

**Mandates of the Special Rapporteur on the right to education; the Special Rapporteur on the right to privacy; the Special Rapporteur on violence against women, its causes and consequences; and the Working Group on the issue of discrimination against women in law and in practice**

REFERENCE:  
AL SAU 4/2019

22 February 2019

Excellency,

We have the honour to address you in our capacities as Special Rapporteur on the right to education; Special Rapporteur on the right to privacy; Special Rapporteur on violence against women, its causes and consequences; and Working Group on the issue of discrimination against women in law and in practice, pursuant to Human Rights Council resolutions 26/17, 37/2, 32/19 and 32/4.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning legislation and social practices of "male guardianship" in Saudi Arabia, including the mobile phone application 'Absher', which seem to contravene international human rights norms and standards as outlined below.

According to the information received:

*Male guardianship and women's human rights*

Guardianship laws, based on conflicting interpretations of Shariah law, severely restrict women's enjoyment of their human rights to education, work, employment and access to justice, and seriously impair their freedom of movement, right to privacy and right to a family life, by making them conditional to the consent of a male "guardian" (spouse or other male family member).

In 2007, the Government issued Supreme Order No. 33322, instructing public institutions to refrain from requiring a woman to obtain a male guardian's permission in order to have access to services and procedures, except where justified by law. However, in most fields of public life women still need their "guardian's" permission.

Women and girls of all ages who apply to formal education at all levels are required to present the approval of their male "guardian" to be accepted. A woman's male "guardian" also needs to accept her travel to education institutions located outside her place of residence or outside the country, irrespective of her age.

Despite a ministerial decree in 2012 stipulating that women no longer need a male guardian's permission to work, access to formal employment by adult women is still conditioned to the approval of a male "guardian", as is the opening of a bank

account or applying for credit. Companies who require the “guardian’s” consent in order to employ a woman are not penalized.

Women’s freedom of movement is also conditioned by their “guardian”, who needs to consent to their application for passports or other forms of official identification.

Women are not allowed to file a complaint to a court without their “guardian’s” consent. The guardianship system hinders the reporting and prosecution of domestic violence in the Kingdom of Saudi Arabia. Women are often unable to make reports of abuse to the police without the participation of a guardian, even when that guardian is the abuser that they seek to report. It has been reported that police and shelters return women to abusive guardians.

Furthermore, women are legally obliged to obey their “guardian”, and can be arrested for not adhering to their obligation. When a woman is under arrest, she is only released to her “guardian”. Women are not allowed to leave Government-run shelters without the approval of their “guardian”, even in cases where the “guardian” has physically abused the woman. Male “guardians” often use physical violence against women in order to force them to obey.

Recent reforms allow women to obtain a driving license and drive (Supreme Order of 26 September 2017, entered into force in June 2018) and sign a rental contract for housing without the consent of a male “guardian”. However, social practices make it difficult for single women to obtain housing in their own name.

Women who want to get married require by law the consent of their male “guardian”. By marrying a man, the woman is immediately subjected to his legal guardianship. In case of the man’s death, it is the woman’s son (or father, in his absence), who exercises the guardianship.

The Government’s attempts to facilitate women’s political participation is being hindered by male guardianship, which makes it difficult for them to exercise their right to vote: often, only the “guardian’s” name is listed in housing rental contracts, so women cannot prove that they live in a particular voting district. Also, women cannot present their family card by themselves for voting, as it is normally held by the “guardian”.

#### *Absher mobile phone application*

Absher is a mobile phone application that serves as part of the Government’s e-portal system, made available for download by the Ministry of the Interior at Google’s and Apple’s application stores. The application includes services such as the issuance of passports and birth certificates, paying for traffic fines, etc. Its official description says: “Absher has been designed and developed with special consideration to security and privacy of user’s data and communication. So, you

can safely browse your profile or your family members, or labors working for you, and perform a wide range of eServices online.” According to the Ministry of the Interior, it has over 11 million users.

Among the services offered by Absher is to allow a male “guardian” to restrict a woman’s travel: he can decide the number and duration of her trips, as well as which airports she can use. He can also prohibit any kind of travel. The application alerts the male “guardian” via SMS when she has checked in at a particular airport or crossed an international border.

We express our concern about the negative impact of male guardianship and the use of mobile phone application Absher on the enjoyment of women’s human rights in Saudi Arabia. It is our assessment that they are based on and result in discrimination against women and severely impair their enjoyment of human rights, including the rights to freedom of movement, education, work, access to justice, privacy and family life, among others.

Despite your Excellency’s Government’s commitment to adopt reforms limiting the impact of male guardianship on women’s human rights, we are concerned that Absher may represent a step back, as a technological tool which allows male “guardians” to extend the control of women to the digital sphere and to restrict their freedom of movement in ways that are incompatible with their enjoyment of human rights. It can also increase the risks for women who attempt to escape from abusive husbands or households.

We therefore call upon your Excellency's Government to increase its efforts to abolish male guardianship in law and practice and to eliminate, without delay, Absher’s capabilities that allow male “guardians” to monitor and restrict women’s whereabouts and freedom of movement.

In connection with the above alleged facts and concerns, please refer to the **Annex on Reference to international human rights law** attached to this letter which cites international human rights instruments and standards relevant to these allegations.

As it is our responsibility, under the mandates provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention, we would be grateful for your observations on the following matters:

1. Please provide information on the impact of Abhser on women’s enjoyment of human rights, including the right to privacy and freedom of movement.
2. Please indicate what steps the Government is taking to follow through on its commitments to end the discriminatory male guardianship system and ensure compliance with its international obligations under the Convention

on the Elimination of All Forms of Discrimination against Women (CEDAW).

3. Please provide information on any measures that your Excellency's Government has taken or intends to take in order to implement the recommendations by UN human rights mechanisms, referred to above, and to bring its legislation into compliance with international human rights law.
4. Please provide information on the impact of male guardianship laws on access to education for women and girls to education at all levels – primary, secondary, tertiary and vocational training. Please also indicate what steps the government is taking to ensure that the right to education of women and girls is fully respected.

We would appreciate receiving a response within 60 days. Passed this delay, this communication and any response received from your Excellency's Government will be made public via the communications reporting website. They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

While awaiting a reply, we urge that all necessary interim measures be taken to halt the alleged violations and prevent their re-occurrence and in the event that the investigations support or suggest the allegations to be correct, to ensure the accountability of any person(s) responsible for the alleged violations.

Please accept, Excellency, the assurances of our highest consideration.

Koumbou Boly Barry  
Special Rapporteur on the right to education

Joseph Cannataci  
Special Rapporteur on the right to privacy

Dubravka Šimonovic  
Special Rapporteur on violence against women, its causes and consequences<sup>0</sup>

Ivana Radačić  
Chair-Rapporteur of the Working Group on the issue of discrimination against women in law and in practice

## **Annex**

### **Reference to international human rights law**

In connection with above alleged facts and concerns, we would like to draw your attention to Article 12 of the Universal Declaration of Human Rights, which prohibits any arbitrary interference with a person’s privacy, family, home or correspondence. The right to privacy is essential to human dignity, and any restriction in its enjoyment must be prescribed by law, necessary to achieve a legitimate aim, and proportionate to the aim pursued. Example of legitimate aims for the restriction of the right to privacy include crimes or specific threats to the integrity of individuals, none of which apply in the case of male guardianship. Moreover, male guardianship does not pass the necessity and proportionality tests: it imposes severe restrictions on every woman’s sphere of privacy and autonomy by imposing them to constantly have a male companion in any public area, and by requiring them to ask for permission for a vast number of autonomous decisions that constitute basic freedoms, based only on tradition.

Making Absher available also constitutes a violation of women’s right to privacy, because it digitally enhances the ability of male “guardians” to arbitrarily monitor, restrict and control women’s whereabouts and freedom of movement without having to justify the need for such monitoring and restrictions. Similarly to the duty to conduct a Privacy Impact Assessment before deploying new surveillance technologies by State agents, an assessment should have been conducted before allowing millions of private individuals in Saudi Arabia to technologically monitor and restrict women’s whereabouts and freedom of movement.

In order to fully discharge its obligations under international law, a State needs to protect individuals against violations of their rights not only by its agents, but also against acts committed by private persons or entities (Human Rights Committee’s General Comment 31, par. 8). In the case of male guardianship and Absher, it requires that women are protected by the State against restrictions in their enjoyment of human rights by their male “guardians”, either spouses or other family members.

The United Nations Convention on the Elimination of all Forms of Discrimination against Women (CEDAW), acceded by Saudi Arabia in 2000, requires putting an end to practices which discriminate against women, including the abolishment of the male guardianship system. In 2018, The Committee on the Elimination of all Forms of Discrimination against Women welcomed the Government’s measures taken to limit the scope of the male guardianship system. It expressed its concern, however, for the persistence of the male guardianship system, in particular its requirement that women have the permission of a male guardian in order to obtain a passport, travel abroad, study abroad on a government scholarship, choose their place of residence, gain access to health-care services and leave detention centres and State-run shelters. It stated that maintaining the guardianship system underscores the subordination of women to a male guardian and undermines the rights and capacity of women and girls to develop their personal abilities and make free choices about their lives and life plans.

Furthermore, in her report to the Human Rights Council in 2018 on online violence against women (A/HRC/38/47), the Special Rapporteur on violence against women referred to General Assembly resolution 71/199, which recognizes that women were particularly affected by violations of the right to privacy in the digital age, and called upon all States to further develop preventive measures and remedies. The Special Rapporteur recommends that States should, in accordance with the principle of due diligence, ensure that regulations on Internet intermediaries respect the international human rights framework, including that with regard to business and human rights, which should be explicitly expanded to include women's human rights instruments that prohibit gender-based violence online.

Your Excellency's Government's 2016 submission to the Committee on the Elimination of Discrimination against Women (CEDAW/C/SAU/3-4) stated that "guardianship means the assignment of a man — whether a husband, father or son — to care for a woman's affairs, including covering her expenses. It does not mean, nor does it ever justify, control of a woman". However, Absher's capability to obtain real-time alerts on a woman's location and to fully or partially restrict her freedom of movement seems to give male "guardians" precisely "control" of a woman.