

Mandate of the Working Group on discrimination against women and girls

Ref.: OL KWT 1/2023
(Please use this reference in your reply)

18 October 2023

Excellency,

I have the honour to address you in my capacity as Chairperson of the Working Group on discrimination against women and girls, pursuant to Human Rights Council resolution 50/18.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning **1 restrictions on women's mobility that are based on certain interpretations of religion enshrined in legislation and social practices about "male guardianship", contrary to international human rights norms.**

According to the information received:

Under Law no. 51 of 1984 concerning Personal Status, a woman may be considered disobedient and lose her right to marital maintenance (*nafaqa*) if: she refuses to move into the marital home without justification; leaves the marital home without a "legitimate reason"; works outside the marital home without her husband's permission and against the family's interests; and travels without her husband's permission, with the exception of travels with a close male relative (*mahram*) to perform Haj (religious pilgrimage) (articles 87, 89-91). A wife's disobedience is established once she refuses to comply with the final court's decision to be obedient. Women can be reported to the police if they leave their homes without their family or guardian's permission. Although leaving home without permission does not amount to a crime under the law, male guardian can report women under 21 years of age on the ground that they are responsible for them, while in the case of a woman older than 21, her guardian can argue that she may have committed a crime, such as having extramarital relations.

Women's mobility and male guardianship.

Legal provisions and social practices that restricts women's mobility based on requirements of male guardianship, like the one mentioned above, are the manifestations of harmful stereotypical notions of men's superiority and are inherently discriminatory, humiliating and derogatory. They would constitute blatant violations of women's and girls' right to equality, including equality before the law and equal protection of the law, as well as of a broad range of other human rights, including the rights to freedom of movement, education, work, access to justice, privacy and family life, as guaranteed under international law. The Working Group has noted that such provisions and practices can easily lead to repressive control by male family members or unsupportive families or communities, resulting in the exclusion of women from certain areas of society and confinement in others (A/HRC/41/33).

The Working Group wishes to refer your Excellency's Government to its obligations under the International Covenant on Civil and Political Rights, acceded by Kuwait in 1996, including those concerning the liberty of movement, recognised in article 12. In its general comment no. 27 on freedom of movement, the Human Rights Committee has clarified that it is incompatible with article 12, paragraph 1, that the right of a woman to move freely and to choose her residence be made subject, by law or practice, to the decision of another person, including a relative (CCPR/C/21/Rev.1/Add.9).

We would also like to draw to the attention of your Excellency's Government the obligations arising out of article 17 of the Covenant, which prohibits arbitrary or unlawful interference with a person's privacy, family, home or correspondence, whether emanating from State authorities or from natural or legal persons. As indicated by the Human Rights Committee, no interference can take place except in cases envisaged by the law, which itself must comply with the provisions, aims and objectives of the Covenant (INT/CCPR/GEC_6624_E (1)). 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 be 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 women's privacy and autonomy by requiring them to ask for permission for a vast number of autonomous decisions that constitute basic freedoms.

Moreover, we wish to refer your Excellency's Government to its obligation under the Covenant on Economic, Social and Cultural Rights, acceded by Kuwait in 1996, to ensure the equal right of men and women to the enjoyment of all economic, social and cultural rights set forth in the Covenant, including the rights to education, work, an adequate standard of living, and to the enjoyment of the highest attainable standard of physical and mental health.

In addition, we would like to recall that the Convention on the Elimination of All Forms of Discrimination against Women, acceded by Kuwait in 1994, requires putting an end to practices which discriminate against women, including the abolishment of the male guardianship system. The Convention requires, inter alia, States Parties to take all appropriate measures to modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women (article 5). It also provides for equality between men and women before the law and for States Parties to accord to men and women the same rights with regard to the law relating to the movement of persons and the freedom to choose their residence and domicile (Article 15) and to take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations (article 16).

In this regard, the Working Group wishes to recall CEDAW's Concluding Observations on Kuwait (CEDAW/C/KWT/CO/5) in which the CEDAW Committee noted expressed its concern about the requirement that wife "obey her husband" under the Personal Status Law and urged Kuwait to review and amend the Law so as to remove provisions that discriminate against women and girls.

In addition, the Working Group would like to refer your Excellency's Government to its obligation under the ILO Discrimination (Employment and Occupation) Convention, 1958 (no. 111), ratified by Kuwait in 1966, which requires the adoption and implementation of a national policy designed to promote equality of opportunity and treatment in respect of all aspects of employment and occupation, including through the repeal of any discriminatory law and practice affecting women's access to and performance of employment and occupations.

As stressed in a Working Group report to the Human Rights Council (A/HRC/35/29), promising practices in cultural and family life require a guarantee of women's right to equality in autonomy and self-determination and the legal and social recognition of women as agents of cultural change. Legal and cultural norms that subjugate women to male control must be actively challenged and eradicated. States must endeavour to repeal all discriminatory provisions in the law, particularly those governing marriage and divorce, child-rearing, inheritance, freedom of movement, access to capital, credit and income-generating activities. In addition to the elimination of direct discrimination, promising practices in this area require that States take active measures to support substantive equality through the law and long-term awareness-raising initiatives directed towards the eradication of patriarchal stereotypes and attitudes.

The Working Group emphasizes the importance of respecting women's and girls' bodily autonomy and agency as well as their free, informed choices, while firmly rejecting any form of coercion stemming from patriarchal oppression. We have recommended to repeal all laws that support the patriarchal oppression of women in families and to recognize and apply, in law and in practice, the right to equality, which should apply in all areas of life and have primacy over all religious and customary norms, codes and rules, with no possibility of exemption, waiver or circumvention (A/HRC/29/44).

We would like to remind Your Excellency's Government that States have the primary responsibility and duty to protect, promote and realise all human rights and fundamental freedoms by taking necessary measures to create social, economic, political and other conditions and legal guarantees required to ensure that all persons, regardless of their sex and gender, under their jurisdiction, individually and collectively, can enjoy these rights and freedoms in practice.

We note that, following the judgement of the Constitutional Court of 20 October 2009, women no longer require a male guardian's consent to obtain a passport, as the Court considered this requirement, which was enshrined in the Passports Law of 1962, to violate equality before the law, personal liberty and freedom of movement under articles 29, 30 and 31 of the Constitution. In light of this decision, we encourage your Excellency's Government to review the provisions of the Personal Status Law, and to remove all provisions that discriminate against, or have a discriminatory impact on women and girls, including those establishing male guardianship.

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

1. Please provide information on the nature and scope of the reported de jure and de facto restrictions and an assessment of the impact of current restrictions on women's mobility on their enjoyment of other human rights, including their access to work, education at all levels, and health services, goods and information.
2. 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.
3. Please provide information on any measures that your Excellency's Government has taken or intends to take in order to eliminate discriminatory social practices restricting women's mobility.

This communication, as a comment on pending or recently adopted legislation, regulations or policies, and any response received from your Excellency's Government will be made public via the communications reporting [website](#) after 48 hours. They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

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

Dorothy Estrada-Tanck
Chair-Rapporteur of the Working Group on discrimination against women and girls