018

¹³⁸ Human Rights Watch, *Boxed In: Women and Saudi Arabia's Male Guardianship System*, 2016, p. 30, https://www.hrw.org/sites/default/files/report_pdf/saudiarabia0716web.pdf

¹³⁹ Human Rights Watch, *Boxed In: Women and Saudi Arabia's Male Guardianship System*, 2016, p. 30, https://www.hrw.org/sites/default/files/report_pdf/saudiarabia0716web.pdf

¹⁴⁰ Information received from Saudi advocates, January 2018

¹⁴¹ Information received from Saudi advocates, January 2018

¹⁴² Information received from Saudi advocates, January 2018

**LEGISLATION
AGAINST
DOMESTIC
VIOLENCE**

IRAQ KURDISTAN REGION,

In addition to criminalizing physical, psychological and sexual violence within the family, The Act of Combatting Domestic Violence in the Kurdistan region (Act No 9 of 2011), also recognized forced marriage, child marriage, female genital mutilation, forced divorce, verbal abuse, forced prostitution and abortion, among other violations which constitute as domestic violence. Furthermore the Act formed a competent court to specialize in domestic violence cases.

ALGERIA

Penal Code was amended in 2016 making assault against a spouse or ex-spouse punishable by up to 20 years in prison, depending on the victim's injuries, and by a life sentence if the attack results in death.

INDONESIA

In 2004, Indonesia enacted a law against domestic violence, including physical, psychological and sexual violence, as well as economic abandonment. The law intended to provide protection to spouses, children and relatives, as well as domestic workers or other persons working or living within the domestic environment. It also granted stiff fines and long jail terms to perpetrators.

TUNISIA

In July 2017, government adopted a law Law on Eliminating Violence Against Women, which also introduces new criminal provisions and increases penalties for various forms of violence when committed within the family. The law calls for establishing family violence units within Tunisia's Internal Security Forces to oversee domestic violence complaints.

8. NATIONALITY

CRITICAL INFORMATION

According to statistics published by the Ministry of Justice in 2015, around 700,000 Saudi women were married to foreign nationals, totaling 10% of marriages in Saudi Arabia.¹⁴³

The Saudi Arabia Nationality Law includes several discriminatory provisions that restrict a woman's right to pass her nationality to her foreign spouse and to her children from a foreign spouse. Article 7 of the Nationality Law provides that a Saudi national is one who was born inside or outside of Saudi Arabia to a Saudi father or to a Saudi woman, but only if the father is stateless or is of an unknown nationality.¹⁴⁴

¹⁴³ Sabq Electronic Newspaper, *Marriage of Saudi Women to Foreigners: Increasing Proportions and a Price Paid by the Children*, March 20, 2015, <https://sabq.org/7muGHe>

¹⁴⁴ Saudi Arabia Nationality Law, issued by Order No. 4 on 25/1/1374(Hijri), http://www.mofa.gov.sa/aboutKingDom/SaudiGovernment/RegimesInKingdom/CivilStatusSystem/Documents/87757_جنسية2.pdf, article 7

Article 8 permits the granting of Saudi nationality by a decision of the Minister of Interior to a person who was born inside Saudi Arabia to a Saudi mother and a foreign father, if the following conditions were met:¹⁴⁵

- (a) That he/she is a permanent resident of Saudi Arabia at the time he reaches the age of maturity;
- (b) That he/she have a reputation of good behavior and was neither convicted of a criminal offense or of a moral offense that carries a jail sentence of over six months;
- (c) That he/she have good command of the Arabic language; and
- (d) That he/she apply for Saudi nationality during the year following reaching maturity.

On the other hand, children of a Saudi father, whether born inside or outside Saudi Arabia are automatically granted nationality.¹⁴⁶

And while Saudi woman are permitted to sponsor their husbands and children for residency in Saudi Arabia, thus allowing them to access the education system, healthcare services in state hospitals, and work in the private sector and civil service in accordance with labor regulations, these women also face additional restrictions. For example, these Saudi women are not entitled to social security benefits, their children from a foreign spouse are not entitled to state-sponsored scholarships for higher education, and it is not possible for a Saudi mother to designate her foreign son as her agent or representative.¹⁴⁷

Children of a Saudi mother and a foreign father continue to face additional discriminatory measures. They are ineligible for state-sponsored scholarships for higher education abroad, they must pay a SAR 200 fee every time they leave the country, they are not permitted to stay outside Saudi Arabia for more than 6 months at a time, and they are required to pay 20% of their salary as insurance against job hazards (as other foreign workers). If the Saudi mother dies, her children cannot inherit real estate property (they may sell it and receive its value), and must then find another sponsor in order to remain in Saudi Arabia. Furthermore, many are not granted citizenship even if their application meets all the required conditions, as the law permits and does not require this grant of citizenship by the Minister of Interior.¹⁴⁸

RECOMMENDATIONS

We recommend that the CEDAW committee urges the State party to:

- Amend the Nationality Law to grant the foreign husband of a Saudi woman the same rights to nationality as those of a foreign woman married to a Saudi man.
- Amend the Nationality Law to remove discrimination in the granting of nationality to children of a Saudi mother, and revise employment and education regulations to grant children of a Saudi mother the same rights as those of a Saudi father.

NATIONALITY	POSITIVE DEVELOPMENTS IN MUSLIM FAMILY LAW GLOBALLY
TRANSMISSION OF CITIZENSHIP FROM MOTHER TO CHILD	<p>AFGHANISTAN, ALGERIA, BANGLADESH, INDONESIA, EGYPT, KENYA, MALI, MOROCCO, PAKISTAN, PALESTINE, SINGAPORE, SOUTH AFRICA, TURKEY, YEMEN: Mothers may pass their citizenship to their children regardless of where their children are born.</p> <p>EGYPT, INDONESIA, MALI, PAKISTAN: Laws or procedures specifically confer women married to foreign-born husbands with the right to transmit their citizenship to their children.</p>

¹⁴⁵ Saudi Arabia Nationality Law, issued by Order No. 4 on 25/1/1374(Hijri), http://www.mofa.gov.sa/aboutKingDom/SaudiGovernment/RegimesInKingdom/CivilStatusSystem/Documents/87757_جنسية2.pdf, article 8

¹⁴⁶ Saudi Arabia Nationality Law, issued by Order No. 4 on 25/1/1374(Hijri), http://www.mofa.gov.sa/aboutKingDom/SaudiGovernment/RegimesInKingdom/CivilStatusSystem/Documents/87757_جنسية2.pdf, article 7

¹⁴⁷ *Marriage of Saudi Women to Foreigners: Increasing Proportions and a Price Paid by the Children*, Sabq Electronic Newspaper, March 20, 2015, <https://sabq.org/7muGHe>; Information received from Saudi advocate, February 2018

¹⁴⁸ Information received from Saudi advocate, February 2018; *8 Obstacles Facing the Husband of a Saudi Woman*, Okaz Newspaper, October 24, 2017, <http://www.okaz.com.sa/article/1583285>; Saudi Arabia Nationality Law, issued by Order No. 4 on 25/1/1374(Hijri), http://www.mofa.gov.sa/aboutKingDom/SaudiGovernment/RegimesInKingdom/CivilStatusSystem/Documents/87757_جنسية2.pdf, article 8.

ANNEX 1:

MUSAWAH VISION FOR THE FAMILY

Musawah asserts that in the twenty-first century, there cannot be justice without equality. Many provisions in Muslim family laws, as defined by classical jurists and as reproduced in modern legal codes, are neither tenable in contemporary circumstances nor defensible on Islamic grounds. Not only do these family laws fail to fulfill the *Shari'ah* requirements of justice, but they are being used to deny women rights and dignified choices in life. These elements lie at the root of marital disharmony and the breakdown of the family.

Musawah believes that Qur'anic principles and the richness of the Islamic juristic tradition enable us to formulate Muslim family laws today that are egalitarian and reflect the needs of contemporary societies. Islamic teachings and universal human rights standards, including the CEDAW Convention, are fully compatible and are dynamic and constantly evolving, based on changing times and circumstances. Inspired by the Qur'anic vision of justice and gender relations, Musawah contends that gender equality and non-discrimination can only be achieved with laws that transform power relations in the family and in society in the direction of just outcomes.

It is our hope that the CEDAW Committee will encourage Governments everywhere, and particularly those purporting to speak for and in the name of Islam and Muslim communities, to:

- Recognize the diversity of opinions, laws and practices in the Muslim world and the growing scholarship in Islam that recognizes equality and justice and the possibility and necessity for reform of Muslim family laws today.
- Promote human rights standards as intrinsic to the teachings of Islam, national guarantees of equality and non-discrimination, and the lived realities of men and women today.
- Encourage open and inclusive public debate regarding diversity of opinion and interpretations in Muslim laws and principles relating to family laws and practices.

