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## UNITED STATES COMMISSION on INTERNATIONAL RELIGIOUS FREEDOM

# ISSUE UPDATE November 2020 SAUDI GUARDIANSHIP

## Guardianship, Women, and Religious Freedom in Saudi Arabia

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## **Executive Summary**

The Saudi guardianship system and its enforcement are based on a unique interpretation of the Hanbali school of Sunni Islam and justify restricting women's ability to travel, attend university, marry, or obtain medical care without the permission of a male guardian. The Saudi monarchy codified this system into law in the second half of the 20th century as part of its attempt to retain its religious credentials amid a period of political, economic, and social transformation. Although recent changes to provisions regarding women's ability to travel are a positive development, key restrictive elements of the guardianship system remain in place.

Saudi Arabia imposes the religious guardianship system on women, regardless of their personal or communal religious beliefs. This imposition contravenes Article 18 of the <u>Universal Declaration of Human Rights</u>. Furthermore, women who peacefully challenge the religious guardianship system have been arrested, subjected to sexual harassment, physical abuse, and death threats. Women who flee Saudi Arabia to escape guardianship laws have had their passports canceled and faced the prospect of repatriation under duress by the state. Saudi Arabia <u>considers</u> these women radical extremists and their political stance a "spiritual and intellectual kidnapping."

The guardianship system, and the consequences of challenging it, are among the systematic, ongoing, and egregious violations of religious freedom that have led the U.S. Commission on International Religious Freedom (USCIRF) to recommend since 2002 that the U.S. State Department *designate* Saudi Arabia a Country of Particular Concern (CPC) under the International Religious Freedom Act of 1998 (IRFA). USCIRF has explicitly called for a plan to end the guardianship system since 2017. The U.S. government has rightly *declared* the important connection between women's rights and religious freedom, and the State Department currently *lists* Saudi Arabia as a CPC. However, it repeatedly has waived sanctions that are otherwise mandated under IRFA for CPCs in the case of Saudi Arabia <u>on the grounds</u> of an "important national interest."

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King Salman bin Abdelaziz Al Saud and Crown Prince Mohammed bin Salman Al Saud have taken initial steps to reform provisions of the guardianship system. In 2017, King Salman issued a royal decree announcing that women would no longer need a guardian's permission to access public services. In 2018, with much international fanfare, Saudi women were granted the right to drive in the Kingdom. In 2019, Saudi Arabia formed a committee to study further *reforming* guardianship laws. In August of that year, the government issued several legal changes that ended the requirement on women to obtain their male guardians' permission to secure passports and travel abroad, and allowed women to report births, marriages, and divorces. The changes were announced in Royal Decree M/134 of 2019, which amended Royal Decree M/24 of August 2000. They *included* amendments to articles 2 and 3 of the Travel Document Laws and articles 19, 30, 33, and 47 of the Civil Status Law. In October 2020, King Salman also *appointed* a woman, Dr. Hanan al-Ahmadi, as assistant president of the Saudi Shura Council.

This report examines the origins of Saudi guardianship laws, their justification under the state's interpretation of Islam, and the effects they have on Saudi women. It also explains how the persistence of the Saudi guardianship system harms U.S. interests both in the Middle East and around the world. The report recommends that the United States more consistently and rigorously press Saudi Arabia to end guardianship and ensure greater religious freedom for Saudi women. Such a change would benefit Saudi Arabia's economy, improve its international reputation, and contribute to the Kingdom's stability. Focusing on laws relating to parental disobedience and absence from home while enforcing existing Saudi laws against domestic violence are low-risk and high-impact steps that the Saudi government can take to begin this process.

#### **Recommendations**

To address the violations of women's religious freedom originating in the guardianship system, the U.S. administration should:

 Urge the Saudi government to develop a set of policies to end the guardianship system by removing penalties on women for disobedience of guardians and absence from home, and enforce existing laws against domestic abuse;

- Emphasize in public statements and private meetings with Saudi government officials the importance of religious freedom for all citizens of Saudi Arabia, regardless of their gender, to the country's continued political, social, and economic development; and
- Call publicly for the release of activists imprisoned in Saudi Arabia for peacefully protesting religious guardianship laws.

#### Introduction

National laws that governments justify on religious grounds often mandate what women should wear, who they can marry, where they can live, how they should work, and whether they can be full participants in society. When women challenge these laws, they can be jailed and subjected to sexual harassment and violence. Limitations on religious freedom deny women, and the religious communities to which they belong, the opportunity to choose their own beliefs and live accordingly. As such, ensuring that governments abide by international standards of freedom of religion or belief not only advances universal human rights, but it also supports greater agency and opportunities for women.

Secretary of State Michael R. Pompeo has emphasized both religious freedom and the importance of women's rights, *declaring* that the State Department strives "for a world in which women and girls are free to realize their full potential and live in dignity along with their families, communities, and countries." In 2017, USCIRF *reported* on the ways in which the international norms on women's rights and religious freedom are mutually reinforcing. As such, U.S. government efforts to improve international religious freedom not only ensure the rights of religious communities but also strengthen the role of women in these societies who may hold a variety of religious beliefs or none at all.

While many Middle Eastern governments violate religious freedom in ways that hurt women, Saudi Arabia's religious guardianship system is uniquely repressive. The Saudi government has also committed egregious violations in the extent to which it punishes women who challenge guardianship laws or try to flee the country when life under such a system becomes unbearable. Saudi Arabia first agreed to examine dismantling the guardianship system following its UN Universal Periodic Review (UPR) in 2009, in which it also admitted the existence of <u>violations</u> of human rights under guardianship "attributable to individual practices." In its 2018 UPR, when similarly criticized over guardianship, the Kingdom noted the declaration of Supreme Order no. 27808 (2017), requiring a *study* of guardianship laws. In June 2020, the UN Working Group on Discrimination Against Women and Girls *submitted a new inquiry* to Saudi Arabia regarding the guardianship system and its treatment of U.S. citizen <u>Bethany Haidari</u> (Vierra).

In recent years, Saudi Arabia has taken some promising initial steps to reform the guardianship system. In 2019, the Kingdom announced that women could *report* births, marriages, and divorces, and *obtain a passport* and travel without a guardian's permission. These new laws were welcome changes that, if fully implemented, would improve religious freedom conditions. USCIRF also noted during a visit to Saudi Arabia in September 2018 that Saudi authorities less strictly enforced certain elements of the guardianship law than others-at least in urban areas. In December 2019, for example, Saudi Arabia stopped requiring restaurants to have separate entrances for men and women. Other changes, like professionalizing and further limiting the powers of the Committee for the Promotion of Virtue and Prevention of Vice (CPVPV), have given Saudi women greater freedom to wear what they like without fearing harassment from religious police in parts of the country. However, the religious guardianship system and its harmful effects remain an ongoing institutional obstacle to equality for Saudi women.

#### Guardianship's Basis in Islam

Guardianship (wilaya) is an Islamic concept that is originally and traditionally intended to protect women from vulnerability to exploitation or harm. While boys are also subject to guardianship laws before adulthood in some Islamic traditions, women in Saudi Arabia fall under the control of a male legal guardian for life. Their guardian must give permission for basic social and political needs, even when women are considered adults by Islamic legal standards. Saudi Arabia has drastically expanded the powers that it grants to guardians over the past 70 years, justifying such expansions on its unique interpretation of Shari'a and imposing them on women regardless of their individual religious beliefs.

The four major schools of thought (*madhahib*) within Sunni Muslim jurisprudence—Maliki, Hanafi, Shaf'i, and Hanbali—differ widely on questions of guardianship. The Hanbali school—named for Ahmad ibn Hanbal (d. 855 CE)—generally has the most restrictive rules regarding which religious sources carry authority, and it was the basis of Sunni preacher Mohammed ibn Abd al-Wahab's religious movement in the 18th century. While other Hanbalis disagree with many elements of al-Wahab's teachings on Islam, his alliance with Mohammed bin Saud in 1744 cemented their centrality in the future Saudi kingdom's interpretation of Islam.

With the exception of the Hanafi school, the other three Sunni madhahib agree that the guardian of any ward should be a male.

Overseeing marriage to a suitable husband is a primary function of a woman's legal guardian (*wali al-amr*) in Islamic legal tradition. However, two other religious functions are rolled into the Saudi state's particular conception of guardianship, both roles of which men other than a legal guardian can fulfil. First, a *mahram* ("prohibited one")—any male with whom it would be prohibited for a woman to marry, as outlined in <u>Sura 4 verse 23</u> of the Qur'an—escorts a woman during travel and can also receive her from a domestic violence shelter. Second, a male relative can serve as a woman's *mu'arif* ("one who knows"), who can verify her identity while she is wearing a face veil (*niqab*) in public. Such a person may be <u>necessary</u> in court, at lease signings, or when filing police complaints.

#### Guardianship and Religion in Saudi Arabia

Saudi Arabia's guardianship laws and their implementation are uniquely systematic, affecting women's ability to travel, marry, attend university, and obtain <u>medical care</u>. These policies are based on religious principles advocated by Saudi authorities and enshrined in Saudi laws and judicial procedures. Saudi Arabia's religious establishment plays an important role in determining the state's interpretation of Islam, directly affecting women's legal status in the country regardless of their individual religious beliefs. Many of the Kingdom's grand muftis are from the Al al-Sheikh family, descendants of Mohammed ibn Abd al-Wahhab. This gives the family, and clerics who are members of it, high status in Saudi Arabia and considerable influence over state affairs that intersect with religion.

While former Saudi Grand Muftis, including Mohammed Ibrahim Al al-Sheikh and Abdelaziz ibn Baz, held very conservative views on women's agency, younger generations of Saudi senior scholars have moved away slightly from these opinions in their jurisprudence and scholarship. Their *interpretations* are still collectively restrictive to women, often citing venerated but conservative Hanbali scholars like Ibn al-Qayyim and *Ibn Taymiyyah*. Nonetheless, gradual shifts in the religious establishment's position on women's rights are evident in court decisions and scholarship, and they appear in public statements as well. In May 2019, for example, former Mecca Grand Mosque Imam Adel al-Kalbani <u>criticized</u> the "phobia" of women underlying gender segregation in Saudi Arabia. These changes indicate that the Saudi religious establishment's position on guardianship laws is not static and that it may be open to engagement on reforming or scaling back the guardianship system.

As explained previously, guardianship in Saudi Arabia is based on religious concepts that the government *applies* across a wide spectrum of laws regulating women's access to healthcare, movement, education, access to justice, marriage, and divorce. However, two specific aspects of guardianship *negatively affect* Saudi women in a particularly discriminatory fashion: parental disobedience and absence from the home. Both entail the threat of criminal charges, regardless of whether a woman agrees with the state's official interpretation of religious law.

"Parental Disobedience" ('uquq—literally, "ingratitude") is the first of these two concepts prosecuted under religious guardianship laws. The roots of 'uquq are in the Qur'an itself; 'Aq al-Walidayn (disobedience to parents) is admonished in Sura 2 verse 233, which reads: "No mother shall be harmed on account of her child, and no father shall be harmed on account of his child." Several other verses mention respect for parents, and several lines of hadith mention respecting parents and their lineages as important. In Saudi Arabia, a parent can bring a charge of 'uquq against his or her child via a complaint to the Saudi Ministry of Justice. The charge has been used against both women (including women's rights activists like Samar Badawi and Rahaf al-Qanoon) and men (including USCIRF religious prisoner of conscience Raif Badawi). However, male guardians often bring legal claims of such disobedience against their female dependents. The punishment for 'uquq ranges from being sent home to imprisonment. Yet in some cases, the parents or guardians in these homes are abusive; international human rights groups have therefore expressed concern that 'uquq laws can trap women in domestic violence situations and impair women's ability to pursue legal redress for domestic violence.

The second charge, "absence from home" (*taghayyub*), allows a man to enlist the help of the state to return a woman to a male guardian's home. While a Saudi woman can legally travel abroad without a guardian's permission, a guardian can file a police complaint or seek a court order to return her back to his home. *Taghayyub* is a form of *noshuz*, or rebelliousness. Sanctions related to *taghayyub*  lead women in Saudi Arabia to remain in abusive relationships and open them to threats and domestic violence. However, in July 2020 a Saudi court <u>ruled</u> that the a male guardian who does not consent to his adult female ward living independently could not return her to his home under laws governing *taghayyub*.

#### The History of Guardianship in Saudi Arabia

While Saudi scholars use religious texts recorded centuries ago to justify guardianship laws, such laws did not always exist in Saudi Arabia. Women's rights were often limited under customary and tribal systems of governance on the Arabian Peninsula, but the codification of specific laws that deny women's rights on religious grounds is a relatively recent development in Saudi history. In 1952, King Abdelaziz appointed a Grand Mufti to serve as the highest religious authority in the Kingdom, and the House of Fatwa and Supervision of Religious Affairs (Dar al-Ifta' W'al-Ishraf 'Ala al-Shu'un al-Diniya) to formally embed religious clerics within the state's decision-making apparatus. In 1971, the government expanded this infrastructure, creating the Board of Senior Ulama' (Hayat Kibaar al-Ulama') as a consortium of top religious experts, and the Permanent Committee for Scholarly Research and Legal Opinion (Lajna al-Da'ima L'il-Bohuth al-'Ilmiya W'al-Iftaa). This Committee conducts research and issues religious rulings on behalf of the Board of Senior Ulama.

These changes, however, proved insufficient to counter religious opposition to the royal family, particularly amid a growing, regional Islamist movement in the 1970s. In November 1979, Juhaiman al-Otaibi led a two-week siege of the Grand Mosque at Mecca on the grounds that the Saudi royal family had lost its right to rule. He argued that the Al Saud dynasty had capitulated to Western cultural influence and followed, in his mind, an incorrect interpretation of Islam. Although the Saudi government retook the mosque two weeks later, with the help of French Special Forces, the event left the royal family shaken and deeply concerned about lingering instability and the potential for internal dissent within the Kingdom.

As a result, the Saudi government instituted a series of new policies throughout the 1980s designed to undermine opposition to the ruling family on the grounds that it was not sufficiently Islamic or had capitulated to the West. King Fahd, who ascended to power in 1982 upon the death of his brother King Khalid, oversaw many of these policies. In 1986, he resurrected the title "Custodian of the Two Holy Mosques," which his brother and predecessor King Faisal had used previously to invoke his religious authority. By 1989 around 100,000 Saudi women were *pursuing* higher education; nevertheless, segregation in the education and employment sectors continued and the exclusion of women from certain spaces increased. For example, between 1985 and 1990, the government *closed down* many women's sports programs that it had previously allowed.

In the 1990s, the Saudi government continued playing a balancing act between religious authorities promoting restrictive policies and domestic and international constituencies pushing the Kingdom toward political, social, and economic reforms. On November 6, 1990, nearly four dozen Saudi women drove cars around Riyadh despite a prohibition on women driving. At the same time, senior religious scholars who served on the conservative Senior Ulama Council were *critical* of government policies that its members believed were un-Islamic. To balance the Council's religious power, King Fahd established the Supreme Council of Islamic Affairs in 1994 and appointed his brother Sultan bin Abdelaziz as its chairman. To this day, the Supreme Council of Islamic Affairs offers religious guidance for Saudis abroad and regulates mosques within Saudi Arabia.

The role of Saudi nationals in carrying out the September 11, 2001 terrorist attacks put renewed international pressure on Saudi Arabia to demonstrate a commitment to reform. As part of these efforts, religious leaders inside and outside of the country's religious establishment began issuing fatwas expanding the rights of women. Three months after the attacks, the Kingdom issued national ID cards for women for the first time, allowing them to carry out financial, legal, and social transactions without the involvement of a male guardian. The government instituted further reforms following the death of King Fahd and the rise of King Abdullah in 2005. In 2009, King Abdullah reshuffled his cabinet and expanded the Senior Ulama Council to 21 members. In 2010, a royal edict *restricted* the power to issue *fatwas* to the Senior Ulama Council.

Throughout the early 2010's, the Saudi government continued to implement further legal reforms for women. By 2012, women were allowed to serve as lawyers and in legal capacities within businesses. In 2013, the Saudi Council of Ministers *passed* a draft law criminalizing domestic abuse with a fine of between 5,000 and 50,000 Saudi riyals. That same year, the Ministry of Labor also *lifted* the formal requirement for women to obtain a male guardian's consent before obtaining employment. Following the death of King Abdullah in 2015, King Salman bin Abdelaziz Al Saud and Deputy Crown Prince Mohammed bin Salman—who is now Crown Prince—emphasized enhanced roles for women in society alongside <u>the Saudi Vision 2030 modernization plan</u>, <u>announced in 2016</u>, with some pushback from the religious establishment. The plan sets benchmarks for greater women's participation in the workforce, and Crown Prince Mohammed bin Salman has explicitly connected women's empowerment to Vision 2030 in <u>interviews with Western</u> <u>media outlets</u>.

## Saudi Arabia's Persecution of Opposition to Guardianship Laws

The penalties are severe for Saudi activists who oppose the Saudi government's interpretation and enforcement of this religiously-based system. In June 2018, Saudi police arrested and imprisoned at least 11 activists who had peacefully protested the guardianship system, several of whom were placed in the Dhahban Central Prison outside of Jeddah. There are credible reports that many of these prisoners are victims of torture, including *beating*, electric shock, and whipping. In addition, many of the women activists were mistreated in gendered ways. One woman was photographed naked and shown these photos during interrogations conducted by men, while in another reported case, two of the women detainees were *forced to* kiss each other in the presence of a male interrogator and whipped when they refused. Some were hugged, kissed, and groped while handcuffed by male interrogators.

Saudi Arabia's Human Rights Commission began an investigation into this mistreatment in <u>December 2018</u>, but the government has not charged any individual involved in these interrogations with a crime or levied other consequences. Amid the 2020 COVID-19 global pandemic, the Saudi government has also <u>denied</u> several prisoners contact with their families.

Multiple Saudi women have sought political asylum outside the Kingdom because of poor treatment by their families under guardianship laws, at great risk to their personal safety. Many of these women denounced Islam, potentially subjecting them to capital punishment were they to return home. The Saudi government has actively attempted to extradite these women back to the Kingdom on behalf of their guardians. It has <u>canceled</u> and <u>seized</u> their passports in foreign airports and tracked them on behalf of their families, reportedly <u>by using unique</u> <u>identifiers associated with their cell phones</u>. Despite recent legal changes, Saudi government social media channels have <u>stated</u> that women fleeing guardianship are radicalized extremists seeking to harm the country's international image. In one illustrative presentation, the spokesman of the Saudi Presidency of State Security, Major General Bassem Atia, held a January 2019 seminar at Qassim University in Buraida on national security threats facing Saudi Arabia. One slide from his presentation <u>read</u>, "Feminism: A Spiritual and Intellectual Kidnapping,"



Slide from the Saudi Presidency of State Security that reads: Feminism: A Spiritual and Intellectual Kidnapping.

#### **U.S. Policy and Guardianship Laws**

Advocacy on behalf of Saudi women abused under the guardianship system is consistent with White House policy priorities. The Trump administration's 2019 United States Strategy on Women, Peace, and Security notes the importance of "religious freedom and equal treatment under the law in our engagement with other nations." The 2017 National Security Strategy identifies both empowering women and protecting religious freedom as priority actions to "champion American values," noting correctly that "for much of the world, America's liberties are inspirational." The State Department's 2017 International Religious Freedom report raised concerns over "impediments introduced by guardianship laws considered as Islamic" in Saudi Arabia consistent with some previous years' reports. However, even as guardianship laws have continued to limit religious freedom for Saudi women, U.S. government advocacy for their reform has been muted in recent years. In fact, the Saudi Arabia chapter of the State Department's 2019 Report on International Religious Freedom, released in June 2020, omits discussion of religious guardianship laws altogether.

The State Department has designated Saudi Arabia as a country of particular concern, or CPC, under IRFA for systematic, ongoing, egregious religious freedom violations repeatedly since 2004, but has kept in place a waiver on taking any associated action towards the Kingdom since 2006. In July 2006, as a consequence of the CPC designation, the State Department announced that ongoing bilateral discussions with the Saudi government had enabled the U.S. government to identify and confirm a number of policies that the Saudi government "is pursuing and will continue to pursue for the purpose of promoting greater freedom for religious practice and increased tolerance for religious groups." The State Department should seek a similar confirmation of policies from Saudi Arabia to address the religious freedom abuses arising from the guardianship system. Progress toward ending the guardianship system also has bipartisan congressional support. In July 2019, the House of Representatives passed H.Res. 129, which called on Saudi Arabia to end the guardianship system and free detained women's rights activists. In the Senate, S. Res 73 similarly calls on Saudi Arabia to end its guardianship laws and release women imprisoned for protesting them. Members of Congress from across the political spectrum agree that supporting the religious freedom of Saudi women is an important way to advance American interests abroad.

As President Trump has <u>emphasized</u>, Saudi economic development falls squarely within the U.S. national interest because it promotes bilateral trade and economic growth with a key defense partner in the Middle East. However, limitations the guardianship system imposes on women hinders economic development, even as the Kingdom has shown progress for women's economic empowerment in recent years. Guardianship laws also perpetuate a fear that Saudi Arabia is not safe for women tourists and business executives, further damaging the Kingdom's economic potential. Given domestic pressure on the Saudi government to deliver strong economic progress due to both low oil prices and the COVID-19 crisis, this stifling of growth is also a potential risk to the Kingdom's political stability.

Among Saudi women themselves, guardianship laws risk generating resentment and radicalized attitudes toward the government. The Saudi government's unwillingness to commit seriously to eliminating these laws has done significant damage to the Kingdom's reputation abroad. In combination with other ongoing human rights concerns (such as lack of adequate accountability for the killing of journalist Jamal Khashoggi at the Saudi consulate in Istanbul, Turkey), this negative sentiment raises the cost of American engagement with Saudi Arabia. It forces the U.S. government to spend time, money, and political goodwill contextualizing Saudi violations of religious freedom to concerned citizens and their representatives in Congress, the global NGO community, allies who share America's commitment to religious freedom, and international organizations like the United Nations.

#### Conclusion

Progress on Saudi guardianship laws stands to greatly benefit the U.S.-Saudi relationship. By empowering Saudi women, their government can ensure their ability to participate in and grow the Kingdom's economy. Such economic growth would bolster the country's stability under the leadership of King Salman and Crown Prince Mohammed bin Salman and create new opportunities for bilateral trade between Saudi Arabia and the United States. Reform would also signal a credible commitment to achieving the key performance indicators outlined in Saudi Vision 2030.

Most importantly, reforming guardianship laws would demonstrate unequivocally that the Saudi government understands that freedom of religion and belief, especially for women, is a right and not a privilege. Saudi women have a critical role to play in the country's economic, political, and social development, but they must be legally empowered in order to make meaningful change. The United States should actively support greater religious freedom for Saudi women by working to end the guardianship system in order to guarantee that they are afforded this opportunity.



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