

Responses of UN Human Rights Bodies to Human Trafficking and Modern-Day Slavery in the Kingdom of Saudi Arabia

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Abstract

This article discusses international conventions related to human rights and human trafficking signed by the Kingdom of Saudi Arabia (KSA). In addition, the article examines KSA's response to human trafficking and presents clear arguments concerning Saudi Arabia's compliance to regional and international standards. The submitted reports by KSA and Non-Governmental Organisations (NGO) are analyzed by the relevant committees and various human rights bodies. The article further discusses the gap between the reports provided by the Saudi state and the real situation and its victims. The article concludes that despite efforts made by the KSA to combat human trafficking, KSA remains non-compliant to international conventions related to human trafficking.

Keywords: Kafala System; Human Trafficking; International Law; Islamic Sharia; Migrant Domestic Workers

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1. Introduction

The KSA is a party to many international instruments dealing with human rights, labour rights and the dignity of the individual. These instruments require states to observe, comply with and demonstrate commitment to their responsibilities and obligations under international human rights law in combating and prosecuting human trafficking, servitude, forced labour, torture and other degrading and discriminatory treatments. In particular, Saudi Arabia has signed up to the International Convention on the Elimination of All Forms of Racial Discrimination (CERD),¹ the Convention on the Elimination of all Forms of Discrimination against Women (CEDAW),² the Convention on the Rights of the Child (CRC),³ the Convention on the Rights of Persons with Disabilities (CRPD),⁴ and the Convention against Torture and Other Cruel and Degrading Treatment (CAT).⁵ These conventions contain provisions concerning the prohibition of human trafficking, forced labour, domestic servitude and sexual exploitation.⁶ However, despite the fact that the KSA has ratified these instruments, a lack of compliance and commitment to the aforementioned issues has been identified in reports and findings by international bodies.⁷ As of 2019, Saudi Arabia tops the list on the index of the worst countries for non-compliance.⁸

To demonstrate its compliance with the provisions of various UN human rights treaties, the KSA is obliged to submit reports to treaty monitoring bodies. The statements in these reports which relate to human trafficking are discussed in this article. The responses of the treaty monitoring bodies will also be analysed, in order to highlight the gaps between the reports provided by the Saudi state and the actual situation of victims. In addition, reports by UN Special Rapporteurs on the adequacy of Saudi measures addressing human trafficking are discussed, as is the consideration under the Universal Periodic Review mechanism of the response of the KSA to human trafficking.

¹ The Kingdom joined this convention on the 23th September 1997.

² The Kingdom joined this convention on the 07th September 2000.

³ The Kingdom joined this convention on the 26th June 1996.

⁴ The Kingdom joined this convention on the 24th June 2008.

⁵ The Kingdom joined this convention on the 23rd September 1997.

⁶ Convention on the Elimination of All Forms of Discrimination Against Women (adopted 18 December 1979, entered into force 03 September 1981) 1249 UNTS 13 (CEDAW) art 6; For example, member states are required to combat human trafficking under the CEDAW where Article 6 states that "States Parties shall take all appropriate measures, including legislation, to suppress all forms of traffic in women and exploitation of prostitution of women".

⁷ UN Committee on the Elimination of Discrimination against Women (CEDAW), 'List of issues and questions relating to the combined third and fourth periodic reports of Saudi Arabia' 69th session (09 November 2017) UN Doc CEDAW/C/SAU/Q/3-4/Add.1; see also UN Committee on the Elimination of Discrimination against Women (CEDAW), 'Consideration of reports submitted by States parties under Article 18 of the Convention' (30 September 2016) UN Doc CEDAW/C/SAU/3-4; see also, HRW, 'World report 2021: Saudi Arabia' (HRW) <<https://www.hrw.org/world-report/2021/country-chapters/saudi-arabia>> accessed 08 May 2022.

⁸ Matthew Quandt, 'Trafficking in Persons (TIP) Report Release' (Shared hope international, 20 June 2019) <<https://sharedhope.org/2019/06/20/2019-trafficking-in-persons-tip-report-release/>> accessed 18 August 2021.

2 Overview of relevant international conventions and instruments

Saudi Arabia is a party to some of the key international human rights instruments and conventions that are concerned with human trafficking i.e., the Genocide Convention,¹ the Forced Labour Convention² and the Supplementary Convention on the Abolition of Slavery.³ Among the 51 original members of the United Nations (UN) who were involved in drafting both its Charter and the Universal Declaration of Human Rights (UDHR), Saudi Arabia was absent during the voting to approve the Declaration in 1948.⁴ This abstention from the vote was due to the contention by Saudi Arabia that the Convention's wording on freedom of religion violated the precepts of Islam.⁵ The Kingdom also maintained that human rights guaranteed by the Islamic-based laws of Saudi Arabia surpass those secured by the UDHR.⁶ Additionally, Saudi Arabia has ratified several international conventions that prohibit slavery and similar violations such as human trafficking, servitude, and discrimination.⁷ Although not all of these pieces of legislation are directly related to human trafficking, they largely refer to human dignity, equality and protection, which are issues that directly or indirectly relate to human trafficking. These include:⁸

- a) The 1926 Slavery Convention or the Convention to Suppress the Slave Trade and Slavery;⁹
- b) The Forced Labour Convention 1930;
- c) The Supplementary Convention on the Abolition of Slavery, the Slave Trade and Institutions and Practices Similar to Slavery 1956;¹⁰
- d) The Convention on the Elimination of All Forms of Racial Discrimination;¹¹
- e) The Convention on the Elimination of All Forms of Discrimination against Women;¹²
- f) The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment;¹³
- g) The Convention on the Rights of the Child;¹⁴
- h) The Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children;¹⁵

¹ The Kingdom joined this convention on the 13 of July 1950, available at the following link <https://treaties.un.org/pages/ViewDetails.aspx?src=IND&mtdsg_no=IV-1&chapter=4&clang=en> accessed 18 August 2021

² The Kingdom joined this convention on the 15 of June 1978, available at the following link <https://www.ilo.org/dyn/normlex/en/f?p=1000:11200:0::NO:11200:P11200_COUNTRY_ID:103208> accessed 18 August 2021.

³ The Kingdom joined this convention on the 5 of July 1973, available at the following link <https://treaties.un.org/pages/ViewDetailsIII.aspx?src=TREATY&mtdsg_no=XVIII-4&chapter=18&Temp=mtdsg3&clang=en> accessed 18 August 2021

⁴ Abdulaziz Alwasil. 'Saudi Arabia's engagement in, and interaction with, the UN human rights system: an analytical review' (2010). 14 (7) The International Journal of Human Rights <<https://www.tandfonline.com/doi/full/10.1080/13642980903007516?scroll=top&needAccess=true&role=tab>> accessed 18 August 2021

⁵ Claude Welch Jr, 'Defining contemporary forms of slavery: updating a venerable NGO' (2009) 31(1) Human Rights Quarterly <<https://www.readcube.com/articles/10.2139%2Fssrn.1081920>> accessed 19 August 2021

⁶ Ministry of Information, Proceeding of Conference of Saudi Scholars and European lawyers on Islamic law and Human Rights, Riyadh: Ministry of Information Press, 1972. 15 (in Arabic); See also Human Rights Watch, 'Human Rights Developments in Saudi Arabia' (HWR) <https://www.hrw.org/reports/1992/WR92/MEW2-02.htm#P422_152635> accessed 23 August 2021.

⁷ These conventions will be discussed later in this section.

⁸ See United Nations Human Rights Office Of the Commission, <https://www.ohchr.org/EN/Countries/MENARegion/Pages/SAIndex.aspx> accessed 02 August 2021

⁹ Convention to Suppress the Slave Trade and Slavery (adopted 25 September 1926, entered into force 09 March 1927) 60 LNTS 253.

¹⁰ Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery (adopted 07 September 1956, entered into force 30 April 1957) 266 UNTS 3.

¹¹ International Convention on Elimination of all forms of racial discrimination (adopted 07 March 1966, entered into force 04 January 1969) 660 UNTS 195. Its preamble states: "Considering that the United Nations Declaration on the Elimination of All Forms of Racial Discrimination of 20 November 1963 (General Assembly resolution 1904 (XVIII)) solemnly affirms the necessity of speedily eliminating racial discrimination throughout the world in all its forms and manifestations and of securing understanding of and respect for the dignity of the human person".

¹² Convention on the Elimination of All Forms of Discrimination Against Women (adopted 18 December 1979, entered into force 03 September 1981) 1249 UNTS 13 (CEDAW) art 6; Article 6 of the convention requires member states to combat human trafficking: "States Parties shall take all appropriate measures, including legislation, to suppress all forms of traffic in women and exploitation of prostitution of women".

¹³ Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, (adopted 10 December 1984, entered into force 26 June 1987) 1465 UNTS 85 art 13; Article 13 of the Convention, for instance, refers to protection. The article states; "Each State Party shall ensure that any individual who alleges he has been subjected to torture in any territory under its jurisdiction has the right to complain to, and to have his case promptly and impartially examined by, its competent authorities. Steps shall be taken to ensure that the complainant and witnesses are protected against all ill-treatment or intimidation as a consequence of his complaint or any evidence given".

¹⁴ UN General Assembly, Convention on the Rights of the Child (adopted 20 November 1989, entered into force 02 September 1990) 1577 UNTS 3 art 35; Member states are required to combat human trafficking under this convention. Article 35 says: " States Parties shall take all appropriate national, bilateral and multilateral measures to prevent the abduction of, the sale of or traffic in children for any purpose or in any form".

¹⁵ The Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime 2000 (Palermo Protocol) (adopted 15 November 2000, entered into force 25 September 2003) UN Doc A/RES/55/25. The Kingdom joined this convention in 2007. Article 2 of the Protocol states that: " The purposes of this Protocol are:

(a) To prevent and combat trafficking in persons, paying particular attention to women and children;

- i) The Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict;¹
- j) The Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography;² and
- k) The Convention on the Rights of Persons with Disabilities and its Optional Protocol;³

The regional instruments include:

- a) The Cairo Declaration on Human Rights in Islam;⁴
- b) The Covenant on the Rights of the Child in Islam;⁵
- c) The Arab Charter on Human Rights;⁶
- d) The Arab Convention to Combat Transnational Organized Crime;⁷
- e) Abu Dhabi document for the system (the unified guiding law to combat trafficking in persons);⁸ and
- f) The Declaration of Human Rights of the Cooperation Council for the Arab States of the Gulf.⁹

Because the Kingdom is an absolute monarchical system and arguably without an official constitution or an elected legislative body,¹⁰ political expression, as well as issues concerning the rule of law and civil liberties, are

(b) To protect and assist the victims of such trafficking, with full respect for their human rights; and

(c) To promote cooperation among States Parties in order to meet those objectives."

¹ Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict (adopted 25 May 2000, entered into force 12 February 2002) 2173 UNTS 222. The preamble to this Convention, for instance, refers to human protection. The preamble states "Reaffirming that the rights of children require special protection, and calling for continuous improvement of the situation of children without distinction, as well as for their development and education in conditions of peace and security".

² UN Committee on the Rights of the Child (CRC), Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography : list of issues to be taken up in connection with the consideration of the initial report of Belgium (CRC/C/OPSC/BEL/1), 8 March 2010, CRC/C/OPSC/BEL/Q/1, available at the following link <https://www.refworld.org/docid/50b3565e2.html> accessed 25 September 2021. The Kingdom joined this convention on the 18th August 2010. The preamble to this Convention, for instance, refers to human trafficking and exploitation. The preamble states "Believing that the elimination of the sale of children, child prostitution and child pornography will be facilitated by adopting a holistic approach, addressing the contributing factors, including underdevelopment, poverty, economic disparities, inequitable socio-economic structure, dysfunctioning families, lack of education, urban-rural migration, gender discrimination, irresponsible adult sexual behaviour, harmful traditional practices, armed conflicts and trafficking in children".

³ UN General Assembly, Convention on the Rights of Persons with Disabilities: resolution / adopted by the General Assembly, 24 January 2007, A/RES/61/106, available at the following link <https://www.refworld.org/docid/45f973632.html> accessed 25 September 2021. The Kingdom joined this convention on the 24th June 2008. Article 1 of this convention says "The purpose of the present Convention is to promote, protect and ensure the full and equal enjoyment of all human rights and fundamental freedoms by all persons with disabilities, and to promote respect for their inherent dignity".

⁴ Cairo Declaration on Human Rights in Islam (*Adopted at the Nineteenth Islamic Conference of Foreign Ministers, 31 July to 5 August 1990*) art 11. Article 11 of this convention states that '(a) Human beings are born free, and no one has the right to enslave, humiliate, oppress or exploit them'.

⁵ Covenant on the Rights of the Child in Islam (adopted by the 32nd Islamic Conference of Foreign Ministers in Sana'a, Republic of Yemen, in June 2005) OIC/9-IGGE/HRI/2004/Rep.Final art 17; Article 17 of this convention states that 'States Parties shall take necessary measures to protect the child from: 1. Illegal use of drugs, intoxicants and harmful substances, or participation in their production, promotion, or trafficking. 2. All forms of torture or inhumane or humiliating treatment in all circumstances and conditions, or his/her smuggling, kidnapping, or trafficking in him/her.

⁶ Arab Charter on Human Rights (adopted 22 May 2004, entered into force 15 March 2008) art 10; Article 10 of this convention states that '1. All forms of slavery and trafficking in human beings are prohibited and are punishable by law. No one shall be held in slavery and servitude under any circumstances. 2. Forced labour, trafficking in human beings for the purposes of prostitution or sexual exploitation, the exploitation of the prostitution of others or any other form of exploitation or the exploitation of children in armed conflict are prohibited'.

⁷ The Arab Convention to Combat Transnational Organized Crime 2010 AD, to which the Kingdom acceded by virtue of Decree No. (M/38) dated 10/6/1433 AH, corresponding to 1/5/2012 AD, and in its eleventh article stipulated that: "Each State Party undertakes to take the necessary measures, within the framework of its domestic law, to criminalize the commission or participation in the commission of the following acts committed by an organized criminal group: 1. Any threat of force, or use thereof, or other forms of coercion, kidnapping, fraud, deception, abuse of power, or exploitation of the state of weakness in order to use, transport, harbor or receive people for the purpose of illegally exploiting them in the practice of prostitution or all other forms of sexual exploitation, forced labor, forced service, slavery, or practices similar to slavery or servitude. The consent of the victim of trafficking is not considered in all forms of exploitation when the means indicated in this paragraph are used".

⁸ Abu Dhabi document for the system (the unified guiding law to combat trafficking in persons) was approved by the Supreme Council of the Cooperation Council for the Arab States of the Gulf at its twenty-seventh session, which was held in Riyadh on 10/9/2006 AD (11/19/1427 AH). Art 10 of this document stipulated procedures to protect victims of trafficking in persons, to ensure their rights to information, medical and psychological care as well as the right to accommodation during the investigation and trial phases if necessary.

⁹ The Declaration of Human Rights of the Cooperation Council for the Arab States of the Gulf, adopted by the Supreme Council of the Gulf Cooperation Council at its thirty-fifth session held in Doha on 9/11/2004 AD, and approved by Cabinet Resolution No. 376 and dated 21/8/1436 AH.

This declaration criminalizes the use of persons in medical experiments in Article (5), trafficking in persons in Article (3), and trafficking in human organs in Article (4).

¹⁰ Alkarama Foundation, 'Report to the Committee against Torture under the Second Periodic Review of Saudi Arabia' (March 2016) < https://www.alkarama.org/sites/default/files/documents/ALK_CAT_KSA_ShadowReport_31032016_Final.pdf> accessed 22 August 2021. See also As'ad AbuKhalil, 'Constitutions in a Non-constitutional World: Arab Basic Laws and the Prospects for Accountable Government' (2002) 96(4) American Political Science Review, < https://econpapers.repec.org/article/cupapsrev/v_3a96_3ay_3a2002_3ai_3a4_3ap_3a842-843_5f55.htm> accessed 23 August 2021; See also ALQST for Human Rights, ALQST Annual Report 2019. 11, available at the following link: <https://www.alqst.org/ar> accessed 19 August 2022. See also Rashed Aba-Namay. "The New Saudi Representative Assembly." (1998) Islamic Law and Society 5, no. 2 235-65. <http://www.jstor.org/stable/3399342>. See also UNGA, 'Report of OHCHR on Summary of

not always treated in accordance with international standards. Since the Saudi legal system is based on Islamic law (Sharia), in practice, secular legislation can be proposed and ratified via royal decree.¹ Hence, the government can issue administrative action and decrees and can also include the decisions taken from closed-door summary tribunals where cases are heard and determined.² It can be argued that through its influence and guidance, the UN Human Rights monitoring bodies' remedial work has improved KSA's general human rights situation. To meet its obligations under various international treaties regarding human rights violations, Saudi Arabia also has promulgated several new laws and updated and amended existing ones.³

3. Saudi Reports to the UN Treaty Monitoring Bodies referring to Human Trafficking

According to the KSA's latest report submitted to the UN Committee on the Elimination of Racial Discrimination (CERD) in 2023 and other reports submitted to human rights committees, the migrant labour population remained the largest group at risk of human trafficking. This was particularly true of female domestic workers due to their isolation inside private residences where they are easily subjected to exploitation and abuse by their employers.⁴ However, in its 2020 report to the Convention on the Elimination of all Forms of Discrimination against Women (CEDAW) Committee, the KSA claimed to have made great strides by setting in motion a series of reforms for the protection of human rights, often in line with Islamic law (sharia).⁵

Specifically reporting on forced labour and sexual exploitation, the KSA repeatedly highlights that it has agencies and institutions which are given the mandate and support to deal with perpetrators of human trafficking offences and to refer them to the investigative authorities and relevant courts for trial.⁶ The KSA has also claimed that many judgments have been issued against persons accused of committing acts that qualify as human trafficking.⁷ The KSA references the National Society for Human Rights and a number of government agencies and civil society organisations for monitoring human trafficking offences and offering social support to victims.⁸

KSA also reported to the CERD Committee in 2016 that it protects the rights of migrant workers to freedom of movement,⁹ including the right to travel within and to leave the KSA. For instance, the KSA introduced Cabinet Decision No. 166 (9 October 2000), which amended the law to allow migrant workers to retain their passports and those of their family members. Also as a consequence of this decision, migrant workers were provided with residency permits, allowing them to move freely throughout the KSA.¹⁰

In addition, Saudi Arabia reported to the CEDAW Committee in 2016 on the numerous legislative, legal and administrative measures which it had taken in order to achieve the objectives of sustainable development goals to eliminate forced labour and human trafficking.¹¹ These measures included the establishment of the

Stakeholders' submissions on Saudi Arabia' 31st session (24 August 2018) UN Doc A/HRC/WG.6/31/SAU/3 para 3.

¹ Law of the Council of Ministers 1993 art 20; Article 20 states that Laws, treaties, international agreements, and concessions shall be issued and amended by royal decrees upon review by the Council of Ministers, without prejudice to the Law of Shura Council.

² UNGA, Vice President and Rapporteur: Mr Elchin Amirbayov (Azerbaijan) 'Report of the Human Rights Council on its eleventh session' (16 October 2009) UN Doc A/HRC/11/37.

³ The Third Report on Human Rights Situation in The Kingdom of Saudi Arabia 2012 (Ambitious Leadership, Underperforming Authorities) 7

⁴ UN Committee on the Elimination of All Forms of Racial Discrimination, 'Combined tenth and eleventh periodic reports submitted by Saudi Arabia under Article 9 of the Convention due in 2020' (27 February 2023) UN Doc CERD/C/SAU/10-11; see also UN Committee on the Elimination of Discrimination against Women (CEDAW), 'Consideration of reports submitted by States parties under Article 18 of the Convention' (30 September 2016) UN Doc CEDAW/C/SAU/3-4 para 27; see also UN Committee on the Elimination of Discrimination against Women (CEDAW), 'Consideration of reports submitted by States parties under article 18 of the Convention on the Elimination of All Forms of Discrimination against Women' (09 November 2017) UN Doc CEDAW/C/SAU/Q/3-4/Add.1 paras 79-80; See also UN Committee on the Elimination of Racial Discrimination (CERD), 'Concluding observations on the combined fourth to ninth periodic reports of Saudi Arabia' (08 June 2018) UN Doc CERD/C/SAU/CO/4-9 paras 19 and 20.

⁵ UN Committee on the Elimination of Discrimination against Women (CEDAW), 'Information received from Saudi Arabia on the follow-up to the concluding observations on its combined third and fourth periodic reports' (28 May 2020) UN Doc CEDAW/C/SAU/FCO/3-4 paras 4; See also UN Committee on the Elimination of Discrimination against Women (CEDAW), 'Consideration of reports submitted by States parties under Article 18 of the Convention' (30 September 2016) UN Doc CEDAW/C/SAU/3-4 para 150.

⁶ UN Committee on the Rights of the Child (CRC), 'Consideration of reports submitted by States parties under article 12 (1) of the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography' (26 September 2017) UN Doc CRC/C/OPSC/SAU/1 paras 28; see also UN Committee on the Elimination of Discrimination against Women (CEDAW), 'Consideration of reports submitted by States parties under Article 18 of the Convention' (30 September 2016) UN Doc CEDAW/C/SAU/3-4 para 27.

⁷ *ibid* paras 28-84; see also UN Committee against Torture (CAT), 'Consideration of reports submitted by States parties under article 19 of the Convention: Second periodic report of States parties due in 2010' (12 February 2015) UN Doc CAT/C/SAU/2 para 65.

⁸ UN Committee on the Elimination of Discrimination against Women (CEDAW), 'Consideration of reports submitted by States parties under Article 18 of the Convention' (30 September 2016) UN Doc CEDAW/C/SAU/3-4 para 27.

⁹ UN Committee on the Elimination of Racial Discrimination 'Consideration of reports submitted by States parties under article 9 of the Convention: Fourth to ninth periodic reports of States parties due in 2006' (10 October 2016) UN Doc CERD/C/SAU/4-9 para 80.

¹⁰ *ibid*.

¹¹ UN Committee on the Elimination of Discrimination against Women (CEDAW), 'Consideration of reports submitted by States parties under Article 18 of the Convention' (30 September 2016) UN Doc CEDAW/C/SAU/3-4 para 27; see also UNDP, 'The SDGs in action' (UNDP) <<https://www.undp.org/sustainable-development-goals>> accessed 15 August 2022.

Standing Committee for Combating Trafficking in Persons, which is designed to work with relevant NGOs.¹ The Standing Committee's intentions are to strengthen the capacity to implement human rights conventions and recommendations, submit reports in a timely manner, coordinate data collection and analyse its content, and consult with civil societies through various support organisations.² Saudi Arabia reported to the CERD Committee in 2016 regarding the strengthening of its legislation, with the Suppression of Trafficking in Persons Act of 2009 among the key pieces of domestic legislation dealing with matters relating to the offence of trafficking in persons.³ This law not only defines but also criminalises human trafficking with a punishment of up to 15 years in prison.⁴

A further piece of legislation reported by the Saudi state to the CEDAW Committee in 2016 was the Saudi Labour Code (2015),⁵ which was issued to amend different parts of the 2005 Labour Law. These amendments were implemented to prevent torture, servitude and discrimination in order to safeguard the rights of workers in line with the KSA's commitment to Article 19(1) of the Committee Against Torture (CAT).⁶ The amendments stipulated that no employee should work more than five hours in a row without a break for rest, prayer, or sustenance that lasts at least 30 minutes during the entire working day.⁷ However, labour law does not apply to migrant domestic workers, where the vast majority of whom are women who are forced to work excessively long working hours.⁸ The KSA also claimed to the CEDAW Committee in 2016 that numerous measures have been adopted to enhance the protection of workers' rights as set forth in the 2009 Code, including a provision to sanction any enterprise or individual having violated the provisions of the Code or any decisions pursuant to it.⁹

In its report to the Committee on the Right of the Child (CRC) in 2017 the KSA highlighted the Convention and the Code of Criminal Procedure, and the new penal system, which was developed to combat and protect against human rights violations. The goal is that racial, ethnic, and ancestry-based racism will decline significantly as a result of the new penal law. A violation of this provision of the law is punishable by up to three years in prison and a fine of SRA100,000.¹⁰ Saudi Arabia claimed in its 2017 report to the CRC Committee that Islamic rights are believed also to be in accordance with international human rights law.¹¹

Although the evidence shows that only a few offenders have been prosecuted, there are certain areas in which the KSA has demonstrated progress. In its report to the CERD Committee in 2023 it was shown that significant effort had been made to reduce forced labour by introducing the Musaned programme and the Wage Protection System (WPS). The aim is to safeguard the rights of workers who are on many occasions victims of

¹ It was formed by the Council of Ministers Resolution No. 244 - 20/07/1430H (13/07/2009) headed by the President of the Human Rights Commission. The membership includes representatives from the Ministries of the Interior, Foreign Affairs, Justice, Social Affairs, Labour, Culture and Information, and Public Prosecution Service.

² UN Committee on the Elimination of Discrimination against Women (CEDAW), 'Consideration of reports submitted by States parties under article 18 of the Convention' (02 March 2018) UN Doc CERD/C/SR/1582 paras 6; See also UNHRC, 'National report submitted in accordance with paragraph 15 of the annex to Human Rights Council resolution 16/21; Kingdom of Saudi Arabia' 31st session (20 August 2018) UN Doc A/HRC/WG.6/31/SAU/1 Annex 2 para 70.

³ UN Committee on the Elimination of All Forms of Racial Discrimination, 'Combined tenth and eleventh periodic reports submitted by Saudi Arabia under Article 9 of the Convention due in 2020' (27 February 2023) UN Doc CERD/C/SAU/10-11 para 120; UN Committee on the Elimination of Discrimination against Women (CEDAW), 'Consideration of reports submitted by States parties under Article 18 of the Convention' (30 September 2016) UN Doc CEDAW/C/SAU/3-4 para 27.

⁴ Saudi Anti-Trafficking in Persons Law (Royal Decree No M/40) 2009 art 3; Article 3 states that "Any person who commits an act of trafficking in persons shall be punished by imprisonment for a period not exceeding 15 years or a fine not exceeding 1,000,000 riyals, or by both penalties". Abdulhamid Al-Ansari, '72 Human Trafficking Cases Booked in 2012' *Arab News* (Riyadh, 23 August 2013).

⁵ Saudi Labour Law, Royal Decree No M/51 (2015).

⁶ Article 19(1) of CAT reads The States Parties shall submit to the Committee, through the Secretary-General of the United Nations, reports on the measures they have taken to give effect to their undertakings under this Convention, within one year after the entry into force of the Convention for the State Party concerned. Thereafter the States Parties shall submit supplementary reports every four years on any new measures taken and such other reports as the Committee may request.

⁷ UN Committee on the Elimination of Discrimination against Women (CEDAW), 'Consideration of reports submitted by States parties under Article 18 of the Convention' (30 September 2016) UN Doc CEDAW/C/SAU/3-4 para 27; see also UN Committee on the Elimination of Racial Discrimination 'Concluding observations on the combined fourth to ninth periodic reports of Saudi Arabia*' (08 June 2018) UN Doc CERD/C/SAU/CO/4-9 para 19

⁸ Article 7 of the 2005 Saudi labour law reads 'The following shall be exempted from the implementation of the provisions of this Law: (b) Domestic helpers and the like.'

⁹ UN Committee on the Elimination of Discrimination against Women (CEDAW), 'Consideration of reports submitted by States parties under Article 18 of the Convention' (30 September 2016) UN Doc CEDAW/C/SAU/3-4 para 20; see also Anti-Trafficking in Persons Law (Royal Decree No M/40) 2009 art 13. Article 13 states that "Without prejudice to the liability of natural persons, if a crime of trafficking in persons is knowingly committed through, to the benefit of, or on behalf of a corporate person, said person shall be punished by a fine not exceeding 10,000,000 riyals, and the competent court may order temporary or permanent dissolution or closure of the same or any branch thereof".

¹⁰ The draft Saudi Penal Code is available at the following link <العقوبات نظام مشروع.pdf> accessed 19 January 2023.

¹¹ UNHRC, 'National report submitted in accordance with paragraph 15(a) of the annex to Human Rights Council resolution 5/1; Kingdom of Saudi Arabia' 17th session (05 August 2013) UN Doc A/HRC/WG.6/17/SAU/1 para 19; see also UN Committee on the Rights of the Child (CRC), 'Consideration of reports submitted by States parties under article 12 (1) of the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography' (26 September 2017) UN Doc CRC/C/OPSC/SAU/1 para 30.

forced labour.¹ This policy identifies victims and refers them to protective services and enhances regulatory enforcement of labour protections for expatriates. It also has had a significant impact in preventing violations of the rights of domestic workers, and violations of relevant laws and regulations.²

KSA made reference in its reports to the various treaty monitoring bodies such as the 2019 Committee on the CRPD and to the 2018 Committee on the CRC, to the series of laws and regulations it has put in place since 2009.³ These were intended to protect the rights of workers, migrants, women and children. The laws that are most often referred to in these reports include:

- a. Anti-Trafficking in Persons Offences Law (2009).
- b. Law on Protection from Abuse (2013).
- c. Domestic Workers and the Like (2013).
- d. The Child Protection Law (2014).
- e. The Labour Law (2015).
- f. Saudi Anti-Harassment Law (2018).

The KSA also reiterates in a number of reports including in its reports to the CERD Committee in 2016 and 2023 that most of the conventions on human rights that have been ratified by the state have become part of Saudi domestic legislation.⁴ While this is true, questions are often raised by various human rights treaty monitoring bodies within the UN and other independent bodies concerning the procedural precedence given to Sharia in cases of conflict between it and provisions of the conventions.⁵ In 2016, the CERD Committee cited the death penalty as an example of procedural precedence given to Sharia in cases of conflict with Convention provisions.⁶ However, Saudi's position, as mentioned in its report which was submitted to the CEDAW Committee in 2018, has remained that Sharia incorporates the principle of human rights and protection of all people against breaches, especially the rights of victims of trafficking, domestic workers and other vulnerable groups including women and children.⁷

Another point raised by the KSA in its report to the CERD Committee in 2023 was the establishment of seven labour tribunals that were opened in provinces and cities across its territory, as well as 27 labour departments in cities and governorates and nine labour departments for appeals in a number of regions.⁸ The KSA further established the Standing Committee for Combating Trafficking in Persons, along with the Human Rights Commission which was given the task of investigating and taking action on human rights complaints.⁹ What is not clear, however, is whether victims of trafficking, domestic workers and those who are not Saudi citizens have unfettered access to these institutions for redress.¹⁰ Although the Human Rights Commission is a mechanism for the protection of rights, it is directly under the authority of the King.¹¹

As stated in the KSA's 2023 report to the CERD Committee, a total of 107 Human Trafficking departments have also been established in the Public Prosecution Office at all levels. Investigations of human trafficking cases are carried out by these divisions. Consequently, there has been an increase in the number of special

¹ UN Doc CERD/C/SAU/10-11 for 27th February 2023, para 120 (n 5); see also the follow-up letter sent to the State party (CERD/101 st session/FU/MJA/ks) for 24th September 2020; See also Ministerial Decision No. 803 for the 12th of December, 2012, on the Protection of Wages Programme. See also 2016 and UN (n 25).

² *ibid*; UNHRC, 'National report submitted in accordance with paragraph 15 of the annex to Human Rights Council resolution 16/21; Kingdom of Saudi Arabia' 31st session (20 August 2018) UN Doc A/HRC/WG.6/31/SAU/1 para 91-62.

³ UN Doc CRC/C/OPSC/SAU/Q/1/Add.1 for 31 October 2018 'Replies of the KSA to the list of issues in relation to its initial report under the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography (CRC/C/OPSC/SAU/Q/1); see also UN News <https://news.un.org/en/tags/human-trafficking> accessed 15 August 2021.

⁴ UN Committee on the Elimination of All Forms of Racial Discrimination, 'Combined tenth and eleventh periodic reports submitted by Saudi Arabia under Article 9 of the Convention due in 2020' (27 February 2023) UN Doc CERD/C/SAU/10-11 para 120; see also UN Committee on the Elimination of Racial Discrimination 'Consideration of reports submitted by States parties under article 9 of the Convention: Fourth to ninth periodic reports of States parties due in 2006' (10 October 2016) UN Doc CERD/C/SAU/4-9 para 3.

⁵ UN Committee on the Elimination of Discrimination against Women (CEDAW), 'Consideration of reports submitted by States parties under article 18 of the Convention on the Elimination of All Forms of Discrimination against Women' 19 February-9 March 2018 <<https://www.ohchr.org/EN/Countries/MENARRegion/Pages/SAIndex.aspx>> accessed 2 August 2021; see also UN Committee on the Elimination of Racial Discrimination (CERD), 'Concluding observations on the combined fourth to ninth periodic reports of Saudi Arabia' (08 June 2018) UN Doc CERD/C/SAU/CO/4-9 para 9-10 (n 5); UN Doc CERD/C/SAU/4-9, para 3 for 2016.

⁶ The KSA's statement in the discussion session of its combined report (third and fourth) on the Convention on the Elimination of All Forms of Discrimination against Women at the 96th session.

⁷ *ibid*.

⁸ UN Doc CERD/C/SAU/10-11 for 27th February 2023 (n 15); see also (CERD/101 st session/FU/MJA/ks) (n 26).

⁹ UN Doc CERD/C/SAU/4-9 paras 20 (n 10).

¹⁰ (CERD/101 st session/FU/MJA/ks) (n 26).

¹¹ The Human Rights Commission has a department called the National Committee to Combat Human Trafficking. This commission is a Saudi government organisation that was founded on September 12, 2005, by a decree of the Saudi Council of Ministers. It declares its independence from the Government of Saudi Arabia. The Commission's objective, according to the organisation, is to preserve and promote human rights in conformity with international norms. See the statement of the Kingdom of Saudi Arabia at the session discussing its combined report (fourth to ninth) on the Convention on the Elimination of All Forms of Racial Discrimination (95th Session). Delivered by Dr. Nasser Al-Shahrani on April 26, 2018.

criminal circuits designated in the relevant courts for consideration of human trafficking cases.¹ Also, in March 2020, the ‘National Referral Mechanism for Victims of Trafficking in People’ was established. This mechanism aims to record cases, specifically of human trafficking from monitoring until their adjudication by the appropriate courts. It also aims to advise staff from the relevant anti-trafficking authorities on the procedures that should be followed at each stage. This is in accordance with the system for combating crimes of human trafficking issued by Royal Decree No. (M/40) dated 21 7/1430 AH, which is equivalent to 14 July 2009 AD.² Nevertheless, reservations were raised by a number of human rights organizations and bodies such as the CAT Committee regarding the independence of the Commission.³ Other questions raised by the CEDAW Committee in 2017 included whether Saudi Arabia has succeeded in increasing the visibility of the various human rights conventions that it has ratified and incorporated into domestic legislation. Moreover, concerns have been raised about whether the training and awareness programmes the KSA has provided for the judiciary services, including those in religious courts, have increased their capacity and willingness to ensure that rights are protected and decisions enforced.⁴ However, the KSA stated in its report to the CERD Committee in 2023 that it has embarked on a public awareness programme for victims of trafficking.⁵ This involves enhancing public awareness of human trafficking, servitude and the ill-treatment of migrant workers.⁶

4. Review by NGOs of Statements on Human Trafficking in Saudi Reports submitted to UN Treaty Monitoring Bodies

In its 2019 submission to the CERD, the Organisation of Americans for Democracy and Human Rights in Bahrain (ADHRB), identified Saudi Arabia as a country where the government is failing to implement provisions of the Convention on the Elimination of all Forms of Discrimination against Women (CEDAW) due to an ineffective system of monitoring and enforcement,⁷ marked by long and drawn-out proceedings, unfair rulings, and a reluctance to enforce judgements. A number of NGOs such as the ADHRB have also faulted the KSA’s judicial system, which is structured in a manner that falls short of international standards, with judges ignoring allegations of torture, solitary incommunicado detention, denial of recourse to legal advice and representation, and coerced confessions.⁸

The Global Detention Project (GDP) and Migrant-Rights.org submitted a report to the CEDAW Committee in 2018 to clarify that over the years a growing number of women in domestic work have become victims of various forms of abuse by their employers, with few effective avenues for redress.⁹ This is because the KSA’s legal system for reporting abuses is seen to be structurally biased in favour of employers when, for instance, an employer may have a migrant worker arrested if he believes the worker plans to file a complaint. The threat of arrest frequently suffices to silence exploited migrants.¹⁰

The ADHRB also found that employers often confiscate passports, withhold wages, and physically or sexually abuse workers with impunity, authorities making little effort to adequately investigate abuses.¹¹ Moreover, in its 2018 report to the UN, the Global Detention Project stated that 99.6% of all domestic workers and personal assistants in Saudi Arabia are foreigners and many of these workers are undocumented, suggesting that a good number of them may be victims of trafficking.¹² The report also shows the systematic detention of these victims despite the country’s adoption of the Suppression of the Trafficking in Persons Act of 2009, which was intended to protect victims. Evidence of systematic detention is also contained in the 2018 joint report by the Global Detention Project and Migrant-Rights.org, submitted to the CEDAW Committee, which includes a series of allegations against Saudi authorities in relation to human rights and the rights of migrant workers and victims of trafficking.¹³ For example, the report states that Filipino women who meet the definition of trafficked persons

¹ UN Doc CERD/C/SAU/10-11, para 110 and 111, for 27th February 2023 (n 05).

² *ibid.*

³ UN Committee against Torture, ‘List of issues and questions in relation to the combined third and fourth periodic reports of Saudi Arabia’ (05 January 2022) UN Doc CAT/C/SAU/QPR/3 para 3.

⁴ UN Committee on the Elimination of Discrimination against Women (CEDAW), ‘List of issues and questions relating to the combined third and fourth periodic reports of Saudi Arabia’ 69th session (09 November 2017) UN Doc CEDAW/C/SAU/Q/3-4/Add.1 paras 8, 15, and 28; See also Abdullah F Ansary, ‘A Brief Overview of the Saudi Arabia Legal System’ (*Hauser Global Law School Program*, July 2008) <https://www.nyulawglobal.org/globalex/Saudi_Arabia.html> accessed 1 September 2021.

⁵ UN Doc CERD/C/SAU/10-11 for 27th February 2023, para 120 (n 05).

⁶ UN Doc CERD/C/SAU/CO/4-9/Add.1 paras 2-3 (n 5).

⁷ Americans for Democracy and Human Rights in Bahrain (ADHRB) report 2019. The report is available on the OHCHR website.

⁸ *ibid.*

⁹ The Global Detention Project and Migrant-Rights.org, ‘Joint Submission to the UN Committee on the Elimination Of Discrimination against Women: Saudi Arabia’ 69th session (*Global Detention Project*, 19 February to 09 March 2018) <<https://www.globaldetentionproject.org/submission-to-the-un-committee-on-the-elimination-of-discrimination-against-women-cedaw-saudi-arabia>> accessed 05 August 2019.

¹⁰ *ibid.*

¹¹ ADHRB (n 40).

¹² The Global Detention Project and Migrant-Rights.org, (19 February to 09 March 2018)

¹³ *ibid.*

under Saudi law are sent to 'shelters' which are not designated by the KSA as detention centres, and that the detained women have no freedom of movement.¹

Several reports such as the ADHRB's report in 2018 show that in practice, the KSA does not fully meet even the minimum standards for the elimination of trafficking and forced labour.² Victims can even be accused of immigration violation or prostitution and as a result be jailed, fined or deported.³ The Saudi government was asked by Human Rights Watch in its 2018 submission to the CEDAW Committee to do more to screen and assist workers fleeing abusive employers and to reform its sponsorship system, in which employers control workers' permits to leave the country.⁴ Although Saudi Arabia may continue to make claims of reform on issues of trafficking and forced labour, it is important to note that according to Article 3 of the Palermo Protocol's definition, both legal and illegal workers can be victims of trafficking.⁵

The European Saudi Organisation For Human Rights (ESOHR) also raised concerns about low rates of prosecution and conviction of offenders in its 2015 report submitted to the CRC Committee.⁶ The ESOHR's report also highlighted the lack of a concerted national plan to robustly combat trafficking as the situation persists. Another problem highlighted by the ESOHR is the lack of data on the number and nature of the victims of trafficking aggregated either by sex, age or nationality, and the lack of specific information on whether victims were trafficked for the purposes of labour or sexual exploitation. Moreover, there is no data to give an accurate account of cases under investigation or those that were prosecuted and convicted.⁷ This information is key to designing and implementing robust systems to monitor and evaluate the efficacy and genuineness of the adjudication process as well as identifying challenges in order to improve policy and legislative review.

Evidently, the situation in Saudi Arabia for victims of human trafficking and migrant workers is challenging. This is compounded when the victim is a child where further problems arise in establishing the child's actual age.⁸ In its 2015 report on the plight of juvenile victims submitted to the CRC Committee,⁹ the ESOHR stated that migrant workers and foreign nationals who travel to the KSA with forged documents to obtain employment are often unable to establish their juvenility even when relying on genuine documents showing their date of birth. As an example, the ESOHR cited the capital case of Rizana Nafeek who travelled to Saudi Arabia from Sri Lanka when she was 17 years old, but falsified her passport to indicate that she was 23 in order to obtain work as a domestic servant.¹⁰ Soon after taking up her post, a baby in her care died. Despite genuine documents proving that she was 17 years old when the crime was committed, and pleas from the Government of Sri Lanka to halt the execution, Rizana was executed because the age of criminal responsibility has not been unequivocally established in Saudi Islamic jurisprudence, despite the obligation to do so under Article 1 of the Convention on the Rights of the Child.¹¹ Rather than specifying an age limit, the Saudi judiciary has a tendency to consider that the end of childhood is not absolute but is subject to review by both the Court of Appeal and the Supreme Court.¹² When children reach puberty, they become adults in Islam, and therefore the death penalty may be imposed on them. This led to the execution of the death sentence on Rizana, despite the fact that she had not reached the age of 18 when the infant died.

5. Concluding Observations of the UN Human Right Treaty Monitoring Bodies on the Statements made by Saudi Arabia on Human Trafficking

Saudi Arabia has been commended by the CERD Committee in its 2018 concluding observations on KSA's 2016 report for the adoption of various measures and mechanisms to combat trafficking in persons and assist victims, including the development of a related national plan and the implementation of an education and

¹ *ibid.*

² ADHRB (n 40).

³ The Global Detention Project and Migrant-Rights.org, (n 42).

⁴ Human Rights Watch submission to the CEDAW committee of Saudi Arabia's Periodic Report (69 Session) for 2018.

⁵ *ibid.*

⁶ Committee on the right of the child NGO Submission Kingdom of Saudi Arabia 73rd session for 01-02 February 2016 submitted by the European Saudi Organisation For Human Rights (ESOHR) on the plight of juvenile victims on 1 November 2015; see also Human rights Watch, 'Saudi Arabia: 10 Reasons Why Women Flee' (*HRW*, 30 January 2019) <<https://www.hrw.org/news/2019/01/30/saudi-arabia-10-reasons-why-women-flee>> accessed 2 September 2021.

⁷ *ibid.* <https://tbinternet.ohchr.org/Treaties/CRC/Shared%20Documents/SAU/INT_CRC_NGO_SAU_22412_E.pdf> accessed 02 February 2022.

⁸ Human Rights Watch Submission Session in Saudi Arabia on September 2, 2016 file:///C:/Users/40189862/Downloads/INT_CRC_NGO_SAU_25075_E.pdf accessed 02 February 2023

⁹ European Saudi Organisation For Human Rights (ESOHR) on the plight of juvenile victims on 1 November 2015. <https://tbinternet.ohchr.org/Treaties/CRC/Shared%20Documents/SAU/INT_CRC_NGO_SAU_22412_E.pdf> accessed 10 August 2021.

¹⁰ Amnesty International Saudi Arabia Session on August 15, 2016 <file:///C:/Users/40189862/Downloads/INT_CRC_NGO_SAU_24886_E.pdf> accessed 02 February 2023.

¹¹ Convention on the Rights of the Child (adopted 20 November 1989, entered into force 02 September 1990) 1577 UNTS 3; The Kingdom joined this convention on the 26th June 1996.

¹² European Saudi Organisation For Human Rights (ESOHR) on the plight of juvenile victims on 1 November 2015.

awareness-raising programme for public officials.¹ However, in its concluding observations on KSA's 2016 report to the CRC Committee, the Committee raised concerns that further efforts are required to ensure the proper implementation of both domestic legislation and adherence to international conventions and standards.²

Saudi Arabia was also commended by the CERD Committee in the June 2018 concluding observations on the 2016 Saudi periodic report for establishing legislation and institutions to address violations and breaches of the crime of human trafficking.³ In particular, the response to the combined fourth to ninth periodic reports submitted on 10th October 2016 has welcomed the policy and legislative measures that include Cabinet Decision No. 207 of 12 September 2005 and Cabinet Decision No. 244 of 17 July 2009, both of which prohibit trafficking in persons. These are supported further by the Anti-Trafficking in Persons Act, by Royal Decree No. M/40 of 21 July 2009. Similar actions were the adoption of the Act on criminal procedure in 2013 and of the national plan for combating trafficking in persons offences for the period 2017 to 2020, as well as the Cabinet Decision No. 308 on Saudi Vision 2030, in 2016.⁴

In the 2018 the CERD Committee's concluding observations on the 2016 Saudi report, they also expressed regret concerning the lack of adequate information on the number of complaints of torture, ill-treatment and servitude among migrant workers and in particular female domestic workers.⁵ The CERD Committee expressed concern regarding the lack of clear data of the number of cases in which sponsors were punished for ill-treatment of migrant workers and the number of victims who received redress and who had been returned to their country of origin. This was particularly in light of information before the CERD Committee that reflected numerous allegations by migrant workers of physical abuse, servitude, sexual violence, rape and attempted rape.⁶ KSA was also called upon to guarantee access to justice for these victims and to reform the provisions of the sponsorship system (herein the Kafala system) as well as its labour legislation that governs domestic work.⁷ It was also emphasized by the CERD Committees in its 2018 concluding observations on the 2016 Saudi report that the KSA should provide data on complaints by victims filed with the authorities and investigations into such allegations along with the type of remedies accorded to victims and the punishment imposed on offenders.⁸

The concluding observations by CEDAW in response to the 2016 Saudi reports raised a series of concerns and observations relating to human trafficking, forced labour and sexual abuse.⁹ On human trafficking victims and forced labour, the Committee appreciated Saudi's accession to the Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially women and children, which supplements the UN Convention against Transnational Organized Crime, and the adoption of the Model Law against Human Trafficking (2006) and Anti-Trafficking in Persons Law (2009).¹⁰ Yet, the CRC Committee in its 2018 Concluding Observations on the KSA's 2016 report raised concerns about the reports of violations on trafficked and migrant workers, particularly female domestic workers.¹¹ CEDAW also expressed concern in its concluding observations in the 2016 Saudi report about victims of trafficking, exploitation and prostitution, who have sometimes been arrested, detained and deported.¹² This is considered to be in violation of human rights standards, including Article 6 of CEDAW, which urges States Parties to take all appropriate measures to suppress all forms of trafficking in women.¹³

Regarding the preventive measures implemented by Saudi Arabia, the CEDAW Committee in its 2018 concluding observations on KSA's 2016 report to this Committee, raised concerns as to whether these aspects incorporate human-rights-based approaches and whether impact assessments had been carried out and, if so, what their results had been.¹⁴ Other issues raised by the CEDAW Committee included the need for training to be given to law enforcement and border officials to enable them to identify and respond to victims of trafficking

¹ UN Doc CERD/C/SAU/CO/4-9, for 8th June 2018 (n 05) UN Doc CERD/C/SAU/CO/4-9; see also UN Committee on the Elimination of Discrimination against Women (CEDAW), 'UN Doc CERD/C/SAU/CO/3-4: see also UN Doc CERD/C/SAU/CO/2

² UN Committee on the Elimination of Discrimination against Women (CEDAW), 'Concluding observations on the combined third and fourth periodic reports of Saudi Arabia' (14 March 2018) UN Doc CERD/C/SAU/CO/3-4.

³ UN Doc CERD/C/SAU/CO/4-9, para 22 for 8th June 2018 (n 05); see also UN Doc CERD/C/SAU/4-9, for 10th October 2016. (n 10).

⁴ *ibid.*

⁵ UN Doc CERD/C/SAU/CO/4-9, for 8th June 2018 (n 05); see also UN Doc CAT/C/SAU/CO/2 for 2016 para 32 (n 26).

⁶ *ibid.*

⁷ UN Committee on the Right of the Child, 'Concluding observations on the combined third and fourth periodic reports of Saudi Arabia' (25 October 2016) UN Doc CRC/C/ SAU/CO/3-4 para 32.

⁸ UN Doc CERD/C/SAU/CO/4-9, para 22 for 8th June 2018 (n 05); see also (CERD/101 st session/FU/MJA/ks) (n 26).

⁹ UN (n 87); See also UN Committee on the Elimination of Discrimination against Women (CEDAW), 'Concluding observations on the combined third and fourth periodic reports of Saudi Arabia' (14 March 2018) UN Doc CERD/C/SAU/CO/3-4 paras 33 and 35.

¹⁰ UN Committee Against Torture, 'Concluding observations on the second periodic report of Saudi Arabia' (08 June 2016) UN Doc CAT/C/SAU/CO/2 para 38.

¹¹ UN Committee on the Right of the Child, 'Concluding observations on the report submitted by Saudi Arabia under article 12 (1) of the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography' (31 October 2018) UN Doc CRC/C/OPSC/SAU/CO/1 para 36

¹² UN Doc CERD/C/SAU/CO/3-4 for 2018, para 35 (n 63).

¹³ UN Committee on the Elimination of Discrimination against Women, 'Summary record of the 1582nd meeting' 69th session (02 March 2018) CEDAW/C/SR.1582 paras 57, 59, and 60.

¹⁴ *ibid.* See also UN Doc CERD/C/SR/1582 for 2018, para 57.

and the lack of any action or policy to collect and monitor data on trafficking victims.¹ Another area raised by the CEDAW Committee related to problems surrounding the low number of prosecutions of trafficking offences.² Hence, it was recommended by CEDAW that KSA should strengthen its legal protection of migrant workers and female domestic workers who are often the victims of such trafficking.³

In 2018 the Committee on the Rights of the Child in its observations on the 2016 report submitted by the KSA, welcomed the various measures taken by the State party in areas relevant to the implementation of the Optional Protocol to the Convention on the Sale of Children, Child Prostitution and Child Pornography.⁴ This included the creation of institutions, plans, programmes and laws such as The Child Protection Act (2014) and The Protection from Abuse Act (2014). These measures were intended to facilitate the implementation of the Optional Protocol.⁵ The ultimate goal of this protocol was to protect children from exploitation.

The CAT Committee, in its 2016 concluding observations on the 2015 Saudi report, were also concerned about the reported lack of independence of the judiciary.⁶ This, they say, hinders the full enjoyment of the rights enshrined in the Convention. In particular, Article 52 of the Saudi Basic Law stipulates that judges shall be appointed and discharged by the King. This raises legitimate concerns on the independence of the judiciary.⁷ This furthermore leads to concern about the high rate of migrants facing arbitrary detention, and the disproportionately high representation of migrants in the prison population.⁸

In the 2016 CAT Committee's concluding observations on KSA's 2015 report, the committee noted their appreciation regarding some of the legal safeguards implemented by the KSA against human rights violations, which include the right to legal counsel and the opportunity for detainees to contact a person of their choice under the 2013 Code of Criminal Procedure.⁹ However, concerns were raised by the 2016 CAT Committee's concluding observations on KSA's 2015 report that the laws do not specify a time frame within which officials must honour these rights. Likewise, the Committee commented that there are constraints on lawyers as they must obtain permission from investigators in order to gain access to their clients and there was also no guarantee of the right to confidential communication between lawyers and their clients.¹⁰ In addition, the laws allowed detainees to be held without charge for up to six months rather than requiring the authorities to promptly present detainees deprived of their liberty to a judge.¹¹ This is in violation of the provisions of the third paragraph of Article 9 of the International Covenant on Civil and Political Rights.¹² These are recognised human rights that the 2013 Criminal Code fails to address.¹³

Another failure in the area of human rights protection was indicated in the CAT Committee's 2016 concluding observations of KSA's 2015 report in the refusal by Saudi Arabia to grant operating licences to human rights organisations. The KSA was also found to have violated International Law when it arbitrarily suspended the activities of key civil rights groups such as the Saudi Arabian Civil and Political Rights Association, the Adala Center for Human Rights, the Union for Human Rights and the Monitor for Human Rights in Saudi Arabia.¹⁴ Furthermore, the 2016 CAT Committee's concluding observations raised concerns about the precedence of sharia law over international treaties.¹⁵

The Committee on the Right of the Child (CRC) in its 2018 Concluding Observations additionally pointed out the inadequacy of the system stipulated in the 2017 Saudi report regarding identifying victims such as

¹ *ibid.*

² UN Doc CEDAW/C/SAU/CO/3-4 para 35, for 2018, (n 63).

³ UN Doc CEDAW/C/SAU/CO/3-4 para 37, for 2018 (n 63).

⁴ UN Doc CRC/C/OPSC/SAU/CO/1 para 5, for 2018 (n 78)

⁵ UN Committee on the Right of the Child, 'Concluding observations on the report submitted by Saudi Arabia under article 12 (1) of the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography' (31 October 2018) UN Doc CRC/C/OPSC/SAU/CO/1 para 5.

⁶ UN Committee Against Torture, 'Concluding observations on the second periodic report of Saudi Arabia' (08 June 2016) UN Doc CAT/C/SAU/CO/2 para 21-22; see also UN Doc CAT/C/SAU/2 for 2015 para 38 (n 8).

⁷ *ibid.*

⁸ *ibid.*

⁹ UN Committee Against Torture, 'Concluding observations on the second periodic report of Saudi Arabia' (08 June 2016) UN Doc CAT/C/SAU/CO/2 para 14. Committee Against Torture; see also UN Doc CAT/C/SAU/2 for 2015 para 38 (n 8).

¹⁰ *ibid.*

¹¹ *ibid.*

¹² The third paragraph of Article 9 stipulates the following: " Anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release. It shall not be the general rule that persons awaiting trial shall be detained in custody, but release may be subject to guarantees to appear for trial, at any other stage of the judicial proceedings, and, should occasion arise, for execution of the judgement".

¹³ The Code of Criminal Procedure promulgated by Royal Decree No. (M/ 2) of 1435.

¹⁴ UN (n 101).

¹⁵ CAT/C/SAU/CO/2, 2016 and UN Committee on the Elimination of Discrimination against Women (CEDAW), 'Concluding observations on the combined third and fourth periodic reports of Saudi Arabia' (14 March 2018) UN Doc CEDAW/C/SAU/CO/3-4 para 9.8; see also Committee on the Elimination of All Forms of Racial Discrimination periodic report of Saudi CERD/C/SR.2622 and 2623), 2018; UN Doc CAT/C/SAU/2 for 2015 (n 8).

children sold into prostitution.¹ There is also an absence of protective mechanisms for children who are refugees, asylum-seekers or stateless, including unaccompanied and separated children. These children may be victims of human trafficking, as trafficked children are often used as camel jockeys, or beggars.² Saudi Arabia was further challenged by the 2018 CEDAW Committee's concluding observations which required ratification and implementation of other conventions such as:³

- a. The Convention Relating to the Status of Stateless Persons⁴
- b. The Convention on the Reduction of Statelessness⁵
- c. The International Covenant on Economic, Social and Cultural Rights⁶
- d. The International Covenant on Civil and Political Rights⁷
- e. The International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families⁸
- f. The International Convention for the Protection of All Persons from Enforced Disappearance⁹ and
- g. Domestic Workers Convention of the ILO Domestic Workers Organization¹⁰

The KSA's endorsement of these conventions would contribute to the prevention of the causes of human trafficking and modern slavery, as well as compliance with international human rights norms.

6. Reports by UN Special Rapporteurs on the Adequacy of Saudi Measures addressing Human Trafficking, and Reaction by Saudi Arabia

Reporting to the Human Rights Council of the General Assembly, the Special Rapporteur on extreme poverty and human rights described the state of the Saudi human rights situation as being insufficient due to the lack of credible and systematic facts and statistics on poverty, which are required as a foundation for rational and informed decision-making. The Special Rapporteur also noted that the multiple social assistance programmes controlled by several ministries, public authorities, and charities result in an inefficient and poorly integrated social protection system incapable of providing comprehensive aid to those in most need.¹¹ Additionally, the Special Rapporteur stated that government officials point to the ratification of several core international human rights treaties, but without adequate implementation.¹² KSA is, for instance, a member of the Human Rights Council and has a national human rights action plan, a sizeable human rights department in the Ministry of Islamic Affairs and various other initiatives. However it is noteworthy that some authorities tend to view certain aspects of human rights conventions as concepts that are not easily reconciled with the KSA's Islamic character or the dominant role of the ruling family.¹³

Despite these paradoxes, there are obvious social changes in the KSA driven by both external and internal factors owing to the fact that one third of the Saudi population today are foreigners, and its businesses are increasingly globalised.¹⁴ Other factors are the high proportion of elites that have spent extended periods studying overseas,¹⁵ as well as a citizenry that avidly consume the latest information and communications through the media. The reality is that Saudi Arabia is slowly becoming an integral and deeply connected part of the post-war global order in which the question of human rights is at the centre of every debate.¹⁶

¹ UN Committee on the Right of the Child, 'Concluding observations on the report submitted by Saudi Arabia under article 8 (1) of the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict' (31 October 2018) UN Doc CRC/C/OPAC/SAU/CO/1 para 31; see also UN Committee on the Rights of the Child (CRC), 'Consideration of reports submitted by States parties under article 8 (1) of the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict' (26 September 2017) UN Doc CRC/C/OPAC/SAU/1.

² *ibid.*

³ UN Doc CEDAW/C/SAU/CO/3-4, para 38-72, for 2018, para 35 (n 63); see also UN Doc CAT/C/SAU/CO/2 for 2016 para 32 (n 73).

⁴ Convention Relating to the Status of Stateless Persons (adopted 28 September 1954, entered into force 06 June 1960) 360 UNTS 117.

⁵ Convention on the Reduction of Statelessness (adopted 30 August 1961, entered into force 13 December 1975) 989 UNTS 175.

⁶ International Covenant on Economic, Social, and Cultural Rights (adopted 16 December 1966, entered into force 01 January 1976) 999 UNTS 3 (ICESCR).

⁷ International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171 (ICCPR).

⁸ International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (adopted 18 December 1990, entered into force 01 July 2003) A/RES/45/158.

⁹ International Convention for the Protection of All Persons from Enforced Disappearance (adopted 20 December 2006, entered into force 23 December 2010) 2716 UNTS 3.

¹⁰ C189 - Domestic Workers Convention, (adopted 16 June 2011, entered into force 05 September 2013).

¹¹ UNHRC, 'Report of the Special Rapporteur on extreme poverty and human rights on mission to Saudi Arabia' 35th session (28 April 2017) UN Doc A/HRC/35/26/Add.3 para 24.

¹² *ibid.*; see also Mohammed Atif, 'Government agencies disrupt human rights in Saudi Arabia' (*alarabiya*, 04 June 2012) <<https://www.alarabiya.net/articles/2012/06/04/218412.html>> accessed 1st September 2021.

¹³ *ibid.*, para 8.

¹⁴ General authority for statistics, Kingdom of Saudi Arabia. <https://www.stats.gov.sa/ar/indicators/1> access 30 August 2021.

¹⁵ UNHRC, 'Report of the Special Rapporteur on extreme poverty and human rights on mission to Saudi Arabia' 35th session (28 April 2017) UN Doc A/HRC/35/26/Add.3 para 8; see also UNGA, 'National report submitted in accordance with paragraph 15(a) of the annex to Human Rights Council resolution 5/1; Kingdom of Saudi Arabia' 31st session (20 August 2018) UN Doc A/HRC/WG.6/31/SAU/1 para 78.

¹⁶ UNHRC, 'Report of the Special Rapporteur on extreme poverty and human rights on mission to Saudi Arabia' 35th session (28 April 2017)

Pursuant to the Human Rights Council resolutions 8/11 and 26/3, reporting back on the Saudi government's policies and programmes relating to human rights and extreme poverty, in 2017 the Special Rapporteur visited Saudi Arabia and stated that the number of migrant workers who are often the victims of trafficking, forced labour or servitude had grown significantly. The Special Rapporteur pointed specifically to issues of female domestic workers, whose population has reached three million and who are major victims of exploitation.¹ Apart from being the poorest community in Saudi Arabia, domestic workers also face issues that include non-payment of salaries, confinement in homes and verbal, mental, physical and sexual abuse.² In every stage of these violations of domestic workers, the question of the *kafala* sponsorship system reappears as the major element that gives the employer enormous power to perpetrate acts of human trafficking.³

The Special Rapporteur on extreme poverty and human rights asserts that Saudi families rely heavily on cheap foreign workers.⁴ The number of migrant workers is seen as one of the prime factors complicating effective oversight in the state. In 2013 for instance, Saudi Arabia adopted improved regulations for domestic workers.⁵ Yet, there is evidence of a chronic lack of enforcement.⁶ Although the Ministry of Labour and Social Development claims to have undertaken inspections and investigated alleged violations, there are no publicly available statistics on its enforcement efforts and little tangible evidence of results. Also, the claims by Saudi Arabia that only a small minority of domestic workers had complaints about abuses contradicts other studies, which reveal much higher percentages. It is also concerning that prosecutions of offenders are very rare.⁷

The Rapporteur raised the alarming issue of the vulnerability of domestic workers, especially women, citing as an example statistics of the Congress of the Philippines, which stated that there were 358 Filipinas in the KSA in prison, detention centres, under house arrest, or with pending cases in criminal courts, in the first half of 2015.⁸ Since a quarter to a third of migrant workers from the Philippines are female domestic workers, it is safe to assume that a significant number of those women facing criminal charges were domestic workers. Moreover, female domestic workers, including those from countries such as Indonesia and Sri Lanka have been sentenced and executed in recent years, while others currently face the death penalty.⁹

Despite these allegations against the KSA, the government still claims that statutory and institutional frameworks are in place to guarantee protection from crimes of trafficking in persons without discrimination.¹⁰ It also claims that there is provision of medical, psychological and legal assistance to victims, with payment of compensation for damages and other forms of redress.¹¹ It further claims that the justice system upholds the principle of public trial. Referring to Article 155 of the Criminal Procedure Act, the KSA argues that court hearings are meant to be public, although courts may, in exceptional circumstances, 'hear the case or part thereof in camera or may prohibit certain groups from attending the hearings for reasons of security or maintenance of public morality or if it is deemed necessary for determining the truth'.¹² Saudi Arabia also makes reference to Article 182 (1) which provides that the verdict, after being signed by the judge(s) who delivered it, shall be read in open court.¹³ Despite the clarity and specification of these texts, there are judicial practices that make court sessions secret in cases other than those permitted by these texts. These secret sessions are a violation of these laws as well as of the Universal Declaration of Human Rights. It is vital that judges be urged to respect these

UN Doc A/HRC/35/26/Add.3 para 8.

¹ *ibid.*, para 51.

² UNHRC, 'Compilation of information prepared by OHCHR in accordance with paragraph 15 (b) of the annex to Human Rights Council resolution 5/1 and paragraph 5 of the annex to Council resolution 16/21: Saudi Arabia' 17th session (06 August 2013) UN Doc A/HRC/WG.6/17/SAU/2 para 61.

³ UNHRC, 'Summary prepared by the Office of the High Commissioner for Human Rights in accordance with paragraph 15 (b) of the annex to Human Rights Council resolution 5/1 and paragraph 5 of the annex to Council resolution 16/12: Saudi Arabia' 17th session (24 July 2013) UN Doc A/HRC/WG.6/17/SAU/3 para 70.

⁴ UNHRC, 'Report of the Special Rapporteur on extreme poverty and human rights on mission to Saudi Arabia' 35th session (28 April 2017) UN Doc A/HRC/35/26/Add.3 para 54; see also Abdulhafiz Mahboob, *Saudi Arabia is in the process of transformation* (e-kutub Ltd England 2019) 154.

⁵ Saudi Regulation of Domestic Workers and & the like 2013.

⁶ UNHRC, 'Report of the Special Rapporteur on extreme poverty and human rights on mission to Saudi Arabia' 35th session (28 April 2017) UN Doc A/HRC/35/26/Add.3 para 55.

⁷ *ibid.*, para 56

⁸ UNHRC, 'Report of the Special Rapporteur on extreme poverty and human rights on mission to Saudi Arabia' 35th session (28 April 2017) UN Doc A/HRC/35/26/Add.3 para 59.

⁹ *ibid.*

¹⁰ UN Committee on the Elimination of Discrimination against Women, 'Information received from Saudi Arabia on follow-up to the concluding observations on its combined third and fourth periodic reports' (28 May 2020) UN Doc CEDAW/C/SAU/FCO/3-4 para 6.

¹¹ UNHRC, 'National report submitted in accordance with paragraph 15(a) of the annex to Human Rights Council resolution 5/1; Kingdom of Saudi Arabia' 31st session (20 August 2018) UN Doc A/HRC/WG.6/31/SAU/1 para 70.

¹² Code of Criminal Procedure promulgated by Royal Decree No M/39 on 7/28/1422 and Cabinet Resolution No 200 on 7/14/1422, art 155.

¹³ Code of Criminal Procedure promulgated by Royal Decree No. M/39 on 7/28/1422 and Cabinet Resolution No. 200 on 7/14/1422, art 182; See UNHRC, 'National report submitted in accordance with paragraph 15(a) of the annex to Human Rights Council resolution 5/1; Kingdom of Saudi Arabia' 31st session (20 August 2018) UN Doc A/HRC/WG.6/31/SAU/1 para 57.

regulations.¹ It would also be possible to insert into these regulations a text that allows a secret judgment to be considered null and void if it is issued in a case which should have been heard in public. Such a text would ensure that these regulations are strictly respected.

Regarding combating torture and abuse, the KSA often points to Royal Decree No. 43 of 1958² and several other related laws, such as the Protection from Abuse Act and the Child Protection Act, and to the fact that the Convention against Torture became part of national law upon the accession of the KSA thereto.³ These provisions are meant to complement one another in order to build a strong statutory framework guaranteeing prevention of and protection from torture and abuse. Despite Saudi Arabia's assertions, a panel of UN special rapporteurs comprised of the Special Rapporteur on extreme poverty and the Special Rapporteur on the human rights of migrants expressed 'grave concern' regarding migrant labour conditions in KSA in 2021. The panel determined that a number of migrant domestic employees are subjected to situations resembling slavery and abuse, and that the treatment of migrant workers in KSA violates human rights, leaving migrants 'at the mercy of employers'.⁴ This demonstrates KSA's inadequacy in responding to these issues.

7. Consideration of Saudi Arabia Under the UN Human Rights Universal Periodic Review Mechanism

The Universal Periodic Review (UPR) is a unique mechanism of the United Nations Human Rights Council, which involves a review of the human rights records of all UN member states. The KSA has participated in all three cycles of the UPR, with the most recent review being in 2019.

In its national report for the first cycle of the UPR, the KSA did not mention human trafficking as a specific issue.⁵ However, the KSA did report on its efforts to combat all forms of violence against women and children, including measures to protect victims of domestic violence and child abuse. The KSA also reported on its efforts to improve the legal and institutional framework for human rights, such as the establishment of the Human Rights Commission in 2005.⁶ In the outcome of the first cycle of the UPR, several countries raised concerns about human trafficking in the KSA.⁷ These countries made recommendations for the KSA to take measures to prevent and combat human trafficking, protect victims, and prosecute traffickers.⁸ The KSA accepted some of these recommendations, including the recommendation to establish a national action plan to combat human trafficking.⁹

During the second cycle of the UPR, the KSA made specific reference to human trafficking in its national report.¹⁰ The KSA reported on its efforts to combat human trafficking through the implementation of the Anti-Trafficking in Persons Law, which criminalizes all forms of human trafficking and provides for the protection of victims.¹¹ The KSA also reported on its efforts to cooperate with international organizations and other countries to combat human trafficking.¹² However, several countries made recommendations for the KSA to strengthen its efforts to combat human trafficking, including through the effective implementation of the Anti-trafficking in Persons Law and the provision of protection and support for victims.¹³ Saudi Arabia accepted all 151 recommendations made by the delegations, including the recommendations related to the rights of women, children, and persons with disabilities.¹⁴ In response to the recommendation on the transmission of human rights culture, the KSA initiated awareness-raising campaigns. However, reports indicate that victims of human trafficking and exploitation of prostitution are sometimes arrested, detained, and deported.¹⁵ The Office of the Committee on the Elimination of Discrimination against Women urged the KSA to effectively enforce the

¹ *ibid.*

² UNHRC, 'National report submitted in accordance with paragraph 15(a) of the annex to Human Rights Council resolution 5/1; Kingdom of Saudi Arabia' 31st session (20 August 2018) UN Doc A/HRC/WG.6/31/SAU/1 para 59.

³ *ibid.*, para 133.

⁴ The report of the European Saudi Organisation for Human Rights, for more information, please see the following website; <https://www.esohr.org/en/> accessed 11 July 2022.

⁵ UNHRC, 'National report submitted in accordance with paragraph 15(a) of the annex to Human Rights Council resolution 5/1; Kingdom of Saudi Arabia' 4th session (11 December 2008) UN Doc A/HRC/WG.6/4/SAU/1.

⁶ *ibid.*

⁷ UNHRC, 'Report of the Working Group on the Universal Periodic Review: Saudi Arabia' 11th session (04 March 2009) UN Doc A/HRC/11/23 para is missing; see also UNHRC, 'Report of the Working Group on the Universal Periodic Review: Kingdom of Saudi Arabia' 11th session (9 June 2009) UN Doc A/HRC/11/23/Add.1 para 27.

⁸ *ibid.*

⁹ *ibid.*

¹⁰ UNHRC, 'National report submitted in accordance with paragraph 15(a) of the annex to Human Rights Council resolution 5/1; Kingdom of Saudi Arabia' 17th session (05 August 2013) UN Doc A/HRC/WG.6/17/SAU/1 para 10, 18, 74, 75, 90 and 99.

¹¹ *ibid.*

¹² *ibid.*

¹³ UNHRC, 'Report of the Working Group on the Universal Periodic Review: Saudi Arabia' 25th session (26 December 2013) UN Doc A/HRC/25/3 para 80, 131, 132 and 133.

¹⁴ UNHRC, 'Report of the Working Group on the Universal Periodic Review: Kingdom of Saudi Arabia' 25th session (28 February 2014) UN Doc A/HRC/25/3/Add.1* para 11-15.

¹⁵ UNHRC, 'Report of OHCHR on Summary of Stakeholders' submissions on Saudi Arabia' 17th session (14 July 2013) UN Doc A/HRC/WG.6/17/SAU/3 para 51.

Human Trafficking Law and adopt appropriate mechanisms to identify and assist victims of trafficking and provide them with the appropriate protection and justice.¹

Regarding the issue of strengthening the Saudi Human Rights Commission, several international treaty bodies recommended that the KSA work to align the principles set out by the Commission with the Paris Principles by providing it with adequate human and financial resources to effectively carry out its mandate.² This could mean giving the Commission a greater degree of independence from the authority of the executive branch, providing independent funding, and giving the Commission free access to all places of detention.³ Without these reforms, the Commission is still not in compliance with the principle governing the status of national institutions for the promotion and protection of human rights.⁴

The KSA emphasized that it undertakes regular and continuous studies of international human rights treaties and instruments in order to assess the appropriateness or feasibility of accession. A high-level governmental committee is currently looking into the possibility of acceding to the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights. However, the KSA contends that derogation from international treaties and consideration of the appropriateness of accession are rights guaranteed by international law.⁵

In the outcome of the second cycle of the UPR, several countries continued to raise concerns about human trafficking in the KSA. These countries made recommendations for the KSA to improve its efforts to combat human trafficking, including through the implementation of the Anti-trafficking in Persons Law and the provision of support and protection for victims. The KSA accepted many of these recommendations, including the recommendation to increase awareness-raising campaigns on human trafficking.⁶

During the third cycle of the UPR, the KSA again reported on its efforts to combat human trafficking in its national report. The KSA reported on the implementation of the Anti-Trafficking in Persons Law and the provision of support and protection for victims.⁷ The KSA also reported on its efforts to cooperate with international organizations and other countries to combat human trafficking. However, several countries continued to raise concerns about the effectiveness of the KSA's efforts to combat human trafficking, including the need for more resources and support for victims.⁸

In response to the third cycle, the KSA received a total of 258 recommendations, out of which it accepted 182, noted 31, and rejected 45. The KSA accepted recommendations related to women's rights, the rights of the child, and the rights of persons with disabilities. However, it rejected several recommendations related to freedom of expression and assembly, the abolition of the death penalty, and the recognition of the right to a nationality.⁹

The KSA reported on the measures it had taken to combat human trafficking, including the adoption of the Anti-Trafficking in Persons Law, the establishment of the National Committee for Combating Human Trafficking, and the provision of training for law enforcement officials on trafficking prevention, detection, and investigation.¹⁰ The KSA also reported on its efforts to provide protection and assistance to victims of trafficking, including the establishment of shelters and the provision of medical and psychological care.¹¹ However, reports suggest that victims of trafficking and exploitation through prostitution are sometimes arrested, detained, and deported, and the KSA was urged to effectively enforce the Anti-Trafficking in Persons Law and adopt appropriate mechanisms to identify and assist victims of trafficking and provide them with the appropriate

¹ Human Rights Council Working Group on the Universal Periodic Review, 'Compilation on Saudi Arabia' (2013) UN Doc A/HRC/WG.6/17/SAU/2 para 25-26.

² *ibid*; see also National Society of Human Rights, 'The Paris Principles' (NSHR, 2012) <https://nshr.org.sa/wp-content/uploads/2013/08/522_PDF.pdf> accessed 21 September 2021; the Paris Principles are based on a set of standards that NHRIs must comply with. These institutions must have a broad mandate in the promotion and protection of human rights. It must also have an administration independent of the government. It should enjoy complete independence in its legal, executive and financial fields, with a comprehensive and transparent selection or appointment process for its members. In addition to having adequate financial resources to carry out their duties, these committees should have sufficient powers to investigate and consider any maritime matter that falls within their jurisdiction.

³ *ibid*.

⁴ *ibid*.

⁵ UN Doc A/HRC/WG.6/17/SAU/1 para 19, for 2013 (n 23)

⁶ UNHRC, 'Report of the Working Group on the Universal Periodic Review: Kingdom of Saudi Arabia' 25th session (28 February 2014) UN Doc A/HRC/25/3/Add.1*.

⁷ UNHRC, 'National report submitted in accordance with paragraph 15(a) of the annex to Human Rights Council resolution 5/1; Kingdom of Saudi Arabia' 31st session (20 August 2018) UN Doc A/HRC/WG.6/31/SAU/1 para 28.

⁸ UNHRC, 'Report of the Working Group on the Universal Periodic Review: Kingdom of Saudi Arabia' 40th session (26 December 2018) UN Doc A/HRC/40/4 para 122.

⁹ UNHRC, 'Report of the Working Group on the Universal Periodic Review: Saudi Arabia' 40th session (26 December 2018) UN Doc A/HRC/40/4; see also UNHRC, 'Report of the Working Group on the Universal Periodic Review: Kingdom of Saudi Arabia' 40th session (26 February 2019) UN Doc A/HRC/40/4/Add.1 para 2.

¹⁰ UNHRC, 'National report submitted in accordance with paragraph 15 of the annex to Human Rights Council resolution 16/21; Kingdom of Saudi Arabia' 31st session (20 August 2018) UN Doc A/HRC/WG.6/31/SAU/1 para 28.

¹¹ *ibid*.

protection and justice.¹

In the outcome of the third cycle of the UPR, several countries made recommendations for the KSA to strengthen its efforts to combat human trafficking, including through the effective implementation of the Anti-Trafficking in Persons Law, the provision of support and protection for victims, and the allocation of more resources to combat trafficking. The KSA accepted many of these recommendations, including the recommendation to establish a national referral mechanism for trafficking victims.²

Based on the findings, the KSA has accepted many of the recommendations made by the delegations during the UPR cycles and has made some efforts to address human rights issues. However, greater improvements are required, particularly in areas related to human trafficking and the strengthening of the Saudi Human Rights Commission.

8. Analysis of the State's Engagement with the UN Bodies and Monitoring Processes

Saudi Arabia claims that it has developed institutional and organisational capabilities that play an essential role in providing support and protection for victims of trafficking and forced labour.³ For instance, CEDAW has acknowledged the growing number of civil society organisations that provide effective oversight of the rights of victims by receiving complaints and monitoring violations and abuses.⁴ However, feedback from UN Committees and from NGOs repeatedly suggests that the KSA has taken insufficient action to deal with these issues.⁵ Indeed, the question of human trafficking, forced labour, servitude and ill treatment, especially of migrant workers, has remained at the centre of every debate on human rights in Saudi Arabia.⁶ This is occurring despite the consistent claim by the KSA's officials of the great progress made by setting in motion a series of reforms for the protection of human rights in line with international conventions and Shari'a Law.⁷

The fact that instances of human trafficking persist suggests that, despite the laws and institutions that have been established, there is no concerted national plan to robustly combat trafficking.⁸ Another problem is that the claims made by Saudi Arabia are not supported by cogent data to show the nature of victims, the redress or support given, or even data on cases under investigation or those prosecuted and convicted.⁹ Often, the information given is generalised on the insistence that the institutions and policies put in place are working well.

While the various Committees of the UN and NGOs have expressed appreciation of Saudi Arabia's accession to various conventions that prohibit human trafficking, there are concerns about the reports of widespread torture, ill-treatment, servitude and trafficking, especially of migrant workers.¹⁰ One of the issues that keeps resurfacing during each review is the notorious sponsorship (Kafala) system, which continuously makes migrant workers vulnerable to abuse and exploitation. Several pleas have been made to reform this system but it still endures.¹¹ It is also contradictory to the various reports submitted by the Saudi government which claim that there are only a few cases of human rights violations.¹² This familiar claim by the KSA is opposed to most independent findings that reveal much higher percentages of victims of these violations.¹³ It is also

¹ UNHRC, 'Compilation on Saudi Arabia' (2018) UN Doc A/HRC/WG.6/31/SAU/2 paras 7-8; See also UNHRC, 'Report of OHCHR on Summary of Stakeholders' submissions on Saudi Arabia' 31st session (24 August 2018) UN Doc A/HRC/WG.6/31/SAU/3 para 3.

² UNHRC, 'Report of the Working Group on the Universal Periodic Review: Kingdom of Saudi Arabia' 40th session (26 December 2018) UN Doc A/HRC/40/4 para 122; see also UNHRC, 'Report of the Working Group on the Universal Periodic Review: Kingdom of Saudi Arabia' 40th session (26 February 2019) UN Doc A/HRC/40/4/Add.1 para 20.

³ UN Committee on the Rights of the Child, 'Consideration of reports submitted by States parties under article 44 of the Convention; Combined third and fourth periodic reports of States parties due in 2011' (08 April 2015) UN Doc CRC/C/SAU/3-4 para 50.

⁴ UN Committee on the Elimination of All Forms of Discrimination Against Women (CEDAW), 'Information received from Saudi Arabia on follow-up to the concluding observations on its combined third and fourth periodic reports' (28 May 2020) UN Doc CEDAW/C/SAU/FCO/3-4 para 8-10; *ibid.*

⁵ *ibid.*

⁶ *ibid.*

⁷ UN Committee on the Elimination of Discrimination against Women (CEDAW), 'Consideration of reports submitted by States parties under Article 18 of the Convention' (30 September 2016) UN Doc CEDAW/C/SAU/3-4 para 6 -28.

⁸ Reprieve's submission to the United Nations Special Rapporteur on Trafficking in Persons, especially Women and Children for the thematic report on the implementation of the non-punishment principle in the context of trafficking in persons in 2021, available at <<https://www.ohchr.org/Documents/Issues/Trafficking/submissions-HRC47/NGOs-and-academia/Reprieve-Pakistan-KSA.docx>>.

⁹ *ibid.*

¹⁰ UN Committee on the Elimination of Discrimination against Women, 'List of issues and questions relating to the combined third and fourth periodic reports of the Kingdom of Saudi Arabia' (31 July 2017) UN Doc CEDAW/C/SAU/Q/3-4 para 18-20; see also UN Committee on the Elimination of Discrimination against Women (CEDAW), 'List of issues and questions relating to the combined third and fourth periodic reports of Saudi Arabia' 69th session (09 November 2017) UN Doc CEDAW/C/SAU/Q/3-4/Add.1 para 79-80; see also, HRW, 'World report 2021: Saudi Arabia' (HRW) <<https://www.hrw.org/world-report/2021/country-chapters/saudi-arabia>> accessed 08 May 2022.

¹¹ UN Committee on the Elimination of Discrimination against Women, 'List of issues and questions relating to the combined third and fourth periodic reports of the Kingdom of Saudi Arabia' (31 July 2017) UN Doc CEDAW/C/SAU/Q/3-4 para 20; See also H el ene Harroff-Tavel and Alix Nasr, *Tricked and Trapped: Human Trafficking in The Middle East* (Geneva ILO 2013) 14-28.

¹² UN Committee on the Elimination of Discrimination against Women (CEDAW), 'List of issues and questions relating to the combined third and fourth periodic reports of Saudi Arabia' 69th session (09 November 2017) UN Doc CEDAW/C/SAU/Q/3-4/Add.1 para 55.

¹³ HRW, 'World report 2021: Saudi Arabia' (HRW) <<https://www.hrw.org/world-report/2021/country-chapters/saudi-arabia>> accessed 08 May 2022; See the Human Rights Commission, Report on the Status of Human Rights in the Kingdom of Saudi Arabia (Human Rights

concerning that the KSA is reluctant to ratify other human rights conventions such as the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights. While the KSA has made improvements in the last two decades in the amount of legislation and the number of institutions established to combat human trafficking and fight modern slavery, the levels of effectiveness and enforcement of these legal and policy mechanisms are still far from desirable.

9. Conclusion

The government of KSA has enacted legislation such as the Saudi Anti-Trafficking in-Persons Law of 2009,¹ the Saudi Labour Law of 2005² and the Regulation of Domestic Labour and Their Equivalent of 2013.³ KSA has also established institutions such as the Human Rights Commission,⁴ the National Society for Human Rights⁵ and the Saudi National Committee to combat abuses such as forced labour, human trafficking, servitude and other actions that result in exploitation. However, the system can still be viewed as being virtually ineffective as it maintains elements that contradict international human rights law and there is an unwillingness to put in place proactive monitoring, investigation and prosecution mechanisms. Consequently, there continue to be numerous reports of men and women from countries in South Central Asia, the Middle East, and Africa either travelling to or being trafficked to KSA as domestic workers or low-skilled labourers and subsequently falling into involuntary servitude.⁶ These victims also experience non-payment of wages, withholding of their passports, confinement to the workplace, long working hours without rest, deprivation of food, threats, physical and sexual abuse, and restrictions on movement, which are all attributes of exploitation.⁷

The issue of domestic worker abuse has been at the top of the list of criticisms of the KSA's human rights system because of the large number of foreign domestic workers from whom complaints and reports of abuses and violations often emerge.⁸ Recent records indicate that the majority of domestic migrant workers and personal assistants in Saudi Arabia are undocumented, suggesting that they were either trafficked or came illegally and hence are vulnerable to violations and abuse.⁹ Several reports also show the systematic detention of these victims of human trafficking with little provision for their support.¹⁰

Despite the series of reports submitted to UN Committees on the efforts being made, many observers believe the KSA government is not increasing its efforts sufficiently to combat severe forms of trafficking and forced labour, and has not made any commitments to taking additional steps to ensure that the circumstances which result in human trafficking are addressed.¹¹ Instead the plight of victims is compounded by a judicial system that is structured in a manner that falls short of international standards of due process, transparency and fairness. Judges often ignore allegations of torture, incommunicado detention, lack of access to legal advice and coerced confessions.¹² Likewise, evidence suggests that when some employers become aware of their workers' plans to file a complaint, the employer simply makes an accusation against the worker resulting in their arrest as

Commission: Riyadh, 1433 AH) 54; A large number of complaints are received by the Human Rights Association. One of the most serious complaints it receives relates to the issue of expatriate workers, from the workers themselves, their countries, or international institutions. Among the most serious and critical observations received by the Association related to the subject of this research which was considered by it to a violation of human dignity, including the following: the continuation of employers withholding the passports of migrant workers, the delay of some employers in paying wages, sometimes the worker's imprisonment inside the workplace for a long time, the migrant worker being prevented from changing an employer or job without the latter's approval, the migrant worker being prevented from leaving the Kingdom without the employer's consent, and workers suffering from the length of labour court proceedings and sessions. Delayed proceedings or postponement of justice hinders employees' option to depart or leave the country for good. This sometimes frustrates them to give up their complaints or accept an unfair settlement against them to end their proceedings.

¹ Saudi Anti-Trafficking in Persons Law (Royal Decree No M/40) 2009.

² Saudi Labour Law, Royal Decree M/51 (2006).

³ Saudi Regulation of Domestic Workers and & the like 2013.

⁴ The Human Rights Commission is a Saudi government organisation established by a decision of the council of ministers on September 12, 2005. It asserts independence from the Saudi government. The Commission's stated goal is to protect and promote human rights in accordance with international standards.

⁵ The National Society for Human Rights (NSHR) is a Saudi human rights organisation that is closely linked to and funded by the Saudi government. It was established on 10 March 2004, two years after the Human Rights First Society was denied a licence. Mufleh bin Rabayan al-Qahtani was the President of the NSHR in August 2018.

⁶ HRW, 'World report 2021: Saudi Arabia' (*HRW*) <<https://www.hrw.org/world-report/2021/country-chapters/saudi-arabia>> accessed 14 February 2022.

⁷ Romina Halabi, 'Contract Enslavement of Female Migrant Domestic Workers in Saudi Arabia and the United Arab Emirates' [2008] *Human Rights and Human Welfare* 43.

⁸ US Department of state, 'Trafficking in Persons Report' (June 2019) <<https://www.state.gov/reports/2019-trafficking-in-persons-report-2/saudi-arabia/>> accessed 13 January 2022.

⁹ The Global Detention Project and Migrant-Rights.org, 'Joint Submission to the UN Committee on the Elimination Of Discrimination against Women: Saudi Arabia' 69th session (19 February to 09 March 2018) <<https://www.globaldetentionproject.org/submission-to-the-un-committee-on-the-elimination-of-discrimination-against-women-cedaw-saudi-arabia/>> accessed 05 August 2019.

¹⁰ *ibid*.

¹¹ Sarah Zimmerman, 'Mending the protection and prosecution divide: looking at Saudi Arabia human trafficking flaws and possibilities' (2016) 15 *Washington University Global Study Law Review* 533.

¹² ADHRB (n 77).

a means to silence the victim.¹ Essentially, the KSA has weak mechanisms for regulating, enforcing and combatting human trafficking and forced labour and for the prosecution of offenders. Likewise, there are arbitrary provisions which tend to restrict oversight functions and independence of human rights activists and NGOs in the KSA through censorship in the name of regulating the activities of these civil society groups.

¹ *ibid*; See also, HRW, 'Bad Dreams: Exploitation and Abuse of Migrant Workers in Saudi Arabia' (*HRW*, 15 July 2004) <<https://www.hrw.org/report/2004/07/13/bad-dreams/exploitation-and-abuse-migrant-workers-saudi-arabia>> accessed 20 August 2019.