

## AMNESTY INTERNATIONAL PUBLIC STATEMENT

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# SAUDI ARABIA: NEW PERSONAL STATUS LAW CODIFIES DISCRIMINATION AGAINST WOMEN

One year ago today, on International Women’s Day, Saudi Arabia passed its first Personal Status Law (PSL), which entered into force on 18 June 2022. Prior to that, Saudi Arabia did not have a codified PSL,<sup>1</sup> as matters related to family life were subject to the discretionary application of the rules of Sharia (Islamic law) and interpretations of Islamic texts by a male-dominated judiciary.<sup>2</sup>

Upon adoption of the Personal Status Law, Mohammad bin Salman praised the new law as a “major qualitative leap in preserving and protecting human rights, family stability, women’s empowerment and promotion of rights.”<sup>3</sup> The PSL was part of a package of legislative reforms announced by Mohammad bin Salman in February 2021 in order to “preserve rights, bolster the principles of justice, enforce transparency, protect human rights and achieve comprehensive and sustainable development.”<sup>4</sup>

Since 2019, Saudi Arabia has been introducing some women’s rights reforms, including eliminating major restrictions imposed on women through the male guardianship system, which placed every Saudi woman, regardless of her age, under the authority of her male relative, commonly her father or husband, and gave that guardian the power to make decisions on her behalf.<sup>5</sup>

However, while these reforms have had some positive impact on women’s rights and their freedom of movement, they did not entirely eliminate the male guardianship system. Women in Saudi Arabia continue to face significant discrimination across different spheres. Further, Saudi authorities have subjected women’s rights activists who have repeatedly called for equal rights and the abolishment of the male guardianship system to widespread and ongoing repression. Saudi Arabia’s continued crackdown against freedom of expression and the closing of any civic space in the country prohibits women’s rights activists and other members of society from participating in discussions about legal reforms.

The codification of a personal status law limits discretionary and inconsistent judicial rulings related to family matters. However, Amnesty International’s analysis of the 42-page PSL found that while the law does introduce some positive reforms, such as setting a minimum age of marriage, the PSL codifies some of the informal yet widespread problematic practices inherent in the male guardianship system and entrenches a system of gender-based discrimination in most aspects of family life, including in marriage, divorce, child custody and inheritance. Amnesty International also found that the PSL does still leave significant scope for judges to exercise their discretion.

In addition to analysing the law, Amnesty International interviewed five individuals: two Saudi Arabian women’s rights activists, one Saudi lawyer, one academic specialized in human rights law in Saudi Arabia and a woman facing custody battles before the personal status courts in Saudi Arabia.

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<sup>1</sup> Hala al-Dosari, “The Personal is Political: Gender Identity in the Personal Status Laws of the Gulf Arab States”, 29 August 2016, The Arab Gulf States Institute in Washington, <https://agsiw.org/the-personal-is-political-gender-identity-in-the-personal-status-laws-of-the-gulf-arab-states/>

<sup>2</sup> International Institute for Democracy and Electoral Assistance (IDEA), Gender Quotas Database, <https://www.idea.int/data-tools/data/gender-quotas/country-view/256/35> (accessed on 21 February 2023) “Saudi Arabia”.

<sup>3</sup> Saudi Press Agency, “Recently-approved Personal Status Law Stems from the Provisions and Purposes of Islamic Sharia and Comes in London with the Latest Legal Trends and Modern International Judicial Practices, HRH Crown Prince Says”, 8 March 2022, <https://www.spa.gov.sa/viewstory.php?lang=en&newsid=2335790#:~:text=HRH%20the%20Crown%20Prince%20stressed,a%20major%20qualitative%20leap%20in>

<sup>4</sup> Saudi Press Agency, “HRH Crown Prince Announces 4 New Laws to Reform the Kingdom’s Judicial Institutions”, 8 February 2021, [spa.gov.sa/viewfullstory.php?lang=en&newsid=2187801#2187801](https://www.spa.gov.sa/viewfullstory.php?lang=en&newsid=2187801#2187801)

<sup>5</sup> Amnesty International, “Saudi Arabia: Women’s rights reforms must be followed by release of detained activists”, 2 August 2019, <https://www.amnesty.org/en/latest/press-release/2019/08/saudi-arabia-womens-rights-reforms-must-be-followed-by-release-of-detained-activists/>

According to Amnesty International's analysis of the law, women still require the consent of their male legal guardian to get married. During marriage, a woman is expected to "obey" her husband, and her right to financial support, such as food and accommodation, from her husband during marriage is conditional on her "submit[ting] herself" to him. Only men can initiate divorce without any conditions, while women face legal, financial and practical barriers codified in the PSL, as detailed below, when seeking dissolution of their marriage. In the event of separation, a mother does not have equal rights over matters related to her children, as the father typically has guardianship over his children. The law also violates the rights of children, most importantly to have their best interests considered in all judicial decisions concerning their welfare. Finally, the PSL codifies discrimination between men and women in inheritance, giving men a much larger share of assets than their women counterparts.

Saudi Arabia has signed and ratified the UN Convention on the Elimination of Discrimination against Women (CEDAW), albeit with reservations. The Kingdom has made a general reservation to CEDAW, arguing that it is not bound by the Convention to the extent to which it contradicts Islamic law. Saudi Arabia has also made reservations to specific articles, such as provisions granting equal rights to men and women with respect to the nationality of their children.<sup>6</sup> In 2018, the CEDAW Committee held that Saudi Arabia's general reservation is "incompatible with the object and purpose of the Convention" and recommended that Saudi Arabia withdraws it.<sup>7</sup> The CEDAW Committee made a similar recommendation in 2008.<sup>8</sup>

CEDAW requires that state parties take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations and to ensure that men and women have the same right to freely choose a spouse and to enter into marriage only with their free and full consent.<sup>9</sup> The CEDAW Committee has also stated that a woman's right to choose her spouse and enter into marriage freely is central to her life, dignity and equality.<sup>10</sup> In light of this, in 2018 the CEDAW Committee called on Saudi Arabia to remove "discriminatory provisions regulating legal capacity, polygamy, divorce, the guardianship system and inheritance" from its laws.<sup>11</sup>

Based on these findings, Amnesty International calls on the Council of Ministers to amend the Personal Status Law and repeal any provisions which discriminate against women, including provisions related to the male guardianship system, and to ensure that women have equal rights and responsibilities with regards to marriage, custody and guardianship of their children, access to divorce and inheritance rights.

## **IMPACT OF NEW PERSONAL STATUS LAW ON JUDGES' DISCRETIONARY JUDGEMENTS**

Article 8 of Saudi Arabia's Basic Law of Governance (Basic Law) states that "The system of government in the Kingdom of Saudi Arabia is established on the foundation of justice, "Shoura" [consultation] and equality in compliance with the Sharia (the revealed law of Islam)."

The Basic Law refers to the role of the family as the "nucleus of Saudi society," and requires the state to strengthen the bonds which hold the family together and to preserve its Arab and Islamic values.<sup>12</sup>

In order to be appointed as a judge, a candidate must be of Saudi nationality and hold a degree from a religious college of Sharia or pass an examination prepared by the Supreme Judicial Council, an 11-member body headed by the Ministry of Justice whose members are appointed by the King for a renewable four year-terms. The body supervises the courts and judiciary, reviews all legal decisions that the Ministry of Justice refers to it, and provides legal opinions on judicial questions. While the Basic Law, as well as the Law on the Judiciary, do not specifically state that a judge must be a man,

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<sup>6</sup> United Nations Treaty Collection, Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), [https://treaties.un.org/pages/ViewDetails.aspx?src=IND&mtdsg\\_no=IV-8&chapter=4&clang=\\_en#EndDec](https://treaties.un.org/pages/ViewDetails.aspx?src=IND&mtdsg_no=IV-8&chapter=4&clang=_en#EndDec)

<sup>7</sup> UN Committee on the Elimination of Discrimination against Women (CEDAW), Concluding Observations: Saudi Arabia, 14 March 2018, UN Doc. CEDAW/C/SAU/CO/3-4, para 10.

<sup>8</sup> CEDAW (previously cited), Concluding Observations: Saudi Arabia, 8 April 2008, UN Doc. CEDAW/C/SAU/CO/2, para 10.

<sup>9</sup> CEDAW (previously cited), Article 16(b).

<sup>10</sup> CEDAW (previously cited), General Recommendation 21: Equality in marriage and family relations, 1994, para 16.

<sup>11</sup> CEDAW (previously cited), Concluding Observations: Saudi Arabia, 14 March 2018, UN Doc. CEDAW/C/SAU/CO/3-4, para 64(a).

<sup>12</sup> Articles 9 and 10, Basic Law of Governance

all judges in Saudi Arabia are men.<sup>13</sup> Further, human rights activists have told Amnesty International that judges are appointed based on their perceived loyalty to the government, rather than their legal knowledge, expertise or integrity.<sup>14</sup>

Prior to Saudi Arabia's codification of the PSL, family-related matters were subject to the judges' discretionary interpretation of Sharia. While judges are required to have expertise in Sharia, important concepts of Saudi family law, such as the male guardianship system and the requirement that women obtain the consent of their male guardians to marry, were subject to debate even between Islamic scholars.<sup>15</sup>

According to Musawah, a global movement for equality and justice in the Muslim family, subjecting family-related matters to the discretionary interpretation of judges created uncertainty in court rulings in which women were "often victims to individual judges' abuse of this discretion."<sup>16</sup> The risks of discretionary rulings were exacerbated by the lack of any *stare decisis* doctrine in Saudi Arabian courts, meaning that precedent is not considered binding in judicial decisions.<sup>17</sup>

Saudi lawyer Taha al-Hajji told Amnesty International: "Before this law, judges relied on different interpretations of the Sharia (Islamic law), which resulted in huge disparities between judgements on very similar cases. Codifying this law means that there are broad lines that must be followed by judges, rather than relying on their wide discretion."<sup>18</sup>

Hala al-Dosari, a Saudi scholar and activist, agreed that codifying the law did bring about some benefits, but also said that "the Personal Status Law mainly standardizes the practiced law in Saudi Arabia. It reduces the differences between judges in application of the law but still maintains the judges' authorities to decide on certain issues such as on the conditions to annul the marriage, or compatibility of the spouses or in relation to property rights ... judges still have discretionary power on issues that are not clearly defined in the law."<sup>19</sup>

## REFORMS AMID CRACKDOWN ON WOMEN'S RIGHTS MOVEMENT

Since 2019, Saudi Arabia has taken some steps to improve women's rights in the country. It gave women the right to drive in 2019 and has repealed many of the most problematic aspects of the male guardianship system. For example, in 2019, Saudi Arabia allowed women over the age of 21 years the right to obtain a passport and to travel without the permission of a male guardian, and it granted women the right to register marriages, divorces, births and deaths and to obtain family records. However, the male guardianship has not been abolished entirely, and the PSL codifies and perpetuates some aspects of it, especially related to marriage.

Women cannot choose their legal guardians. Initially, a woman is under the guardianship of her father. When she marries, guardianship is transferred to her husband.<sup>20</sup> If her guardian dies or she divorces, a new guardian is appointed, which is usually the oldest male relative, brother or son. Therefore, a woman's life is very much dependent on the good will of her male guardian, whose guardianship she cannot request to terminate or transfer to another male relative except in specific cases described below.

Male guardianship impedes women's ability to exercise a range of rights and violates the UN Convention on the Elimination of all Forms of Discrimination against Women (CEDAW), which Saudi Arabia ratified in 2000.

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<sup>13</sup> Samah al-Agha, "Female Judges in Saudi Arabia, Hope Versus Reality", 18 May 2021, Arab Law Quarterly, <https://brill.com/view/journals/alq/aop/article-10.1163-15730255-BJA10084/article-10.1163-15730255-BJA10084.xml?language=en&ebody=article%20details>

<sup>14</sup> Amnesty International, *Saudi Arabia: Muzzling critical voices: politicized trials before Saudi Arabia's Specialized Criminal Court* (Index: MDE 23/1633/2020), 6 February 2020, <https://www.amnesty.org/en/documents/mde23/1633/2020/en/>, p.18. See also: Democracy for the Arab World Now (DAWN), "Saudi Arabia: Government Appoints Agent Involved in Khashoggi Murder Cover-Up As President of Counter-Terrorism Court", 12 October 2022, <https://dawnmena.org/saudi-arabia-government-appoints-agent-involved-in-khashoggi-murder-cover-up-as-president-of-counter-terrorism-court/>

<sup>15</sup> Ebrahim Saifuddin, "Marriage without Wali.", 29 February 2020, Mehbooba, <https://www.mehbooba.co.uk/marriage-without-wali/>

<sup>16</sup> Musawah, *Thematic Report on Muslim Family Law and Muslim Women's Rights in Saudi Arabia*, February 2018, <https://www.musawah.org/wp-content/uploads/2019/02/Saudi-Arabia-Thematic-Report-2018-CEDAW69.pdf>, p.5.

<sup>17</sup> University College London, *The Role and Significance of Judges in the Arab Middle East: An interdisciplinary and empirical study*, September 2018, <https://discovery.ucl.ac.uk/id/eprint/10076746/>

<sup>18</sup> Interview by voice call with Taha al-Hajji, Saudi lawyer, 24 February 2023.

<sup>19</sup> Interview by voice call with Hala al-Dosari, Saudi scholar and activist, 22 February 2023.

<sup>20</sup> Interview by voice call with Hala al-Dosari, Saudi scholar and activist, 22 February 2023.

Despite positive women's rights reforms, Saudi authorities have subjected women's rights activists in Saudi Arabia who have repeatedly called for equal rights and the abolishment of the male guardianship system to widespread and ongoing repression. In March 2019, 11 women activists faced trial before a Criminal Court in Riyadh for their activism, and some women were charged with promoting women's rights and calling for the end of the male guardianship system.<sup>21</sup> This group includes Saudi Arabian human rights defender Loujain al-Hathloul, who was arbitrarily detained in 2018 and sentenced to five years and eight months in prison, suspended by two years and 10 months, after a grossly unfair trial before the Specialized Criminal Court (SCC). She was conditionally released in February 2021 and is now on a travel ban after facing nearly three years of arbitrary detention, torture and other ill-treatment, including sexual harassment and solitary confinement.<sup>22</sup>

Saudi Arabia's continued crackdown against freedom of expression hinders the possibilities for effective reforms due to the lack of civic space for individuals to share critical views that may not align with the authorities' narrative. Salma al-Shehab, a Leeds University PhD student and mother of two from Saudi Arabia's Shi'a minority, was sentenced to 34 years imprisonment on appeal by the SCC for supporting women's rights activists such as Loujain al-Hathloul on Twitter.<sup>23</sup> Hala al-Dosari told Amnesty International, "There is a lot of fear and people are self-censoring because they understand that those people who spoke up were targeted, persecuted and silenced. Even people who genuinely faced challenges after codification of the law cannot talk about this publicly because of the situation inside Saudi Arabia."<sup>24</sup>

A Saudi academic and expert in women's rights in Saudi Arabia also told Amnesty International: "The fact the Personal Status Law has been codified into law is a positive point. We have been asking for this for a long time... However it is useful to keep revising the law, keep adding to the law, and take into account the views of civil society and feminists in shaping the law further. There is a lack of a safe environment to have these discussions about women's rights. All discussions that are deemed critical have been criminalized."<sup>25</sup>

## **WOMEN REQUIRE CONSENT OF A MALE LEGAL GUARDIAN TO GET MARRIED**

Only men can be legal guardians, and unlike men, under the PSL, only women must have the consent of a male legal guardian to get married and for the marriage contract to be validated. The law does contain some safeguards which seek to protect a woman from being forced into marriage, such as proof of consent of both the man and woman and the prohibition of a legal guardian's agreement to a woman's marriage without her consent. However, it does not provide any clarity on what "consent" entails or how it should be obtained.

If a woman's legal guardian rejects the marriage, despite her desire for the marriage to go forward, that guardianship is transferred to the court, which is another male-dominated entity, to "take charge of marrying the woman."<sup>26</sup> This transfer of guardianship further diminishes women's agency, increases men's control over women, exacerbates the unequal power dynamics between them, and impacts the ability of women to give their "free and full" consent to marriage as required under international law and standards.<sup>27</sup>

Hala al-Dosari told Amnesty International that "male guardianship is something limiting for many women. The law does not set out conditions for a woman to challenge the power of the guardian when it comes to deciding on a marital partner."<sup>28</sup>

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<sup>21</sup> Amnesty International, "Saudi Arabia: Women activists persecuted under bogus charges", 14 March 2019, <https://www.amnesty.org/en/latest/press-release/2019/03/saudi-arabia-women-activists-persecuted-under-bogus-charges/>

<sup>22</sup> Amnesty International, "Saudi Arabia: Verdict upholding Loujain al-Hathloul's conviction an appalling injustice", 10 March 2021, <https://www.amnesty.org/en/latest/news/2021/03/saudi-arabia-verdict-upholding-loujain-al-hathloul-conviction-an-appalling-injustice-2/>

<sup>23</sup> Amnesty International, "Saudi Arabia: Quash 34-year prison sentence for student Salma al-Shehab", 18 August 2022, <https://www.amnesty.org/en/latest/news/2022/08/saudi-arabia-quash-34-year-prison-sentence-for-student-salma-al-shehab/>

<sup>24</sup> Interview by voice call with Hala al-Dosari, Saudi scholar and activist, 22 February 2023.

<sup>25</sup> Interview by voice call with Saudi academic and expert in women's rights in Saudi Arabia (name not disclosed for security reasons), 28 February 2023.

<sup>26</sup> Article 20, Personal Status Law.

<sup>27</sup> CEDAW (previously cited), Article 16. See also: CEDAW, General Recommendation 21: Equality in marriage and family relations, 1994; Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages, Article 1.

<sup>28</sup> Interview by voice call with Hala al-Dosari, Saudi scholar and activist, 22 February 2023.

## LEGAL LOOPHOLE ENABLING CHILD MARRIAGE POSES A RISK TO GIRLS

Prior to the introduction of the PSL, Saudi Arabia did not have a minimum age of marriage. The new PSL forbids the marriage of a person below the age of eighteen, which is considered to be the “age of majority” under the law.<sup>29</sup> However, the court may permit the marriage of a man and woman under the age of eighteen in cases where they have reached puberty and their “interest” in the marriage is verified.<sup>30</sup>

In April 2022, the Ministry of Justice published draft implementing regulations, which stipulated that children under 18 can be married on three conditions. First, a request must be submitted by the person wishing to marry or by their guardian, who is usually the father, or mother. Second, the consent of the person being married must be “expressly acknowledged” before the court and the mother’s opinion on the matter must be heard. Finally, the person wishing to marry must have achieved “physical and mental completeness” and there should be no danger to them in the marriage, which must be proven by presenting a medical, psychological and/or social report.<sup>31</sup> However, these draft regulations have not yet been put into practice, so it is still unclear how the courts will decide on marriages for those under the age of eighteen.

Saudi Arabia must ensure that any party below the age of 18 years old entering marriage must do so with meaningful consent without any undue influence or coercion, including the threat of violence or financial incentive. Where there is no meaningful consent, the marriage may be considered to be forced. Child marriage has significant and lifelong consequences and impedes girls’ abilities to realize a wide range of human rights. Girls who marry early are more likely to leave school early and have poor access to work, and they are at increased risk of domestic violence and a range of health problems associated with early childbearing.<sup>32</sup>

## WOMEN FACE DISCRIMINATION IN OBTAINING DIVORCE AND OTHER FORMS OF SEPARATION

The PSL provides for three avenues for separation between spouses, including divorce, *khula’* (separation) and *faskh* (annulment). *Khula’* is a form of separation which can be initiated at the request of the wife but requires the consent of the husband, and *faskh* is a court-ordered, fault-based separation.

Only men can initiate divorce without conditions. In the cases of *khula’* and *faskh*, where women are able to initiate the dissolution of marriage, they face legal, financial and practical barriers codified in the PSL that do not apply to men and disproportionately impact women. Such inequality with regards to dissolution of marriage violates Saudi Arabia’s obligations under international law.<sup>33</sup>

## WOMEN LACK EQUAL ACCESS TO DIVORCE AND OTHER FORMS OF SEPARATION

The PSL clearly states that “divorce is the dissolution of the marriage contract through the will of the husband pronouncing words that signify this.”<sup>34</sup> This gives men the ability to unilaterally divorce their wives, verbally or in writing, without any conditions. The PSL’s only stipulation is that a woman is “informed” of the divorce and is entitled to financial compensation in case she was not informed and if the husband fails to register the divorce.<sup>35</sup> For example, a husband can divorce his wife simply by saying “I divorce you” three times on one or multiple occasions. In this case, the divorce is considered to be final. Conversely, women do not have a right to unilaterally end the marriage under the PSL. Although *khula’* may be initiated at the request of the wife, it requires the consent of the husband and is conditional on the woman paying back her *mahr*, or dowry, as well as anything else that is “lawfully considered an asset.”<sup>36</sup>

A woman may also obtain a *faskh*, or annulment, which is a court-ordered, fault-based divorce<sup>37</sup> for at least one out of a limited set of grounds, including illness, the husband’s failure to pay her *mahr* (dowry), the husband’s refusal or inability

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<sup>29</sup> Preamble, Personal Status Law.

<sup>30</sup> Article 9, Personal Status Law.

<sup>31</sup> Article 5, Draft Implementing Regulations to the Personal Status Law.

<sup>32</sup> Amnesty International, “The Devastating Impact of Child Marriage on Girls Around the World”, 14 October 2015, <https://www.amnestyusa.org/the-devastating-impact-of-child-marriage-on-girls-around-the-world/>

<sup>33</sup> CEDAW (previously cited), Article 16(1)(c). See also, Universal Declaration of Human Rights (UDHR), Article 16(1).

<sup>34</sup> Article 77, Personal Status Law.

<sup>35</sup> Article 90-91, Personal Status Law.

<sup>36</sup> Article 100, Personal Status Law. See also, Articles 95 and 96, Personal Status Law.

<sup>37</sup> Article 103, Personal Status Law.

to provide financial maintenance, mistreatment by the husband “if the harm is proven”, desertion and where the husband refuses to have sexual intercourse with his wife.<sup>38</sup>

## **WOMEN BEAR DISPROPORTIONATE FINANCIAL BURDENS DURING DIVORCE AND OTHER FORMS OF SEPARATION**

In the limited circumstances under which the PSL allows women to initiate separation proceedings, the law imposes disproportionate financial burdens on women that can further limit their ability to end their marriage.

While a woman is entitled to part of her *mahr* in the case of divorce,<sup>39</sup> which is initiated by the husband, women who seek *khula'* or *faskh* must compensate the husband.

*Khula'* is conditional not only on the husband's consent but also on the wife compensating her husband. The compensation that the wife is required to give her husband could include “everything that is lawfully considered to be an asset,” such as the *mahr*.<sup>40</sup> According to Saudi scholar and activist Hala al-Dosari, the husband and judge determine the amount of this compensation.

Bethany al-Haidari, a US citizen and academic specialized in human rights in Saudi Arabia, moved to Saudi Arabia in early 2011 and married a Saudi citizen with whom she had a daughter. She spent years trying to separate from her husband and faced immense challenges in doing so. Bethany said she was not able to obtain a *khula'* because she could not afford to pay back her *mahr*. After years of asking her husband to divorce her, Bethany filed for a *faskh* in November 2018 after having to show evidence that her husband was using drugs and was abusive towards his family. According to Bethany, who now works at the Freedom Initiative, a US-based human rights organization focusing on the Middle East and North Africa region, many women cannot file for *khula'* because they do not have the financial means to do so.<sup>41</sup> Although Bethany's experience pre-dates the application of the PSL, the PSL does nothing to address and remedy cases like hers.

A woman can initiate a *faskh* before the marriage is consummated, and the court can order the annulment provided she has returned the *mahr*. In cases where the wife is seeking a *faskh* before the marriage is consummated and “for a reason that is due to her,” she must return the *mahr*, and at the husband's request, may be asked to additionally compensate him for what he spent on her for the marriage.<sup>42</sup> However, the PSL fails to provide any definition of what such a “reason” could entail. According to a Saudi academic and expert on women's rights in Saudi Arabia interviewed by Amnesty International, such reasons may include if the wife does not live in the marital home or refuses to have sexual intercourse with her husband.<sup>43</sup>

In all cases of marriage dissolution, the PSL disadvantages women economically. Given the traditional gender roles and the fact that women are more likely to be financially dependent on their husbands, women do not receive a fair financial arrangement at the end of a marriage, particularly related to property distribution and post-dissolution maintenance, and they may become economically vulnerable as a result. The PSL fails to provide for any provisions on the division of marital property upon the dissolution of marriage. Additionally, the PSL fails to account for the non-financial contributions made by women during the marriage.<sup>44</sup> The PSL gives women the right to post-dissolution maintenance after a separation is finalized only during her *iddah* period, which is the 3-month period during which she cannot get remarried, or if she was pregnant, until she gives birth.<sup>45</sup>

The CEDAW Committee has acknowledged that women's unequal position in the family and the lack of recognition of women's non-financial contributions to the marriage often results in property distribution and post-dissolution

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<sup>38</sup> Articles 105-115, Personal Status Law.

<sup>39</sup> Article 40(3), Personal Status Law.

<sup>40</sup> Article 100, Personal Status Law.

<sup>41</sup> Interview by voice call with Bethany al-Haidari, an academic specialized in human rights law in Saudi Arabia, 14 February 2023.

<sup>42</sup> Article 112, Personal Status Law.

<sup>43</sup> Interview by voice call with Saudi academic and expert on women's rights in Saudi Arabia, 28 February 2023.

<sup>44</sup> CEDAW has held that during the division of marital property, “financial and non-financial contributions should be accorded the same weight.” CEDAW, General Recommendation 21: Equality in Marriage and Family Relations, 1994, para 7.

<sup>45</sup> Article 53, Personal Status Law.

maintenance regimes often favouring husbands regardless of whether laws appear neutral.<sup>46</sup> The Committee has urged states to make sure that they should be guided by the principle that economic advantages and disadvantages related to the relationship and its dissolution should be borne equally by both parties.<sup>47</sup> The CEDAW Committee has encouraged states to reform post-dissolution maintenance laws to better reflect gender-based economic disparities between spouses including the fact that women do a greater share of unpaid work.<sup>48</sup>

## **WOMEN FACING FAMILY VIOLENCE NOT ADEQUATELY PROTECTED**

The PSL does not adequately protect women from family violence, and existing legislation criminalizing domestic abuse remains inadequate and not robustly enforced.<sup>49</sup>

The male guardianship system, which the law does not abolish, enables abuse. As discussed above, the system gives men control over critical aspects of women's lives, and the difficulties of transferring guardianship may lock women into abusive situations. Further, the law's codification of patriarchal gender roles creates an environment that is rife for abuse. While the law stipulates that the husband has a duty to provide financial maintenance to his wife during the marriage, which includes food, clothing, accommodation and other essential needs,<sup>50</sup> this right is conditional on the wife "submit[ing] herself to him"<sup>51</sup> and may be denied if she, amongst other things, "refuses herself to her husband...without a legitimate reason."<sup>52</sup> The PSL fails to define "legitimate reason." Such provisions place women at risk of exploitation and abuse, including marital rape, which Saudi law does not criminalize.

Such stereotypical gender roles contravene international human rights standards. CEDAW obliges states parties to "modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women."<sup>53</sup>

Further, the PSL limits the ability of women to end abusive marriages. Women can initiate a *faskh* where they suffer "harm" at the hands of the husband, but the burden is on the woman to prove the harm and prove that the harm was making it impossible to continue living together.<sup>54</sup> If the woman was not able to meet those high evidentiary standards, the law requires the couple to go through an adjudication process whereby the parties select an adjudicator from each of their families. Otherwise, the court will appoint two adjudicators. This reconciliation process can last up to two years.<sup>55</sup> Such provisions, which create additional barriers to ending a marriage, prioritize the reconciliation of the family over the woman's safety.<sup>56</sup> Men seeking divorce do not have to go through a similar process. These practices contravene international standards on states' obligations to respond to domestic violence, which require that the response prioritize "the rights of the...survivor over other considerations, such as the reconciliation of families or communities."<sup>57</sup>

Non-Saudi women face additional obstacles in reporting domestic violence by their spouse, as according to Saudi law a foreign woman's husband can be her *kafeel* (sponsor), and therefore her residency in the country may depend on her

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<sup>46</sup> CEDAW (previously cited), General recommendation on article 16 of the Convention on the Elimination of All Forms of Discrimination against Women (Economic consequences of marriage, family relations and their dissolution), 30 October 2013, CEDAW/C/GC/29, para. 43.

<sup>47</sup> CEDAW (previously cited), General recommendation on article 16 of the Convention on the Elimination of All Forms of Discrimination against Women (Economic consequences of marriage, family relations and their dissolution), 30 October 2013, CEDAW/C/GC/29, para. 45.

<sup>48</sup> CEDAW (previously cited), Concluding Observations: Germany, 10 February 2009, UN Doc. CEDAW/C/DEU/CO/6, paras 55 and 56.

<sup>49</sup> Human Rights Watch, "Saudi Arabia: New Law to Criminalize Domestic Abuse" 3 September 2013 <https://www.hrw.org/news/2013/09/03/saudi-arabia-new-law-criminalize-domestic-abuse>

<sup>50</sup> Article 45, Personal Status Law.

<sup>51</sup> Article 51, Personal Status Law.

<sup>52</sup> Article 55, Personal Status Law.

<sup>53</sup> CEDAW (previously cited), Article 5(a).

<sup>54</sup> Article 108, Personal Status Law.

<sup>55</sup> Article 109, Personal Status Law.

<sup>56</sup> Musawah, "Saudi Arabia: Overview of Muslim Family Laws and Practices", 2 July 2022, <https://www.musawah.org/wp-content/uploads/2019/03/SaudiArabia-Overview-Table-2022.pdf>, p.30.

<sup>57</sup> UN Women (previously cited), *Handbook for Legislation on Violence against Women*, 2012, p. 45.

marital relationship. Therefore, a non-Saudi wife is at risk of deportation if her husband does not renew her residency due to her domestic abuse complaint against him, his prosecution or his imprisonment.

## **DISCRIMINATORY PROVISIONS ON CUSTODY AND GUARDIANSHIP OF CHILDREN**

The PSL does not give women and men equal rights over matters relating to their children in the event of separation, in contravention of international law and standards. While the mother is automatically granted custody, and is the child's "custodian",<sup>58</sup> the father remains the child's legal guardian and has the power to make critical decisions regarding the child's life.

As the legal guardian, under the PSL, the father possesses more powers with regards to the child's upbringing than the mother, as he is responsible for the "minor's affairs and representation."<sup>59</sup> This includes "general supervision of the minor in a manner that does not enter into conflict with the authority of the person raising the child in managing the child's affairs."<sup>60</sup> However, these provisions are vague, and they allow judges significant discretion in situations where there is a disagreement between a child's guardian (usually the father) and custodian (usually the mother). As detailed below, the courts often discriminate against women.

Further, the child's custodian (typically the mother) is only allowed to travel outside Saudi Arabia with the child for a period of a maximum 90 days in a year; any travel exceeding this period requires consent of the other parent (typically the father who is the legal guardian), or another legal guardian if the father is deceased.<sup>61</sup> Not only does this requirement impose restrictions on women's freedom of movement, it also prevents women from relocating outside of Saudi Arabia with their children, unless they have the express approval of the child's father or the appointed legal guardian.

Additionally, only the father, as the male legal guardian, can give consent to his daughter's marriage and is required for the marriage contract to be validated, as described above.

The grounds for termination of the mother's custodianship are much wider than grounds for terminating the father's legal guardianship, creating the risk that fathers may use the broad powers of their legal guardianship to take away the rights that a woman has over her child. Custody may be terminated on the basis that the custodian does not have "full capacity" and is unable to "raise, protect and care for the child", among other grounds.<sup>62</sup> The PSL fails to clearly define these terms, leaving much of these considerations to the discretion of judges.

Further, a legal guardian can terminate the mother's custody if she marries a man unrelated to the child.<sup>63</sup> This provision risks deterring divorced women with children from re-marrying as they would risk losing their children unless they can prove that the marriage is in the "interest" of the child. However, the burden of proof is on the woman, and it is unclear how the judiciary will interpret the "interest" of the child. There is no similar provision under the PSL restricting a father's guardianship over his child based on his marital status.

Even when a woman retains custody of her children after re-marrying, her new husband has to consent to her children living in the marital home "if they do not have another nursemaid or they are affected by being separated from her."<sup>64</sup> Even if the new husband consents to a wife's children from her previous marriage living in the marital home, he has the right to reverse the consent if he is "harmed" by it. The PSL fails to provide a definition of "harm" within this context. Conversely, unless the wife co-owns or co-rents the marital home, the husband does not need the wife's consent to have his children from a previous marriage live in the home, provided this does not cause the wife "harm."<sup>65</sup> Here again, the PSL does not indicate what this harm entails and how to prove this in court.

On the other hand, the grounds for terminating guardianship do not relate to whether the father has remarried. The court may remove guardianship where the guardian does not have "full capacity" and are "able to undertake the requirements of guardianship entrusted to them."<sup>66</sup> Moreover, a person who is appointed as guardian by the father or the court is required to not have been "sentenced with removal from the guardianship of another minor due to harm or squandering

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<sup>58</sup> Article 127, Personal Status Law.

<sup>59</sup> Article 137, Personal Status Law.

<sup>60</sup> Article 138, Personal Status Law.

<sup>61</sup> Article 129, Personal Status Law.

<sup>62</sup> Article 125, 128, Personal Status Law.

<sup>63</sup> Article 126, Personal Status Law.

<sup>64</sup> Article 57(2), Personal Status Law.

<sup>65</sup> Article 57(1), Personal Status Law.

<sup>66</sup> Article 143, Personal Status Law.

the protection of their assets” and “there must be no hostility between them and the minor that causes concern about the minor’s interest.”<sup>67</sup> These orders are subject to the discretion of the court, and the PSL fails to provide any avenues for mothers to terminate guardianship of the father, for example in cases where the father is abusive.

In practice, the courts do discriminate against women in custody hearings.<sup>68</sup> Amnesty International spoke to a woman living in Saudi Arabia whose child was taken from her by her ex-husband for two months in 2022. The father did not inform her of the whereabouts of her child. When the police were notified, they documented the case and forced the father to return the child weeks later. However, the police failed to take any legal action against the father. Despite the courts awarding her custody of her child in 2022, her ex-husband re-filed for custody. According to the mother, the Personal Status Court recently awarded custody to her ex-husband despite her not being aware or notified of any custody hearings.<sup>69</sup>

According to Bethany al-Haidari, when her ex-husband filed for custody of their child on behalf of his mother in May 2018, the reasons he cited were the fact that Bethany was an American citizen, did not teach her daughter Arabic, interacted with men not related to her, did yoga and did not cover her hair. Despite the fact that the judge stated that Bethany, her ex-husband and his mother were all unfit to have custody, the judge held in July 2019 that his mother was the “least unfit” for custody, despite evidence Bethany presented that his mother was also abusive. Bethany filed an appeal to this ruling, and instead of holding a custody hearing, she was called into the office of the President of the Personal Status Court with her ex-husband and US Embassy staff present, where she was informed that both parties must reach a settlement agreement. Bethany told Amnesty International, “They [Saudi Arabia] talk about an independent judiciary, but my appeal was derailed. I told them [the court] about evidence of abuse of both the grandmother and father, as well as neglect and drug abuse. Best interest of the child does not exist. We had no choice.”<sup>70</sup>

Both CEDAW and the Convention on the Rights of the Child, which Saudi Arabia has ratified, stipulate that in all matters relating to children, their best interests should be a primary consideration.<sup>71</sup> CEDAW has also called on states to ensure that men and women have equal rights and responsibilities with regards to guardianship of their children.<sup>72</sup>

## UNEQUAL INHERITANCE RIGHTS BETWEEN MEN AND WOMEN

The PSL discriminates between men and women with regards to inheritance, giving men a much larger share of assets than their female counterparts.<sup>73</sup>

The law stipulates that for a couple that has no children and no other descendants, the wife inherits only one quarter of her husband’s assets, while the husband inherits half of his wife’s assets. If the couple does have children or other descendants, the wife inherits one eighth of her husband’s assets, while the husband inherits a quarter of his wife’s assets.<sup>74</sup> Even if the husband had more than one wife, upon his death, the multiple wives share the designated share of one wife.<sup>75</sup> This differentiation places female widows at a greater financial disadvantage than male widows, particularly given that more women are financially dependent on their husbands, which the Committee on the Elimination of Discrimination Against Women has warned violates CEDAW.<sup>76</sup>

Gender discrimination is applied to children, as a daughter inherits one half of either parents’ assets where she is the only child. In cases where a couple have more than one daughter and no sons, the daughters all split two thirds of the

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<sup>67</sup> Article 141, Personal Status Law.

<sup>68</sup> Musawah, “*Thematic Report on Muslim Family Law and Muslim Women’s Rights in Saudi Arabia*”, February 2018, <https://www.musawah.org/wp-content/uploads/2019/02/Saudi-Arabia-Thematic-Report-2018-CEDAW69.pdf>, p.24.

<sup>69</sup> Interview by voice call with “Sarah” (name changed for security reasons), 27 February 2023.

<sup>70</sup> Interview by voice call with Bethany al-Haidari, an academic specialized in human rights law in Saudi Arabia, 14 February 2023.

<sup>71</sup> Convention on the Rights of the Child (CRC), adopted November 20, 1989, G.A. Res. 44/25, annex, 44 U.N. GAOR Supp. (No. 49) at 167, U.N. Doc. A/44/49 (1989), entered into force September 2, 1990, art. 9.

<sup>72</sup> UN Committee on Discrimination Against Women, General Recommendation No. 21: Equality in marriage and family relations, (1994), article 16 (f), [http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolNo=INT/CEDAW/GEC/4733&Lang=en](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolNo=INT/CEDAW/GEC/4733&Lang=en)

<sup>73</sup> Articles 210-215, Personal Status Law

<sup>74</sup> Articles 209-210 Personal Status Law.

<sup>75</sup> Article 210(2), Personal Status Law.

<sup>76</sup> CEDAW (previously cited), General Recommendation 21: Equality in Marriage and Family Relations, 1994, para 35.

inheritance.<sup>77</sup> However, where there is a son, the son gets the share of two daughters.<sup>78</sup> Moreover, the law discriminates against women in identifying eligible heirs for inheritance. For example, only grandchildren from a son, and not grandchildren from a daughter, are eligible for inheritance from their grandparents.<sup>79</sup> This same unequal pattern of distribution of inheritance based on gender is repeated in other familial relationships, such as between siblings and aunts and uncles.

The unequal rights to inheritance further entrench economic discrimination between men and women. The CEDAW Committee has held that States are required to “adopt laws relating to the making of wills that provide equal rights to women and men as testators, heirs and beneficiaries.”<sup>80</sup>

## RECOMMENDATIONS TO THE SAUDI ARABIAN AUTHORITIES

As this analysis shows, the PSL codifies discrimination against women and does not adequately protect women from violence. Crown Prince Mohammad bin Salman has widely publicized his women’s rights reforms, including the introduction of the PSL, and claimed that these reforms are a measure of progress for the Kingdom. However, upon closer examination, it is clear that the PSL does not live up to promises, and it continues to entrench a system of gender-based discrimination and violence against women.

Amnesty International addresses the following recommendations to the respective authorities:

### TO THE COUNCIL OF MINISTERS

- Amend the Personal Status Law to ensure that:
  - Provisions including remnants of the male guardianship system are repealed including, but not limited to, Articles 11, 13, 15, 20, and 129;
  - The law does not discriminate against women, including by codifying problematic and stereotypical gender roles that require wives to “obey” and “submit themselves” to their husbands, such as in Articles 42(5), 51, and 55;
  - Prohibit all forms of forced or coerced early marriage, and ensure that both parties to the marriage enter into it freely without any undue influence or coercion, including the threat or violence or financial incentives;
  - Where coercion is suspected in marriage involving one or more individuals under the age of 18, establish procedures to evaluate the consent of the parties, and to protect the best interests of the child, given due regard to the views of the child according to their evolving capacity;
  - Women and men have equal access to divorce, and the law does not place disproportionate financial burdens on women that can further limit their ability to end their marriage, including by ensuring that women’s non-financial contributions during marriage are recognized and accounted for in post-marriage financial agreements;
  - Men and women have equal rights and responsibilities with regards to guardianship of their children, and that the best interests of the child are prioritized when making any decisions regarding custody; and
  - Men and women have equal inheritance rights.
- Amend the Law on Protection from Abuse to explicitly criminalize marital rape and ensure that the authorities have a confidential and robust reporting mechanism for survivors to report domestic violence and abuse and seek redress without fear of reprisal;
- Amend the Law on Associations and Foundations, which came into effect in 2016, to remove restrictions that prevent the legal registration of independent human rights groups and other civil society organizations, including women’s rights groups. This includes removing the powers of the Ministry of Labour and Social Development to

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<sup>77</sup> Article 215(1), Personal Status Law.

<sup>78</sup> Article 215(2), Personal Status Law.

<sup>79</sup> Article 205, Personal Status Law.

<sup>80</sup> CEDAW (previously cited), General Recommendation on article 16 of the Convention on the Elimination of All Forms of Discrimination against Women (Economic consequences of marriage, family relations and their dissolution), 30 October 2013, para 52.

prevent or impede the legal registration of such associations on grounds such as that the Ministry deems them to be breaching “national unity.”

- Lift Saudi Arabia’s reservations made to the Convention on the Elimination of All Forms of Discrimination against Women and Convention on the Rights of the Child which violate the object and purpose of the treaty and bring Saudi domestic law in line with its international human rights obligations.

#### **TO THE SUPREME JUDICIAL COUNCIL**

- Ensure that judges do not discriminate against women in the application of the Personal Status Law.

#### **TO THE KING AND PRIME MINISTER OF SAUDI ARABIA**

- Immediately and unconditionally release those imprisoned solely due to their women’s rights activism or for exercising their rights to free speech.