

SAUDI ARABIA: A BRIEF ON THE IMPLEMENTATION OF CEDAW COMMITMENTS FROM ARTICLES 2, 5, 11, AND 16

*Information for the Committee on the Elimination of Discrimination Against Women
88th Pre-Sessional Working Group, October 2023*

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INTRODUCTION

The WORLD Policy Analysis Center, based at the University of California, Los Angeles, captures quantitative policy data on more than 2,000 indicators that matter to equality, health, and well-being. We strive to improve the quantity and quality of globally comparative data available to policymakers, citizens, national governments, intergovernmental organizations, civil society, and researchers for all 193 UN member states. We submit the following brief in advance of the 88th Pre-Sessional Working Group of the Committee on the Elimination of Discrimination against Women.

This brief will focus on the following areas:

1. Prohibition of Discrimination in Constitutions (Article 2)
2. Marriage (Articles 2, 16)
3. Paid Maternity and Paternity Leave (Articles 5, 11)
4. Non-discrimination in Work and Employment (Article 11)

We have collected and analyzed information on rights, laws, and policies in these areas for all 193 UN member states using a variety of sources, including primary national legal sources (e.g. original legislation and constitutions), national reports on policies and laws to the United Nations and official global and regional bodies, and secondary sources where clarification or corroboration of primary data is needed. Using a rigorous double-coding process, we create original databases which distill thousands of pages of text to highlight the essential features of each right, law, or policy. These original databases are the reference for the following brief. When drafting each brief, we perform a series of additional verifications to ensure the data provided reflects the current constitutional and legal landscape of a country.

In this report we first provide a summary of our constitutional and legislative findings, as well as suggested questions for the Committee to ask Saudi Arabia and topics we hope the Committee will address in its concluding observations. This summary is followed by detailed constitutional and legislative excerpts documenting our findings. We hope the Committee will recommend that Saudi Arabia address any gaps in consultation and collaboration with relevant stakeholders, including civil society organizations.



SUMMARY OF FINDINGS AND RECOMMENDATIONS

1. General Equality and Non-Discrimination (Article 2)

Based on our review of Saudi Arabia's constitutional framework, we did not identify any constitutional provisions that guarantee equality or non-discrimination based on sex or gender.

RECOMMENDED QUESTIONS FOR THE LIST OF ISSUES AND CONCLUDING OBSERVATIONS

We hope the Committee will:

- Recommend in its concluding observations that Saudi Arabia amend its Basic Law to add explicit guarantees of equality and non-discrimination based on sex/ gender, consistent with CEDAW commitments.

2. Marriage (Articles 2, 16)

Saudi Arabia introduced legislation in 2022 that for the first time sets the minimum age of marriage for both boys and girls at 18, although both boys and girls can still get married at any age with court authorization after the court determines that the marriage is in the minor's interest. There is no publicly available data on child marriage in Saudi Arabia.

While important, provisions on the minimum age of marriage are only a component of marriage equality. Equality of rights when entering, when exiting, and within marriage are also necessary for full equality, and research shows that neither the Basic Law nor general legislation grants these rights to Saudi women.



RECOMMENDED QUESTIONS FOR THE LIST OF ISSUES AND CONCLUDING OBSERVATIONS

We hope the Committee will:

- In its list of issues, ask Saudi Arabia: does Saudi Arabia have any concrete, near-term plans to expand its recently passed legislation to prohibit marriage before the age of 18, with no exceptions?
 - If Saudi Arabia does not have concrete, near-term plans, recommend in its concluding observations that Saudi Arabia pass legislation that establishes 18 years as the minimum age for marriage without any exceptions.
- In its list of issues, ask Saudi Arabia: given the dearth of reliable statistics to evaluate the prevalence of child marriage, can Saudi Arabia provide rates of underage marriages in the country, disaggregated by sex and age?
 - If updated statistics are not available, recommend in its concluding observations that Saudi Arabia begin collecting and reporting statistics on age of marriage, disaggregated by sex to evaluate implementation of the newly passed law.
- In its list of issues, ask Saudi Arabia: does Saudi Arabia have concrete, near-term plans to extend equal rights when entering, when exiting, and within marriage to all women, either in legislation or through amendments to its Basic Law?
 - If Saudi Arabia does not have concrete, near-term plans, recommend in its concluding observations that Saudi Arabia pass legislation or amend its Basic Law to ensure that women have equal rights when entering, when exiting, and within marriage.

3. Paid Maternity and Paternity Leave (Articles 5, 11)

Based on our systematic review of national legislation and country reports, Saudi Arabia provides 10 weeks of paid maternity leave, with the possibility of extending this leave for one unpaid month; this same law provides three days of paid leave to new fathers.



RECOMMENDED QUESTIONS FOR THE LIST OF ISSUES AND CONCLUDING OBSERVATIONS

We hope the Committee will:

- In its list of issues, ask Saudi Arabia: Can Saudi Arabia outline any concrete, near-term plans to pass legislation that increases paid maternity leave duration to at least 14 weeks, consistent with widely accepted standards set and endorsed by global institutions such as the ILO and UNICEF?
 - If Saudi Arabia does not have concrete, near-term plans to increase paid maternity leave duration to at least 14 weeks, recommend in its concluding observations that Saudi Arabia pass and implement legislation that does so.
- In its concluding observations, recommend that Saudi Arabia:
 - Increase the duration of paid paternity leave. Ensuring fathers' access to an adequate duration of paid paternity leave is foundational to increasing gender equality in caregiving responsibilities and gender equality in employment.

4. Non-Discrimination in Work and Employment (Article 11)

Saudi labor legislation protects against discrimination on the basis of gender generally, and more specifically by prohibiting discrimination on the basis of gender in hiring and mandating equal pay for work of equal value; it does not, however, explicitly prohibit discrimination on the basis of gender in vocational training, promotions or demotions, or terminations.

When determining whether Saudi Arabia extends these protections against discrimination to all women, regardless of marital, pregnancy and family status, our research shows Saudi legislation only prohibits terminations on the basis of pregnancy.

There are no additional protections against discrimination on the basis of marital status or family status, although the law broadly prohibits “any other form of discrimination” beyond any specific groups listed. Even with these protections, general inequality on the basis of marital and family status in Saudi Arabia is likely to require changes beyond labor policy. Full equality will require constitutional equality as well as equality within the marriage.

Further, we could find no provisions on either indirect discrimination, or prevention of retaliatory action for bringing forth complaints of workplace discrimination.



RECOMMENDED QUESTIONS FOR THE LIST OF ISSUES AND CONCLUDING OBSERVATIONS

We hope the Committee will:

- In its list of issues, ask Saudi Arabia: Can Saudi Arabia outline any concrete, near-term plans to pass legislation that explicitly prohibits **sex-based discrimination** in training, promotions and demotions, and terminations?
 - If concrete, near-term plans are not in place, recommend in its concluding observations that Saudi Arabia pass and implement legislation that explicitly prohibits sex-based discrimination in training, promotions and demotions, and terminations
- In its list of issues, ask Saudi Arabia: can Saudi Arabia outline any concrete, near-term plans to pass legislation that **comprehensively prohibits discrimination at work** -- in hiring, training, promotions and demotions, remuneration, and terminations – **on the basis of family status, marital status, and pregnancy**?
 - If concrete, near-term plans are not in place, recommend in its concluding observations that Saudi Arabia pass and implement legislation that enacts protections against discrimination in hiring, training, promotions and demotions, remuneration, and terminations on the basis of family status, marital status, and pregnancy, in all of the dimensions cited above.
- In its list of issues, ask Saudi Arabia: can Saudi Arabia outline any concrete, near-term plans to pass legislation that **prohibits indirect discrimination at work** on the basis of sex?
 - If concrete, near-term plans are not in place, recommend in its concluding observations that Saudi Arabia pass and implement legislation that enacts protections against indirect discrimination on the basis of sex.
- In its list of issues, ask Saudi Arabia: can Saudi Arabia outline any concrete, near-term plans to pass legislation that **prohibits retaliatory action** for filing claims of workplace discrimination?
 - If concrete, near-term plans are not in place, recommend in its concluding observations that Saudi Arabia pass and implement legislation that prohibits retaliatory action for filing claims of workplace discrimination.
- In its list of issues, ask Saudi Arabia: can Saudi Arabia outline any concrete, near-term plans to extend gender equality regardless of marital and family status in national legislation or through amendments to its Basic Law?
 - If Saudi Arabia does not have concrete, near-term plans, recommend in its concluding observations that Saudi Arabia pass legislation or amend its Basic Law to ensure that women have equal rights regardless of marital or family status.



DETAIL OF CONSTITUTIONAL AND LEGISLATIVE FINDINGS

While the following review is systematic and rigorous, we recognize that there may be laws or policies governing these areas that we have not captured, including new legislation or policies that have not yet been published globally.

1. General Equality and Non-Discrimination (Article 2)

While the entirety of the Convention aims to eliminate discrimination against women in all spheres of life, Article 2(a) of the Convention specifically requires States Parties “To embody the principle of the equality of men and women in their national constitutions”.

We reviewed full text constitutions for all 193 UN member states available from official government sources to determine whether the constitution explicitly guaranteed equality or non-discrimination on the basis of sex and/or gender by prohibiting discrimination, guaranteeing equal rights, guaranteeing equality before the law, or guaranteeing overall equality or equal opportunities.

Constitutions state the values of a country, describe the rights of people living within the country, and profoundly influence norms and practice. In nearly all countries, constitutions take precedence over other sources of law—making them critical tools for delineating and implementing equal rights. New constitutions and new rights guaranteed in constitutions can be used to overturn discriminatory laws as well as to legislate non-discrimination guarantees. Moreover, constitutions can offer protection against policy and legal changes during periods of social and political shifts that may seek to undermine equal rights.

SAUDI ARABIA’S CONSTITUTIONAL PROVISIONS: No Protection Against Discrimination

Based on our review, we did not identify any provisions that guarantee equality or non-discrimination based on sex or gender in Saudi Arabia’s Basic Law or in any other Saudi provisions that can be considered to have constitutional status. Saudi Arabia is one of less than 15% of countries globally that do not include an explicit guarantee of equality based on sex or gender in their constitution.

2. Marriage (Articles 2, 16)

Article 16 of the Convention calls for the elimination of discrimination in “all matters relating to marriage”, in particular equal rights when entering marriage (16.1.a, 16.1.b) and equal rights during marriage and when exiting marriage (16.1.c.).

The practice of child marriage is also specifically targeted in the Convention. Child marriage disproportionately affects girls, often leading to social, economic, educational, and health inequalities, which States Parties have committed to eliminating. Article 16.2 of the Convention calls on States Parties to legislate a minimum age of marriage and prohibit the marriage of children. Additionally,



disparities in the legal minimum age of marriage between girls and boys contravenes Article 2(a) of the Convention, which commits States Parties to “embody the principle of the equality of men and women” in their “national constitutions or other appropriate legislation”.

We systematically reviewed national civil codes and child-related legislation for all 193 UN member states to determine whether national legislation established a minimum age of marriage for both girls and boys generally, with parental consent, and under religious and customary law.

SAUDI ARABIA’S LEGISLATIVE PROVISIONS: Minimum Age of Marriage Legislation Passed for the First Time, but Exceptions Remain.

As confirmed in paragraph 36 of the State Party Report, our research shows that Saudi Arabia – one of only three remaining countries worldwide that had no minimum age of marriage – introduced legislation in 2022 that for the first time sets the minimum age of marriage for both boys and girls at 18. However, girls and boys can still get married at any age, although they now require court authorization – including ensuring that the marriage is in the minor’s interest – to do so.

Royal Decree No. M/73, Personal Status Regulation, 2022

لمادة التاسعة

يمنع توثيق عقد الزواج لمن هو دون (ثمانية عشر) عاماً، وللمحكمة أن تأذن بزواج من هو دون ذلك ذكراً كان أو أنثى إذا كان بالغاً بعد التحقق من مصلحته في هذا الزواج، وتبين لوائح هذا النظام الضوابط والإجراءات اللازمة لذلك

Moreover, adult women do not have equal rights with respect to marriage. The Basic Law and the new Personal Status Regulation do not protect gender equality when entering, when exiting, and during marriage.¹

3. Paid Maternity and Paternity Leave (Articles 5, 11)

Article 11.2 of the Convention states that:

¹ See World Bank (2022). Women Business and the Law – Saudi Arabia. Consulted on September 1, 2023, at <https://wbl.worldbank.org/content/dam/documents/wbl/2022/snapshots/Saudi-arabia.pdf>; see also articles 26 and 34 of the Personal Status Regulation.



In order to prevent discrimination against women on the grounds of marriage or maternity and to ensure their effective right to work, States Parties shall take appropriate measures:

(a) To prohibit, subject to the imposition of sanctions, dismissal on the grounds of pregnancy or of maternity leave and discrimination in dismissals on the basis of marital status;

(b) To introduce maternity leave with pay or with comparable social benefits without loss of former employment, seniority or social allowances;

Further, Article 5(b) of the Convention emphasizes the importance of including men in the upbringing of children.

Research evidence indicates that paid paternity leave can increase gender equality in caregiving responsibilities and gender equality in employment; it is therefore important to ensure fathers have access to adequate paid paternity leave.

We systematically reviewed national labor codes and social security laws to assess the availability of paid maternity and paternity leave.

SAUDI ARABIA'S LEGISLATIVE PROVISIONS: Both Maternity Leave and Paternity Leave Are Insufficiently Long

Based on our systematic review of national legislation and country reports, Saudi Arabia's Labor Law provides 10 weeks of paid maternity leave to mothers, with the possibility of extending this leave for one unpaid month; this is confirmed in paragraph 133 of the State Party Report. This same law provides only three days of paid leave to new fathers.

Labor Law, 2005, as amended to Feb 2021

Article 151

1) Working women have the right to 10 weeks fully paid leave which she can distribute as she wishes starting at maximum, four weeks prior to the likely date of the birth as prescribed by medical certificate.

2) The women may not return to work within 6 weeks after delivery and may extend for one month without pay.

(...)

Article 113



Subject to the leave of working women defined under this law, the worker shall be entitled to fully paid leave:

5 days in the case of the death of a spouse (...) or the event of his marriage, and three days in the case of the birth of a child.

4. Non-Discrimination in Work and Employment (Article 11)

Article 11 of the Convention states that:

[p]arties shall take all appropriate measures to eliminate discrimination against women in the field of employment in order to ensure, on a basis of equality of men and women, the same rights.

We systematically reviewed national labor codes, gender equality, and other relevant legislation for all 193 UN member states to determine whether national legislation prohibited gender discrimination in employment in five areas covered by CEDAW:

- employment opportunities or hiring (art. 11.1.b)
- equal pay for work of equal value (art. 11.1.d)
- training (art. 11.1.c)
- promotions or demotions (art. 11.1.c)
- job security or terminations (art. 11.1.c)

We assessed whether women were explicitly protected from discrimination at work in each of these areas and whether the definition of discrimination included both direct and indirect discrimination.

We also examined whether there were explicit protections from discrimination on the grounds of pregnancy, marital status, and family status in line with Article 11.2.a) of the Convention, which prohibits “dismissal on the grounds of pregnancy or of maternity leave and discrimination in dismissals on the basis of marital status”. We further examined whether discrimination on the grounds of pregnancy, marital status, or family status was prohibited in other stages of employment, consistent with CEDAW’s spirit of prohibiting discrimination against all women, regardless of their circumstances.

SAUDI ARABIA’S LEGISLATIVE PROVISIONS: Scarce Protections on the Basis of Sex and Pregnancy, no Protections on the basis of Family and Marital Status

According to our research the Saudi Labor Law protects against discrimination on the basis of gender generally, and more specifically by prohibiting it in hiring and mandating equal pay for work of equal value; it does not, however, explicitly prohibit discrimination on the basis of gender in vocational training, promotions or demotions, or terminations.

This same law also prohibits terminations on the basis of pregnancy.



Labor Law No. M/51, 2005, amended to 2020

الفصل الثاني

الأحكام العامة

المادة الثالثة:

العمل حق للمواطن، لا يجوز لغيره ممارسته إلا بعد توافر الشروط المنصوص عليها في هذا النظام، والمواطنون متساوون حق العمل دون أي تمييز على أساس الجنس أو الإعاقة أو السن أو أي شكل من أشكال التمييز الأخرى، سواء أثناء أداء العمل أو عند التوظيف أو الإعلان عنه.

المادة الخامسة والخمسون بعد المائة:

لا يجوز لساحب العمل فصل العاملة أو إنذارها بالفصل أثناء حملها أو تمتعها بإجازة الوضع، ويشمل ذلك مدة مرضها الناشئ عن أي منهما، على أن يُثبت المرض بشهادة طبية معتمدة، وأن لا تتجاوز مدة غيابها (مائة وثمانين يوماً في السنة سواءً أكانت متصلة أم متفرقة).

In addition, multiple secondary sources, including paragraph 129 of the State Party Report, state that Ministerial Resolution 2370/1 of 2010 mandates equal pay for work of equal value on the basis of gender.

Our research found no protections against discrimination on the basis of family or marital status, although article 3 above prohibits “any other form of discrimination” beyond groups explicitly listed.

We also found no provisions on either indirect discrimination, or prevention of retaliatory action for bringing forth complaints of workplace discrimination.

A summary of these findings is presented in Table 1.

Table 1: Does Saudi Arabia have legislative provisions in place explicitly guaranteeing non-discrimination for women in the following key areas of employment?	
Employment opportunities and hiring	Yes
Equal pay for work of equal value	Yes
Training	No specific provision, broad protection only
Promotions and/or demotions	No specific provision, broad protection only



Table 1: Does Saudi Arabia have legislative provisions in place explicitly guaranteeing non-discrimination for women in the following key areas of employment?

Terminations	No specific provision, broad protection only
Discrimination on the basis of marital status, family status, and pregnancy	Only prohibition of terminations on the basis of pregnancy
Indirect discrimination	No provisions found.
Retaliatory action	Yes

BRIEFING PREPARED BY THE WORLD POLICY ANALYSIS CENTER, UNIVERSITY OF CALIFORNIA, LOS ANGELES