



Human Rights Watch Submission to the CEDAW Committee of Oman's Periodic Report for the 68th Session

October 2017

We write in advance of the 68th session of the Committee on the Elimination of Discrimination against Women, and its review of Oman's compliance with the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW). This submission addresses issues related to articles 1, 2, 3, 6, 9, 11, 15, and 16 of the Convention, and includes suggested recommendations to put to the Omani government.

1. Nationality (CEDAW articles 1, 9, and 11)

The CEDAW Committee in its last review of Oman in November 2011 called on the government to "withdraw its reservation to article 9 of the Convention and to amend its domestic laws to grant Omani women equal rights with men in regard to transmission of their nationality to their children who have foreign fathers and to their foreign husbands."¹

Oman still does not allow women to transmit nationality to their children on an equal basis with men. Article 18 of the new Omani Nationality Law, promulgated by Royal Decree No. 38/2014, allows an Omani woman to transmit nationality to her children from a marriage to a foreign man only upon becoming widowed, divorced, or when her husband has been absent or abandoned them for at least 10 consecutive years.² Moreover, their marriage should have obtained approval from the ministry before it took place, and she should have custody of the child.³ Omani men can transmit Omani nationality to their children automatically, regardless of whether they are married to an Omani or non-Omani woman.

While both Omani men and women may confer nationality to their foreign spouses, the foreign spouse of an Omani woman is required to have been married and lived in Oman for more than 15 years before he can apply, whereas an Omani man's foreign spouse is required to have lived in Oman for more than 10 years.⁴

2. Personal status laws (CEDAW articles 1, 2, 15 and 16)

¹ CEDAW Committee, Concluding observations: Oman, Fiftieth session 3 – 21 October 2011, UN Doc. CEDAW/C/OMN/CO/1, November 4, 2011, para. 33-34, http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CEDAW%2fC%2fOMN%2fCO%2f1&Lang=en (accessed January 21, 2017).

² Omani Nationality Law, promulgated by Royal Decree No. 38/2014, article 18, <http://gulfmigration.eu/oman-sultans-decree-no-38-of-2014-issuing-the-omani-citizenship-law-2/> (accessed January 23, 2017).

³ Omani Nationality Law, art. 18 also provides that the child should also have resided in Oman for at least 10 continuous years, possess sound conduct and character; shall not have been convicted of any crime or offence in breach of trust, unless rehabilitated; and the minor's guardian, if any, shall express in writing his non-objection of the child acquiring Omani citizenship.

⁴ Omani Nationality Law, arts. 15-16. Note other stringent conditions apply to both the foreign husband and the foreign wife.

The CEDAW Committee, in its concluding observations in 2011, called on Oman to reform its Personal Status Law regarding matters of property, divorce, inheritance, and the requirement of a *wali* (male guardian)'s permission for a woman to enter into marriage.⁵ However, Oman has not done so, and its Personal Status Law still discriminates against women.

Oman's Personal Status Law requires a woman's male guardian to contract her into marriage, a condition not imposed on men.⁶ Oman has issued Royal Decree No. 55/2010, which permits a woman to appeal to the sharia court chamber in the Supreme Court if her guardian refuses to grant her permission to marry. It also allows a woman to appeal a judgment directly to the Sultan. However, by not repealing the requirement of a male guardian's permission, the law places a burden on women who wish to marry independently of their guardian's wishes. The Personal Status Law also requires two Muslim men to act as witnesses to the marriage.⁷

Article 38 of the Personal Status Law recognizes a husband as the head of a household.

A husband can divorce his wife without cause, whereas women who seek divorce must apply to the courts, and only allowed to do so on limited ground such as if he has abandoned them or failed to provide financial support.⁸ A woman can also obtain a *khula* divorce, which is a divorce in which she must pay compensation for her husband's consent to the divorce.⁹

Women are also discriminated against in obtaining guardianship over their children. The law recognizes fathers as the legal guardians of the children, regardless of whether a court has ordered that the children should live with the mother.¹⁰

In matters of inheritance, women inherit half as much as male heirs.¹¹ For instance, a husband inherits a fixed share of one half of the estate of his wife if there is no heir, and one quarter of the estate of his wife if there is an heir. However, a wife inherits a fixed share of one quarter of her husband's estate if there is no heir, and one eighth of the estate if there is an heir.

3. Violence against women and girls (CEDAW articles 1, 2, 3, and 16)

Oman has failed to implement the CEDAW Committee's recommendations on violence against women such as adopting a specific law on violence against women, including domestic violence.¹²

Oman has no legislation to combat domestic violence. Article 37 of the Personal Status Law stipulates that a wife has the right not to be physically or mentally abused by her husband. While the general penal code provisions could apply to physical forms of domestic violence, there is no publicly available information on how many successful prosecutions have taken place using these provisions in cases of domestic violence.¹³

⁵ CEDAW Committee, Concluding observations: Oman, Fiftieth session 3 – 21 October 2011, UN Doc. CEDAW/C/OMN/CO/1, November 4, 2011, para. 45.

⁶ Personal Status Law, Royal Decree No. 32 of 1997, arts.19-20.

⁷ Personal Status Law, art. 28.

⁸ Personal Status Law (No. 32 of 1997), arts. 98–114.

⁹ Personal Status Law (No. 32 of 1997), art. 95.

¹⁰ Personal Status Law (No. 32 of 1997), arts. 158-169.

¹¹ Personal Status Law (No. 32 of 1997), arts. 243, 244, 245, 246 and 254.

¹² CEDAW Committee, Concluding observations: Oman, Fiftieth session 3 – 21 October 2011, UN Doc. CEDAW/C/OMN/CO/1, November 4, 2011, paras. 27-28.

¹³ Penal Code, promulgated by Royal Decree No. 7/74, arts. 247-249.

The Ministry of Social Development has opened a shelter for domestic violence survivors, however, it is reported by local press to be limited to Omani women and girls, and expatriate women married to Omani nationals.¹⁴

Rape is criminalized under article 218 of the Penal Code relating to “indecent assault,” but it excludes marital rape.¹⁵

Furthermore, non-penetrative forms of sexual assault and sexual harassment are not criminalized in the penal code.

Human Rights Watch interviewed nineteen Tanzanian former domestic workers in Oman who described sexual harassment and sexual assault including attempted rape and in one case, anal rape. Women described employers and other male family members groping them, exposing themselves to them, chasing them around the house, and coming into their rooms late at night to harass them. They also said the perpetrators would threaten to dismiss them, or inform their wives that the domestic worker had seduced them to try to force them to sleep with them.

Several workers said they feared dismissal if they complained to their female employers, which occurred in one case, or they could not communicate due to language barriers. When they did complain, female employers did not believe them or placed the burden on them to avoid the harassment.

A former Tanzanian embassy in Oman official told Human Rights Watch that the embassy in Oman referred some domestic workers who reported rape to the Omani police. However, these cases did not move forward either because the woman refused to undergo the forensic test as the forensic doctor was a man, or the police, after questioning her, did not believe the woman had been raped.

The World Health Organization’s “Guidelines for medico-legal care for victims of sexual violence” provide that in cases of sexual assault, priority should be placed on the survivor’s health and wellbeing. Ideally the same health practitioner should provide the forensic examination and health services at the same visit, and the authorities should ensure “that female nurses or physicians are available whenever possible. If necessary, efforts to recruit female examiners should be made a priority.”

The UN Office on Drugs and Crime’s Handbook on Effective Police Responses to Violence against Women state that investigations, and the collection of related evidence for rape and other acts of sexual assault cases require sensitivity. They call for the authorities to take steps “to respect the victim, her privacy, and the trauma she has undergone, while minimizing the intrusion into her life.”

Reporting rape to Omani authorities also carries risks. When rape is not proven, the reporting of rape itself can be considered a confession of sexual relations prompting charges of *zina* (sexual relations outside of marriage) against the rape victim.

¹⁴ “Shelter from the storm of abuse for women in Oman,” *Times of Oman*, January 7, 2015, <http://timesofoman.com/article/45953/Oman/Shelter-from-the-storm-of-abuse-for-women-in-Oman> (accessed January 23, 2017).

¹⁵ Penal Code, promulgated by Royal Decree No. 7/74, article 218 states: “Any person who has intercourse with a female outside of marriage without her consent through coercion, threat or subterfuge, or who abducts a person using the same means with the intent of committing fornication, or who commits fornication with a person under the age of 15 or with a person who has a physical or mental deficiency, shall be punished by imprisonment of 5 to 15 years, even if the act occurs without coercion, threat or subterfuge or if the perpetrator is a parent or guardian of the victim, or has power over the victim, or is an attendant of the victim.”

In Oman, *zina* carries a penalty of three months to one-year imprisonment, or one to three years' imprisonment if the accused is married.¹⁶ However, for a prosecution to proceed, the spouse or the guardian of the accused must file an official complaint, or if there is no guardian found, a prosecutor can still file a case.¹⁷ In practice, the Tanzanian official told Human Rights Watch that the police calls the wife of the accused who then typically pardons her husband at the station. The Tanzanian embassy in Oman also writes to the domestic worker's husband in Tanzania to confirm in writing that he does not wish to file a *zina* complaint against her.

Female genital mutilation (FGM) continues to take place in Oman and has not been explicitly criminalized. A 2014 study conducted for the Stop FGM in Middle East campaign reported that 78 percent of women interviewed said they had been subject to FGM, with the vast majority conducted at home. It also indicated that FGM is still widely practiced, with 64 percent of interviewees stating that their families still practiced FGM.¹⁸

4. Migrant domestic workers (CEDAW Articles 1, 2, 6, 11, and 15)

Oman has done very little to conform to CEDAW's recommendation in its last review to "strengthen the legal protection of foreign workers by adopting policies aimed at preventing abuses; prosecute and sentence the offenders in such crimes, including the recruiters and employers; raise awareness of workers' rights among all, including migrant and domestic workers, and ensure their access to legal aid and complaint mechanisms and provide necessary assistance and victim protection."¹⁹

Oman reported hosting a total of 169,456 female migrant domestic workers in July 2017.²⁰ Most are from the Philippines, Indonesia, India, Bangladesh, Sri Lanka, Nepal, and Ethiopia.

A 2016 Human Rights Watch report, based on interviews with 59 migrant domestic workers, found workers faced multiple forms of abuse and exploitation at the hands of their employers or recruitment agents. Most said that their employers had confiscated their passports, making it harder to leave them if their employers are abusive. Many said their employers did not pay them their full salaries, forced them to work excessively long hours without breaks or days off, or denied them adequate food and living conditions. Some said their employers physically or sexually abused them.²¹

In some cases, workers described abuses that amounted to forced labor or trafficking. They said they applied for jobs in the United Arab Emirates (UAE), but after arriving there, recruitment agents or employers forced or coerced them into crossing the porous border into Oman with employers who exploited and abused them. Employers typically pay fees to

¹⁶ Oman Penal Code, promulgated by Royal Decree No. 7/74, arts. 225-226. The criminalization of adult consensual sexual relations violates international human rights law including the rights to privacy, nondiscrimination, physical autonomy, and health.

¹⁷ Oman Penal Code, promulgated by Royal Decree No. 7/74, art. 227.

¹⁸ "Female Genital Mutilation in the Sultanate of Oman," January 2014, <http://www.stopfgmmideast.org/wp-content/uploads/2014/01/habiba-al-hinai-female-genital-mutilation-in-the-sultanate-of-oman1.pdf> (accessed January 24, 2017.) See also "The Deepest Cut," *Y – the Pulse of Oman*, February 5, 2014, <https://www.y-oman.com/2014/02/deepest-cut/> (accessed January 23, 2017).

¹⁹ CEDAW Committee, Concluding observations: Oman, Fiftieth session 3 – 21 October 2011, UN Doc. CEDAW/C/OMN/CO/1, November 4, 2011, para. 43.

²⁰ Oman National Centre for Statistics and Information, "Monthly Statistical Bulletin," August 2017, https://www.ncsi.gov.om/Elibrary/LibraryContentDoc/bar_202017%اغتسطس_da60168d-3ef2-4cfd-9de7-9d7cfc6eb083.pdf p.21, (accessed September 29, 2017).

²¹ See Human Rights Watch, "*I Was Sold*": Abuse and Exploitation of Migrant Domestic Workers in Oman, July 2016, <https://www.hrw.org/report/2016/07/13/i-was-sold/abuse-and-exploitation-migrant-domestic-workers-oman>.

recruitment agencies to secure domestic workers' services, and several workers said that their employers told them they had "bought" them.

Such abuses are facilitated by Oman's restrictive *kafala* (sponsorship) immigrant labor system and lack of labor law protections for domestic workers. The *kafala* system ties migrant domestic workers' visas to their employers. They cannot work for a new employer without the current employer's permission in the form of a "no-objection certificate" or "release", even if they complete their contract or their employer is abusive. Human Rights Watch interviewed workers who said they had to forego their salaries as a condition for their "release," or work for a new employer who repaid recruitment costs to the initial employer. In some instances, the police and Ministry of Manpower officials helped enforce this practice.

Oman noted in its response to the CEDAW Committee's list of issues that in 2014 the Ministry of Manpower received 439 requests for change of employers, and "took legal action." Such requests would have required the worker's initial employer to consent.²²

Oman's labor law also explicitly excludes domestic workers, and regulations issued in 2004 on domestic workers provide only basic protection.²³ The regulations do not establish standards for working hours, weekly rest days, annual vacation, or overtime compensation. The regulations do not stipulate any penalties for employers' breaches of its provisions.

Moreover, the 2011 standard employment contract for domestic workers—which mandates one day off per week and thirty days of paid leave every two years—still falls far short of the protections offered by Oman's labor law.²⁴

While Oman prohibits employers from confiscating workers' passports under a 2006 Ministry of Manpower circular, it is not clear whether Omani law actually allows for criminal sanctions or whether any have ever been imposed.²⁵ While the government reported handling hundreds of complaints of passport retention, there is no mention on whether any of these cases involved domestic workers or whether employers faced sanctions for passport confiscation.²⁶

Forced labor is not criminalized in the penal code but under the country's labor law, which excludes domestic workers.²⁷ Labor inspectors have no mandate to check on domestic workers, and as such, there are no inspections for working conditions of domestic workers in private homes.

²² "List of issues and questions in relation to the combined second and third periodic reports of Oman: Replies of Oman," U.N. Doc. CEDAW/C/OMN/Q/2-3/Add.1, July 19, 2017, para. 74.

²³ Labour Law, issued by Royal Decree no.35/2003, 2012, art. 2(3), https://www.manpower.gov.om/Portal/Englishpdf/Service/toc_en.pdf (accessed June 21, 2016), and Ministerial Decision no. 189/2004 on labor rules and conditions for domestic employees, issued on June 16, 2004, available in Arabic at <http://www.omanlegal.net/vb/showthread.php?t=14362> (accessed January 23, 2017), and <http://www.s-oman.net/avb/showthread.php?t=701180> (accessed January 23, 2017).

²⁴ Ministry of Manpower Decision no. 1/2011 Organizing manpower of non-Omanis, "Employment Contract for Domestic Workers and Similar Jobs," <http://www.omanlegal.org/law/omanlegal/2011-1-1-1.pdf> (accessed January 23, 2017), p. 13.

²⁵ The 2006 circular provides no penalties for noncompliance. Human Rights Watch could not find this circular on a government website. The text of the Ministry of Manpower Circular no. 2/2006 of 2006 (in Arabic) is reproduced on this website: <http://avb.s-oman.net/archive/index.php/t-1285676.html> (accessed January 23, 2017).

²⁶ "List of issues and questions in relation to the combined second and third periodic reports of Oman: Replies of Oman," U.N. Doc. CEDAW/C/OMN/Q/2-3/Add.1, July 19, 2017, para. 73; and US State Department, Office to Monitor and Combat Trafficking in Persons, "2017 Trafficking in Persons Report," June 2017, <https://www.state.gov/documents/organization/271344.pdf> (accessed October 7, 2017), p.309.

²⁷ Royal Decree no. 74/2006 amending some provisions of the Labour Law, adds art. 3(bis) under chapter 2 of the Labour Law: "The employer is prohibited to impose any form of compulsory or coercive work," and art. 123: "Failure to observe article 3(bis) will result in imprisonment of a maximum of one month and/or a fine of 500 OMR. The penalty will be doubled in case of recurrence." See text of decree (in Arabic) on Oman Legal website, http://omanlegal.org/law/Resault.aspx?law_file=74-2006.pdf (accessed January 23, 2017), and Oman's labor law at Ministry of Manpower website, <https://www.manpower.gov.om/Portal/Laborlaw.aspx> (accessed January 23, 2017).

Domestic workers who said they escaped abusive situations have few options. Some said they sought help from recruitment agents, but that the agents confined them to their offices, beat them, and then forced them to work for new families. Some domestic workers who turned to the police for help said officers dismissed their claims out of hand, and returned them to employers or recruitment agencies. In several cases, workers said that employers beat them after the police returned them.

Domestic workers who leave their employer's homes also risk their employers reporting them as "absconded," an administrative offense that can result in deportation and a ban on future employment, or even a criminal complaint against them.

Some embassy officials discourage domestic workers from pursuing the labor dispute-settlement process or the courts because the process is lengthy and likely to fail, and the workers cannot work in the meantime. The Omani labor dispute-resolution mechanism at the Ministry of Manpower has no power to force employers or agents to attend dispute-resolution sessions. Workers told Human Rights Watch that either agents did not turn up to dispute resolution sessions, or officials did not believe their stories of abuse and sided with employers. Many workers return home unpaid and without justice.

The number of prosecutions and convictions for trafficking into forced labor is low. Instead, there has been a decrease in investigations and prosecutions for trafficking, with the US Trafficking in Persons report noting that the government reported investigating only five sex trafficking prosecutions in 2015, none on forced labor, three prosecutions involving nine suspects, and no convictions.²⁸ In 2016, the authorities investigated one sex trafficking and one forced labor case, and prosecuted nine people—three for sex trafficking and six for forced labor, but no convictions to date.²⁹ There is no publicly available information on whether any of the prosecutions or convictions relate to trafficking of women into domestic servitude. The US Trafficking in Persons report noted that the "government generally treated forced labor cases, including involving domestic workers, as labor law violations rather than criminal offenses."³⁰

5. Recommendations

We encourage the Committee to use the upcoming review to urge the government of Oman to:

- Amend Omani Nationality Law No. 38/2014 to stipulate that an Omani citizen is any person born to an Omani father or an Omani mother.
- Amend the Personal Status Law to ensure that women have equal rights to enter marriage, during marriage, in obtaining a divorce, in guardianship over their children, and in inheritance.
- Compile and publish national studies and statistics on violence against women, including on domestic violence, sexual violence, and female genital mutilation.
- Adopt legislation on violence against women, including to prevent domestic violence, prosecute abusers, and assist survivors.
- Ensure provision of emergency shelters for all women and girls at risk of domestic violence, and provide assistance for long-term housing to those that need it.

²⁸ US State Department, Office to Monitor and Combat Trafficking in Persons, "2016 Trafficking in Persons Report," June 2016, <http://www.state.gov/documents/organization/258881.pdf> (accessed June 30, 2016), p. 293.

²⁹ US State Department, Office to Monitor and Combat Trafficking in Persons, "2017 Trafficking in Persons Report," June 2017, <https://www.state.gov/documents/organization/271344.pdf> (accessed October 7, 2017), p.309.

³⁰ Ibid.

- Amend the penal code to criminalize marital rape, and to criminalize female genital mutilation, non-penetrative forms of sexual assault, and sexual harassment with adequate penalties. Decriminalize consensual adult sexual relations.
- Adopt guidelines in line with WHO guidelines on medico-legal care for victims of sexual violence. In particular, ensure that female nurses or physicians are available whenever possible, and recruit female examiners. Ensure that a finding of a forensic examination that there are no genital injuries visible--because she did not resist, through fear of force or harm--does not disprove her claim.
- Provide gender-sensitive training to police officers and prosecutors on gender-based violence including rape and sexual assault.
- Reform the labor law so that domestic workers are provided with the same legal protections as other workers, including on hours of work, payment of wages, salary deductions, rest days, paid holidays, and workers' compensation.
- Reform the *kafala* (visa-sponsorship) system, to allow workers to change employers and leave the country without employer consent before and after completing their contract. Remove penalties for "absconding."
- Prohibit employers and agencies from forcing workers to pay recruitment costs if they leave before their contract is finished or to work without pay for a new employer who can repay the amount.
- Pass a law explicitly criminalizing passport confiscation by employers and agents, including penalties, and rigorously enforce this law.
- Set a standard minimum wage under law for all domestic workers, including an hourly minimum, and end wage discrimination against domestic workers on the basis of nationality or gender.
- Train police officers, public prosecution officials, and labor ministry officials handling domestic worker complaints to identify, investigate, and prosecute cases of forced labor, slavery, and trafficking in persons in all forms.
- Strengthen and expedite dispute resolution for domestic worker complaints.
- Criminalize forced labor under the penal code and ensure there are adequate penalties.
- Improve provision of emergency shelters and other assistance by establishing government-sponsored shelters for domestic workers fleeing abuse, or provide financial support for private shelters. Publicize the existence and contact information of shelters and other assistance among domestic workers.
- Ratify the International Labour Organization's Domestic Workers Convention, and the International Convention on the Protection of the Rights of All Migrant Workers and their Families.