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Resilient nations

Kingdom Of
Saudi Arabia
Gender Justice
& The Law

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Kingdom of
Saudi Arabia
Gender Justice

Assessment of laws affecting gender equality and
protection against gender-based violence

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ACRONYMS

CEDAW	Convention on the Elimination of All Forms of Discrimination against Women
CEDAW Committee	UN Committee on the Elimination of Discrimination against Women
ESCWA	Economic and Social Commission for West Asia
FGM/C	female genital mutilation / cutting
GBV	Gender-based violence
ILO	International Labour Organization
IOM	International Organization for Migration
NGO	Non-government organization
OECD	Organisation for Economic Co-operation and Development
SDGs	Sustainable Development Goals
UNDP	United Nations Development Programme
UNESCWA	United Nations Economic and Social Commission for West Asia
UNESCO	United Nations Educational, Scientific and Cultural Organization
UNFPA	United Nations Population Fund
UNHCR	United Nations High Commission for Refugees (UN Refugee Agency)
UNICEF	United Nations Children's Fund
UN Women	United Nations Entity for Gender Equality and the Empowerment of Women
WHO	World Health Organization
Arabic terms	
fatwa	Ruling or pronouncement on a point of Islamic law
'idda	The period a woman must observe after the death of her spouse or after a divorce during which she may not remarry
khalwa	Social mingling of men and women who are unrelated
khul'a	Divorce process initiated by the wife requiring return of her mahr
mahr	Mandatory payment by the groom or his father to the bride which then becomes her property
talaq	Repudiation; divorce process whereby the husband repudiates his wife
'urf	Custom
wali	Guardian
wilaya	Guardianship
zina	Unlawful sex, including adultery and sex between two persons neither of whom are married

INTRODUCTION

Scope

UNDP, in partnership with UN Women, UNFPA, and ESCWA, has conducted a study on Gender Justice and the Law to provide a comprehensive assessment of laws and policies affecting gender equality and protection against gender-based violence in the Arab states region.

The study is composed of an introductory piece that describes the background, rationale, analytical framework and methodology, and a total of 18 country profiles. Each country profile maps the country's key legislative and policy developments regarding gender justice.

This country profile presents the findings of the study relating to Saudi Arabia. It provides an analysis of whether the country's laws and policies promote or impede equality between women and men before the law, and whether they provide protection against gender-based violence.

This country profile includes analysis of the following areas of the law:

- Constitutional guarantees of gender equality and constitutional protections against gender-based violence
- Status of penal codes and whether the country has domestic violence laws that address gender-based violence
- Status of personal status codes and how they impact gender equality
- Status of nationality laws and whether they ensure that women and men enjoy equal rights in relation to citizenship
- Status of labour laws and whether they provide protection from discrimination and gender-based violence in the workplace

Methodology and acknowledgements

The study was conducted in two phases:

1. A literature review was conducted between January 2016 and June 2017 of the various laws, regulations, policies, and law enforcement practices related to gender justice in each of the 18 countries, which then formed the basis of draft country profiles.
2. Realizing the limitations of desk-based literature reviews, country validation processes for each of the draft country profiles were led by UN Country Teams and national consultants. Country validation processes took place between September 2017 and August 2018 to ensure the accuracy of each country profile. These sought the views of government partners and other key national stakeholders.

The draft country profile of the Kingdom of Saudi Arabia was reviewed by the Ministry of Foreign Affairs, the Ministry of Justice and the Human Rights Commission of the Kingdom of Saudi Arabia, and their feedback was incorporated into this country profile. Their contributions are greatly acknowledged.

The literature reviews that formed the basis of the country assessment were authored by consultants John Godwin and Nadya Khalife. They also edited the final drafts for publication after feedback from national counterparts. Their insights and hard work are recognized with gratitude. Nadya Khalife and Amr Khairy translated the outputs of the study into Arabic and English. Gratitude is also extended to John Tessitore for assistance with copyediting in English.

In 2019 the country profile was updated by Nehad Abul Komsan, in consultation with the Family Affairs Council of the Kingdom of Saudi Arabia.

KINGDOM OF SAUDI ARABIA



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The colour codes indicate whether the laws comply with international human rights standards, the recommendations of the UN Committee on the Elimination of Violence against Women, and recommendations of the country's Universal Periodic Review.

Gender Justice & The Law

DOES THE LAW ENSURE GENDER EQUALITY AND PROTECTION FROM VIOLENCE?

YES

The law provides for gender equality and/or protection from gender-based violence and is substantially compliant with international standards. A green category does not indicate that the law is perfect or that gender justice in the relevant topic area has been fully achieved.

NO

The law does not provide for gender equality and/or there is no or minimal protection from gender-based violence.

Partly

Some gender justice aspects of the law have been addressed, but important gender inequalities remain.

No available data or inadequate information.

Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)

Saudi Arabia ratified CEDAW in 2000, with reservations relating to the norms of Islamic law and that the Kingdom does not consider itself bound by Article 9(2) (nationality) and Article 29(1) (dispute resolution).

Constitution

The Basic Law of Governance does not include a provision on gender equality or prohibition of discrimination based on sex or gender. The Basic Law of Governance guarantees the principle of equality in general. Article 8 states: "Government in the Kingdom of Saudi Arabia is based on the premise of justice, consultation and equality in accordance with the Islamic Sharia." Article 47 states: "The right to litigation is guaranteed to citizens and residents of the Kingdom on an equal basis."

NATIONALITY LAW

NATIONALITY

Women do not have the same rights as men to pass nationality to their children or to a foreign spouse. The Council of Ministers Resolution No. 406 of 12/11/2012 addresses the situation of children of Saudi women married to a foreign man, including that the State is to bear their residence fees and allows them to work in the private sector. The children of Saudi women can also benefit from the Citizen's Account Program, which provides entitlements to cash payments.

CRIMINAL LAWS

Domestic violence

Women and girls are protected by the Law on Protection from Abuse 2013. It creates criminal penalties for acts of domestic violence and establishes a process for people to lodge complaints and receive protection. It could be improved by clarifying if the law criminalizes marital rape as a form of abuse.

Abortion for rape survivors

Abortion is generally prohibited under Sharia law, including in the case of rape. Abortion is legal to save the woman's life or if the pregnancy is less than four months old and continued pregnancy gravely endangers the mother's health.

Female Genital Mutilation / Cutting (FGM/C)

There is no legal prohibition. It is not practiced.

Marital rape

Marital rape is not criminalized. Rape of a wife by a husband was not traditionally subject to punishment in Sharia courts, but a husband is under a general obligation not to harm his wife.

Sexual harassment

Sexual harassment was criminalized in 2018. The law defines "harassment" as any word, act, or sign with a sexual connotation by a person to any other person that harms their body or modesty by any means, including through modern technology.

Human trafficking

The Anti-Trafficking in Persons Law of 2009 prohibits human trafficking and there are prevention and protection measures. A Royal Decree specifies the responsibilities of the Anti-Trafficking in Persons Commission to include: research, information, media campaigns and social and economic initiatives to prevent and combat trafficking in persons. The Human Rights Commission launched a national plan to combat trafficking in persons from 2017 to 2020. An awareness campaign was launched to combat human trafficking.

Rape (other than of a spouse)

Rape is a criminal offence under Sharia law with a wide range of penalties, including flogging and execution.

Femicide: Mitigation of penalty (so called 'honour' crimes)

Leniency for perpetrators of 'honour' crimes against women is not codified in Saudi law. Sentencing of men who commit such crimes is at the discretion of the court. No cases of interventions have been recorded for so-called 'honour' crimes.

Sex work and anti-prostitution laws

Prostitution is prohibited by Sharia law.

Exoneration by marriage

There is no provision that acquits a rapist from punishment if he marries his victim. The regulations in force in Saudi Arabia stipulate that a person convicted of a rape crime is punishable in any case.

Adultery

Adultery is criminalized by Sharia law (zina offence).

Sexual orientation

Homosexual conduct between consenting adults is criminalized by Sharia law.

PERSONAL STATUS LAWS

Minimum age of marriage

Article 16/3 of the Executive Regulations of the Child Protection Law affirms that marriage under the age of 18 years shall not take place except with the permission of a court. Before concluding the marriage contract, it is necessary to ensure that the marriage of persons under 18 years of age "shall not be prejudicial, and achieves their best interests, male or female." The Ministry of Justice, in its Ministerial Decision 1630368/40 dated 28/5/1440 Hegira, confirmed the application of this Article and the requirement to verify the best interests of both parties to the contract in the case of requests for marriage of persons under 18 years.

Guardianship of children

Fathers are the guardians of their children and make decisions about important matters such as health care and education. Mothers also have a role in making decisions for their children. The care of a child's financial affairs can be provided by either the father or mother, as stipulated in the Royal Decree No. M/134 dated 27/11/1440 (30 July 2019), including amendment of Article 33 to grant women equal rights with men in registering births. Article 50 grants both husband and wife the right to request the family registration from the Department of Civil Status, and Article 91 has been amended to read: "the head of the family in the application of this system shall be the father or mother of the children."

Male guardianship over women

Women require the consent of a male guardian to marry. Early marriage is not allowed except with the court's permission. Supreme Decree No. 33322 of 2017 terminated government entities from requiring women to obtain the permission of their guardian in order to receive government services. Resolution No. 684 of 2019 ended the requirement to obtain permission of a guardian to travel abroad. Royal Decree No. M/134 dated 27/11/1440H (30 July 2019) provides equality between men and women in the requirements for obtaining passports.

Custody of children

After divorce, the mother has custody of children up to a specified age, but she loses custody if she remarries. A decree was issued to regulate custody matters by the President of the Supreme Council of the Judiciary No. 1049/C dated 20/06/1439 AH, in relation to proof of custody of the mother, and custody is up to the age of 15 years.

Marriage and divorce

Under Sharia principles, the husband is required to financially support his wife. The wife owes obedience to the husband. A husband can divorce by repudiation (talaq). A wife has the right to divorce on specified grounds. She can also apply for a khul'a divorce without grounds if she forgoes financial rights.

Polygamy

Polygamy is permitted.

Inheritance

Sharia rules of inheritance apply. Women have a right to inheritance, but in many cases receive less than men. Daughters receive half the share that sons receive.

LABOUR LAWS

Right to equal pay for the same work as men

The Labour Law prohibits discrimination against women in hiring or wages based on amendments made by Royal Decree No. 684 of 27/11/1440 H (30 July 2019), including Article 2, which changes the definition of the worker as "any person - male or female - who works for the benefit of an employer and under his management or supervision for a fee, even if he is away from his sight". Article 3 has been amended to state "citizens are equal in the right to work without any discrimination on the basis of sex, disability, age or any other form of discrimination, whether during the performance work or when hiring or advertising." Article 34 provides model mechanisms prohibiting wage discrimination between men and women workers for work of equal value.

Domestic workers

Domestic workers are not covered by the full protections of the Labour Law. A Ministerial Decree No. 310 dated 7/9/1434 H (2013) was issued for the Regulation of Domestic Workers. The Decree regulates the employment of domestic workers and sets out minimum entitlements. Employers are required to treat domestic workers with dignity and to ensure their safety.

Dismissal for pregnancy

Under Article 155 of the Labour Law employers are prohibited from dismissing a woman because she takes maternity leave.

Paid maternity leave

Women are entitled to 10 weeks of maternity leave, which is fully paid by the employer. This is less than the ILO standard of 14 weeks.

Legal restrictions on women's work

The Labour Law prohibits employment of women in hazardous operations or harmful industries. The Minister prescribes occupations and jobs that are deemed harmful to women. The law also prohibits women from working at night, except in situations determined by the Minister.

OVERVIEW

Legal framework

International law

Saudi Arabia ratified the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) in 2000, with the following reservations: 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; the Kingdom does not consider itself bound by Article 9(2) (relating to nationality of children) and Article 29(1) (relating to dispute resolution) of the Convention.

Domestic laws

Saudi Arabia's laws are based on Islamic Sharia law. This is confirmed by the Basic Law issued by Royal Decree No. A90 dated 27/8/1412 in Article 7, which states: "Governance in the Kingdom of Saudi Arabia derives its authority from the Book of God Most High and the Sunnah of his Messenger, both of which govern this Law and all the laws of the State." Article 81 of the same Law stipulates that: "The enforcement of this Law shall not prejudice whatever treaties and agreements with states and international organizations and agencies to which the Kingdom of Saudi Arabia is committed."

In addition to Sharia law, the main laws relevant to gender justice are:

- Saudi Arabian Citizenship System Regulation of 1954
- Basic Law of Saudi Arabia of 1992
- Labour Law of 2005
- Anti-Trafficking in Persons Law of 2009
- Law on Protection from Abuse of 2013
- Anti-Harassment Law of 2018
- New Family Law System of 2019

A draft personal status code has been prepared, which includes six sections and 346 articles, in addition to the principles and decisions issued by the Supreme Judicial Council and the Supreme Court.

Basic Law¹

The Basic Law provides:²

- Saudi Arabia is an Arab Islamic state (Article 1).
- The ruling of Saudi Arabia derives its authority from the Holy Koran and His Prophet's Sunnah, which govern the law and all the systems of the state (Article 7).
- The ruling in Saudi Arabia is based on justice, consultation, and equality in accordance with Islamic law (Article 8).
- The family is the kernel of Saudi society (Article 9).
- The state will aspire to strengthen family ties, maintain its Arab and Islamic values, and care for all its members (Article 10).
- The state protects human rights in accordance with the Islamic Sharia (Article 26).
- The enforcement of this law shall not prejudice treaties and agreements with states and international organizations and agencies to which the Kingdom of Saudi Arabia is committed (Article 81).
- Article (48) of the law specifies that "the right to litigate is guaranteed equally to citizens and residents".

Policy framework

The National Family Safety Programme was established in 2005 to provide guidance and raise awareness in relation to family violence.³

The Family Affairs Council was launched in 2017 and is chaired by the Minister for Labour and Social Development. Its members represent the ministries of Interior, National Guard, Islamic Affairs, Justice, Labour and Social Development, Economy and Planning, Health, Culture, and Information and Education. The roles of the Council include specializing in strategies and policies that

1 Basic Law of Governance, Royal Decree No. A/91, 1 March 1992.

2 The draft law was not reviewed in the course of preparing this report.

3 Royal Decree No. 11471/MB.

concern women and to develop proposals for family-related legislation.⁴ The Family Affairs Council established the Women's Committee, Childhood Committee, Elderly Committee, and Family Protection Committee.

Saudi Arabia is undertaking a series of measures to improve the status of women. New regulations, royal orders, and Cabinet decisions on women's rights have recently been promulgated or amended. Traditionally, the system of male guardianship of women requires a male guardian to authorize a woman's enjoyment of certain rights. This system continues to affect women's ability to travel outside the country and to leave detention centres and State-run shelters. An important development is Supreme Order No. 33322, issued in 2017, which instructs government entities to refrain from requiring a woman to obtain a guardian's permission to access services and procedures, except where justified by law. Other efforts aimed at promoting gender equality include the adoption of Saudi Arabia's Vision 2030 and the Tenth Development Plan 2015-2019, which aim to empower women and enhance their contribution to economic and social development. To strengthen the response to human trafficking, the government has adopted a National Plan for Combating Trafficking in Persons Offences 2017-2020, and established the Standing Committee for Combating Trafficking in Persons.⁵

In January 2019, the Kingdom announced the Women in the Workplace initiative, which requires equal pay for equal work. The initiative does not call for complete gender segregation in the work environment. Instead, it provides the option for the employee to work in a mixed-gender office or in a private room.

The National Observatory of Women's Participation in Development was launched in 2018 to enhance the conditions for women participating in the development process. The observatory is a research centre that monitors the participation of Saudi women in development at the local and international levels, including in the economic, educational, organizational, health and social fields. The Observatory is a reference source for decision makers, charities, societies and institutions. It provides a collection of standards and indicators related to women's role in development.

Legal and support services

The government offers assistance to survivors of domestic violence and abuse, provides a telephone hotline, and has established shelters to provide services for survivors of domestic violence.⁶ Complaints of domestic violence can be lodged with the police, the Ministry of Labour and Social Development, social protection committees of the different regions and governorates, or the Human Rights Commission.

Committees have been created for the purpose of social protection in Saudi Arabia's main regions and governorates, coordinating with related entities to achieve social security for women and families. The Ministry of Labour and Social Development has established units dedicated to social protection in regions and governorates. It has also contracted a number of charities to fight violence against women in areas that lack such units. Administrations concerned with empowering women in governmental entities have been also established.

The government is implementing measures in response to mounting community concern about the prevalence of domestic violence. The government has established family protection and child protection shelters to provide temporary housing and access to health care. It is also implementing an identification system based on fingerprints designed to provide women more reliable access to courts.⁷ The previous system required women to present themselves at court in the presence of a male relative to prove their identity if they declined to unveil their faces.

There are offices that specialize in guiding women in legal matters. The Mawaddah Society has worked with the Saudi Ministry of Justice to develop a response system for family disputes based on need assessments. It provides legal counselling for women in Riyadh and Jeddah, and Mawaddah female lawyers prepare witness statements for court cases for female clients.⁸

Women are allowed to study law and qualify as a lawyer. The Code on Legal Practice defines the criteria for practicing law and does not mention a practitioner's gender, which means that both men and women can practice law.⁹ By 2018, several thousand Saudi women held law degrees. In 2015, the number of women licensed to practice law was 67. This rate has increased and the most recent numbers for 2018 indicate that 304 women are licensed to practice. A number of women have also been accepted as public notaries.¹⁰

The government also launched programmes in 2018 to support hosting the children of working women (Qura) and to support the transfer of working women (Wusool). An electronic portal allows women seeking work to register and obtain information about eligibility criteria in all governorates. A training programme provides professional support to women in need and orphans to develop the skills required for entering the labour market.

4 "Three women on Saudi Arabia Family Affairs Council," Gulf News (1 August 2017), <http://gulfnews.com/news/gulf/saudi-arabia/three-women-on-saudi-arabia-family-affairs-council-1.2067220>.

5 Committee on the Elimination of Discrimination against Women, Concluding observations on the combined third and fourth periodic reports of Saudi Arabia (9 March 2018), CEDAW/C/SAU/CO/3-4.

6 "Ministry allocates SR10.4m for victims of domestic violence," Arab News (24 March 2015), http://www.arabnews.com/saudi-arabia/news/722471?quicktabs_stat2=1.

7 "Saudi Arabia: Courts will identify women by fingerprints," Arab News (14 November 2015), <http://www.arabnews.com/saudi-arabia/news/835291>.

8 Hala Aldosari, *The Personal is Political: Gender Identity in the Personal Status Laws of the Gulf Arab States* (Washington DC: Arab Gulf States Institute in Washington, 2016).

9 Royal Decree No. M/38 of 28 Rajab 1422 (16 October 2001), Art. 3.

10 Katherine Zoepf, "Sisters in law: Saudi women are beginning to know their rights," *The New Yorker* (11 January 2016), www.newyorker.com/magazine/2016/01/11/sisters-in-law.

PROTECTION FROM DOMESTIC VIOLENCE AND SEXUAL VIOLENCE

Rape is a criminal offence under Sharia law with a wide range of penalties, including flogging and execution. Rape of a wife by a husband was not traditionally subject to punishment in Sharia courts, but a husband is under a general obligation not to harm his wife and the wife can seek a divorce if she cannot bear to live with him.

Sexual harassment was criminalized by a law approved by the Shura Council in May 2018 (Royal Decree M/96 dated 16/9/1439 Hijra). Decree M/96 defines "harassment" as any word, act, or sign with a sexual connotation by a person directed at any other person that harms their body or modesty by any means, including through modern technology. The law imposes on violators the penalty of imprisonment for up to two years and a fine of up to 100,000 Saudi Riyals. The penalty is enhanced to five years of imprisonment and a fine of 300,000 Saudi Riyals if the individual repeats the harassment.

In August 2019, the Family and Youth Committee of the Shura Council in the Kingdom endorsed a proposal to amend the anti-harassment law to expand the criminalization of sexual harassment.

Law on Protection from Abuse of 2013

The Law on Protection from Abuse creates criminal penalties for acts of domestic violence and establishes a process for people to lodge complaints and receive assistance and protection.

"Domestic abuse" is defined by the Law as: "any form of exploitation, physical, psychological, or sexual, or the threat thereof committed by an individual against another exceeding the limits of powers and responsibilities derived from guardianship, dependency, sponsorship, trusteeship, or livelihood relationship. The term 'abuse' shall include the omission or negligence of an individual in the performance of his duties or responsibilities in providing basic needs for a family member or an individual for whom he is legally responsible."¹²

In 2019, the Saudi Cabinet decided to amend an article in the Criminal Procedure Law for cases of domestic violence. The government added a third paragraph to Article 71 of the executive regulations of the Criminal Procedure Law, which states the following: "Hearing and investigating the accused in cases of domestic violence should occur in the presence of a psychologist or social worker with experience, when necessary."

The aims of the legislation are to:

1. Ensure protection from all forms of abuse.
2. Provide assistance, treatment, and shelter as well as social, psychological, and health care.
3. Take necessary legal proceedings to hold the violator accountable and punish him.
4. Raise community awareness about the concept of abuse and its implications.
5. Address undesirable social behaviour that indicates the existence of a favourable environment for the occurrence of abuse.
6. Set scientific and practical mechanisms to deal with abuse.¹³

Anyone who learns of an act of abuse must report it immediately. All public officials, both civil and military, as well as persons working in charitable organizations, who, in the course of their duties, learn of an act of abuse, must report it forthwith to the institution for which they work, which must in turn report it to the relevant authorities or the police.¹⁴ The Act also prohibits revealing the identity of a person who reports abuse except in circumstances set forth in the implementing regulations or if that person gives their consent.¹⁵

The Ministry of Labour and Social Development must, after receiving and assessing a complaint, do the following:

1. Take necessary measures to ensure the provision of health care to victims of abuse, and make a medical evaluation of the case, if needed.
2. Take necessary arrangements to prevent the continuation or recurrence of abuse.
3. Provide family and social counselling to the parties involved if the Ministry decides to address the case within the confines of the family.
4. Summon any of the parties to the case or any relative thereof, or any person involved to take their statements. Necessary measures and undertakings shall be taken to ensure protection for the victims of abuse.
5. Provide the parties of an abuse case access to psychological treatment or rehabilitation programmes as appropriate for each case.¹⁶

¹¹ Law on Protection from Abuse of 2013, Royal Decree No. M/52 Dated 15/11/1434H – 21/9/2013.

¹² Ibid., Art. 1.

¹³ Ibid., Art. 2.

¹⁴ Ibid., Art. 3.

¹⁵ Ibid., Art. 5.

¹⁶ Ibid., Art. 7.

Anyone found to have committed an act of abuse against another may be sentenced to jail for a period not less than one month and not more than one year and/or a fine not less than 5,000 Saudi Riyals and not more than 50,000 Saudi Riyals, and courts retain discretion to impose a harsher sentence if the situation warrants it. The penalty is doubled for repeat offenders.¹⁷

The Law requires implementing regulations to be issued, which are required to clarify processes for lodging and handling complaints and to provide details on roles and responsibilities.¹⁸ Executive Regulations implementing the Law on Protection from Abuse were issued in 2014 that address the following:¹⁹

- Establishment of the Centre for the receipt of complaints against violence and abuse, which receives reports of domestic violence on the toll-free number for 24 hours with a full female cadre.
- Urgent interventions in cases of abuse and immediate coordination with relevant authorities (governmental and civil).
- Designing programmes to deal with the perpetrators of violence that address their health and psychological conditions to help them coexist with family members.
- Raising awareness among members of society about the need to protect family members against abuse and violence.
- Committees in all regions are handling cases in addition to the committees of the Ministries of Education and Health to ensure that victims have access to remedies.
- The obligation for all public or private bodies immediately to notify the Ministry of Labour and Social Development or the police about any case of abuse that may come to their attention or that is reported to them.

A Circular of the Ministry of Labour and Social Development contains guidance for judges on the measures to be taken when learning of cases of domestic abuse.²⁰

HONOUR CRIMES

Honour killings occur when a woman is killed by a male member of her household, usually a husband, brother, or father, for dishonouring the family status. Honour killings have been identified as a harmful traditional practice of some tribes in Saudi Arabia.²¹ The Human Rights Commission of the Kingdom of Saudi Arabia states that honour killings are rare and such cases are dealt with strictly by the legal system.

All killings are crimes under Sharia law. Leniency for perpetrators of honour crimes against women is not codified in Saudi law. Sentencing of men who commit honour crimes is at the discretion of the court.

Women may face prosecution for breaching Sharia laws intended to protect the virtue of women and girls and protect family reputation, e.g., for *zina* (extra-marital sex).

ADULTERY AND SEX OUTSIDE OF MARRIAGE

If the Sharia offence of *zina* (extra-marital sex) is committed by a married person, it is punishable by stoning to death; if it is committed by an unmarried person, it is punishable by 100 lashes. The crime of *zina* cannot be proven unless there are four adult eyewitnesses to the act of sexual intercourse or there is other conclusive evidence, e.g., the offender voluntarily confesses.²²

Convictions for the crime of adultery are very rare because of these strict rules of evidence which make it difficult to prove the offence.

It can also be emphasized in this context that a survivor of rape or sexual assault is not punished for *zina*. The penalties prescribed by Sharia and the law apply to the perpetrator, and health, social and legal assistance is available to the survivor.

17 Ibid., Art. 13.

18 Law of Protection from Abuse of 2013, Art. 16.

19 Executive Regulations on the Protection from Abuse Law issued by Ministry of Labour and Social Development No. 43047 dated 8/5/1435H, Art. 3.

20 Circular No. 487/T of the Ministry of Labour and Social Development, dated 19 Jumada I A.H. 1435; also See Committee on the Rights of the Child, *List of issues in relation to the combined third and fourth periodic reports of Saudi Arabia, Addendum Replies of Saudi Arabia to the list of issues* (13–30 September 2016), CRC/C/SAU/Q/3-4/Add.1.

21 Abdulaziz S. Al-Rodiman, "The Application of Shari'ah and International Human Rights Law in Saudi Arabia," dissertation submitted for the degree of Doctor of Philosophy, Brunel University (April 2013).

22 SaharAlhabdan, "Domestic Violence in Saudi Arabia," Theses and Dissertations Paper 27, Maurer School of Law (Indiana University, 2015), p. 75.

ABORTION FOR RAPE SURVIVORS

Abortion is generally illegal under Sharia principles, including in the case of rape. However, under a Ministerial Regulation issued in 1989, an abortion may be performed to save the pregnant woman's life, or if the pregnancy is less than four months old and it is proven beyond doubt that continued pregnancy gravely endangers the mother's health.²³

FEMALE GENITAL MUTILATION/CUTTING (FGM/C)

There is no legal prohibition against FGM/C. While data on its prevalence in the general population is not available, it is not a common practice among the local Saudi population. However, it is known to be practiced in some ethnic minority populations, e.g., Bedouin tribes in the western regions,²⁴ and among immigrant populations.²⁵

The Child Protection Law applies to the practice of FGM/C. Article 1 of the Child Protection Law states that abuse includes "every form of child abuse, exploitation, or threat thereof, including physical abuse." In addition, hospitals and health centres implement the policies of the World Health Organization (WHO).

FAMILY MATTERS

To date, personal status laws are not available in the form of specific legal articles, but through detailed and comprehensive legal principles and rules that include all the provisions contained therein in addition to principles related to personal status.²⁶ The Supreme Court undertakes the determination of general principles in matters related to personal status, and the Supreme Judicial Council issues decisions.

A code of judicial rulings is being prepared that includes a section on personal status. A draft personal status code of six sections and 346 articles has been prepared in addition to the set of principles and decisions issued by the Supreme Judicial Council and the Supreme Court, which were previously issued in making laws that are binding on judges in their rulings.

Marriage

Forced marriage is prohibited. Marriage of a child under 18 is permitted subject to conditions. The authorized person must hear the consent of the girl to the marriage and must hand her a copy of the marriage contract. Article 16/3 of the executive regulations of the child protection system stipulates that "before the conclusion of the marriage contract it is necessary to ensure that marrying a person under the age of eighteen years will not harm the child and will achieve the child's best interests, whether male or female." The Ministry of Justice in its Ministerial Decision 1630368/40 dated 28/5/1440 Hegira, approved the enforcement of this article and therefore in the case of marriage of a child under 18 years of age it is required that the marriage be verified as being in the best interests of both parties to the contract.

Women cannot get married without permission of a male guardian (*mahram*), and the formal marriage contract is decided upon between the husband and the bride's guardian. If the guardian refuses to agree to the marriage, the woman seeking marriage must apply for a court order. In such cases, the judge assumes the role of the guardian and may approve the marriage.²⁷ Under Sharia principles, women have a general obligation to obey their husbands unless to do so would breach Islamic law, and husbands must provide financial support to their family.²⁸ Husbands and wives are required to respect one another and treat their spouse with love so as to achieve peace in family life.

Polygamy is legal and men may have up to four wives, provided that they can support and treat all wives equally.

²³ Art. 24 of the Rules of Implementation for Regulations of the Practice of Medicine and Dentistry, Ministerial Resolution No. 218/17/L of 26 June 1989.

²⁴ Norwegian Knowledge Centre for the Health Services (Kunnskapssenteret No.13), Psychological, social and sexual consequences of female genital mutilation (FGM/C): A Systematic Review of Quantitative Studies. (2010), http://www.kunnskapssenteret.no/publikasjoner/_attachment/166709?_ts=14853c22052&download=false.

²⁵ Sharifa A. Alsibiani and Abdulrahim A. Rouzi (King Abdulaziz University, Jeddah), "Sexual function in women with female genital mutilation," *Fertility and Sterility*, vol. 93, issue 3 (Feb. 2010), pp. 722–724.

²⁶ Letter from Ministry of Justice to the Resident Coordinator dated 12/11/1439 H.

²⁷ United States Department of State, Country Reports on Human Rights Practices for 2014, Saudi Arabia.

²⁸ See Sahar Alhabdan, "Domestic Violence in Saudi Arabia" (2015), pp. 42–45.

Divorce

Men are able to obtain a divorce unilaterally through repudiation. A woman seeking a divorce is required to prove specific grounds for the divorce. Women can obtain divorce unilaterally if this is required in the marriage contract or after the contract. Women also have the right to file for divorce in the event that they do not want to continue married life. It was also issued by the Supreme Court that the wife has the right to request the dissolution of the marriage because of her hatred of her husband and the inability to live with him.

The wife's right to dissolve the marriage in the case of her disliking her husband, was addressed by a Ministerial Circular No. 8/T/31 issued on 10/3/1411 AH, to speed up decisions on marital issues and give them priority among other issues. Alternatively, a woman can obtain a divorce without proving grounds if she gives up financial rights. Women have the right to obtain a *khul'a* divorce, which requires them to return their dowry or part of the dower to achieve an amicable settlement.

Guardianship and custody of children

Children are under the sole guardianship of their father. The mother maintains custody of children up to the age of 15³⁰ and has the right to custody without the presence of the father.

In the event of conflict, the custody of the child goes to the mother except in the event that it is not in the interest of the child to remain in the custody of the mother for fear of harm to the child, in which case the right to custody will be transferred to the grandmother. If there is a risk of harm from the grandmother, then custody goes to the father if there is an absence of harm. The non-custodial party has the right to visit the child.

The regulation of custody issues, including the child protection system are addressed by the Circular of the President of the Supreme Judicial Council No. 1049/T dated 06/20/1439 AH.

Amendments were made to the Civil Status Law by Royal Decree No. M/134 and date 11/27/1440 AH (30 July 2019 AD). Women have the right to apply for a birth certificate for their children as a result of an amendment to Article 33 which grants women equal rights to men with regard to reporting births. Article 50 grants both the husband and wife the right to request a family registry from the Civil Status Department, and Article 91 was amended to read: "The head of the family in implementing this law is the mother or the father for the juvenile."

The executive regulations for the travel documents system state that the child in custody - a Saudi national - has the right to obtain a passport and to travel with a custodian.

INHERITANCE

Inheritance under Sharia is linked to the provisions of Islamic law that obligates men to carry the financial responsibility of their family. The amount of inheritance is determined by the relationship of kinship. Women may inherit from their father, mother, husband, or children and, under certain conditions, from other family members. In the common situation where a parent dies before their children, a daughter receives half the share that a son receives. In the less common situation where a son dies before his parents, the son's father and mother both receive a one-sixth share if the deceased son had children. Depending on the source of the inheritance, there are also some cases in which women receive more than men.

NATIONALITY

Men and women are treated differently by Saudi nationality law.³¹ Accordingly, children of Saudi fathers acquire Saudi nationality automatically at birth, regardless of the child's birthplace. However, Saudi women do not transmit their nationality to their children if the child is born from a relationship with a non-Saudi man. Article 7 of the law states, "Individuals born inside or outside the Kingdom from a Saudi father, or Saudi mother and unknown father, or born inside the Kingdom from unknown parents (foundling) are considered Saudis." Women are also denied the right to confer their nationality to foreign spouses in the same way that men can do. Children of Saudi women can apply for nationality when they reach the age of majority, provided they meet conditions including permanent residence in Saudi Arabia, fluency in Arabic, no criminal record and application within one year of reaching age of majority.³²

30 Meeting with Family Affairs committee - Dec 1, 2019
31 Saudi Arabian Citizenship System (Regulation) of 1954, Cabinet Decision no. 4 of 25/1/1374.
32 Ibid., Article 8.

LABOUR LAWS

Entering employment

Women no longer need a guardian's permission to work. The Labour Law³³ provides that "all citizens are equal in the right to work."³⁴ The Law does not contain any discriminatory rules against women in the workplace and applies equally to both genders, but it does not specifically prohibit discrimination against women in recruitment or hiring. In addition, Vision 2030 have exerted particular interest in women's economic participation and developed several initiatives to enhance women's employment opportunities.

The Labour Law provides that women are to be employed in occupations that are compatible with their nature, and it is prohibited to employ women in hazardous operations or harmful industries, as prescribed by the Ministry of Labour.³⁵ These restrictions include prohibition on working in strenuous roles, such as in mines.³⁶ The law also prohibits women from working at night, except in situations determined by the Ministry.³⁷ The Ministry has actively sought to increase female participation in the workplace by issuing regulations regarding the employment of women in factories, theme parks, and retail outlets.³⁸ Women have been able to practice law since 2013.

The Vision 2030 Plan addresses women's economic participation and a number of initiatives have been developed that provide job opportunities for women.

Remaining in employment

Women's capacity to participate in employment is supported by the removal of the prohibition on women obtaining a driving license, effective June 2018.³⁹ In 2019, women were allowed to apply for a passport and travel without the permission of a male guardian.

Women's workforce participation is also supported by maternity leave provisions. Women are entitled to ten weeks of maternity leave, which is fully paid by the employer. The leave may be extended for an additional month on an unpaid basis.⁴⁰ An employer cannot terminate an employee who is on maternity leave.⁴¹ Employers are required to provide childcare facilities if they employ 50 or more women and there are at least ten children under six years of age.⁴²

The Labour Law prohibits discrimination against women in hiring or wages based on amendments to the Labour Law made by Royal Decree No. 684 of 27/11/1440 H (30 July 2019), most notably, Article 2, which changes the definition of the worker to be "any person - male or female - who works for the benefit of an employer and under his management or supervision for a fee, even if he is away from his sight". Article 3 has been amended to provide that "citizens are equal in the right to work without any discrimination on the basis of sex, disability, age or any other form of discrimination, whether during the performance of work or when hiring or advertising." Article 34 provides model mechanisms, including prohibiting any wage discrimination between men and women for work of equal value, and the employment of women does not require a permit from the Ministry of Labour and Social Development or any other party.

The Kingdom is a party to the International Labour Organization Convention No. 100 concerning equality for workers and workers for work of equal value, and Convention No. 111 concerning discrimination in employment and occupation.

The executive regulations of the Labour Law 1440 AH stipulate that no action may be taken that would put pressure on the freedom of women to enjoy equal opportunities, and it is not permissible to pay women less than men for work of equal value,

The Human Resources Development Fund (Hadaf) support centres for children of female employees.

A Royal Decree was issued to raise the retirement age for women in the public and private sectors to 60 years, so that it will be the same age as men.

33 Labour Law of 2005, Royal Decree M/51 23 Sha'ban 1426/27 September 2005, updated 2015.

34 Ibid., Art. 3.

35 Ibid., Art. 149.

36 "Women can work in four new jobs at night," *Arab News* (21 April 2016), <http://www.arabnews.com/saudi-arabia/news/913451>.

37 Labour Law of 2005, Art. 150.

38 Sara Khoja, "Considerations for female employees in KSA," Clyde & Co. (12 April 2016), <https://www.clydeco.com/insight/article/considerations-for-female-employees-in-ksa>.

39 Supreme Order of 26 September 2017.

40 Labour Law, Arts. 151-152.

41 Ibid., Art. 155.

42 Ibid.

Workplace sexual harassment

The special law on sexual harassment, adopted in accordance to Royal Decree M/96 in 2018, includes workplace sexual harassment. The Labour Law also provides that a worker may leave a job without notice in any of the following cases:⁴³

- If the employer, a family member, or the manager in-charge commits a violent assault or an immoral act against the worker or any of his family members.
- If the treatment by the employer or the manager in-charge is characterized by cruelty, injustice, or insult.

A Ministerial Resolution No. 20912 issued on 2/2/1441 AH imposes regulatory protections against behavioural violations in the workplace.

Most employers provide separate male and female workspaces.

Domestic workers

There are approximately 1.5 million foreign domestic workers in Saudi Arabia, originating from South Asia and East Asia, other parts of the Middle East, and Africa. Domestic workers are excluded from the Labour Law.⁴⁴

Implementing Regulations issued in 2016 under the Labour Law prohibit employers from retaining the passports of their workers. An exception is made for workers who request that their employer retains their passport, in which case a passport receipt form must be provided in Arabic and the worker's language.

The Council of Ministers' Decision No. 310 of 1434 (2013) regulates the employment of domestic workers and sets out minimum worker entitlements. Employers are required to treat the worker with dignity and keep the worker safe. The Council of Ministers' Decision 166 of 12/7/1421 AH (2000) established that the relationship between employers and foreign workers is governed by the contract of employment concluded between them and not by the rules of sponsorship. The Decision stipulates that foreign workers shall be responsible for ensuring that an application is made to the Passports Department for the issue of residence permits for them and their families. It is illegal for employers to withhold passports belonging to domestic workers. Nonetheless, the practice of withholding a worker's passport is still reported to occur, which can create vulnerability to gender-based violence.⁴⁵

SEX WORK AND ANTI-PROSTITUTION LAWS

Sex work is punishable as *zina*, which is a serious offence under Sharia law incurring a maximum penalty of 100 lashes. Sharia law imposes strict conditions regarding the evidence required to prove the crime of *zina*, and flogging is not imposed in all cases.

HUMAN TRAFFICKING

The Anti-Trafficking in Persons Law⁴⁶ prescribes punishments of up to 15 years' imprisonment and fines. Penalties may be further increased under certain circumstances, including trafficking of a woman, child, spouse, ascendant, or descendant. Foreign workers are vulnerable to trafficking, particularly female domestic workers, due to their isolation inside private residences.⁴⁷

The Human Rights Commission launched a national plan to combat trafficking in persons from 2017 to 2020, which included in its activities and programs the enhancement of the capabilities of law enforcement. Training has been implemented in a number of regions of the Kingdom. 107 sub-units were established for the investigation of human trafficking within the public prosecution sector and an awareness campaign was launched to combat human trafficking.

43 Ibid, Art. 81.

44 Ibid., Art. 7(2).

45 United States Department of State, *2017 Trafficking in Persons Report, Saudi Arabia (2017)*, <https://www.state.gov/j/tip/rls/tiprpt/countries/2017/271271.htm>.

46 Anti-Trafficking in Persons Law (2009), Royal Decree No. M/40.

47 US Department of State, *2017 Trafficking in Persons Report*.

SEXUAL ORIENTATION, GENDER IDENTITY, AND RELATED ISSUES

Under Sharia law, consensual same-sex sexual conduct is punishable by death or flogging, depending on the perceived seriousness of the case.⁴⁸ It is also illegal for men to behave like women or to wear women's clothes, or for women to behave like men and wear men's clothes. According to Sharia law, same-sex relations violate customs that recognize marriage as a formal contract between a male and a female and which provide for each spouse a defined role in marriage.

There are no specific laws protecting homosexual or transgender people from hate crimes, gender-based violence, or discrimination. There are no legal protections for, or recognition of, transgender people. Only intersex individuals are allowed to undergo sex-reassignment surgery. According to a decree by the Ministry of Health issued in 2011, hospitals and medical centres can only perform sex-reassignment surgery on intersex people after the case is confirmed by the Ministry of Health.⁴⁹

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Legislation

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⁴⁸ See Javid Rehman, Eleni Polymenopoulou, "Is Green a Part of the Rainbow? Sharia, Homosexuality and LGBT Rights in the Muslim World," *Fordham International Law Journal*, vol. 37, no. 1 (2013), pp. 1–50.

⁴⁹ International Lesbian and Gay Association (ILGA), "Saudi Arabia: 425 Cases of Sex-Reassignment in 27 Years" (31 May 2012), <http://ilga.org/saudi-arabia-425-cases-of-sex-reassignment-in-27-years/>.



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