



Distr.

GENERAL

大会

A/HRC/11/6/Add.3

14 April 2009

CHINESE Original: ENGLISH

人权理事会

第十一届会议

议程项目3

## 增进和保护所有人权、公民、政治、经济、社会和文化权利，包括发展权

暴力侵害妇女、其原因及后果问题特别报告员亚肯·埃蒂尔克的报告\*

增编

### 对沙特阿拉伯的访问 \*\*

### 内容提要

本报告载述我于2008年2月对沙特阿拉伯的正式访问所得调查结果。

沙特阿拉伯王国正面临着史无前例的挑战。尤其在过去20年里出现要求改变现状的压力，导致了一些有限的改革，这些改革还是对女权产生了重大影响。

沙特妇女的舆论、愿望和要求就如同她们各自的生活经历一样形形色色、不一而足。有些妇女对其生活表示知足和满意，而另一些妇女辩称该国对妇女存在着严重的歧视性做法，从而影响到她们作为完整的人的权利和尊严，并损害了社会的实际价值。

已取得有一些影响到妇女地位的积极发展、尤其是在妇女接受教育方面的发展，导致妇女能在较短的时间里大幅度提高文化水平。但是，在这一进步的同时妇女参与劳动大军的人数却没有相应的增加，而且她们仍然大多被排除在决策进程之外。

男女的隔离和需要男性监护的习俗对妇女的自立、作为成人的法律地位以及参与社会和工作场所全部活动的能力都造成了严重的障碍。

近年来，对妇女的暴力已被认为是一项公共政策问题。但是，当前涉及到离婚和子女监护方面的司法惯例加之妇女缺乏自立和经济独立性仍然限制她们脱离侵权性婚姻关系的能力。涉及到早婚和逼婚以及离婚的问题也日益受到公众的关注，但是由于对这些问题法律上缺乏明确性、法官也缺乏处置权，因此纠正侵权行为的机会很少。针对女佣这一属于最弱势群体群的暴力没有得到适当的认识。本报告就以下问题提出了一些建议：为帮助妇女当家做主权威和增加妇女参与公共领域而有必要的措施、消除对妇女和女童的暴力、司法和法律改革、制止欺凌移民工人采取的措施。此外还就沙特阿拉伯能够加强其与国际人权机制合作的方式提出了一些建议。

### Annex

REPORT OF THE SPECIAL RAPPORTEUR ON VIOLENCE AGAINST WOMEN, ITS CAUSES AND CONSEQUENCES, YAKIN ERTÜRK, ON HER MISSION TO SAUDI ARABIA ( 4-13 February 2008)

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## I. INTRODUCTION

1. At the invitation of the Government, I carried out an official mission to Saudi Arabia from 4 to 13 February 2008. I visited Riyadh, Buridah (Al Qassim), Jeddah and Dammam.

2. During the course of my mission, I held consultations with the President and members of the Human Rights Commission, the Head of the Majlis al-Shura and officials from various ministries and public entities. I also met with academics, businesswomen, journalists, lawyers, human rights activists, women's groups, representatives of United Nations agencies, the Organization of the Islamic Conference and the diplomatic community. I had the opportunity to visit various social protection centres where I spoke with women survivors of violence and domestic workers as well as detainees at the women's prison in Riyadh.

3. I would like to express my heartfelt thanks to all the victims of violence who agreed to share their personal experiences with me, as well as to the many inspirational men and women I met who are struggling for the betterment of their society against strong odds. I am also grateful to the Human Rights Commission for the excellent cooperation extended to me during the mission.

4. I look forward to continued dialogue with the Government and other stakeholders on the implementation of my recommendations.

### ii. The Context

5. The Kingdom of Saudi Arabia was founded in 1932 by Abd Al-Aziz bin Abd al-Rahman Al Saud (Ibn Saud). Today, it is confronted with unprecedented challenges from many fronts. Particularly over the past two decades, pressures for change have resulted in modest but noteworthy reforms, including increased engagement with the international human rights system. Such reforms, and their impact on women's status, need to be assessed in light of the complex and fragile social, economic and political dynamics that shape the trajectory of the Saudi State and society.

### A. Governance structure

6. The modern Saudi State emerged with the coming together of a number of tribal *amirs* under the paternal leadership of Abd Al-Aziz Al Saud. This process was supported by the politico-religious alliances of the Al Saud and Al Shaikh families and further reinforced by the exploitation of oil. The Wahhabi-Hanbali interpretation of Islamic law, which is said to be the most conservative, enjoys hegemony. From a predominantly rural society composed of loosely organized tribes, Saudi Arabia has become largely urbanized, with over three-fifths of the population living in major cities.

7. In 1992, the Basic Law of Governance, i.e., the Constitution (the Basic Law hereafter) and the Law on the Consultative Council (*Shura*) were issued. The latter is a deliberative body with 150 members restricted to men 30 years of age and older who are appointed by the King. Together with the Council of Ministers, they retain the authority of enacting laws. The King also appoints *amirs* mainly from the Al Saud family as provincial governors.

8. Article 1 of the Basic Law provides that "the Kingdom of Saudi Arabia is a sovereign Arab Islamic State with Islam as its religion; God's Book and the Sunnah of his prophet, God's prayers and peace be upon him, are its constitution". Accordingly, the sharia (Islamic law) provides the basis of governance and characterizes the State as well as its relationship with its citizens.

9. Saudi Arabia has no political parties or trade unions and the establishment of non-governmental organizations is in its infancy. In 2005, nationwide elections were held for half the members of the 179 municipal councils, while the other half were appointed by the King. Women could not participate in these elections. The weekly open meetings held in accordance with article 43 of the Basic Law, which provides that the King's court and that of the Crown Prince shall be open for anyone with a complaint or a plea, allow for a degree of direct access to the Government. Women, however, rarely submit their pleas in person.

## B. International obligations

10. Saudi Arabia has ratified several of the core human rights instruments, including the Convention on the Rights of the Child and the Convention on the Elimination of All Forms of Discrimination against Women. Saudi Arabia made a general reservation to the latter Convention, whereby “in case of contradiction between any term of the Convention and the norms of Islamic Law, the Kingdom is not under the obligation to observe the contradictory terms of the Convention”. The language used in this reservation, which is similar to that made in other treaties, does not clearly define the extent to which Saudi Arabia accepts its international obligations, although I was assured by officials that there was no contradiction in substance between the Convention and Islamic law.

11. According to article 26 of the Basic Law, the State protects human rights according to sharia. Article 70 provides that provisions of any international agreement approved by royal decree shall be valid and directly applicable in courts. Most of my interlocutors noted however, that in practice international instruments do not have precedence over national law and it is unclear whether they have ever been used in courts.

## C. Socio-economic dynamics

12. The Basic Law (art. 9) states that the family (*usra*), represented by the elder male, is the core of Saudi society and the State strives to strengthen the bonds of the family (art. 10). Loyalty to the territorial State, as opposed to familial and tribal networks, has been on the rise in the past decades and there is a growing wealthy, educated and globally connected professional middle class. Nonetheless, despite these developments the traditional structures of power, identity and affiliation are maintained as the fundamental pillars of the society and the sensitive balance among them is manoeuvred cautiously. Consequently, reformists are ambivalent about moving too fast, particularly with regard to personal-status norms.

13. While the diversification of the economy in recent years has reduced dependency on oil, Saudi Arabia continues to be characterized by its dependence on a large foreign workforce. Employment within the Saudi population has so far concentrated on high-skill occupations requiring technical or university qualifications - a “recipe for reliance on foreign labour at lower and middle levels”, noted the Government in its eighth development plan. According to a 2006 study by the General Statistics Department, the number of non-Saudi workers in the Kingdom, mostly coming from Asia, was estimated at 8,024,885 (1,244,335 women), out of a total population of approximately 27 million.

14. The presence of such a large number of foreign workers, many of whom are in precarious employment situations, poses a number of challenges for Saudi Arabia. Aside from the obvious security and human rights concerns, the need to create opportunities for native entrants in the labour market, especially the young and women is particularly complex. In addition to managing a tight system of labour contracts and migrant control, measures for the “Saudiization” of the economy have been initiated since the fourth national development plan, with quotas in private businesses set for Saudis, including for manual labour. Since then, the share of native labour in total employment increased to 44.9 per cent in 2002. Businesses, however, are said to be suffering from a lack of Saudi staff. The system of sex segregation, which limits women’s employment options, also accounts for the low rate of Saudis in the workforce.

## D. Sex segregation

15. Saudi Arabia is a sex-segregated society, a policy which is enforced in public institutions, private businesses, restaurants and cafés, and which shapes the architectural design of private homes. Discussions and meetings among men and women are conducted through video conferences or by phone, rather than face to face. Although the new Saudi Labour Code, amended in 2005, no longer includes a provision explicitly requiring sex segregation in the workplace, the fact that there has been no formal/public repeal or prohibition of segregation, leaves uncertainty as to its proper enforcement.

16. According to many businesswomen and officials, sex segregation is a primary obstacle to women’s ability to participate in the full range of activities and opportunities in the workplace and results in the duplication of tasks and resources. Until 2004, when the Ministry of Commerce and Industry abolished the requirement, women had to hire a male manager to run or establish companies that have dealings with men.

17. Some argue that sex segregation is not discriminatory in itself, but that problems arise due to the lack of private sections for women in government and business institutions. Royal Decree No. 120 (2003) outlines steps for expanding job opportunities for Saudi women, including an obligation for all government agencies providing services to women to establish women’s sections within a period not exceeding a year of the issuance of the decree. At the time of my visit, many institutions did not have functioning women’s units - there were for instance, no female police officers and just a few female staff within the Ministry of Interior. I was encouraged to learn that a women’s department was established by Royal Decree No. 8382/MB of October 2008 in the Ministry of Justice to supervise the women’s divisions of the courts and notary public offices. Also welcomed is the opening in 2008 of women’s sections of the Human Rights Commission in Riyadh and Mecca, with sections in other provinces also planned.

18. One notable exception to sex segregation is in the health sector, where medical schools are mixed and women and men generally work side by side in hospitals and health centres. Health professionals agree that the provision of one joint service, while observing societal sensitivities, such as for separate gynaecological care, allows for efficient use of resources and delivery of better quality services.

## III. Women’S STATUS

19. Positive developments in the status of women have taken place in recent years. Yet, by and large, the “modern” practices concerning women in Saudi Arabia stand in contrast to not only the role women played during early Islam but also vis-à-vis the laws and religious principles prevailing in the country. The contradictions in this regard are most apparent in the areas of women’s autonomy and participation in the public sphere.

## **A. Education**

20. The most noteworthy progress has been in the field of education. Since the opening of schools for girls in 1956, women's literacy rates increased dramatically, although a gender gap remains. By 2006, 78.4 per cent of Saudi women aged 15 and above were literate, compared to 88.6 per cent of men, while the literacy rate of youth (15 to 24) is estimated at 95.5 and 97.7 per cent, respectively.

21. Today, women enjoy free and nearly complete access to primary and secondary education. In 2004, a royal decree made primary education compulsory for all children between the ages of 6 and 15. In remote areas, parents are provided with financial incentives to send their daughters to school and teachers with an additional allowance. There are now more schools for girls than for boys in the Kingdom. From kindergarten to twelfth grade, 51.4 per cent of students are girls and 48.6 per cent are boys. In tertiary education, female graduates constitute 56.5 per cent of all students, and male graduates 43.5 per cent. This increase in girls' years of education has had a positive impact on marriage patterns, as shown for instance by an increase in the age of first marriage and a decrease in polygamous practices.

22. However, concerns have been raised that the overall aim of girls' education which was to prepare them for their "natural roles" as mothers and wives has not changed over the past 40 years. Although stereotypes that were perpetuated in some textbooks have recently been removed, at secondary and tertiary levels of education, girls specialize in humanities and arts rather than science and engineering courses. They also remain excluded from some fields of study - depending on the particular university - such as engineering, astrology, geology and, until recently, law. From 2000 to 2007, 12 universities opened in the Kingdom. This, coupled with a recent decision by the Higher Education Council to increase studies in physical sciences, may create additional opportunities for girls.

23. Sex-segregated education adversely impacts on the quality of education as the allocation of resources and access are said to be unequally distributed. Female faculty members have complained that women's branches of universities are less equipped than those for boys and that the highest decision-making positions are occupied by men.

24. Nonetheless, the achievements in girls' education have been commendable. This however, has not been accompanied by a comparable increase in women's participation in the labour force.

## **B. Employment**

25. Women's participation in the labour market, although it remains low, increased to 10.3 per cent in 2004 and is expected to reach 14.8 per cent in 2009. The public sector is women's prime employer, in particular the Ministry of Education with 83.4 per cent of its employees female in 2003, and the Ministry of Health, with 5.4 per cent of its employees.

26. The State report to the Working Group on the Universal Periodic Review (UPR) contends that Saudi working women amount to 50 per cent of the number of male workers, although the source of this data is unclear. NGO figures are much lower. Women's low participation in the workforce is attributed to the mismatch between educational outputs and employment opportunities, women's lack of freedom of movement and restrictions emanating from the guardianship system.

27. Some professions, in particular the legal and judicial professions, are still beyond the reach of women. Women with law degrees from abroad have been unable to open their own practice. Law courses are now offered to women in some universities, with the first graduates expected in 2009. At the time of writing, there was no public plan to allow them to practise law once they graduate.

28. Women's participation in the private sector is lower than in the public sector. Commercially registered firms owned by women accounted for about 4.7 per cent of all businesses registered at the Chambers of Commerce and Industry in 2004. However, the State report to the UPR noted that 20,000 private companies (21 per cent) were owned by women. Some measures have also been taken to increase the "Saudiization" of female jobs and encourage women's participation in and ownership of businesses.

29. Article 149 of the Labour Law (2005) specifies that women "shall work in all fields suitable to their nature", in accordance with sharia provisions. Criteria for women's work, as set out in paragraph 2/A of Council of Labour Force, No. 1/19M/1405 (1987), are quite restrictive. Such criteria have not been repealed, even though they seem to counteract several other regulations taken in recent years to encourage women's employment, such as the inclusion in the Eighth Development Plan of a wide range of measures in this regard, the Council of Ministers Decision No. 120 (2004) on the expansion of employment opportunities for Saudi women, and Royal Decree No. 187 (2005) on the issuance of women's work permits in private businesses.

## **C. Decision-making**

30. In February 2009 a woman was appointed as a deputy minister and in April 2009 another was appointed as a university president for the first time in the country's history. In June 2006, six women were also appointed to the Shura, albeit as "advisers" exclusively on women's issues. These are most promising steps towards expanding the public space for women. However, women's participation in decision-making remains limited. In many universities women are not represented in the governing bodies. Officials suggested that having women supervising men is not well accepted in society, although there are cases of women supervising men in medical schools/facilities.

31. The private sector may offer more potential for women to become autonomous and reach positions of power and authority. Women are already allowed to sit in chambers of commerce, although their participation remains low; the Jeddah Chamber of Commerce being the only chamber with women on its Board of Directors. Some businesswomen reported that chamber officials were generally against their standing for elections.

32. It is interesting to note that public opinion in favour of women sharing decision-making power appears high. In a survey conducted in Jeddah, 84 per cent of women and 78 per cent of men interviewed replied positively to the question: "Do you believe that women can share decision-making with men on issues of national development?"

## **D. Guardianship system**

33. *Mahram*, or the legal guardianship of women by a male, is practised in varying degrees and encompasses major aspects of women's lives. The system is said to emanate from social conventions, including the importance of protecting women, and from religious precepts on travel and marriage, although these requirements were arguably confined to particular situations.

34. While some women rationalize the system as necessary for their protection and express pride in being such "pampered Saudi women", others complain that the system is a denial of their intellectual capacities, moral values and legal capacity as adults. Guardianship indeed severely limits women's autonomy, freedom of movement and the exercise of their legal capacity in relation to marriage, divorce, child custody, inheritance, and property ownership/control, as well as decision-making in family matters, education and employment. In general, the guardianship system renders women's legal position precarious.

35. Although guardianship is not regulated in law, there are some specific legal provisions requiring a guardian's authorization or presence in order for a woman to access or benefit from some services. Marriage and its dissolution must be approved by a guardian to be considered legal. A woman wanting to travel or undergo an operation pertaining to sexual and reproductive matters needs her guardian's approval.

36. While, according to law, women have the right to undergo any other medical operation, open a business, perform financial transactions, own property, inherit, and choose their education without a male guardian's approval or presence - in practice the exercise of such rights can be arbitrarily restricted depending on the practice adopted by a particular institution or the understanding of the individual in charge. Reportedly, in most business operations, and depending on the context, women generally need either the approval or presence of a male guardian/representative, or a power of attorney.

37. Women's lack of an identity card (ID) deepens their dependency on men. This is the case for instance, when they must appear before a court, are performing financial/administrative transactions, and in some situations even when a guardian is not strictly required. I have been told of fraudulent schemes whereby men, misrepresenting fully veiled women in court, are able to cheat them out of their property or inheritance. In 2001, despite opposition, photo ID for women was instituted - a major step forward in establishing women's autonomy as legal persons. Some problems in its implementation are reported however, such as the requirement of the guardian's approval to obtain one, and many women today still lack an ID card either because they lack their guardian's approval or due to the woman's reluctance to appear unveiled in the photograph.

38. The guardianship system, by granting such power to men over women, is said to have condoned or allowed abuse of women and children. Although nothing in the law prevents a woman from going to a police station, a health-care centre or a court to file a complaint, the practice varies. I was told of a number of cases where women were not able to file complaints because police or health-care professionals - or in some cases, the women themselves - believed they had to have an authorization from their guardian. On other occasions where a woman could not show an ID card or was fully covered, officials would insist on having a guardian present. Clearly, where the guardian or someone close to him is the perpetrator, the possibility of obtaining redress is low, if possible at all.

## **IV. Violence against Women**

39. In recent years, violence against women has increasingly been recognized as an issue deserving public attention and intervention, the media being particularly vocal about it. A number of initiatives have been taken by government institutions, in particular to address the issue of violence in the family, long a taboo in Saudi Arabia. Within this context, issues related to early and forced marriage and divorce are also increasingly gaining public attention. Recognition of violence against domestic migrant workers, however, continues to be problematic among the populace as well as the authorities.

### **A. Manifestations of violence against women**

#### **1. Violence in the family**

40. The extent of domestic violence in Saudi Arabia is difficult to assess because of constraints on reporting and the lack of data. From 2004 to 2006, the National Society for Human Rights (NSHR) received 713 cases of family violence and 600 pertaining to personal affairs. A counselling centre in one of the major Saudi cities receives on average 50 complaints of domestic violence and child abuse per month, and could take more, had they the human resources to do so. The Jeddah committee for social protection reported receiving over 250 family violence cases from January to May 2008.

41. Many of my interlocutors believe that the actual number of victims of domestic violence is higher than the fragmentary figures reported. A national experts meeting held in May 2007 raised concerns over the high prevalence of domestic violence in the Kingdom and recommended immediate action by the Government. A study conducted in 2003-04 showed that 52.6 per cent of men interviewed abused their wife for "misconduct"; an act that 52.7 per cent of the male respondents accept as "the appropriate way to deal with women's misconduct".

42. Husbands or ex-husbands, followed by close relatives (predominantly fathers and brothers), are the most common perpetrators of violence against women within the family. The NSHR received complaints concerning physical and psychological violence, sexual harassment, defamation and insults. Data from the National Programme for Family Safety shows that physical violence is the most common form of violence reported, which in 60 per cent of cases is caused by husbands, followed by brothers and fathers.

43. In addition, the Human Rights Commission and the NSHR have received complaints relating to abuse of power by husbands or other family members, such as: the denial of education, health or inheritance to wives and children; denying a wife the possibility to see her children; confiscating official documents such as identity cards in order to prevent women from travelling or accessing services; and the abandonment of wives and their children.

44. There is also anecdotal evidence of neglect, abuse and violence against girls by family members. In 2006, there were around 1,300 girls in institutions for juveniles, many of whom are said to be there because they ran away from domestic abuse. Although the extent of such abuse cannot be determined due to the lack of data, Ayda's story is illustrative:

My father is a retired military man and an alcoholic. He abused me since I was little. My mother died at the hospital because of beatings and burns. When my siblings and I accused our father of her death, he forced us to change our testimony. He hit me with chains and swords and raped me. I ran away from the house and lived on the street, where the *hay'at* found me and brought me to a shelter. But my father complained to the police I had run away and I spent one week in prison. My complaint about rape was rejected as the case focused on my running away. My father ultimately rejected me, so I could stay in the shelter with two of my sisters. I fear for my younger sister, who remains with our father.

## 2. Violence in the public sphere

45. Cases of rapes are not discussed openly and women and girls fear they will be judged by society should they report rape. Only rarely are rape cases brought to public and Government attention. While comprehensive data on rape cases is lacking, health professionals I talked to I often the first to be in contact with victims of rape - acknowledged that it is an emerging issue that would warrant more attention.

46. The famous case of "the Qatif girl" highlights some of the difficulties in ensuring that victims of sexual violence receive adequate consideration and protection. In 2006, the 19-year-old girl and her male companion were abducted and she was raped by seven Saudi men. Four of the men were sentenced to one to five-year prison terms and to flogging, ranging from 80 to 1,000 lashes. The rape victim and her companion were sentenced to 90 lashes for the crime of *khehwa*, an offence under sharia law of being alone in private with an unrelated member of the opposite sex or "illegal mingling". The sentence against the girl was later increased to 200 lashes and a six-month prison term. She was ultimately pardoned by the King, although he did not imply there had been any judicial misconduct.

47. Saudi legislation does not specifically criminalize rape and no punishments for rape or other types of sexual violence are specifically defined, although judges could apparently issue a judgement based on the crime of "vice and corruption" as defined by Islamic law. Victims fear being judged and charged by society and the judiciary for having committed adultery should they complain about rape. Another issue is the lack of guidelines for health professionals, which could enable them to recognize rape cases and make proper referrals.

48. A source of "terror" for women on the street is the possibility of being apprehended by the Commission for the Promotion of Virtue and the Prevention of Vice (CPVPV), popularly known as *hay'at* or *mutawwa*, an authorized law enforcement agency responsible for maintaining morality in public places. Reportedly some members of the CPVPV are responsible for serious abuses; harassing, threatening and arresting people who supposedly deviate from "religious norms". According to my interlocutors, the CPVPV often makes quite liberal use of the offence of *khehwa*, - the exact distinction between legal and illegal mingling of men and women seemingly left to the interpretation of the individual *mutawwa*.

49. Although members of the CPVPV are required to act in concert with the police and within certain limitations with respect to arrest and detention of people - as underscored in the Punitive Procedures Act - they reportedly often act independently and without clear lines of accountability. For instance, charges against two Commission members for having molested a woman were dismissed in court on the grounds that the Commission had immunity.

## 3. Forced marriage and divorce

50. Although the average age of first marriage has increased, and while there is no precise data on the extent of child marriage, there is growing concern about this practice, which varies according to the socio-economic level of the family and local circumstances. Girls may be forced by their guardian to marry older men or men with mental disabilities for monetary or family considerations. Recently, the marriage of an 8-year-old girl to a 58-year-old man by her father, who needed the advance dowry to solve his financial problems, provoked strong reactions among activists and in the national and international media. Her mother's plea for a divorce was rejected by a court in Unayzah on the grounds that the case should wait until the girl reaches puberty. Recent government correspondence indicates that the court has now cancelled the marriage contract.

51. Forced marriages often place girls at risk of abuse and violence. A woman with whom I met was physically abused as a child by her brother, who forced her to marry a man when she was 14 years old, who also abused her physically. Thanks to the help of a social protection committee, she obtained a divorce after struggling for 10 years. Her four children were granted to her ex-husband.

52. No law determines the age of marriage and child marriage is not prohibited. The practice is based on sharia precepts, whereby maturity is associated with puberty, which could start as early as 9 for girls. The Grand Mufti Sheikh Abd al-Aziz Al-Sheikh, the head of the Council of Senior Religious Scholars, has recently been quoted in the media as saying that a 10 or 12-year-old girl is marriageable. Although the mufti's pronouncements are respected, they are not binding on the Government. Following the debates around the ruling by the Unayzah court, the Human Rights Commission condemned the marriage of minor girls as an "inhumane violation" and called on all government agencies to adopt a clear position on child and forced marriages in order to end the practice, as it has "severe health consequences on the girl child" and her personal development. In November 2008, the Shura approved a law officially defining the age of adulthood as 18, although whether this will also apply to the legal age for marriage is unknown.

53. Guardians also have the authority to dissolve marriages they deem unfit. The practice does not appear widespread, but has been highlighted nationally and internationally by the forcible divorce of Fatima Azzaz and Mansour Al-Timani. I have also received reports of 10 other attempts to annul marriages based on “tribal incompatibility”, which were brought to court after the Fatima and Mansour case. It appears that judicial proceedings have been blocked pending the resolution of the latter.

54. Fatima and Mansour, who have two children, had been married for several years, with the approval of Fatima’s father. In 2005, after the father’s death, a court divorced the couple on grounds of “tribal incompatibility” upon the demand of Fatima’s half-brothers, who had become her guardians. The couple were arrested in 2006 for living together as an unmarried couple. Fatima was imprisoned for nine months, before being given shelter with her 2-year-old son in a government institution, where I visited her. Fatima refuses to leave the shelter until her family is reunited. Mansour lost his job and lives with the couple’s 5-year-old daughter with the help of concerned people. During my visit, I could witness first-hand the desperation of Fatima and Mansour. Although, I was assured by the Human Rights Commission that the couple would be reunited and the case had been submitted to the competent authorities, at the time of submitting the present report the case was still pending.

55. The decision of the judge to forcibly divorce Fatima and Mansour was reportedly based on his concern to avoid the “social tensions” that could arise due to the violation of tribal norms. Such judgements, however, are in clear violation of Saudi Arabia’s fundamental Islamic principles and with precepts of the Basic Law (arts. 9 and 10) which define the family as the foundation of Saudi society, and which the State is mandated to strengthen. The Fatima and Mansour case is a symbol of non-compliance with this law and illustrates both the arbitrary nature of the administration of justice and the extent to which the guardianship system can be abused.

#### **4. Abuses against female migrant workers**

56. Foreign female workers in Saudi Arabia work predominantly as maids and to some extent in the nursing sector. According to Government and NGO estimates, in early 2008, the number of women domestic workers ranged from 1 to 1.5 million.

57. While most migrant workers come voluntarily to Saudi Arabia, some are allegedly trafficked for the purpose of forced labour or sexual exploitation. Upon arrival, all migrants ~~I~~ contrary to the Council of Ministers’ Decision 166 (2000) - have their passport and residency permit taken away from them, and some find themselves in slave-like conditions. Trafficking of children from countries such as Somalia or Chad for the purpose of sexual exploitation or forced labour and begging have also been reported. Government officials report however, that there are initiatives under way to prevent such crimes, and that a law on trafficking had been finalized and was being presented to the Shura Council.

58. While domestic workers comprise less than a quarter of the migrant workforce, embassies from labour-sending countries report that abuses against them account for the vast majority of complaints received. There is no law guaranteeing a minimum wage, although some labour-sending countries have started negotiating set wages with recruitment associations and the Saudi Government. Domestic workers, as other migrant workers, often face delays or denial of salary. Employers who do not pay their workers’ wages on time are liable to a penalty and prohibition of recruitment for a period of one year, although this regulation does not seem to be systematically applied.

59. Female domestic workers are among the most vulnerable to abuse. Direct testimonies, as well as embassy, NGO and media reports, confirm that these women are victims of physical, verbal and sexual abuse, are sometimes locked up in the house with no possibility to make or receive phone calls, or are prohibited from leaving the house at their will. Overwork and food deprivation are other abuses commonly reported.

60. At the women’s prison in Riyadh, out of 1,200 inmates, most were foreign domestic workers from Asia and Africa, with the exception of two dozen Saudi nationals. They had been arrested and convicted either for “moral crimes” (adultery, sexual advances, *khehwa*) or for offences such as stealing, begging, carrying false documentation, or running away. Frequently, women had been picked up by the police or the CPVPV for seemingly innocuous acts, such as being on the street or speaking to someone in a supermarket.

61. An Indonesian inmate told me: “I worked four years as a maid. My sponsor took my passport and residency permit. He didn’t give me any salary. He abused me sexually during a week his wife was absent. He then rejected me and stopped my employment. I was living on the street when I was caught with the son of my employer by the religious police and sentenced to a [one] year and two month prison term and 200 lashes. The son was only sentenced to two months in prison and 100 lashes.”

62. The majority of women in the prison were in pretrial detention for exceedingly long durations of up to a year and a half. Some were still detained despite the fact that their sentence had ended. Most of them complained they had not been informed about the judicial process, the exact reasons for their arrest, or their rights as the accused. There are also female migrants on death row, and concerns that due process rights have not been upheld in their cases.

63. Foreign women, and particularly domestic workers, are disproportionately affected by Saudi Arabia’s strict sex segregation and restrictive practices towards women. They are isolated in private homes, vulnerable to abuse and lack access to redress. Prejudices against migrants, which are broadly shared across society, including by employers and officials, are compounding factors. The lack of a tracking system also reinforces the vulnerability of migrants, who arrive in groups of hundreds generally through recruitment agencies on “block visas”. Thus, neither the Saudi Government nor the sending country can verify where precisely those migrants go.

64. Moreover, the *kafala* (sponsorship) system increases the risks of exploitation and abuse since the employer bears responsibility for granting permission before a worker can enter Saudi Arabia, change employment or leave the country. Some have argued that, since employers bear the cost for the domestic workers’ recruitment (generally 5,000 to 9,000 Riyals), they may develop a sense of ownership regarding their domestic workers and slip into abusive behaviour towards them. There have been documented cases of workers not being able to leave abusive situations or return home after completion of their contracts because their employer denied

them permission.

65. The system was recently under review by the Ministry of Labour, with plans to transfer sponsorship authority from individual employers towards a few large recruitment agencies. This is a promising initiative provided that provisions for regulation and monitoring are included.

## **B. Responses to violence against women**

66. An encouraging development in recent years has been the demystification of the taboo around violence against women, an issue which is now increasingly occupying the public discourse and agenda.

67. One of the most notable initiatives in responding to the problem is the National Programme for Family Safety (NPFS), which is administered within the National Guard Health Affairs, and aims to prevent violence through training, awareness-raising and the provision of services to victims. Since its creation, NPFS has been conducting training for social workers, police, forensic experts, and psychiatrists on the issue of child abuse. Child abuse is said to have provided a more acceptable entry point to discuss openly in society than violence against women. The demand has grown to such extent that NPFS is now on call 24 hours a day throughout the week to respond to complaints of child abuse.

68. NPFS has recently been expanding its work on domestic violence, offering training, health services, and assistance to women in filing complaints with the police and obtaining the required legal medical report. NPFS has also arranged for emergency shelter, longer-term accommodation in some cases, and foster parents for abused children.

69. Since January 2008, NPFS and the Ministry of Health have started setting up family protection centres in every hospital in the Kingdom, composed of trained staff to identify and address cases of abuse. At the time of my visit, a directive informing all hospitals about the plan to set up those centres had been sent and staff training had begun. There were also plans to establish a national registry of cases of violence against children and women, and reporting forms were being prepared to that end.

70. Since 2004, the Ministry for Social Affairs has also run social protection committees in all provinces, in which other relevant ministries are represented. They receive complaints of psychological and physical abuse from women and children, make recommendations to address them, and provide psychosocial and medical assistance. Representatives of the ministry explained that women in need of long-term housing could benefit from the ministry's regular social-welfare programme.

71. Some of my interlocutors expressed concern that the performance and approach of social protection committees varied and the manner in which they dealt with family conflicts often discouraged women from escaping abusive relationships. Officials underlined that the aim of the committees was to preserve family unity rather than impose untimely changes on society. While the intention is understandable, this should not come at the cost of women's protection from abuse and redress.

72. Charity-based organizations, often sponsored by the royal family, also provide services for victims of violence. A few of these organizations have gone beyond the traditional model of charity, and offer more empowering programmes for women such as microcredit programmes, and literacy or professional training courses. They also conduct awareness-raising campaigns on family violence and liaise with relevant authorities to solve individual cases, including by supporting women in bringing their case to court.

73. Women's access to justice should benefit from the judicial reforms announced in 2007 in Royal Decree No. M/78. These include the promulgation of new Statutes for the Judiciary and the Board of Grievances, and foresee, among other things, the establishment of personal status courts to deal with family issues. Furthermore, Royal Decree No. M/8382 (2008) approved a programme to implement the recommendations of the Committee on the Elimination of Discrimination against Women to establish specialized women's departments in courts and notaries (which would include women supervisors), and to effectively respond to women's complaints.

## **C. Legislative and institutional framework**

### **1. Legal ambiguities and the administration of justice**

74. The Saudi legal and judicial system is based on sharia law and its commentaries, and is mostly unwritten. In particular, there is no written law governing cases pertaining to personal and family issues, and there is no codified penal code. There is also no provision or code criminalizing violence against women, though laws have been developed on child abuse and domestic violence, both of which, I was informed, were recently submitted to the highest authority for approval.

75. The non-codification of laws leaves the interpretation and application of sharia to the competency of the courts and to a Council of Senior Religious Scholars, appointed by the King. In accordance with the Law of the Judiciary, judges are expected to be fully versed in Islamic law and jurisprudence (*Fikh*) and must hold a degree from a sharia college. There is an overall consensus that judges have significant discretionary power in adjudicating cases. Sentences can thus differ from court to court or even case to case. Reportedly, judges apply guidelines drawn from customs and traditions such as those practised by tribes in pre-Islamic periods, which often do not comply with obligations contained in the sharia or in international instruments ratified by Saudi Arabia. The forcible divorce of women such as Fatima Al-Timani is a case in point.

76. The lack of legal clarity and the discretionary powers of judges are particularly problematic for the rights of women to a fair trial. There are reports of women being prevented from appearing or being heard in court, and evidentiary standards are said to discriminate against women, whose testimony is valued at half that of men's, according to Islamic law. In view of these standards and the fact that women are not granted equal rights with respect to family matters, it is particularly difficult for women - and even more so for female foreign migrants - to prove domestic violence, rape or sexual assault.



77. The Statutes of the Judiciary of 1975 were not in compliance with the principles of independence of the judiciary and the separation of powers and failed to ensure consistency with respect to the review and monitoring of judicial practices and judgements. The new Statutes of the Judiciary of 2007 transfer a number of functions previously entrusted to the Ministry of Justice to the Supreme Council of the Judiciary, which is now tasked to “review judgements and express an opinion on their jurisprudential substantiating grounds from the standpoint of ... their compatibility with the aim of ensuring justice in light of changing conditions and circumstances”. It is indeed crucial to ensure that the Supreme Court examines and controls judicial practices and principles, with a view to ensuring fairness and consistency in all matters related to the judiciary, including judicial judgements. I was also assured that a research centre is to be established within the Ministry of Justice, which will be staffed with specialists who will publish selected judicial judgements, after approval of the Supreme Council of the Judiciary.

78. Officials indicated that the trend was to codify judicial practices into law and rely less and less on outdated jurisprudence. Increased codification is welcomed, as new crimes and social problems require specific legal responses. A council of experts, tasked by the Council of Ministers with drafting laws, is currently working on codifying criminal provisions, though the expected time frame for this endeavour is unclear.

## **2. Divorce and child custody**

79. Judicial practices pertaining to divorce and child custody also impact on women’s ability to escape abusive marriages. According to the State report to the Committee on the Elimination of Discrimination against Women, the law gives a woman the right to apply for separation “on grounds of hurt”, the unjustified absence of the husband, his imprisonment or his “refusal to support her adequately”. In practice, procedures for women to obtain a divorce are lengthy and may not bring a resolution, since women must thoroughly demonstrate grounds for divorce. A woman may also buy her way out of a marriage, if she can afford it.

80. By contrast, men are entitled to divorce without having to demonstrate particular grounds for a divorce. There is growing concern over increasing divorce rates - mostly decided by men. According to the Ministry of Social Affairs, the divorce rate in early 2008 was 30 per cent, although NGO and media reports indicate that it could be as high as 60 per cent.

81. Divorce on grounds of domestic violence is also difficult to obtain as judges are said to demand levels of evidence which are difficult, if not impossible, for women to provide. In case of divorce, a Saudi woman may keep her children until they reach the age of 7 for girls and 9 for boys. Custody of children over these ages is generally awarded to the father or, if he is deceased, to his family. In rare cases where women may be granted physical custody, fathers retain legal custody. This means, for instance, that all transactions on behalf of the children require the father’s consent. Foreign women married to Saudi nationals also encounter significant discrimination in custody and divorce matters.

## **3. Protective framework for migrant domestic workers**

82. Saudi Labour Law excludes foreign domestic workers (art. 7 (2)). They thus lack the legal protections guaranteed to other workers such as overtime pay or limits on working hours. Protective mechanisms and resources for domestic workers are generally weak and abuse against them is rarely reported. Penalties for forced labour under the Labour Law are limited to fines or bans on future hiring and, as such, are not a sufficient deterrent. More recently, the Government indicated that “the bill of law regulating the employment of domestic servants and the like” has been submitted by the Ministry of Labour to the Council of Ministers for review before adoption, but at the time of finalizing this report, the bill had not been adopted.

83. Domestic workers who try to obtain redress face, in many instances, the threat of countercharges such as, adultery or other moral “misconduct”, theft, and sanctions for having left their employers, thereby violating immigration and contractual regulations. Bringing a case to court may actually be counterproductive, especially in cases of sexual assault, which rarely result in convictions. Lengthy trials also deter migrants from bringing cases to court, as they cannot afford to wait in Saudi Arabia without work for very long. Migrants are thus generally advised by their embassies to settle for compensation rather than bringing a case to court. However, negotiations between employers and workers often result in unfair settlements for the latter.

84. The Ministry for Social Affairs operates a centre in Riyadh for domestic workers who require exit visas, identity documents, or who are in dispute with their employers. According to some sources, the shelter is overcrowded (typically housing 1,000 to 1,500 workers) and cannot cope with the demand. Domestic workers often wait for months without any news about their case.

85. Since July 2004, the Labour Ministry has had a Migrant Workers’ Welfare Department. It also manages over 30 labour offices throughout the Kingdom, whose tasks, according to the Labour Law, are to consider and settle labour disputes between employer and employee, and refer cases to labour commissions for the settlement of disputes. While the State’s report to the Working Group on the Universal Periodic Review affirms that domestic workers can apply to these commissions for redress, other sources note that, given the exclusion of domestic workers in the Labour Law, these workers cannot in practice benefit from the help of those offices and are instead systematically referred to the Ministry of Social Affairs.

86. Some embassies manage their own safe houses for their runaway nationals, which are often of poor quality and overcrowded. One embassy that I visited received 15 runaway maids per day, making it difficult for the few embassy staff to handle the volume of complaints. They have few resources to support the legal and administrative actions that migrant workers might wish to undertake. They are also not equipped to help maids in other parts of the country besides Riyadh and Jeddah, where embassies and consulates do not exist.

87. Most labour-sending countries have not signed bilateral agreements with Saudi Arabia to regulate working conditions of domestic workers and mechanisms for redress. As a result, embassies generally use diplomatic means to negotiate the payment of salary or secure the release of a migrant from prison. Problematically, those labour-exporting countries are dependent on migrant remittances, which may make them hesitant to pursue better conditions for their nationals working in Saudi Arabia, for fear that quotas on their

nationals will be reduced. "Our hands are tied", as one embassy staff told me.

88. While I was told that no hospital or social protection committee would turn away a foreign worker asking for help, there are reports of migrants being refused access, and lacking basic information on these services. Moreover, according to embassy sources, since migrant's health care is under the responsibility of his/her sponsor, they will have to pay for the health care if they are unaccompanied.

#### **4. Absence of a women's national machinery**

89. No institution oversees and addresses issues pertaining to women and gender equality specifically. According to the State reports to CEDAW and UPR, Cabinet Decree 63 of 2003 approved the creation of a Higher National Committee for Women's Affairs. At the time of my visit, no such Committee existed, and no information to this effect has been received since then.

90. A national institution overseeing women's issues could help coordinate the work of various bodies currently in charge of prevention of violence against women and protection of victims, including the implementation of the law on domestic violence.

91. A women's machinery could also play an important role in the coordination and collection of data on violence against women, which is currently lacking. The Ministry of the Interior did not have any data disaggregated by sex, victim, perpetrator or type of abuse. The Ministry of Social Affairs has apparently started gathering statistics on reported cases of domestic violence (the first statistics were gathered for the year 2005-2006). However, this information is neither collected nor recorded at a central level.

#### **V. Conclusions and Recommendations**

**92. The voices, aspirations and demands of Saudi women are as diverse and multiple as are their life experiences. Among the Saudi women I met, some have expressed contentment and satisfaction with their lives. Others have raised concerns of serious levels of discriminatory practices against women that compromise their rights and dignity as human beings and undermine the true values of their society. And still others shared with me the discrimination and abuse they encountered, with few prospects for redress.**

**93. This diversity is reflective of the prevailing constraints and opportunities available to women. In past years there have been significant developments in women's status, notably in the area of education. Yet, women's participation in the labour force in both the public and private sectors is lagging, although the latter seems to offer greater prospects for employment and self-actualization in the long term. Women's role in decision-making positions is limited. The guardianship system and a policy of strict sex segregation are major factors preventing a greater participation of women in society and public life.**

**94. Women's lack of autonomy and economic independence, practices surrounding divorce and child custody, the absence of a law criminalizing violence against women, and inconsistencies in law enforcement and the administration of justice continue to prevent many women from escaping abusive environments. In this regard, the lack of written laws governing private life and discretionary court rulings constitute a major obstacle to women's access to justice. Much remains to be done to ensure that women develop their full capacity, become equal partners in the betterment of their society, and that all women, including domestic migrant workers, enjoy a life free of abuse and discrimination.**

**95. I would like to address the following recommendations in several areas to the Government of Saudi Arabia:**

##### **(a) Women's empowerment and public sphere participation:**

**Incorporate in law the principle of equality between women and men, and a definition of discrimination based on sex.**

**Establish an independent national machinery for the advancement of women, including with prerogatives to intervene in cases of violence against women.**

**Take measures, including through awareness-raising campaigns, to end the practice of guardianship and abolish existing legal provisions that require a guardian's authorization, such as those pertaining to women's travel or access to services or employment. Ensure public and private institutions, including health services, private businesses and the travel industry, are notified of the changes and monitor their actions in this regard.**

**Facilitate the procedure for women to obtain an identity card and raise awareness in this regard.**

**Establish the facilities and mechanisms for women's equal participation in all public and private institutions, including law practices and the judiciary.**

**Take the necessary measures to enable women to exercise their right to vote and to stand for election in future elections.**

**Expedite the implementation of the Eighth Development Plan objectives regarding women's employment and education, including developing training services and increasing the enrolment of women and girls in the sciences, and in applied and vocational specializations in secondary and higher education.**

**Repeal or amend provisions in labour-related codes/regulations, such as Council of Labour Force, No. 1/19M/1405 (1987), which limit women's access to employment.**

**Ensure women's equal participation in decision-making and planning at all levels, including the Shura Council and**

Council of Ministers. To that end, provide training for women in leadership skills and technical know-how.

**(b) Elimination of violence against women and girls:**

Adopt the draft law on domestic violence, with clear guidelines on implementation mechanisms, a monitoring and coordinating body, and sanctions against perpetrators

Adopt a Penal Code clearly defining criminal offences - including rape and the use of torture and cruel, inhuman and degrading treatment or punishment - and specifying penalties for perpetrators

Adopt guidelines for government agencies and religious leaders aimed at preventing and ending child and forced marriage

Standardize the age of majority in the Kingdom at 18 in accordance with the Convention on the Rights of the Child, and ensure its application to the legal age of marriage

Adopt a family law to regulate marriage and divorce, including the prohibition of marriage annulments against the will of both spouses

Adopt guidelines for the police and the judiciary on how to investigate, prosecute and rule on cases of rape and sexual violence

Establish women's units within the police and the General Prosecutor's office

Systematize the gathering of data and statistics on violence against women, disaggregated by type of violence and relationship with the aggressor

Enhance the protection and services offered to victims of abuse by social protection committees, including through legal aid and empowerment programmes

Conduct awareness-raising campaigns and training for law enforcement officials, the judiciary, health-care providers, social workers, community leaders and the general public, to increase understanding that all forms of violence against women are grave violations of fundamental rights and incompatible with Islamic values

**(c) Judicial and legal reforms:**

Accelerate the establishment of family or personal status courts, staffed with female lawyers, counsellors and social workers and with specialized women's committees

Set up a training programme for judges with the Higher Institute for Judges, in cooperation with the Ministry for Justice, to address the international obligations the Kingdom has pledged to respect, including those pertaining to women's rights and the protection of women from violence

Provide free legal services to those unable to bear the cost of litigation

Examine the compatibility of tribal customs pertaining to marriage and divorce with obligations under sharia law and in international instruments ratified by the Kingdom

**(d) Migrant workers:**

Adopt the addendum to the Labour Law in order to cover domestic workers and ensure the protection of their rights, with adequate enforcement mechanisms

Reform the sponsorship system so that workers' visas are not tied to a particular employer/sponsor and workers are able to transfer employment or leave the country without the individual sponsor's consent

Effectively investigate and prosecute employers whose treatment of domestic workers violates national and international provisions, in particular in cases of physical/sexual violence

Provide shelters, psycho-social and legal aid to migrant victims of abuse

Raise awareness among the population about domestic workers' rights and regulations/punishments in case of abuse against them

**(e) International commitments:**

Ratify the International Covenants on Civil and Political Rights and on Economic, Social and Cultural Rights, and the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families

Lift the general reservation to the Convention on the Elimination of All Forms of Discrimination against Women and amend national legislation accordingly

Ratify the Optional Protocol to the Convention

Strengthen bilateral and multilateral cooperation - as reflected for instance in the Abu Dhabi Declaration of January

**2008 - to ensure migrant worker rights and prevent trafficking**

**Issue invitations to the Special Rapporteurs on the human rights of migrants and on contemporary forms of slavery to comprehensively assess the situation of migrant domestic workers**

**96. I would like to address the following recommendations to the Governments of labour exporting countries:**

**Strengthen pre-departure briefing programmes for migrant workers**

**Increase human resources, especially lawyers, to support migrant workers in Saudi Arabia seeking legal or other assistance**

**Protect migrant workers' rights through bilateral and multilateral cooperation**

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