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## Women's Activism in Saudi Arabia: Male Guardianship and Sexual Violence

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# List of Arabic Words

<i>Abaya</i>	A cloak covering a woman's entire body
<i>Fitna</i>	Sedition, commonly used to describe a woman's sexual deviance from acceptable, legitimate relationships
<i>Fiqh</i>	Islamic jurisprudence
<i>Fatwa</i>	Legal opinion about Islam made by credible religious scholars
<i>Hadith</i>	Narrations originating from the words and deeds of Prophet Muhammad
<i>Hiraba</i>	Brigandage, highway robbery
<i>Hudud (singular hadd)</i>	Limitations, restrictions, or prohibitions; the ordinances of Allah, they have fixed punishments derived from Islamic sources
<i>Ijma</i>	Consensus of Islam's main historical scholars on a certain issue
<i>Ijtihad</i>	Independent legal reasoning
<i>Kafala</i>	"Sponsorship"; used to describe the system whereby residency permits in Saudi Arabia are provided to sponsoring employers, whose written consent is required in order for an employee to change jobs or leave the country
<i>Khulwa</i>	Meeting between an unrelated man and a woman in a place where no one is watching them
<i>Lian</i>	An oath taken in cases where the husband accuses his wife of adultery but there are no witnesses except himself, whereby the husband repeats his accusation four times and a fifth time, praying that Allah's curse be on him if he is not telling the truth
<i>Mahram</i>	Male relative from a woman's family who cannot marry her, i.e., her closest male relative (her father, brother, grandfather, father's brother, husband, or son)
<i>Muhsan</i>	Refers to the legal status of an individual who, at the time of the zina, is in a valid and on-going marriage that has been consummated
<i>Nushuz</i>	Disobedience (wife towards husband or vice versa)
<i>Qadhf</i>	False accusation of zina
<i>Qisas</i>	Punishments under Islamic criminal law in cases of bodily harm and homicide.

<i>Qiyas</i>	Reasoning by analogy by credible religious scholar
<i>Qadi</i>	Judge
<i>Quran</i>	Literally, “the recitation”; the direct word of Allah revealed to the Prophet Muhammad
<i>Sahaba</i>	The first generation of Muslims
<i>Shura</i>	Consultation
<i>Sunna</i>	The Prophet Muhammad’s words, actions, and practices
<i>Tazir</i>	An offense for which no clear punishments are stipulated in the Quran or Sunna; therefore, sanctions are left to the discretion of the judge
<i>Ulema</i>	Islamic scholars/clergy
<i>Zina</i>	Sexual intercourse between individuals who are not married to each other (including both adultery and fornication)

# 1 Introduction<sup>1</sup>

Saudi Arabia is often presented in Western media as the poster child of women's oppression. It is the country where women are forced to cover their heads and body in black dress and cannot drive cars. Although Saudi Arabia has ratified several human rights conventions, including the United Nations Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW), there are many legal restrictions on Saudi women's rights in the name of Sharia.<sup>2</sup> Because Sharia, as applied by Saudi courts, is uncodified and because judicial precedent does not bind judges, the scope and content of this law is uncertain. Therefore, Saudi Arabia presents itself as a particularly difficult political environment for women's rights activists to demand legal reform. Added to that, civil society organisations, including women's groups, are not allowed in Saudi Arabia. In spite of these constraints, however, women's rights activists are active, both inside and outside of the country. In recent years, Saudi Arabia has seen some reforms, including, among others, a ban on domestic violence in 2013.

Against the backdrop of a Saudi state that does not have a codified criminal code, this paper explores how rape is defined in Saudi courts and to what extent and how women's rights activists have put rape on the agenda.

How is rape defined in Saudi courts?

Saudi judges regard rape as a *hadd* (pl. *hudud*) crime. The *hudud* crimes are viewed as the ordinances of Allah, and they have fixed punishments derived from Islamic sources. A Saudi *fatwa* from 1981 stipulates that *hiraba* (brigandage, or highway robbery), which is a *hadd* crime, should cover offenses of sexual honour. This is an unusual interpretation and departs from classical Islamic jurisprudence. Proving *hiraba* requires two male witnesses or a confession from the perpetrator as evidence. Should there not be sufficient evidence, a judge can treat rape as a *tazir* crime, that is, an offense for which punishments are not stipulated in the Quran or Sunna (the Prophet Muhammad's words, actions, and practices). This means the punishment is left to the discretion of the judge. Although this allows for circumstantial evidence, rape remains difficult to prove to Saudi's conservative judiciary, which seems keener to punish the offense of gender mixing.

To what extent and how women's rights activists have put rape on the agenda?

The main concerns of women's rights activists have been the ban on driving and the male guardianship system rather than the issues of rape and sexual violence, which remain taboo topics in the country. Although most women's rights activists do not explicitly focus on sexual violence, they implicitly focus on domestic violence and marital rape through their campaign against the male guardianship system. The male guardianship system not only directly affects a woman's ability to report the crime to the police and file a court case without the permission of a male guardian, but it also relies on an underpinning idea of women's obedience that is often in conflict with the possibility

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<sup>1</sup> This study has been funded by the project "Women's Human Rights and Law Reform in the Muslim World" funded by RAFTO. I would like to take the opportunity to thank Mari Nordbakk for conducting literature review for this study and providing vital comments. Thanks also to the gender research group at Chr.Michelsen Institute (CMI) for providing feedback on the draft report. I would especially like to thank Halah Eldoseri both for facilitating the data collection and for commenting on drafts to the interview guide as well as the report. This study would not have been possible without the help of Halah Eldoseri. I take responsibility for all errors.

<sup>2</sup> Saudi Arabia has ratified CEDAW, but has reserved itself in all cases where CEDAW may be in conflict with Sharia.

of combatting domestic violence, including marital rape. Furthermore, any struggles for legal reform remain difficult because of the lack of a written penal code or codified regulations.

There is very little data on the interplay between uncodified Islamic law and sexual violence in Saudi Arabia.<sup>3</sup> It is a difficult context not only for women's rights activists to operate within, but also for researchers to access information. Saudi Arabia is a closed country and information regarding laws and court cases are therefore hard to come by. With few exceptions, most written secondary sources on women's rights in Saudi Arabia are from "grey" literature and media accounts that often portray a stereotypical image of Saudi women as oppressed and without agency (Hamdan 2005). While this study relies on secondary sources, it is supplemented by blogs<sup>4</sup> and reports<sup>5</sup> by Saudi activists and data collected through interviews with Saudi prosecutors and women's rights activists. The data collection was facilitated with the invaluable help of Halah Eldoseri, a postdoctoral researcher in women's health and a woman's rights activist who maintains a blog on Saudi women's rights that focuses on violence against girls and women.<sup>6</sup> The data collected includes three interviews with prosecutors<sup>7</sup> and four interviews with women's rights activists<sup>8</sup>, all of whom have been anonymised in the report. To my knowledge, the fact that such a study is based on interview data from prosecutors is rare. Only Vogel (2000) was previously able to gain access to the Saudi legal system and to interview judges. In addition, many academic writings on Saudi women are based on ethnographic and qualitative work (Le Renard 2008, 2013, 2014) from the middle and upper classes in Riyadh, but few, if any, studies are explicitly focused on women's activism. I assume this is so because of the politically restrictive environment: it is difficult to do fieldwork and conduct interviews with actors who are regarded as "anti-government" without putting the informants at risk or having the state deny access. The data material is not extensive, but considering the lack of published material on the issue, I hope that it can serve as an avenue for debate and further research.

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<sup>3</sup> To my knowledge, there is only published book on Islamic law and the Saudi legal system that briefly mentions rape and how it relates to *Hudud* (Vogel 2000). There are, however, some publications on domestic violence (see Almosaed 2004; Throneburg Butler 2015; Eldoseri et.al 2014).

<sup>4</sup> I mostly rely on the blog by Halah Eldoseri on Saudi Women's Rights. The blog appears in Arabic and was established in "2010" in order to profile the situation of women in Saudi Arabia and to raise awareness on violence against women and girls through statistics and research as well as to guide women to resources available to them in cases of violence different kinds" <https://saudiwomenrights.wordpress.com/> (My translation from Arabic) and a blog by Eman Al Nafjan called the Saudiwoman's Weblog <http://saudiwoman.me/>

<sup>5</sup> For example, the Stakeholder Report for the Universal Periodic Review of Saudi Arabia 2013 ((Eldoseri and Al-Sadah 2013).

<sup>6</sup> <https://saudiwomenrights.wordpress.com/> The blog appears in Arabic and was established in " 2010 in order to profile the situation of women in Saudi Arabia and to raise awareness on violence against women and girls through statistics and research as well as to guide women to resources available to them in cases of violence different kinds" (My translation from Arabic)

<sup>7</sup> Two prosecutor from Jeddah and one from Riyadh. They are referred to as Jeddah prosecutor 1 and 2 and Riyadh prosecutor. I interviewed the Riyadh prosecutor myself through skype with the facilitation and translation of Hala al-Dosari.

<sup>8</sup> They are referred to as woman activists 1,2,3 and 4. I conducted one interview via email and Hala al-Dosari conducted the other three interviews.



## 2 Short background on Sharia as a source of law in Saudi Arabia

Saudi Arabia has Sharia as 'the law of the country' and only enacted the Basic Law of Governance in 1992. Article 1 of the Basic Law of Governance stipulates that the Quran and Sunna is the constitution of Saudi Arabia (Saudi Arabia 1992; van Eijk 2010, 152).

The country is unique among modern Muslim states in that Sharia is *not* codified and the court system is much more independent from state power than in any other Muslim country. However, it should be noted that the king appoints and relieves all judges. Conveniently, members of the royal family have never been tried or convicted by a Saudi court. Court cases involving ministers, members of the Consultative Council (an advisory council to the king), or close acquaintances of the royal family are never tried to the end.

There is no system of judicial precedent that tempers the discretionary power judges have when they adjudicate cases. Because any judge is empowered to disregard previous judgements (both his own and those of other judges) and apply his personal interpretation of the Quran and the Sunna to any particular case, divergent judgements arise even in apparently identical cases, making predictability of legal interpretation difficult (Vogel 2000). Therefore, there is a detrimental lack of uniformity in legal and judicial processes. Van Eijk (2010, 161, quoting Yamani 2008, 139) explains:

According to classical Islamic doctrine, a judge (*qadi*) has a religious duty to settle a dispute brought before him: in each individual case he is allowed to use independent interpretation (*ijtihad*) in order to find the most desirable solution. He may disregard previous judgements, either his own or those of other judges, in this process.

A single judge in Saudi Arabia has great discretionary authority in adjudicating cases: "he is empowered to exercise his personal Islamic understanding and interpretation without recourse to previous decisions relating to similar cases."

The court system constitutes the basic judiciary of Saudi Arabia and its judges and lawyers form part of the *ulema*, the country's Islamic scholars. Today Saudi judges tend to follow the principles of the Hanbali school of Sunni jurisprudence (see Hallaq 2004). Importantly, though, judges are *not* limited to the Hanbali School and may lean on insights from other schools of jurisprudence if proven by textual sources.

The specific ideology espoused by judges abetting the rule of the Sa'ud family is often labelled "Wahhabism" after its founder, the Sunni scholar Ibn 'Abd al-Wahhab (AD 1703–1792), and is a form of Salafism (Meijer and Aarts 2012). Ibn Abd el-Wahhab based his ideas on the works of particularly two legal scholars, namely Ahmad ibn Hanbal (AD 780–855), founder of the Hanbali school of law, and Ahmad ibn Taymiyya (AD 1263–1328), one of the most prominent scholars of that school (van Eijk 2010, 142). However, it should be noted that the Wahhabi ideology rejects, in theory, any bond to Islamic jurisprudence (*fiqh*) and instead favours *ijtihad* (independent legal reasoning) based on the Quran and the Sunna (Vikør 2005; DeLong-Bas 2004).

**The Hanbali school of jurisprudence**

*Islamic jurisprudence (fiqh) has developed over 14 centuries. Over that span of time, various schools of jurisprudence have emerged, each with its own interpretation and application of the Sharia. Today, there are four recognised Sunni Islamic law schools that developed in the seventh, eighth, and ninth centuries: (i) the Hanafi school, founded by Abu Hanifah al-Nu'man ibn Thabit (AD 699–767); (ii) the Shafi'i school, founded by Abu Abdullah Muhammad Ibn Idris al-Shafi'i (AD 767–820); (iii) the Maliki school, founded by Malik Bin Anas (AD 711–795); and the Hanbali school, founded by Imam Ahmad Ibn Hanbal (AD 780–855).*

*The Hanbali school of jurisprudence is the smallest and youngest of the four major Sunni schools and is practiced mainly in Saudi Arabia and Qatar (Vikør 2005; see also Hallaq 2004). Being a strict traditionalist, Ibn Hanbal rejected the rationalist elements of what had by the end of the first century become the mainstream legal theory (fiqh) (Hallaq 2004). Under mainstream Islamic legal theory are four recognised sources of law: the Quran, the Sunna, ijma (a legally binding consensus of key jurists), and qiyas (reasoning by analogy to one of the higher sources). But whereas Hanafi, Maliki, and Shafi'i regarded ijma and qiyas as legitimate legal sources, Ibn Hanbal did not. He outright rejected qiyas as a valid source of law. He rejected also rejected the possibility of religiously binding consensus (ijma), as it was impossible to verify once later generations of Muslims spread throughout the world; he even went so far as to declare that anyone who claimed ijma was accurate was a liar. Ibn Hanbal did, however, accept the possibility and validity of the consensus of the Sahaba, the first generation of Muslims.*

*Nonetheless, Ibn Hanbali strongly encouraged the practice of independent reasoning (ijtihad) through study of the Quran and Sunna. In light of this, later followers of the school expanded on the types of consensus accepted as valid, and the prominent Hanbalite Ibn Taymiyya expanded legal consensus to later generations while at the same time restricting it only to the religiously learned. Ibn Taymiyya's philosophy exercised significant influence on Muhammad ibn Abd al-Wahhab, who, with the assistance of Ibn Sa'ud, founded Wahhabism, an ideology that has sustained the Saudi state during the last two centuries.*

*When it comes to women's rights there are some differences between the law schools. For example, all the schools agree that a father has the right to give a minor away in marriage without her having any right to refuse as she is not yet legally competent. The Maliki school extends the father's right into adulthood. In contrast, the Shafi'i school grants this right to the father only with regards to marriage of minors; for the marriage of adult women, the guardian needs the consent of the bride. The Hanbali school allows any male guardian (for instance, an uncle or brother) to marry away a minor, not only the father (Vikør 2005).*

The Basic Law of 1992 establishes Saudi Arabia as a monarchy and grants the king all political power (article 5). He holds the legislative power to pass royal decrees<sup>9</sup>, but these are referred to as “regulations” rather than “laws” because they are considered subordinate to the Quran and Sunna. The judges regard royal decrees and regulations as part of politics and thus outside the realm of the Sharia court system. Normally the royal decrees “do not play any direct role in courts” (Vikør 2005, 267), although it should be noted that the king has the power to pardon or dismiss cases. Despite a decision made in 1962 that the Sharia courts should follow the king's decrees and regulations, the judges see them merely as advisory and not binding (ibid.). However, Saudi Arabia has a chief *mufiti* and a council of leading *ulema* that issue *fatwas*, that is, opinions of legal scholars. The *fatwas* play a determining role in judicial practice and judges will normally follow these *fatwas* irrespective of their theoretical freedom to apply individual legal reasoning (ibid.). In theory, however, judges can quote any reference they seem suitable from any school of Sharia even if it contradicts a *fatwa* from the chief *mufiti*.

<sup>9</sup> Other forms of regulations include Council of Ministers Resolutions, Ministerial Resolutions and Ministerial Circulars.

In 2007, reforms to Saudi Arabia's legal system were announced, including the establishment of specialised courts (such as criminal and family law courts) in order for judges to specialise on one category of legal issues (Cochran 2009, 7).<sup>10</sup>

Women's rights have been placed at the centre of a potential power struggle between the *ulema* and the state, both historically and presently (van Geel 2012).<sup>11</sup> The government under King Abdullah (and now under King Salman) is regarded as reform-friendly, particularly after 9/11. However, we should be careful to juxtapose a reform-friendly monarchy with a conservative *ulema*. Both camps are divided from within and some religious scholars are more inclined to reform than others, even though few can be characterised as radical or ground-breaking in their approach to women's rights.

While some of the legal restrictions put on women are mediated through royal decrees (like the driving ban on women), many are based on Islamic scholars' interpretation of Sharia. Without codification or a system of precedence, individual judges are free to interpret the Quran and prophetic traditions—the two agreed sources of Sharia—as they see fit (within general Islamic legal doctrines). It is within personal status law (regulating marriage, divorce, custody, and inheritance) and criminal law that we find many of the discriminatory legal restrictions placed upon women. The male guardianship system, which subordinates women to male guardians (whether father, husband, brother, uncle, or son) and puts legal restrictions on them, falls under personal status law, and sexual violence is at the intersection of this law and the criminal law. While the principle that a wife must be obedient to her husband perverts the concept of marital rape (and also allows for wife beating)<sup>12</sup>, other types of rape and sexual violence fall under criminal law.

The lack of codification of Sharia law makes it very difficult for women's rights activists to mobilise against its discriminatory aspects. Saudi Arabia is therefore a particularly tough political environment for women seeking to demand legal reforms. It should be noted that women's rights activists are critiquing the Saudi Wahhabi *interpretation* of Islam; they are not blaming Islam as such for the Saudi state's gender discrimination. The perspective taken in this paper is along the same lines. Sharia is

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<sup>10</sup> Activists are calling for a reform of the judicial system. Already in 2003, activists submitted a petition called 'A Vision for the Present and the Future of the Homeland' to the then Crown prince Abdullah. The petitioners called for an independent and reformed judiciary, the creation of human rights institutions, improvement of the rights of women, and a popular election of the Consultative Council. Several of the petitioners, political activists and lawyers were arrested and put in prison. They were, however, pardoned the next year when King Fahd died and Abdullah took over. In the following two years, two human rights organizations were authorized to be established: the national Society for Human Rights and the Human Rights Commission, both government-operated and funded (Van Eijk 2010:153-154).

<sup>11</sup> When King Faisal (r. 1964–1975) wished to introduce girls' education in the 1960s, some *ulema* claimed that education would corrupt girls' morals and destroy the foundations of the Saudi Muslim family. Influential men petitioned the King to open public schools for girls, so that girls did not have to travel to Egypt and Syria for education, made the push for girls' education onto the King's agenda. King Faisal worked together with the *ulema* to convince conservative elements that Islam does not oppose women's education and that education would also contribute to girls' Islamic education, making them better Muslim mothers. Education was the first field in which 'progress' and 'enhancement of women' was realized by creating separate spaces for them (albeit 30 years after boys' schools were introduced). One consequence of girls' education—segregated from boys' education—was the need for women teachers to teach female pupils (Van Geel 2012).

<sup>12</sup> In 2009, Saudi Arabia's Grand Mufti Abdulaziz al-Alshaiikh delivered a speech on domestic violence. In his speech, he warned against the use of violence against women and children. However, he mentioned that it can be permitted for male guardians to hit their wives, sisters and daughters under certain conditions. In the case of disobedient women who do not respond to reason and who need to be disciplined, the Grand Mufti specifically stated that striking a woman is permitted, although with the caveat that other methods of discipline should have been previously employed. He later added that the hitting should not be harsh and should inflict no permanent harm. <http://www.islamtoday.net/nawafeth/artshow-12-114549.htm>

regarded as dynamic and open to interpretation, and indeed interpretations vary across contexts and across time, as exemplified in the diverse codifications of Sharia across the Islamic world (both in historical times and today).

### 3 The politics of women's rights: Gender segregation and male guardianship

Gender segregation is one of the defining features of Saudi Arabia, and has become a cornerstone of Saudi Arabia's interpretation of Islam (Meijer 2010; Doumato 2010). As several researchers have pointed out, this is not a "traditional" practice in Saudi society, but it is rather linked to the exploitation of oil, the development of the rentier state, the process of urbanisation, and conservative religious discourses (al-Khateeb 2007; van Geel 2012).

This is exemplified by the fact that rural societies in Saudi Arabia, both in the past and today, experience gender-mixing to accommodate for rural women's multiple roles in public and private spheres. For instance, the ban on urban women's driving has not affected rural women, reflecting changes in gender norms brought about by urbanisation. Women's rights activists point out that the ban on driving is not a societal ban, as the Saudi state often claims (Al Nafjan 2015b, 2015c).

In the 1980s, urbanisation and the booming employment opportunities in the oil industry in the urban centres resulted in a significant increase in men's salaries. As a result, women's employment was no longer needed to sustain the household and women's domesticity became a symbol of both wealth and moral distinction (van Geel 2012).

At the same time, however, there was a contradictory development as educated urban women demanded employment opportunities. This was coupled with developments such as the cinema (where men and women would "mix"), television, and sports. These developments angered a group of rebels led by Juhayman al-'Utaybi, who claimed that Saudi society had become immoral because of what they saw as Western influences and that King Khalid (r. 1975–1982) had not countered these developments. In 1979, these rebels laid siege to the Grand Mosque of Mecca and directly challenged the kingdom and the legitimacy of Al Sa'ud (van Geel 2012). This growing conservatism often targeted women as "culture bearers" of the family, community, and nation, tasked with preserving and passing on cultural and religious practices to the next generation. Consequently, women's access to public spaces was curtailed (DeLong-Bas 2004).

Gender segregation in Saudi Arabia separates the two sexes in the public sphere in order to avoid "gender mixing" and is considered to be justified under the Sharia legal notion of "shielding from corruption" (Le Renard 2008). This argument is used in particular against women's rights, including driving, which, according to this interpretation, if granted, would set women on a slippery slope toward immorality. Women's mixing and interaction with unrelated men leads to moral corruption and sexual chaos (*fitna*), it is claimed. In settings where a Saudi woman meets an unrelated man, she is therefore required to be draped in the *abaya* (a cloak covering the entire body), to cover her hair with a *hijab* (a piece of cloth hiding all of the hair) and to veil her whole face with a *niqab*.<sup>13</sup> Because of the system of gender segregation and the principles upon which it relies, young women (and men)

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<sup>13</sup> Le Renard (2014) notes that the system of gender segregation means there is *less* veiling for Saudi women than in Muslim contexts where public space is more mixed and women are expected to be more modest. This makes beauty and dress more important in Saudi Arabia than it might be in other countries of the Arabian Peninsula.

are especially targeted for the crime of *khulwa*, that is, the illegal mixing of unrelated men and women.

The religious police force, known as the Committee for the Promotion of Virtue and Prevention of Vice (*al-hay'at al-amr bil ma'ruf wa al-nahia 'an al-munkar*), is concerned with overseeing public moral behaviour, including proper dress and interaction between men and women. Women often break dress codes in mixed spaces. Le Renard (2014) regards this as a form of transgression, not necessarily “protest,” that produces change by redefining norms. The more common the transgression, she claims, the more normalised it becomes, and the less the religious police can do about it. These transgressive acts are embedded in shifting power relations in the context of reform (Le Renard 2013).

From the perspective of the Saudi government, the development of “women only” public spaces is not conservative; it is seen as progress and a way to facilitate women’s access to the public sphere. The policy of gender segregation has developed over time. The segregation policy has led to the development of a separate female sphere of activities, first in education, but later also in other arenas (Meijer 2010). Although opposition to women’s education and employment existed in the past, today female students are in majority in Saudi universities.<sup>14</sup> The percentage of women partaking in the labour force is relatively low at 19% (especially taking into consideration the education boom), but it is growing, albeit within the paradigm of segregation. In the past, women were limited to working in fields deemed “suitable” for their “nature,” such as medicine, charity work, and education. The first jobs that were made available to women were as teachers, since gender segregation necessitated women teaching girl students.<sup>15</sup> However, other fields traditionally reserved for men, such as engineering, have recently been opened to women (De-Long Bas 2009), and women are also entering the labour force in other arenas. For example, women’s banks were an innovation allowed in 1980 to give women a place to put their money without having to have any contact with men. The banks employ women exclusively for every position except for the guards posted at the door to see that no men enter by mistake (van Geel 2012). Some Saudi government ministries, like the Ministry of Labor, also have segregated divisions (Al-Munajjed 2009).<sup>16</sup> At the end of 2007, the long-standing bans on women checking into hotels alone and renting apartments for themselves were lifted by royal decree, and a women-only hotel opened in Riyadh. The ban was lifted in order to facilitate the travels of business women. However, women are still not allowed into hotels or beach resorts for recreational purposes without an accompanying adult male guardian.

Reforms suggested are often within the paradigm of segregation. One major reform was introduced in 2011, when the king issued a decree announcing that women would be able to participate for the first time in municipal elections and to be appointed to the Consultative (*shura*) Council. The king proclaimed this royal decree after a group of women’s rights activists from across Saudi Arabia launched the Baladi (“my country”) Campaign to advocate for women’s political participation. The Baladi Campaign responded to a Saudi government announcement that it would ban deny women their right to participate in the September 2011 elections (Jadaliyya Reports 2011).<sup>17</sup> In protest, many women had defied the ban and gone to the polls in an attempt to register.

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<sup>14</sup> In 2004, 79 percent of all PhD degrees awarded in the kingdom went to women, and if the 102 all-women’s colleges for teachers are included, about 75 percent of all students are women.

<sup>15</sup> The King Abdullah University of Science and Technology, which opened in September 2009, is Saudi Arabia’s first coeducational campus where men and women study alongside each other.

<sup>16</sup> Since 2008, Riyadh has hosted the middle east’s only women only hotel in which only female attendants work and only female guests are welcome (Van Geel 2012).

<sup>17</sup> Activists who organized a national campaign to advocate political participation of women (Baladi Campaign) had to work without formal authorization. Read more on the baladi campaign here

[http://www.jadaliyya.com/pages/index/1600/saudi-women-respond-to-exclusion-from-voting\\_balad](http://www.jadaliyya.com/pages/index/1600/saudi-women-respond-to-exclusion-from-voting_balad)

The royal decree amended two articles in the Consultative Council's statute and introduced a 20% quota for women. Women first joined the previously all male Consultative Council in January 2013, occupying 30 of the seats. The king appointed the 30 women who joined the Council.<sup>18</sup> However, these appointed women members were not able to assume their duties until separate exits, entries, and office spaces were assigned. Although Consultative Council meetings are segregated in this manner, women members do seem to attend all committee meetings without gender segregation requirements (Eldoseri and Al-Sadah 2013).

Nonetheless, Saudi women's ability to exercise their political rights is restrained by the system of male guardianship, sometimes referred to as the *mahram* system. Under this system, women are considered as legal minors under the control of their *mahram* (closest male relative, e.g., father, brother, grandfather, father's brother, husband, or son) and are subject to legal restrictions on their personal behaviour that do not apply to men. Many of these legal restrictions do not have a legal basis in any royal decree or regulation, but some do. Among those restrictions that are provided for in regulations are requirements for male consent for issuing travel documents, registering records for delivery (birth certificates) and death reports, enrolling in education (including higher education), applying for educational scholarships, and being released from state institutions (like prisons or rehabilitation health centres).

In enforcing the *mahram* system, Saudi religious scholars rely on the idea that men and women are biologically different and that men are both mentally and physically superior to women. In other words, women are too emotional and do not have the mental capacity to make life choices for themselves. In addition, women are expected to be obedient toward their guardians. They rely on the quranic verse 34 of Surah an-Nisa, where the Quran uses the word *qawwamun* to describe the man. This word has been interpreted by Saudi religious scholars and others as "male guardian," giving men authority over women, not only within the family but also in public life. However, the verse is controversial and there are multiple interpretations of it. Islamic feminists in the region interpret the word as "breadwinner," something which immediately changes the meaning of the verse. In their opinion, the verse has been so misinterpreted and so misread that it has wrongfully given men virtual control over women's lives.

The restrictions on women put in place by the *mahram* system are evident in various fields such as women's mobility, education and work opportunities, political participation, health, and access to

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<sup>18</sup> The following women were appointed to the Shura Council (Al-Arabiya 2013): (1) Her Royal Highness Princess Sarrah bint Faisal bin Abdulaziz al-Saud, (2) Dr. Amal bint Salamah bin Sulaiman Al-Shaman, (3) Dr. Thuraya bint Ahmed bin Obeid bin Mohammed Obeid, (4) Dr. Thuraya bint Ibrahim bin Hussein al-Arrayed, (5) Dr. Al-Jawharah bint Ibrahim bin Mohammed Bu-Besht, (6) Dr. Hamdah bint Khalaf bin Miqbel Al-Enzy, (7) Dr. Hanan bint Abdulraheem bin Mutlaq Al-Ahmadi, (8) Dr. Hayat bint Sulaiman bin Hasan Sindi, (9) Dr. Dalal bint Mekhled bin Jahez Al-Harbi, (10) Dr. Zainet bint Muthanna bin Abduou Abu-Taleb, (11) Dr. Elham bint Mahjoub bin Ahmed Hasanain, (12) Dr. Salwa bint Abdullah bin Fahad Al-Hazaa, (13) Dr. Fatima bint Mohammed bin Mohsen Al Saeed Al-Qarni, (14) Dr. / Fadwa bint Salamah bin Odeh Abu Marifah, (15) Dr. Fardous bint Saud bin Mohammed Al-Saleh, (16) Dr. Khawla Bint Sami Alkrie, (17) Dr. Lubna bint Abdulrahman bin Mohammed Al-Tayeb al-ansari, (18) Dr. Latifa bint Othman bin Ibrahim Al-Shaalan, (19) Dr. Mastourah bint Obaid bin Lafi Al-Husseini Al-Shammari, (20) Dr. Muna bint Abdullah bin Saeed Al Mushayt, (21) Dr. Muna bint Mohammed bin Saleh Al-Dosari, (22) Her Royal Highness Princess Moudi bint Khalid bin Abdulaziz al-Saud, (23) Dr. Moudi bint Mohammed bin Abdulaziz Al-Dugaither, (24) Dr. Nihad bint Mohammed Saeed bin Ahmed Al-Jeshi, (25) Dr. Nora bint Abdulaziz bin Abdulrahman Al-Mubarak, (26) Dr. Nora bint Abdullah bin Ibrahim Al-Asqah, (27) Dr. Nora bint Abdullah bin Abdulrahman Al-Adwan, (28) Dr. Huda bint Abdulrahman bin Saleh Al-Halisi, (29) Dr. Hia bint Abdulaziz bin Nasser Al-Manea, and (30) Dr. Wafa bint Mahmoud bin Abdullah Taibah.

justice. To give one concrete and recent example, although universal suffrage was granted by the king in 2011, women only made up 22% of registered voters in the 2015 municipal elections. The small number of women voters and nominees is partly due to difficulties in registering (providing national ID and proof of residency) as well as a lack of mobility (the driving ban and lack of public transportation). While theoretically female voters could register without the approval of male guardians, in practice this is rarely the case, according to women's rights activists (Al Nafjan 2015a).



Cartoon taken from the *Saudiwoman's Weblog* (2015c)

The male guardianship system entails that a woman cannot participate in politics, gain education, work, or travel without the permission of her male guardian, who could be her father, brother, grandfather, father's brother, husband or son.<sup>19</sup> As such, women's rights within the private domain (marriage, divorce, custody) as well as within the public domain (education, work) are restricted by her male guardian. In general, the guardianship system renders women's legal position precarious. Nonetheless, it is not my intention to portray Saudi women as powerless and without agency because of that system. On the contrary, they find ways to negotiate and bargain both in everyday activities as well as through conscious activism. Their actions may include transgressing cultural norms or more directly resisting the *mahram* system.

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<sup>19</sup> Formally, women do not need her male guardian's permission to access medical care with the exception of abortion or surgical procedures aimed at controlling reproduction. Despite this, at some hospitals, health officials require a guardian's permission for women to be admitted, discharged, or to administer a medical procedure on her or her children (HRW 2008).

## 4 How is rape defined in Saudi Arabia's uncodified Sharia?

Saudi Arabia does not have a codified criminal code, which makes it difficult to determine what constitutes *zina* and how it is different from rape. All three prosecutors interviewed confirmed that Saudi Arabia follows the Hanbali school of jurisprudence, which defines *zina* in accordance with classical Islamic jurisprudence: “unlawful” sexual intercourse, that is, intercourse between individuals who are not married to each other (fornication or adultery) with consent. It is treated as a *hadd* crime.<sup>20</sup>

### **Islamic criminal justice: Hudud crimes and their penalties**

*Criminal justice in Islamic law covers three main areas: qisas, tazir, and hudud. Qisas refers to retribution and covers offenses such as bodily harm and homicide. Tazir refers to offenses for which punishments are not stipulated in the Quran or Sunna and that are therefore left to the discretion of judges. Hudud are regarded as the ordinances of Allah, and they have fixed punishments derived from the Islamic sources. Hudud crimes include (1) zina (sexual intercourse outside of marriage), punishable by death by stoning for married people (muhsan) and 100 lashes for unmarried men and women; (2) theft, punishable by amputation of the hand; (3) highway robbery (brigandage), punishable by death by crucifixion (a harsher punishment than theft because it is assumed that this crime involves killing the victim); (4) false accusation of zina (qadhf), punishable by 80 lashes; and (5) drinking alcohol, punishable by 80 lashes. Some jurists, including those of the Hanbali school, also consider apostasy a hadd crime punishable by death.*

*These punishments are severe and are intended to deter, not to be regularly applied. There is a hadith saying “[I]f you can, avoid using the hudud penalties” (Vikør 2005). Since the evidentiary requirements for these crimes are strict, it has historically been rare for judges to establish that all the criteria of a hadd crime have been fulfilled. For example, the evidence for zina is four male witnesses of good reputation that actually saw the penetration and/or a confession by the perpetrator. In addition, there is protection against false accusation of zina.*

The evidence for adultery and fornication under the Hanbali law school is four male witnesses (female witnesses are not permitted) or a confession by the perpetrator before the court. Pregnancy in unmarried girls is *not* regarded as evidence for *zina*.<sup>21</sup> This follows the majority of the Sunni Islamic law schools (Hanafi, Shafi'i, and Hanbali) that take the quranic verse on *zina* as establishing an exclusive method of proving the crime—that is, it must be proved by eyewitness testimony or confession only.<sup>22</sup> Anything else is merely circumstantial evidence and not admissible in a *hadd*

<sup>20</sup> Interview with Jeddah prosecutor 1 and 2; interview with Riyadh prosecutor (2015).

<sup>21</sup> Interview with Riyadh prosecutor (2015). He does regard pregnancy in an unmarried woman as a reason to “suspect”, but says that it is not considered “valid evidence by itself for *zina* in Saudi courts”. If a married woman is pregnant and her own husband claims she was pregnant from another man, he will have to go to *lian* oath. The *lian* is an oath that gives the husband the possibility of accusing his wife of *zina* without legal proof and without becoming subject to the punishment prescribed for accusing someone of *zina* without evidence (which is 80 lashes); it also gives him the possibility to deny the paternity of the child if she is pregnant (Schacht 2013). It basically functions as an avenue for divorce.

<sup>22</sup> Interview with Jeddah prosecutor 2 (2015). There is one verse of the Quran in which the evidentiary requirement of four righteous male witnesses is stated. It reads as follows: “If any of your women are guilty of lewdness, take the evidence of four (reliable) witnesses from amongst you against them; and if they testify,



prosecution (Quraishi 2001). Only the Maliki law school, practiced in Sudan, considers pregnancy in unmarried girls to be sufficient evidence for fornication (Tønnessen 2014; Peters 2005).

In Saudi Arabia, the punishment for fornication (sexual relations before marriage) is 100 lashes and imprisonment for one year, and the punishment for adultery is death by stoning.<sup>23</sup> Because of the strict evidence required, it is difficult to prove that *zina* has taken place. According to Vikør (2005, 267), Saudi Arabia has a bad reputation for its strict application of criminal law and especially its usage of the death penalty. But he also notes that this is not because the country applies *hudud* punishments. Saudi jurists have accepted the classical principle that *hudud* penalties should be avoided if possible. Thus, the many death penalties passed down are not given following convictions for *hudud* offenses, but are almost exclusively given following convictions for *tazir* offenses.

According to prosecutors, “there are two types (of *zina*) according to Islamic Hanbali jurisprudence: *zina* that calls for *hudud* and *zina* that does not”.<sup>24</sup> In other words, unlawful sexual intercourse can be prosecuted as a *hadd* crime or as a *tazir* crime. If it is prosecuted as a *tazir* crime, pregnancy in unmarried girls is allowed as evidence. Treating *zina* as a *tazir* crime makes more convictions possible because the evidentiary requirements for conviction are lower. Women (and men) are frequently punished for the crime of *khulwa*, that is, the illegal mixing of unrelated men and women in public spaces. In many ways, this is somewhat comparable to the crime of “attempted” *zina*, seen in the case of Afghanistan. This charge of *khulwa* is unique to Saudi courts. In classical Islamic jurisprudence, there are no stipulations of punishments for gender mixing, but only for fornication and adultery.

“Rape” is defined as unlawful sexual intercourse, that is, intercourse between individuals who are not married to each other (fornication or adultery) without consent. Rape is regarded as a *hadd* crime similar to *hiraba* (highway robbery/brigandage). This is a distinctly Saudi interpretation and to my knowledge it is not seen in other countries with *hudud* crimes. It can be traced back to *fatwa* no. 85 issued in 1981, which dealt separately with abduction, assault, and drug crimes. As for abduction, the *fatwa* states with reference to Quran 5:33–34 that the *hadd* of brigandage should apply to punish abductions for sexual purposes. As such, the *fatwa* states that brigandage should cover offenses of sexual honour (not just property), which departs from a classic understanding of Sharia law (Vogel 2000, 254–255). The evidence for rape is similar to that of *zina*, namely, two male witnesses and/or confession before the court. According to one prosecutor,

Both *zina* and rape are *hudud* crimes (meaning that crime and punishment are stated in Quran and Sunnah) and the evidence required is a confession of the individual who committed the crime without retraction of his/ her confession, or the testimonies of four acceptable witnesses (witnesses of good moral backgrounds) who testify that they have witnessed the act in details. In rape, the evidence needed for punishment is a confession from the rapist without retraction of the confession, and the testimony of two witnesses”.<sup>25</sup>

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confine them to houses until death do claim them, or Allah ordain for them some (other) way” (Surah al-Nisa 4: 15)( Mir-Hosseini and Hamzic 2010: 30-31).

<sup>23</sup> According to prosecutors’ interviews, stoning for *zina* has never been carried out in Saudi Arabia, because of the high burden of proof (Interview with Jeddah prosecutor 2 (2015). According to Women Living Under Muslim Laws, stoning has reportedly been used as death penalty by the Saudi government four times between 1981 and 1992, but limited information means that it is difficult to ascertain if it has been carried out in recent years (WLUM 2014:2-3).

<sup>24</sup> Interview with Riyadh prosecutor (2015).

<sup>25</sup> Interview with Jeddah prosecutor 1 (2015).

Rape, according to Saudi prosecutors, can also be considered a *tazir* crime if the evidence for *hadd* is not fulfilled (see also Vogel 2000, 255).<sup>26</sup> This opens up the possibility of circumstantial and medical evidence, but prosecutors make clear that it is “the person who claims that rape did occur [who] is responsible for proving it”.<sup>27</sup> In addition, it remains somewhat unclear what is regarded as acceptable circumstantial evidence. It is difficult to access specific cases, but some cases that have circulated in the media suggest that women remain vulnerable to prosecution in cases of rape either for the crime of fornication and adultery or gender mixing.

One of these cases is the “Qatif-girl” case. A teenage girl from Qatif, along with her male companion, were kidnapped and gang-raped by seven Saudi men in mid-2006. The evidence of a mobile-phone film was supposedly disregarded, and the men were imprisoned on charges of kidnapping, not rape, because the court required confessions from the perpetrators to convict them on rape charges. The Qatif girl and her male companion were also punished for unlawful mingling with the opposite sex (*khulwa*) and sentenced to 90 lashes and six months in prison. When the case was appealed, the sentence was doubled to 200 lashes (see HRW 2007; Eltahawy 2007; Setrakian 2007; Levy 2007).<sup>28</sup>

There are no statistics available on the number of *zina* (or *khulwa*) and rape cases. I contacted the Ministry of Justice, but did not receive a response. In the *Annual Statistics Book of the Ministry of Justice* for 2012 (MOJ 2012), it appears that both sodomy and *zina* cases are relatively common and involve Saudi nationals as well as non-Saudis, particularly in the Riyadh and Makkah regional courts. The chart below shows the number of cases in the regional courts of Riyadh and Makkah involving both Saudis (S) and non-Saudis (NS):

Offense type	Riyadh regional court		Makkah regional court	
	Saudis	non-Saudis	Saudis	non-Saudis
Sodomy	96	33	116	89
Zina	457	424	144	177
Violence against women	30	11	119	195
Violence against children	8	2	30	41

According to the report of the Special Rapporteur on Violence against Women, non-Saudi nationals working as domestic workers are the most vulnerable to abuse, including sexual abuse (Ertürk 2009). At the women’s prison in Riyadh, most of the 1,200 inmates were foreign domestic workers from Asia and Africa. Many had been arrested and convicted for “moral crimes” such as adultery, fornication, or gender mixing (*ibid.*).

The statistics from the Ministry of Justice do not differentiate between *zina* as *hudud* and *zina* as *tazir* (MOJ 2012). The statistics book also does not specifically discuss the number of rape cases, although it does differentiate between violence against women and violence against children cases (since violence against children cases can include non-sexual as well as sexual violence). As the chart above shows, the Makkah regional court stands out as having the highest number of violence against women and violence against children cases.

<sup>26</sup> Interview with Jeddah prosecutor 2 (2015).

<sup>27</sup> Interview with Riyadh prosecutor (2015).

<sup>28</sup> The Qatif girl and her companion were pardoned, but not cleared, by the King.

Only a few interviews are part of this study, and it is difficult to generalise against the backdrop of the Saudi legal system where there is no adherence to judicial precedence. According to the prosecutors interviewed, rape cases are common, but the majority of cases concern children. As one interviewee stated, “No accurate statistics exist, and in my opinion the majority of rape cases are against children”.<sup>29</sup> This might be related to the fact that it is difficult for adult women to access the legal system because of the male guardianship system. The fact that rape is still a taboo topic and considered something shameful means that families tend to hide the fact that their daughters have been raped, so as not to spoil their chances of marriage. In the words of a women’s rights activist,

Women don’t report sexual abuses. I noticed that from my work in the hospital. . . . In our society honour is a sensitive issue so punishment is not usually enforced because women and families don't report rape, in fact they hide the issue. We don't have unfortunately any statistics on its prevalence (rape), but from my experience working with children of domestic violence, I know it exists but people cover it up and particularly when it affect girls and more so during adolescence”.<sup>30</sup>

#### 4.1 Statutory rape

It is unclear what constitutes statutory rape and what the defining line between a child and an adult is. There seems to be a conflict on this issue between the politics of the state and the *ulema*. The Ministry of Interior is of the opinion that a child cannot consent to sexual relations; thus, all cases involving sexual relations with children are considered rape. But judges are of a different opinion. According to one prosecutor, “There is a directive from the Minister of Interior that a child below 15 years of age should be treated by the courts as a victim of rape even if he/she was consenting, but the judges never follow this directive (...)”.<sup>31</sup> Evidence for a child’s lack of consent thus must be presented to the courts, according to prosecutors. It should also be noted that a person below age 15 is considered a child (since 15 is often regarded as the age of puberty or sexual maturity), something that is not in accordance with international human rights conventions, such as the Convention on the Right of the Child, signed by Saudi Arabia setting the age of adulthood at 18.

##### **A statutory rape case<sup>32</sup>**

*For a child who engaged in a sexual intercourse (either zina or sodomy), I investigated a case where the child resided with the rapist at his home for three days before the sexual act was discovered. The child claimed that the rapist had abducted him and forced him to have sexual intercourse. I demanded that the court apply the hiraba hadd to the case, but the investigation before the court revealed that the child in question had stated that he had a good relationship with the rapist, for example, eating with him and playing PlayStation games with him. Afterwards, the child changed his testimony to say that the rapist had abducted him and forced him to have sexual intercourse. Because of this change in the child’s testimony, the judge ignored the prosecution’s demand to apply hiraba hadd. Instead, the judge ruled that the child consented to sexual intercourse and that it was not forced, thereby ignoring the Ministry of Interior’s directive to consider children less than 15 years of age as rape victims, whether or not they consented.*

<sup>29</sup> Interview with Jeddah prosecutor 2 (2015).

<sup>30</sup> Interview with woman activist 2 (2015).

<sup>31</sup> Interview with Riyadh prosecutor (2015).

<sup>32</sup> Provided by Riyadh prosecutor (2015).

## 4.2 Marital rape and domestic abuse

In August 2013, the Saudi Council of Ministers passed the Regulation on Protection from Abuse in response to a campaign funded by the King Khalid Foundation that aimed to address the widespread problem of domestic abuse in Saudi Arabia (Throneburg Butler 2015). Domestic violence is believed to be a common problem in Saudi Arabia. Of course, no accurate statistics exist. However, according to a recent study conducted in Jeddah, 44.5% of the women reported experiencing spousal violence, both moderate and severe violent acts (Eldoseri et al. 2014).<sup>33</sup> Nora Almosaed (2004) explains that violence is perceived as an effective way of dealing with female “misconduct” (such as leaving the house without permission, engaging in alleged relationships with men, talking back, and not dealing respectfully with male family members). The campaign featured a powerful image, which the organisation published in Saudi Arabian newspapers and on internet-based social media platforms, such as Facebook and Twitter. The image depicts a woman concealing everything but her eyes, one of which is blackened and bruised. Beneath the picture a text (in Arabic) states, “Some things can’t be covered”.<sup>34</sup> The campaign gathered attention both in Saudi Arabia and abroad. It should be noted that other campaigns (not endorsed by the royal family) have been effectively shut down, among others the White Ribbon Campaign, which encouraged men to speak out against domestic violence (Al Nafjan 2013).

The first article of the new regulation defines “abuse” as bodily, psychological, or sexual mistreatment, whether against a Saudi citizen or foreign workers. However, the regulation does not make explicit that marital rape is a crime, leaving open the possibility of differing interpretations of criminality. According to prosecutors interviewed, there have been few (if any) cases of marital rape in Saudi courts, either before or after the regulation. Because of the belief that women should be obedient to their husbands, the concept of marital rape does not exist. A wife cannot refuse to have sexual intercourse with her husband; it is part of the marriage contract. In the words of one prosecutor, “According to the Islamic jurisprudence and the religious/legal judges, the husband has the right to a wife’s obedience and the husband has to treat his wife fairly, so marital rape does not exist”.<sup>35</sup> The belief that it is a wife’s obligation to have sexual intercourse with her husband on his request is further entrenched into social norms: “[I]t is customary knowledge that the husband has a right of sex with his wife regardless of her approval. (...)”.<sup>36</sup> There are only limited circumstances where the husband does not have this right—related to a woman’s menstrual cycle or religious ritual. A prosecutor explains,

Ibn Taimiya (a late Hanbali Imam) mentioned that a wife who refuses to have sex with her husband is committing a major sin and that this act is not permissible except in two cases: legitimate religious excuse (i.e, she is performing a religious ritual requiring abstinence like fasting or visiting the holy mosque, or she is menstruating or bleeding postpartum) or if she fears harm according to the general rule (no harm or no for causing harm). In the first excuse, a wife is excused to refuse intercourse but not other sexual acts aimed at pleasing the husband (such as kissing and hugging).<sup>37</sup>

<sup>33</sup> Structured interviews were conducted with 200 married women recruited from primary-care centres in Jeddah.

<sup>34</sup> See the picture and the presentation of the campaign here (in Arabic)

<http://www.kkf.org.sa/ar/Pages/nomoreabuse.aspx>

<sup>35</sup> Interview with Riyadh prosecutor (2015).

<sup>36</sup> Interview with woman activist 2 (2015). In the words of another woman activist “Marital rape” is considered a marital right for a husband (and) it is very sensitive to speak about it in the Saudi society”. Interview with woman activist 4 (2015).

<sup>37</sup> Interview with Riyadh prosecutor (2015).

According to Lisa Hajjar (2004, 11), marital rape is “uncriminalizable” under dominant interpretations of Islamic law, because of the stipulation on obedience. Although she finds support in Islamic texts that instruct men not to force themselves upon their wives, this tends to be undermined by the principle of female obedience (ibid, 12). She continues to explain that a wife’s refusal to have sex with her husband can be conceived as a defiance of her duties, giving rise to accusations of disobedience (*nushuz*) and “thereby triggering legalistic justification for beating” (ibid.). The Saudi interpretation is therefore not unique. On the contrary, while most criminal codes in the region remain silent on marital rape<sup>38</sup>, most family codes include stipulations on a wife’s obedience to her husband.<sup>39</sup> While a growing number of Muslim majority countries, such as Lebanon (2014), Tunisia (2005), and Algeria (2015) have legislated a ban on domestic violence, comparable with the Saudi Regulation on Protection from Abuse (2013), these new pieces of legislation also fail to explicitly criminalise marital rape.

## 5 Male guardianship: Why is it relevant to sexual and domestic violence?

Although women’s rights activists have not explicitly put rape on the agenda, they have done so implicitly through a focus on the male guardianship system (and by extension the *kafala*, or sponsorship, system for migrant workers<sup>40</sup>, which in their opinion is key in terms of women’s ability to escape violence, to receive medical treatment after rape and other types of abuse, and to obtain access to justice.

There are several reasons for *not* having an explicit focus on rape: (1) male guardianship affects all women of different backgrounds and social classes and its dissolution is key to enable women to escape abuse of all types; (2) sexual violence against women is still a taboo topic; and (3), since rape is linked to *hudud* crimes, it is an extremely difficult policy area for women’s rights activists to address. An activist explains,

The advocacy against sexual violence has a low profile because the society is not open to discuss the sex taboo openly. The community thinks that sexual offenses are rare. . . . There is a religious lobby that resist and refuse the enactment of such legislations by arguing that Sharia has safeguarded the issue of sexual relations and that such laws will not criminalise fornication or adultery and they represent steps to westernise or enforce secularisation of the

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<sup>38</sup> While the Sudanese Criminal Act of 1991 is silent on marital rape, it is interesting to note that the Criminal Acts of 1925 and 1974 explicitly state that the provision on rape is only valid outside of marriage, not inside it. (Tønnessen 2014).

<sup>39</sup> There are exceptions to the rule. The 2004 Mudawana reform in Morocco abolished male guardianship and women’s obedience to her husband.

<sup>40</sup> The *kafala* (sponsorship) system ties migrant workers’ residency permits to “sponsoring” employers, whose written consent is required for workers to change jobs or leave the country. Employers often abuse this power in violation of Saudi law to confiscate passports, withhold wages, and force migrants to work against their will or on exploitative terms. Female migrants working as domestic workers often face sexual and violent abuse. In the Stakeholder Report for the Universal Periodic Review of Saudi Arabia 2013, “Unfulfilled Promises”, it is recommended that “Migrant workers should be protected by abolishing the sponsorship system and improving the effective access of women migrant workers to meaningful redress mechanism” (Eldoseri and Al-Sadah 2013).

society. . . . The guardianship system has a priority from my opinion to be approached by activists because it affects larger (all) women and has no religious basis”.<sup>41</sup>

A related issue—the ban on women driving—has been central to the agenda of women’s rights activists in recent years. A central figure in the ban on women driving is Manal El-Sherif, a divorcée and mother of two, who has established a Facebook page called “Support #Women2Drive.” In the opinion of El-Sherif and others, women’s participation in public life (that is, to pursue educational or work opportunities) is hampered by their inability to move on their own. Women are required to have a driver or to take taxis, which is a costly privilege of the upper and middle classes. The class dimension is important here. The inexistence of a functioning public transport system hampers the mobility of women in lower classes—those women who arguably need the financial rewards of education or employment the most. Accordingly, women’s rights activists see the ban on driving as an important part of the male guardianship system.

The Association for the Protection and Defense of Women’s Rights in Saudi Arabia has been central in the campaign against male guardianship. Founded by Wajeha al-Huwaider and Fawzia al-Uyyouni, the association claims that the guardianship system is based on men’s disrespect of Saudi women. The association led a campaign called “Treat Us Like Adult Citizens—Or We’ll Leave the Country.” Wajeha al-Huwaider, who launched the campaign at the King Fahd Bridge, proclaimed that she intended to come to the bridge, as well as to the Al-Damam city airport, every Thursday and Friday to demand that the *mahram* system be abolished, until such time as she would be allowed to travel without a guardian’s permission. As part of the campaign,

A petition signed by 25 female Saudi activists was delivered early March 2014 to the 150-member Saudi Shura Council, a formal advisory body to the monarchy, calling for the end of “absolute male guardianship” of women and demanding “serious measures to protect women’s rights and stop domestic violence.” (Harbi 2014; see also MEMRI 2007)

Activists claim that the guardianship system is a big obstacle to women, not only in exercising their right to education, work, and movement, but also in implementing the ban on domestic violence. This is because an abused woman is more likely to be charged with disobeying her male guardian than her guardian is likely to be charged for abuse. In addition, the system restricts women’s mobility and denies them the right to take certain actions without the guardian’s permission. An activist explains,

I find that the guardianship system is linked directly to violence against women and children by granting men with vast authorities over women and children and limit[ing] women’s access to resources and means to escape violent homes. By promoting rights to drive (to commute to work, study, or leave the home), right to represent oneself (removal of guardianship), women can acquire more power to escape violence”.<sup>42</sup>

The male guardianship system affects female victims of domestic violence in at least two ways. Given that the guardian is often also the abuser, it may be difficult for women to both seek medical care and report the case to the police and/or file a court case. While a woman can be admitted to a hospital without her guardian’s permission, she typically needs her family ID papers, which are often held by the male guardian. In 2002, women were allowed for the first time to apply for their own individual civil status (ID) cards rather than, as in the past, having a legal identity only as a dependent on their male guardian’s identity card. The Executive Regulation for the Travel Documents Law states that at 15 years of age all persons must obtain a civil status card, with the approval of their guardian. In 2008, according to the Saudi National Society for Human Rights, women for the first time were

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<sup>41</sup> Interview with woman activist 1 (2015).

<sup>42</sup> Interview with woman activist 4 (2015).

allowed to receive their civil status cards without their guardian's permission. But, many Saudi women still do not have their own national ID cards and are dependent on the family ID papers either because male guardians make it difficult for them to obtain one or due to their reluctance to appear unveiled in the photograph (Ertürk 2009)

A woman can only file a case or request in Saudi courts without the presence of a male relative if she has a national ID cards. As many Saudi women still do not have national ID cards, it is difficult for them to file court cases. And in the instances where women with national ID cards do report and file court cases, there is some resistance from judges—and some judges still arbitrarily refuse to accept women's complaints without the presence of an adult male relative. In the words of Rana Harbi (2014), "Under the flawed Saudi legal system, a man can easily get away with abuse, making it impossible for a woman to protect herself or her children."

Furthermore, women hesitate to report domestic abuse because it jeopardises their economic livelihoods and/or custody of the children until the case is processed in the courts. Activists note that in situations of domestic violence, either against the wife or the children, women often hesitate to seek divorce because they are very unlikely to gain custody of the children.<sup>43</sup> In the words of a women's rights activist,

The guardianship system is very important priority to activists because it subjects women directly to the violence by their guardians such as sexual violence against the wife or sexual harassment against the daughter. In such instances, the mother[s] rarely complain to courts because of the custody laws that grant the guardian the right to the children and [in addition] women are economic dependent on their guardians (...).<sup>44</sup>

The Regulation on Protection from Abuse is therefore flawed<sup>45</sup>, according to activists, because it does not dissolve the male guardianship system and the worker sponsorship regulations which make it difficult, if not impossible, for the law to have an effect (Eldoseri 2013). Female victims would require logistical support or transportation from male relatives, who themselves often are the abusers, in order to report abuses or escape abusive situations. Moreover, the law does not explicitly criminalise all forms of violence, such as marital rape.

Even if young women and girls escape from domestic violence to shelters, the regulation is the main frame within which solutions are sought—and the regulation makes reconciliation a paramount priority. For example, the regulation provides that abusers should be called in and made to sign pledges not to abuse, reinforcing the traditional response mechanism in place "to protect the family framework at the expense of its members" (ibid.). The ultimate aim of the regulation is to avoid family disintegration, not to protect women from domestic abuse. In the view of Eldoseri and Al-Sadah (2013, 4), "[M]ost women are treated as prisoners until reconciliation with family succeeds. This is due to the difficulty created by the institutionalised guardianship system. Released women cannot rent, drive, work, or obtain official documentation without their guardians' permission or presence." As such, shelters have little long-term impact in protection from abuse, since women have little decision-making power over their future. It is a catch 22; under the male guardianship system they need their abusers' permission to live a life free from abuse.

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<sup>43</sup> Interview with woman activist 2 (2015).

<sup>44</sup> Interview with woman activist 3 (2015).

<sup>45</sup> It is also noted that no specialized government body or authority has been named for dealing with cases of violence and abuse. It is left completely up to the 'concerned authorities' to assess cases and decide the severity of the response regardless of whether these authorities are in healthcare, education, or police. Instead the Regulation put emphasis on prevention through awareness raising.

## 6 A Saudi women's movement?

Saudi Arabia is an absolute monarchy; the king holds all power. Political parties and civil society organisations are prohibited and the media is largely controlled. In other words, “No civil society organisations are allowed to exist in Saudi”.<sup>46</sup> It is difficult to conceive of a Saudi women's movement: such a movement implies that women can gather and communicate demands freely and independent from the state (Vidyasagar and Rea 2004). In the words of an activist, “Independent organisations promoting a vision outside the governmental views of women, characterised by traditional Salafists views, are banned and targeted by the authorities [through the] arbitrary use of laws against activists to silence them”.<sup>47</sup> Women's rights activists experience online defamation campaigns, restrictions of work opportunities, censoring of online activities, and discrediting in the mainstream media.<sup>48</sup> One activist explains the harassment and challenges she faces in her work:

I received threats of murder. . . . I also was subjected to malicious legal complaints submitted to the governor's office, I was referred to interrogation. My name was subjected to defamation in the media with accusations like spreading liberal or secular ideologies and inciting women against their male guardians. . . .”<sup>49</sup>

Additional challenges relates to community and family ties. Some women's rights activists are timid about voicing their support on an issue “out of fear from losing their family's support or their financial interests/jobs requirements (...)”.<sup>50</sup>

Saudi women's rights organisations are non-existent. Rather, they operate through the circulation of work online (either in the form of blogs, reports, or campaigns) and petitions—since the Basic Law of Governance opens up the possibility for citizens to petition the king or the crown prince. In the words of an activist,

We exist mainly as groups of like minded people and work through technology means [e.g., WhatsApp, Telegram groups] to organise ourselves and promote stories that need attention and support; we can't function fully because of the systematic targeting of activists (...)”.<sup>51</sup>

Despite constraints, there is a growing number of Saudi women's rights activists demanding an end to discriminatory legal practices, such as the ban on driving, that is coming to the forefront now more than ever (al-Sharif 2012). In the words of Manal al-Sharif (in Heath 2014, 7) who has led this campaign to end the ban on driving, “I believe if women want to change their reality, it will change. If women are silent, I don't think anything will change. Rights are never given. Rights are taken.”

Of course, women's protests are not something new, and, it is important to remember that Manal al-Sharif's protest is not the first of its kind in Saudi Arabia. Dozens of courageous and outspoken Saudi women laid the foundation for al-Sharif and Women2Drive 22 years ago. The movement began on November 6, 1990, in the midst of the Gulf Crisis, when dozens of women gathered at a Tamimi Safeway supermarket, took their driver's seats, and drove on the Riyadh highway until they were stopped by police (Altorki 2000; Heath 2014).

<sup>46</sup> Interview with woman activist 4 (2015).

<sup>47</sup> Ibid.

<sup>48</sup> Ibid.

<sup>49</sup> Interview with woman activist 1 (2015).

<sup>50</sup> Interview with woman activist 4 (2015).

<sup>51</sup> Ibid.



This incident shows that Saudi women are clearly able to manoeuvre within a difficult terrain using the few means available to them. They have also initiated several petitions requesting that the driving ban be lifted (in 2006, 2011, and 2013), all of which were rejected by the Ministry of Interior. While the possibility of organising demonstrations is not available, hundreds, if not thousands, of women have driven—both in protest and because they have no other option. The reactions women who have driven cars despite the ban have received, have generally not come from society, but from the government. In the words of a Saudi woman blogger, “[P]eople have been suspended from their jobs, imprisoned and banned from travel for wanting the ban lifted” (Al Nafjan 2015b). Some have even been threatened with terrorism charges for public incitement (ibid.). Because of the uniqueness of the driving ban worldwide, the campaign has been able to attract attention from international media, a strategy women activists have employed to put pressure on the government.

While the king has showed some, albeit limited, room for reform (for example, on political rights), it remains an uphill battle. Most reforms are wrapped within the existing gender ideology of the state. Even the Baladi Campaign to advocate for women’s political participation has met resistance from the government. Dr. Hatoun al Fassi and Fowziya al- Hani started the initiative to advocate for women’s participation in the 2010 municipal elections. A year later, King Abdullah decreed that women could take part in elections. Since then, the Baladi Campaign has worked on raising awareness about the importance of women’s political participation through lectures, workshops, and media appearances. However, before the 2015 municipal elections, the Ministry of Municipal and Rural Affairs abruptly stopped the campaign’s efforts because it was seen as a non-governmental organisation. Despite being shut down by the government, the campaign continues online through social media. Among other things, women’s rights activists posted online the photos they took while registering for the election, in order to encourage other women to do the same (Al Nafjan 2015a).

Women’s rights activists also meet great resistance from the religious lobby. For example, in a 2012 interview, Cleric Sheikh Adnan Bahareth stated that lifting the driving ban will place more of a “burden” on women, since a woman (rather than her husband or driver) “will have to go to the souk on her own, she will have to get the food, she will have to drive the kids to and from school.” (Heath 2014, 10). In fact, he argues, women in this way control men, as men must complete the tasks that women cannot. Saudi women are often portrayed as being “pampered” and privileged within the male guardianship system: men are at their service. Men bring home the pay check to provide for women, and if women chose to work they can spend their salaries on shopping. Accordingly, it is the *mahram*’s duty as the protector of a woman to drive her or provide a driver for her when she chooses to go shopping or to go to work. There is a strong class dimension to this view, since it does not take into consideration the lower classes, including work immigrants, whose households depend on two incomes, yet do not have the means to buy a car. And as a women’s rights activist notes, “Saudi women are weak, no matter how high their status, even the ‘pampered’ ones among them, because they have no law to protect them (...).”<sup>52</sup>

Another recent campaign met strong opposition from Saudi sheikhs. The White Ribbon Campaign was initiated in Saudi Arabia by two community figures (Abdullah al-Alami and Samar Fatany). Among other things, the campaign spoke out against child marriage and sexual harassment in the workplace.<sup>53</sup> Sheikh Nasser al-Omar was the most influential sheikh to lash out against the campaign. In a videotaped sermon circulated on YouTube, “[H]e instruct[ed] all Muslims to reject it and he refer[red] to the initiators as advocates of immorality” (Al Nafjan 2013).

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<sup>52</sup> Interview activist 3 (2015).

<sup>53</sup> The campaign originated in Canada and encourages men and boys to work to end violence against women and girls.

<sup>54</sup> In particular, the sheikh viewed the campaign's focus on workplace harassment as advocacy against gender segregation. According to the sheikh, the White Ribbon Campaign "compromise[d] the very foundation of the pact between the Saudi Royal family and Mohammad bin Abdul Wahab's followers" (ibid.).

Women's rights activists not only meet resistance from the political and religious sphere, but also from other women. It is important and significant to note that for every petition written by women's rights activists arguing for these rights, there is another written against them. In response to Al-Huweidar's campaign to abolish the *mahram* system, "Treat Us Like Adult Citizens—Or We'll Leave the Country," 12 Saudi women, headed by Saudi Princess Jawaher bint Jalawi, launched a counter-campaign on KSA-wa.net, called "My Guardian Knows What's Best For Me." This campaign argued that the ban on driving is appropriate and the male guardianship system and the importance of honour benefit Saudi women. The campaign organisers aimed to collect signatures from 1,000 Saudi women on a petition to be sent to Saudi King Abdallah bin Abd Al-Aziz. The petition vehemently opposed the demand to abolish male guardianship, along with "all the other calls by liberals that will lead to the Westernization of Islam's principles" (WLUMML 2009).<sup>55</sup>

Saudi women's rights activists are challenged from multiple fronts, including the state, the religious lobby, and counter-campaigns from women who hold opposing and more conservative views. The category of "women" is certainly multidimensional, and not all Saudi women fall into the category of those who protest the Saudi state's view on proper gender arrangements. Le Renard (2013, 2014) reminds us that while women transgress the Saudi state's gender norms in the everyday, thus showcasing their agency, that does not mean that they want to change the entire system. But as this study shows, a growing number of women's rights activists, who *are* actively challenging the male guardianship system, is emerging and manoeuvring cleverly within a constraining political environment with a strong religious lobby. Defying regulations and decrees such as the driving ban, initiating campaigns on social media, and putting Saudi women's rights on the agenda in international media are all means to put pressure on the king to slowly, but steadily, introduce reforms.

## 7 Concluding remarks

Still considered a taboo topic, sexual violence is slowly emerging onto the political agenda in Muslim majority countries. Victims of sexual abuse face particular legal obstacles in Muslim countries that have codified the Islamic *hudud* penalties, such as Sudan, Pakistan, Iran, and Afghanistan. In most criminal codes in countries with *hudud*, the crime of *zina* is not clearly differentiated from rape—something that constitutes a serious human rights violation for rape victims.

Saudi Arabia is a unique case in at least two aspects. First, although the country implements *hudud*, Sharia remains uncoded and judicial precedent does not bind judges. Therefore, the scope and content of the Saudi criminal law is uncertain. Given the lack of a codified law (that defines rape and other sexual offences), coupled with a lack of transparency in how the Sharia is interpreted, it is difficult for women to demand legal reform. Second, in contrast to other countries with *hudud*, the

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<sup>54</sup> You can see the sermon here (in Arabic)

<https://www.youtube.com/watch?v=G7xbPILDwBY&NR=1&feature=endscreen>

<sup>55</sup> But this is certainly not unique to Saudi Arabia. Women activists advocating legal reform in the region are meeting counter-mobilization, particularly from Salafist movements. In response to the Islamic feminism advocated by Sisters in Islam in Malaysia focused on challenging classical Islamic interpretations about male guardianship and women's obedience, "the obedient wife club" emerged.

religious courts in Saudi Arabia treat rape as a *hiraba hadd* crime. While in other countries with *hudud*, a major legal obstacle facing rape victims is that rape is conflated with *zina*. Often rape is categorised as *zina* without consent, and the strict rules of evidence used for *zina* (four male witnesses and/or confession) are also applied to rape. Moreover, rape victims run the risk of being convicted of *zina* and punished. Thus, the campaign of women's rights activists to reform rape laws has focused on clearly differentiating rape and *zina* in criminal codes. This pragmatic approach was successful in both Pakistan (in 2006) and in Sudan (in 2015) when they engaged in legal reforms that (at least on paper) define rape without relating it to *zina* (Tønnessen and al-Nagar 2015). In this way, women's rights activists have avoided (to a certain extent at least) directly challenging the Islamic texts in which the crimes and punishments for *zina* are explicitly stipulated. (In other words, they have not challenged the fact that extra-marital intercourse is a criminal offense.)

Regarding rape as a *hiraba hadd* crime makes it extremely hard for Saudi women's rights activists to address the issue from a legal perspective, since they are thereby forced to question the Islamic texts (that is, the Saudi interpretation of Islamic texts), the chief *mufti* who issued the relevant *fatwa* in 1981, and thus the very foundation of the Saudi state. Since the *hudud* crimes have a central and elevated place in the call for Sharia among Islamic countries—and are regarded as the ordinances of Allah—they are not easily challenged. It is difficult to question the Islamic scriptures upon which the *hudud* offenses are based without being accused of challenging Islam itself, which could lead to accusations of being an apostate (a crime punishable with death). Indeed, a common strategy to sideline and silence activists is to accuse them of being secularists and claiming that they support the abolition of Sharia. In the words of a Saudi activist, "*Hudud* is linked to clear Islamic text. Challenging clear Islamic texts can place activists at risk for interrogation on charges of apostasy".<sup>56</sup> In sum, Saudi Arabia presents itself as a particularly challenging political environment for women's rights activists to put rape on the agenda.

Nonetheless, although Saudi women's rights activists have not explicitly put rape on the agenda (for good reasons), they have done so implicitly through a focus on the male guardianship system—and by extension the *kafala* (sponsorship) system for migrant workers, which they claim has no basis in Islam. The male guardianship system, which has not been codified into law, not only restricts a woman's right and access to education and work without her *mahram*'s permission and approval, but also restricts her mobility and the possibility of escaping violent abuse.

Although Saudi Arabia presents itself as a unique case, Saudi women's rights activists face many of the same challenges as women's rights activists in the region generally. Against the backdrop of non-democratic regimes in countries ranging from Sudan to Afghanistan to Saudi Arabia, it is difficult to organise as a women's movement independent from the state. Furthermore, women's rights activists' demands are met with resistance from a religious lobby throughout the region. Although the religious *ulema* has a special place in the Saudi state, activists in the region are often met by Islamic actors inside and outside of the religious clergy who deem their claims to gender equality as arguments against Islam and for westernisation. Lastly, advocates of gender equality are met with hostility and counter-mobilisation from conservative women defending the status quo and the privileges (often class-based) they see for themselves within existing hierarchies of gender relations.

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<sup>56</sup> Interview with woman activist 4 (2015).

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The project Women's Human Rights and Law Reform in the Muslim World seeks to map family and criminal law reforms in the period 1995-2015 in Afghanistan, Egypt, Iran, Lebanon, Morocco, Pakistan, Saudi Arabia, Sudan, Tunisia and Yemen. How have women activists in Muslim countries advocated for legal reform in the years since the 1995 Beijing Declaration famously stated that "women's rights are human rights"? The project is funded by the Rafto Foundation which is a non-profit and non-partisan organization dedicated to the global promotion of human rights. The project is part of an initiative taken by Rafto laureates Shirin Ebadi, Rebiya Kadeer, Malahat Nasibova, and Souhayr Belhassen, and facilitated by the Rafto Foundation to establish a Women's Network, which is an international network of high-profile and influential women to improve women's human rights and enhance gender equality in Muslim societies. In supporting local activists and civil society organizations with a common platform, the objective of the Women's Network is to raise the voices of women in Muslim societies, and to address the religious, legal, social, political and cultural mechanisms that prevent women's voices from being heard.

