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**The Role of the Kingdom of Saudi Arabia's Interaction and Engagement with
International Human Rights Law on Improving and Developing Its Human Rights
Law**

By Dhoha Ameen Alharbi

A Thesis presented for the degree of Doctor of Philosophy



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2019

ABSTRACT

The Kingdom of Saudi Arabia (KSA) has been heavily criticised for not following international human rights law (IHRL) norms, yet a closer examination of changes in the Kingdom in the period 1990 to 2016 show there has been a significant change in approach. This change has occurred even while KSA has maintained that it is only bound by IHRL norms consistent with *Shari'ah* (Islamic law). In this context, using an empirical examination, this thesis provides original insights into the processes by which the KSA's engagement with IHRL influences its domestic law, and assesses the adequacy of existing theoretical models in explaining how international law influences a State's law and practices. Having identified lacunas in the existing literature and empirical research base, this thesis considers four main questions: What changes have there been in the KSA's law and practice that reflect a greater engagement with IHRL?; What are the factors to which key actors attribute these changes?; To what extent are the changes due to the KSA's engagement with IHRL?; and Have the IHRL mechanisms been useful from the perspective of promoting and protecting women's rights? In-depth, semi-structured interviews were conducted with relevant stakeholders. The research found that there has been a significant change in the Kingdom's approach of dealing with the IHRL: a number of developments in the KSA's domestic law regarding women's political and civil rights are the result of its interaction with IHRL, in particular its ratification of the Convention of the Elimination of All Forms of Discrimination against Women (CEDAW). Alongside the role of IHRL, the study emphasises the role of the State's policymakers in triggering the domestic changes that comply with international norms. The changes in domestic law were also attributed to other internal factors including political and social environment factors. The research concludes that the process of the interaction between the Kingdom and IHRL mechanisms is best explained by the transnational legal process model. Importantly, the study finds that the internalisation of the norms of IHRL into the KSA's domestic law is more likely to be effective in relation to practices that are seen as influenced by cultural tradition rather than those practices that are viewed as having as basis in religion. This research recommends, because of the importance of Islamic law, further empirical research on the role of Muslims states' interaction with IHRL on promoting human rights utilising mixed-methods approaches incorporating both large-samples of interviewees and further in-depth case studies.

بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ

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LIST OF TECHNICAL ABBREVIATIONS

Abbreviation	Meaning
CAT	Convention against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment
CDHRI	Cairo Declaration on Human Rights in Islam
CEDAW	Convention on the Elimination of All Forms of Discrimination against Women
CERD	International Convention on the Elimination of All Forms of Racial Discrimination
CIL	Customary international law
CRC	Convention on the Rights of the Child
CSW	Commission on the Status of Women
EU	European Union
GCC	Gulf Cooperation Council
HR	Human Rights
HRC	UN Human Rights Council
ICESCR	International Covenant on Economic, Social and Cultural Rights
ICCPR	International Covenant on Civil and Political Rights
IDCNDCC	Interreligious Dialogue Centre and National Dialogue Centre
IHRL	International Human Rights Law
IHRT	International Human Rights Treaty
IL	International Law
INGOs	International non-governmental organisations
IPU	International Parliamentary Union
IWRAW	International Women's Rights Action Watch
KSA /SA	Kingdom of Saudi Arabia/ Saudi Arabia
NSHR	National Society for Human Rights
OHCHR	UN High Commissioner for Human Rights
OIC	Organisation of Islamic Conference
SHRC	Saudi Human Rights Commission
UDHR	Universal Declaration of Human Rights
UN	United Nations
UNGA	United Nations General Assembly
UPR	Universal Periodic Report
US	United States America
VCLT	Vienna Convention on the Law of Treaties

EXPLANATIONS OF ARAB'S CONCEPTS

Concept	Terminology
<i>Amirs</i>	Princes
<i>Asir</i>	Name of region in Saudi Arabia
<i>Asl</i>	Basis
<i>Bay'a</i>	Citizens shall give the pledge of allegiance
<i>Fatwas</i>	Islamic scholars' interpretations
<i>Fiqh</i>	Understanding Islamic texts
<i>Hadiths</i>	All Prophet Muhammad (peace be upon him), statement, an act, a report, a moral character, or a biography of him, whether before or after the mission.
<i>Hasa</i>	Name of city in Saudi Arabia
<i>Ijma</i>	Consensus
<i>Ijtihad</i>	Individual reasoning
<i>Illah</i>	Cause
<i>Karâmah</i>	Human dignity
<i>Majlis al-Shura</i>	Consultative Council
<i>Musâwât</i>	Equality of all human beings
<i>Qawammah</i>	Wardship
<i>Qiyas</i>	Analogy
<i>Shari'ah</i>	Islamic Law
<i>Sunna</i>	The traditions of the Prophet Muhammad
<i>Ulama</i>	Clergy
<i>Walee</i>	Guardianship

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Declaration

I hereby declare that no portion of the work that appears in this study has been used in support of an application of another degree in qualification to this or any other university or institutions of learning.

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Dedication...

*To the spirit of my beloved Dad who departed this life at the beginning of this
journey...*

Introduction

This thesis builds an empirical analytical framework through which to analyse the role of the Kingdom of Saudi Arabia's (KSA) engagement with international human rights law (IHRL) and its mechanisms in improving the Kingdom's domestic human rights law in the period 1990 to 2016. In particular, it evaluates the impact of this interaction in terms of improving women's rights. In addition, the thesis assesses which theories of international law provide the best explain the interaction between IHRL and the Kingdom's law. In this respect, the major objective of this research is to investigate the role of the KSA's engagement with IHRL in influencing the changes that have taken place in domestic law in relation to women rights over the 26 years since 1990 and to provide further recommendations to improve and protect human rights, whether in the national law of the state or in the UN human rights law in their respective legislative frameworks.

To set the scene for the study, the overall structure of the introduction is as follows: motivation for the research; contributions of the study to the relevant literature; the aims, objectives and questions of the research; an introduction to the methodology adopted; and an overview of the research.

1. Motivation for the Research

In recent decades, IHRL has become an integral part of international law and consequently has received considerable attention. Against this background, a wide range of views have been offered to analyse its role in terms of protecting individual rights, as well as in assessing its role in terms of a State's obligations towards the IHRL rules. Thus, its precise role and its effectiveness in promoting and protecting human rights has become a prominent issue in the current international human rights discourse. This importance reflects the increase in recognition of and concern about violations of human rights in general and women's rights in particular. In this context, since the adoption of the Universal Declaration of Human Rights (UDHR)¹ in 1945, a series of human rights instruments have been, created such as the International Covenant on Civil and Political Rights (ICCPR),² and the Convention on the

¹ The UNHR regime was created in reaction to the horrific violation of human rights that occurred during the Second World War. See <<http://www.un.org/en/universal-declaration-human-rights/>> accessed 17 July 2016.

² The ICCPR was open for signature, ratification, and accession via General Assembly Resolution 2200A (XXI) of 16 December 1966, and finally entered into force on 23 March 1976, in accordance with Article 49. See 'International Covenant on Civil and Political Rights', <<http://www.ohchr.org/EN/ProfessionalInterest/Pages/CCPR.aspx>> accessed 5 September 2015.

Elimination of All Forms of Discrimination against Women (CEDAW).³ The aim of these instruments, along with others, is, in theory, to promote and protect individuals' rights and eliminate all types of discrimination based on various grounds including race, ethnicity, religion, or gender. Some of the rights in these instruments became universal norms for human rights forming part of customary international law (CIL). Despite the fact that the IHRL covenants, treaties and legislations have been promulgated and conferences held, in some cases signing "a treaty is associated with worse human rights practices".⁴ The reasons why such violations occur are the subject of considerable debate. Therefore, the question about the effectiveness of IHRL is continually discussed. Does it help states parties develop positive human rights' practises? And, if there is an impact, does this happen because of the IHRL itself or because the state itself engages with IHRL? And, what is the mechanism by which this influence occurs? It is important to recognise that engagement with IHRL varies amongst states.⁵ Some states place considerable importance on their interaction with and acceptance of IHRL norms, while others adopt a more cautious approach toward IHRL for a number of reasons, such as the state's domestic law, traditional culture, social practice, and state sovereignty. Consequently, states compliance with the norms of the international law varies. Thus, the impact of IHRL on a state's domestic law varies according to that state's degree of engagement with and its acceptance of IHRL norms.

Against this background, a large volume of studies has been published examining the relationship between IHRL and a state's domestic law⁶. In this respect, one of the most important motives for me to carry out this study was to investigate how the KSA engages with IHRL, as well as to build a clear understanding regarding the consequences of such interaction. Importantly, states that ratify human rights treaties may be required to modify their domestic legal system to comply with these norms. These modifications might involve

³ Convention on the Elimination of All Forms of Discrimination against Women, G.A. Res. 34/180, 34 U.N. GAOR Supp. (no. 46) at 193, U.N. Doc. A/34/46, entered into force on 3 September 1981. See: 'Convention on the Elimination of All Forms of Discrimination against Women' <<http://www.ohchr.org/EN/ProfessionalInterest/Pages/CEDAW.aspx>> accessed 14 September 2015.

⁴ Oona A Hathaway, 'Do Human Rights Treaties Make a Difference?' (2002) 111 *The Yale Law Journal* 1935, 1941.

⁵ See, Ryan Goodman and Derek Jinks, 'Measuring the effects of human rights treaties' (2003) 14.1 *European Journal of International Law* 171. Javaid Rehman, *International human rights law* (Pearson education, 2010). Oona A Hathaway, 'Do Human Rights Treaties Make a Difference?' (2002) 111 *The Yale Law Journal* 1935.

⁶ See, *ibid.* Also, Rosalyn Higgins, 'The Relationship Between International and Regional Human Rights Norms and Domestic Law' (1992) 18 *Commonwealth Law Bulletin* 1268. E Neumayer, 'Do International Human Rights Treaties Improve Respect for Human Rights?' (2005) 49 *Journal of Conflict Resolution* 925. Ryan Goodman and Derek Jinks, *Socializing States: Promoting Human Rights through International Law* (Oxford University Press 2013).

changes to the current laws or establish new legislation in order to achieve the IHRL's aspirations. In this respect, it is important to understand the actual relationship between two types of law, IHRL and Saudi domestic law, which is derived from Islam.

In this regard, an important motivation for me is the opaque picture of the dealing and attitudes of Muslim countries towards IHRL. A major obstacle for my research is the lack of literature on this issue, as well as the predominance of negative images in relation to human rights in Muslims countries. In particular, when it comes to human rights in the KSA, I have noticed the mostly negative criticisms of the human rights issue, which generally portray the Kingdom as failing to cooperate with the international community on this issue. Also, I noticed that the literature related to the Kingdom relied heavily on theoretical analysis of official documentary sources. Therefore, it was important for me to provide a more reliable basis for analysis by applying an empirical analysis to explore different perceptions of the Kingdom's interaction with IHRL. To the best of my knowledge, this is the first empirical study on the Kingdom's interaction with the UN human rights system that involves interviews with both key state actors and non-state actors.

Another motivation is related to the debate concerning the difference and tensions between Eastern and Western values. IHRL can be seen to display a 'Western' bias that appears to threaten 'Asian' values and thus be viewed as a challenge to non-Western societies.⁷ Thus, the motivation in this part is to contribute to understanding the reality of the engagement with Muslim countries, represented by the KSA, by IHRL. It shows how common ground is created between the two laws in order to promote and protect human rights while, at the same time, respecting the different values and cultures of societies.

The final motivation for the research is that most studies conducted with regard to the Kingdom engagement with IHRL mechanisms have been conducted by men.⁸ Therefore, it is

⁷ P Samuel Huntington, 'The Clash of Civilizations' (1993) 72 *Foreign Affairs* 22. Heiner Bielefeldt, "'Western' versus 'Islamic' Human Rights Conceptions: A Critique of Cultural Essentialism in the Discussion on Human Rights' (2000) 28 *Political Theory* 91.

⁸ Abdulaziz S Al-rodiman, 'The Application of Shari'ah and International Human Rights Law in Saudi Arabia' (University of Brunel 2013). Abdulaziz M Alwasil, 'Saudi Arabia's Engagement In, and Interaction With, the UN Human Rights System: An Analytical Review' (2010) 14 *The International Journal of Human Rights* 1072. Mashood A Baderin, *International Human Rights and Islamic Law* (OUP 2003). Raed A Alhargan, 'The Impact of the UN Human Rights System and Human Rights INGOs on the Saudi Government with Special Reference to the Spiral Model' (2012) 16 *The International Journal of Human Rights* 598. Two popular studies conducted by female, see, Nisrine Abiad, "*Sharia, Muslim states and international human rights treaty obligations: A comparative study*" (BIICL 2008). S Waltz, 'Universal Human Rights: The Contribution of Muslim States' (2004) 26 *Human Rights Quarterly* 799.

important to ensure Saudi women engage in this debate. Therefore, my participation in this study would likely provide a different perspective in the field of Saudi human rights.

2. Contributions to Knowledge and the Literature

In recent years, there has been a growing interest in the role of state interaction with IHRL in terms of influencing its domestic law and improving its human rights situation, as well as how international norms travel across nations and are implemented domestically. In this respect, a huge volume of literature has been published on this issue. However, each scholar has his/her own approach that is relevant to their interests and subject. Therefore, it is not possible to present a comprehensive review of the literature at this stage.⁹ However, it is useful to outline the key arguments presented in similar studies and how this thesis develops its own position and methodology.

For example, Al-Hargan addresses the issue of how Saudi Arabia could ratify the ICCPR without violating *Shari'ah* (Islamic Law).¹⁰ The study adopts the qualitative documentary analysis method to provide an analytical perspective on the Saudi position towards the ICCPR. It concludes that it is impossible for the KSA to ratify the ICCPR without violating its basic laws which rely on *Shari'ah*. However, the study takes a narrow view of how the KSA dealt with IHRL and how this impacted its national legal systems because it examined the position of the KSA towards the treaty that it had not ratified yet.; it is difficult, if not impossible, to examine the impact of the KSA's engagement with IHRL using a case study of an unratified treaty. Moreover, the study lacks a comprehensive overview of civil society and human rights international non-governmental organisations (INGOs). In contrast to Al-Hargan, this thesis investigates the impact of the KSA's engagement with IHRL by examining the CEDAW, which has been ratified by Saudi Arabia. Furthermore, it uses a qualitative case study applying in-depth, semi-structured interviews with various stakeholders. This methodology ensures that this study provides a more comprehensive perspective of the Kingdom's dealings with IHRL.

Second, Alwasil examines the approach of the KSA's engagement and interaction with the UN human rights system and its mechanisms.¹¹ The Alwasil study also adopts the qualitative

⁹ See Chapters One and Two for more details.

¹⁰ Abdulhamid A Al-Hargan, 'Saudi Arabia and the International Covenant on Civil and Political Rights 1966: A Stalemate Situation' (2005) 9 *The International Journal of Human Rights* 491.

¹¹ Abdulaziz M Alwasil, 'Saudi Arabia's Engagement In, and Interaction With, the UN Human Rights System: An Analytical Review' (2010) 14 *The International Journal of Human Rights* 1072.

documentary analysis method. He points out the positive role of the Kingdom in contributing to the establishment of IHRL, as well as the tendency of the Kingdom in recent years to abide by its obligations towards international law. In addition, Alwasil concludes with a number of suggestions and questions on the influence of the UN human rights system in developing and promoting human rights in a country such as Saudi Arabia. Although, Alwasil provides a theoretical framework of the KSA's interaction and engagement with the IHRL, as with Al-Hargan (2005), it lacks an in-depth analysis of the different perspectives of the influence of IHRL on the KSA's domestic law. In contrast, this thesis empirically investigates these perspectives of the KSA's engagement with IHRL on developing human rights between 1990 and 2016.

The third study was by Al-Rodiman who addresses the application of *Shari'ah* in the Kingdom in relation to IHRL.¹² The study discusses the KSA's implementation of a number of articles from the Convention on the Rights of the Child (CRC) and the CEDAW. It adopted the textual analysis method as an objective tool for analysing data contained in the texts, as well as a comparative method. However, the study has a narrow basis, focusing on the rights of women in Saudi courts in relation to family matters though the use of official documents.

In the fourth study, Çali *et al.* uses an original qualitative dataset based on interviews carried out in the region with different stakeholders, such as diplomats, policymakers, judges, lawyers, and human rights activists.¹³ The study examines reasons for Gulf Cooperation Council (GCC)¹⁴ ratifications of human rights treaties and the limited effect on domestic reforms.¹⁵ It found that small gains emerge after ratification as a combination of international socialisation and GCC leaders' cautious leadership preferences for domestic human rights reform.¹⁶ In relation to Saudi Arabia, the study mentions that the legal status of human rights treaties is unclear in the its Basic Law when international agreements are put into effect through local legal integration. The study argues that in Saudi Arabia, no treaty gains force as

¹² Abdulaziz S Al-rodiman, 'The Application of Shari'ah and International Human Rights Law in Saudi Arabia' (PhD Thesis University of Brunel 2013).

¹³ B Çali, N Ghanea and B Jones, 'Big Promises, Small Gains: Domestic Effects of Human Rights Treaty Ratification in the Member States of the Gulf Cooperation Council' (2016) 38 Human Rights Quarterly 21.

¹⁴ The Gulf Cooperation Council (GCC) is an intergovernmental and regional body with permanent observer status at the United Nations. The six member states of the Gulf Cooperation Council, formed in 1981, include Bahrain, Kuwait, the Sultanate of Oman, Qatar, the Kingdom of Saudi Arabia, and the United Arab Emirates. See, <<http://www.gcc-sg.org/en-us/Pages/default.aspx>> accessed at 30 October 2018.

¹⁵ B Çali, N Ghanea and B Jones, 'Big Promises, Small Gains: Domestic Effects of Human Rights Treaty Ratification in the Member States of the Gulf Cooperation Council' (2016) 38 Human Rights Quarterly 21.

¹⁶ *ibid.*

a result of Royal Decrees, and gazetting is required to bring a treaty into force. However, even once gazetted the legal effect of any treaty is moderated by the Qur'an and *Shari'ah*, which are described in the constitution as “the ultimate sources of reference for this Law and the other laws of the State”.¹⁷ Their findings confirm that the UN human rights treaties do not have extensive effects on institutions, legislative changes and judicial decisions in the GCC region post-ratification.

However, the data from this thesis challenges Çali *et al.*'s study in several ways: first, it challenges their argument around the ambiguous status of the international treaties and its legitimacy in Saudi law by examining the KSA's ratification of the CEDAW and the domestic consequences of this action regarding the development and enhancements of women rights (1990-2016). Second, although Çali *et al.* examine rationales behind the GCC ratifications of IHRL, the study does not provide an account of the ways in which the KSA internalises international norms into its domestic law. In particular, the current study challenges their argument regarding the limited consequences to the KSA's ratification of IHRL by providing an empirical examination of the role of the KSA in engaging with the CEDAW in improving women's rights in the 26 years since 1990. This study also explains the process by which the KSA's domestic law complies with the international treaty norms in the light of the international law models.

The common feature of the aforementioned studies is that, with the exception of Çali *et al.*, they employ the documentary analysis method. By applying this method, they provide an overview of the history of Saudi Arabia's engagement with IHRL and how it deals with certain IHRL instruments. In addition, they provide a basis for the issues being investigated in this research. However, the studies generally lack insights into the various Saudi stakeholders, including human rights activists, civil society members and INGOs, as well the perspectives of members of UN treaty bodies. Furthermore, the researchers do not empirically address the relationship between the KSA's domestic law and the mechanisms of IHRL, as well as the role of such mechanisms on the latest developments in the field of human rights. In addition, the studies do not examine what other factors, external to IHRL, have contributed to the recent changes in Saudi women's rights. In general, there is a lack of literature that addresses the issue under investigation.

¹⁷ Article 7 of Basic Law of Governance. See, <<https://www.saudiembassy.net/basic-law-governance>> accessed 8 January 2019.

Using only the documentary analysis method is insufficient for investigating the issue of the role of the KSA's interaction with IHRL in changing and improving its domestic law. This is because investigating the relationship between IHRL and changes in the national law of KSA needs to consider all aspects of this complex issue by gaining the perspectives and inputs of the relevant stakeholders. Furthermore, most of the documentary evidence is contained in official reports provided by the state to the UN human rights related committee, as well as those issued by different government bodies in relation to human rights issues. Additionally, in order to address the gaps in the existing research, this research is designed to empirically investigate the experiences and perspectives informing these studies in order to situate the perspectives of participant-interviewees¹⁸ within the academic discourse on the role of the KSA's dealing, interaction and engagement with the IHRL mechanisms on shaping and changing its domestic law. It also examines the effectiveness of IHRL in terms of enhancing human rights.

This study further contributes to the literature by identifying whether existing theories of international law could explain the changes KSA's human rights law between 1990 and 2016. At the time of writing this study, Alhargan is the only scholar to analyse the impact of UN human rights system and human rights NGOs.¹⁹ He examines the socialisation of international human rights norms in Saudi Arabia from 1990 to 2011.²⁰ He argues that the human rights INGOs, aided "by advocacy resulting from the UN human rights system, in particular UN treaty-based bodies, will lead to more concessions and adaptations to new norms" by states.²¹ Thus, his ideas contribute to the framework of this research. This thesis builds on his methodology adding further empirical data from the perspective of key stakeholders. For instance, although the study examines the influence of the actors of international human rights on the human rights practices of the Saudi government, Alhargan relies on solely on documentary analysis rather than examining in-depth the actors' perspectives concerning their role on promoting international human rights norms domestically. In this context, the current study is the first empirical study to explore and determine which theories of IHRL provide a sufficient explanation of the Kingdom interaction, engagement, and compliance with international norms.

¹⁸ For the rationale on how the semi-structured interviews provide the knowledge needed see Section 3.2.4.

¹⁹ Raed A Alhargan, 'The Impact of the UN Human Rights System and Human Rights INGOs on the Saudi Government with Special Reference to the Spiral Model' (2012) 16 *The International Journal of Human Rights* 598.

²⁰ *ibid.*

²¹ *ibid.* p.598.

Moreover, there is no doubt that the issues around human rights gained considerable attention in the latter decades of the twentieth century. As a result, a number of global and regional human rights treaties have been introduced in order to increase the protection of human rights. In this period, the KSA has passed a number of laws to develop and promote women's rights.²² However, debate continues around the effectiveness of IHRL in developing and changing states' domestic legislation with respect to human rights. For example, there has been a huge debate around the effectiveness of Muslim states (including the KSA) acceding to and ratifying international human rights treaties on their human rights' performances and practices. Therefore, another main contribution of this thesis is to evaluate the effectiveness of IHRL in promoting women's rights within the context of Saudi Arabia, a society that appears to have greater capacity than other states to resist international pressure on these issues. This capacity arises for several reasons: the human rights system in the KSA emerged from Islam which came into being 1,440 years ago, before the creation of the IHRL. For Muslims a divine law cannot be changed or replaced by another law. Second, the KSA does not rely on foreign aid, therefore is more able to resist international pressure to change its policies.

In order to examine the effectiveness of the IHRL on the development of human rights in the Kingdom, the research investigates the specific case of Saudi women's rights through the issues of women's participation in political life, as well as changes in their civil rights such as male guardianship. This focus reflects the controversy around women's rights in the KSA and the focus on this issue in the reports of international human rights organizations', and in the review of KSA reports under the various UN Covenants. Thus, this research also contributes by examining to what extent cooperation between states (in this case Saudi Arabia) and the international human rights system has impacted on the development of human rights (in particular those of women). This is achieved by investigating the recent changes in Saudi domestic legislation with respect to the issues mentioned above. Thus, the study provides a new insight in terms of Muslim states' engagement with the IHRL.

Overall, the current study makes a distinctive contribution to the empirically-informed analysis concerning the role of the KSA's engagement with IHRL on its domestic law and its practices pertaining to the rights of Saudi women. This study sheds light on the extent to which international human rights norms influence the development and the improvement that

²² See Chapters Two, Four and Six.

occurred in the human rights law of the KSA. It also examines and assesses the changes in the KSA's performance towards its human rights system, particularly the development in Saudi women's rights between 1990 and 2016. Furthermore, the study determines which theories of IHRL can best explain the process of the KSA's internalisation of the IHRL norms in its domestic law.

In short, it is apparent that there is a dearth of research on the KSA's interaction with IHRL, as well as on the issue of understanding how the IHRL mechanisms contribute to enhancing human rights development in the KSA. Thus, this research aims to fill some of the gaps in the literature in this area.

3. Aims, Objectives and Research Questions

As highlighted previously, this research explores the role of the KSA's engagement with IHRL on its national law in relation to human rights development. This role is assessed by investigating the developments in Saudi women's rights between 1990 and 2016. Moreover, this research provides an important opportunity to advance the understanding of how state interaction with the mechanisms of IHRL lead to compliance with the norms of international law. In addition, it provides an understanding which international law theories best explain the way in which the KSA's domestic legislation has become compatible with IHRL norms. In this respect, the first part of the thesis provides a theoretical framework about IHRL and a state's domestic law (Chapter 1) and the KSA's interaction and dealing with IHRL (Chapter 2). The second part empirically evaluates the KSA's engagement with IHRL between 1990 and 2016, the consequences of this relationship, and how these consequences occurred.

Consequently, this study has the following aims and objectives:

- To assess the role of the KSA's engagement with international human rights mechanisms in influencing the changes that have taken place in the domestic law relating to women's rights from 1990 to 2016.
- To understand the role of the IHRL on influencing changes in the domestic law of KSA pertaining to women's rights.
- To evaluate whether existing theories on IHRL and a state's domestic law provide a sufficient framework for the analysis of the development of women's rights in the KSA from 1990 to 2016.

- To generate a more nuanced understanding of the interaction between IHRL and domestic laws in KSA, focusing on women's rights.
- To assess the effectiveness of IHRL on promoting and protecting women's rights.

In order to carry out these aims and objectives, the key questions that are investigated in this study are as follows:

- What changes have there been in the KSA's law and practice that reflect a greater engagement with IHRL?
- What are the factors to which key actors attribute these changes?
- To what extent are the changes due to the KSA's engagement with IHRL?
- Have the IHRL mechanisms been useful from the perspective of promoting and protecting women's rights?

4. Research Methodology²³

The research is based on a combination of different types of methodology. The first part (Chapters One and Two) provides a theoretical framework of IHRL and a state's domestic law, and, more specifically, the KSA's domestic law and its position towards IHRL. The second part (Chapters Three, Four, Five, Six and Seven) provides the empirical analysis and discussion of the findings.

The first part primarily relies on a documentary analysis methodology using library-based information, such as books, articles, online journals and web sources. By employing qualitative methods of investigation, it attempts to highlight the relationship between IHRL and a state's domestic law; how IHRL theoretically influences a state's domestic law. It also seeks to identify the changes there have been in the KSA's human rights law that may have resulted from its engagement with IHRL. In order to underline the main arguments in the theoretical framework, it discusses the key points of the relationship between IHRL and a state's domestic law, presents the dominant theories in the context of IHRL influencing a state's domestic law, the KSA's human rights law and its engagement with IHRL. Additionally, a case study design was used for an in-depth analysis of the CEDAW's effectiveness in term of improving women rights in the KSA.

In the second part, a thematic analysis of qualitative interviews is adopted. It allows the study to obtain various perspectives on the research questions and also to ascertain if the existing

²³ For more details regarding the methodology see Chapter Three.

theories on the impact of IHRL on domestic law provide a sufficient framework for domestic law changes in the KSA's human rights law.

This study adopts an inductive, descriptive and analytical approach in relation to the findings, the process, and procedures of the KSA's dealing and compliance with IHRL norms.

5. Overview of the Research

This study is structured according to the key questions of this investigation as explained in the Section 3. This section provides a brief overview of each chapter.

Chapter 1 establishes the theoretical framework for understanding how IHRL influences a state's domestic laws. It analyses the relationship between IHRL and a state's domestic law. The chapter presents the main theories in the context of the IHRL influencing a state's domestic law, and gives particular focus to the theory of the transitional legal process. It also outlines the background to CEDAW and evaluates its effectiveness in term of promoting and protecting the rights of women. The chapter then discusses Muslim states' positions towards the CEDAW and the issue of universality and relative standardisation in international human rights instruments for Muslims. This chapter is primarily based on an analysis of existing academic research.

The second chapter provides a theoretical framework for the KSA's engagement with IHRL. It discusses the background to the KSA and the nature of its legal system and its human rights law. The chapter underlines the Kingdom's interaction and engagement with IHRL. It analyses the KSA's engagement and dealing with IHRL by focusing on the Kingdom's interaction with the core IHRL instruments; the UDHR, ICCPR and the CEDAW. As this thesis focuses on the development of the human rights of Saudi women, it analyses the Kingdom's international obligations under IHRL, including assessing the KSA's engagement with the CEDAW. This chapter is also based on an analysis of existing academic research.

Chapter Three focuses on the philosophical aspects of the methodology and describes the research philosophy and presents an account of the research design including interview design. It also discusses the participants in the empirical research, outlining their recruitment and demographics. The chapter also highlights the data collection methods including: semi-structured interview questions; interview procedures; pilot interviews; and theoretical saturation. Thereafter, it outlines data quality, trustworthiness and ethical issues. In addition, it discusses the methods for analysing the empirical research data that inform this thesis.

These include the data analysis method and thematic analysis process. Finally, it presents a reflection on the research process.

The next three chapters (four-six) present the findings from the empirical research. Each chapter answers one or two of the four research questions. Chapter 4 presents the interpretation and the analysis of the empirical data related to the first question: what changes have there been in the KSA's law and practice that reflect a greater engagement with IHRL between 1990 and 2016. Chapter 5 analyses the empirical data related to the second question: what are the factors to which key actors attribute these changes? Chapter 6 presents the findings from the third and four questions: to what extent are the changes due the KSA's engagement with IHRL?; and have the IHRL mechanisms been useful from the perspective of promoting and protecting women's rights?

Chapter Seven presents the discussion of the findings of this research with reference to previous studies to determine similarities and differences in order to build a clear view about the role and the impact of the KSA's engagement with IHRL, and the ways in which the Kingdom interaction and compliance occurred.

Chapter Eight sets out the main conclusions. It provides a brief summary and reflects the key points of this research. It highlights the importance of the study for practice and policy. In addition, it explains the key contributions of the research to the literature, the limitations of the research and recommendations for further research are also presented.

CHAPTER ONE:

INTERNATIONAL HUMAN RIGHTS LAW AND STATES' DOMESTIC LAWS

As mentioned previously, since the creation of the UDHR by the UN, IHRL has become integral to international law. States engage with the UN human rights system in several ways whether through membership of the UN, accession to treaties or participation in various activities related to human rights. In contrast, states can refuse to cooperate with the UN system. Consequently, states comply with the norms of the international law differently. Thus, the impact of IHRL on states' domestic law varies in relation to their reaction to the evolving human rights situation. Against this background, a large volume of studies has been published describing and examining the relationship between IHRL and a state's domestic law.

This chapter establishes the theoretical framework for understanding how IHRL influences a state's domestic laws. As this study adopts an inductive approach to exploring the dynamics of the IHRL mechanisms and their influence(s) on the Kingdom's domestic law, this chapter provides an overview of the dominant models of international law and state compliance. It gives particular focus to the theory of the transnational legal process because the transnational legal process theory is best suited to the methodological approaches used in this research. However, in order to help understand the debates relevant to this thesis, short descriptions of other pertinent theories are included.

The chapter is organised in the following way. Section 1.1 presents the two main theories on the relationship between international law and national law in order to understand how states define themselves to the international law (Section 1.1.1). In addition, it outlines the dominant theories in the context of IHRL influencing a state's domestic law (Section 1.1.2). Thereafter, Section 1.2 discusses the CEDAW and evaluates its effectiveness in terms of promoting and protecting the rights of women. The chapter then discusses Muslim states²⁴ position towards the CEDAW and the issue of universality and relative standardisation in

²⁴ The criteria for identifying Muslim countries is contested. Some identify Muslim countries as those where Muslims constitute over 70% of the total population such as Afghanistan, Algeria, Bahrain, Bangladesh, Comoros, Djibouti, Egypt, Gambia, Indonesia, Iran, Iraq, Jordan, Kuwait, Libya, Maldives, Mali, Mauritania, Morocco, Niger, Oman, Pakistan, Qatar, Saudi Arabia, Senegal, Somalia, Sudan, Syria, Tunisia, Turkey, United Arab Emirates and Yemen. However, the vast majority of these states are not constituted as Islamic states in accordance with *Shari'ah*. Nevertheless, all these states apply *Shari'ah* with regard to family law and inheritance law. See, A An-Na'im, 'Rights of Women and International Law in the Muslim Context, The' (1987) 9 Whittier Law Review 491.

international human rights instruments for Muslims (Section 1.3). In Section 1.4, the chapter's summary and conclusion are presented.

1.1 The IHRL and a State's Domestic Law

“Almost all nations observe almost all principles of international law and almost all of their obligations almost all of the time.”²⁵

Since the creation of the international human rights system by the UN, the number of states acceding to international treaties and conventions has risen. States engage with and agree to be bound by a treaty's norms, which means that the treaty can become part of the state's domestic law, although, for most states, further legislation is needed before the treaty obligations are incorporated into domestic law.²⁶ Furthermore, a number of treaties require states to modify their national law so that it becomes compatible with the treaty's norms. This raises the question: how do state parties to IHRL, which have national legislation that differs from, or even contradicts, IHRL, eventually comply with the IHRL norms? This leads to a second question: how does IHRL influence a state's domestic law so that the state internalises the norms of IHRL into its domestic law? This section examines the relationship between IHRL and a state's domestic law. In addition, in order to help understand the process by which IHRL influences state parties, it examines theories on the impact of IHRL on a state's domestic laws.

1.1.1 The Relationship between IHRL and a State's Domestic Legal System

Before discussing the theories that specifically consider the influence of IHRL on a state's domestic law, it is necessary to explain, in brief, the two main theories on the relationship between international law and national law. This will help understand how states define themselves in relation to international law. In this context, there are two approaches; the monist approach (monism) and the dualist theory. Monists, influenced by liberal ideas of a world society,²⁷ assert that there is only one system of law, of which international law is a component, “alongside all the various branches of domestic law”.²⁸ Moreover, the monist approach means “international law is simply part of the law of the land, together with the

²⁵ L. Henkin, *How Nations Behave: Law and Foreign Policy* (Columbia University Press 1979) 47.

²⁶ For more details see, Eric Stein, ‘International Law in Internal Law: Toward Internationalization of Central-Eastern European Constitutions?’ (1994) 88 AM. J. INT’L L. 427. Also, Mario Mendez, ‘The Legal Effect of Community Agreements: Maximalist Treaty Enforcement and Judicial Avoidance Techniques’ (2010) 21 European Journal of International Law 83-104.

²⁷ T. Hillier, *Sourcebook on Public International Law* (Cavendish Publishing 1998).

²⁸ Rosalyn Higgins, *Problems and Process: International Law and How We Use It* (Clarendon Press, 1994) 205.

more familiar areas of national law”.²⁹ Slyz argues that “in a purely monist legal system, legislatures are circumscribed by the requirements of international law in enacting legislation.”³⁰

In this approach, international law is incorporated directly into domestic law. In this model when conflict occurs between international and domestic law, international law prevails.³¹ This is because international law has priority; thus, it has the ability to create the state’s national law.³²

In contrast, dualist theory largely developed in the 19th century which witnessed the rise of sovereignty of states theory and the growth of legal positivism.³³ It considers international law and national law as two different types of legal systems that co-exist within different fields.³⁴ This approach assumes that there are two separate and independent legal systems, international law and national law, that work independently of each.³⁵ Thus, Fitzmaurice argues that in the case of the dualist approach, each of international law and domestic law works and has supremacy in its own field.³⁶ This means that both international and national law have their own role and power in their own sphere. The function of international law is to organise the relationships between sovereign states, while domestic law regulates a state’s internal affairs.³⁷ In dualist doctrine, if a conflict occurs between the two systems, then the national courts would apply national law.³⁸

Thus, according to dualists, international human rights treaties do not have a direct influence on the state.³⁹ This is because courts benefit from treaties not because they are a source of law but because the treaties indicate the direction for issues of national law.⁴⁰ In contrast, the monist approach sees international law and treaties combine with national law in a single system. Thus, international human rights treaties encourage a state’s respect for human rights and its obligation towards international law.

²⁹ Michael Donald Kirby, ‘The Growing Rapprochement between International Law and National Law’ <http://www.highcourt.gov.au/speeches/kirbyj/kirbyj_weeram.htm> accessed 28 November 2011.

³⁰ G Slyz, ‘International Law in National Courts’ (1995) 28 NYUJ Int’l L. & Pol. 67.

³¹ Rebecca MM Wallace, *International Law* (Sweet and Maxwell, 2005).

³² Hans Kelsen, *General Theory of Law and State* (The Lawbook Exchange Ltd 1945).

³³ T Hillier, *Sourcebook on Public International Law* (Cavendish Publishing 1998).

³⁴ Rebecca MM Wallace, *International Law*, (Sweet and Maxwell, 2005).

³⁵ *Ibid.*

³⁶ Gerald Fitzmaurice, Suzanne Bastid, Manfred Lachs, MB Landheer, Miguel A Marin Luna, and Jaroslav Zorek *The General Principles of International Law Considered from the Standpoint of the Rule of Law* (AW Sijthoff 1957).

³⁷ T Hillier, *Sourcebook on Public International Law* (Cavendish Publishing 1998).

³⁸ *ibid.*

³⁹ David Feldman, ‘Monism, dualism and constitutional legitimacy’ (1999) 20 Aust. YBIL 105.

⁴⁰ *ibid.*

The two approaches, the monist and dualist models, provide ‘ideal’ explanations of the relationship between international law and national law and can be seen as opposite ends of a continuum. Thus, Fitzmaurice argues that neither model can explain the practical problems faced by states in attempting to combining international and domestic laws. He points out that:

the entire monist-dualist controversy is unreal, artificial and strictly beside the point, because it assumes something that has to exist for there to be any controversy at all—and which in fact does not exist—namely a *common field* in which the two legal orders under discussion both simultaneously have their spheres of activity.⁴¹

Furthermore, scholars such as Lauterpacht argue that there is no benefit of trying to apply monist and dualist theories to an ambiguous model.⁴² This is because each state’s legal system has a unique relationship that cannot be modelled using either the monist and dualist models.⁴³ Nevertheless, how the KSA identifies itself to the two models is examined in Section 2.1.5.1.

1.1.2 Theories on the Impact of IHRL on States’ Domestic Laws

Since 1948 when the UDHR was adopted by the United Nations General Assembly (UNGA), a number of international human rights instruments have been developed with appropriate review mechanisms. This has resulted in debate around the mechanisms and the ways in which IHRL impacts a state’s national law. The question arises of how IHRL, in general, and human rights treaties, in particular, influence states’ development and respect for their citizen’s rights. Political science and international relations scholars have posited a number of theories in this regard. A detailed review of the international relations literature is beyond the scope of this thesis. Instead, this section focuses on providing an overview of the most dominant theories that explain the effects of IHRL on a state’s domestic law with particular focus on the theory of the transnational legal process model. According to Neumayer, these theories are classified into two categories:⁴⁴ theories that primarily consider states as unitary

⁴¹ Gerald Fitzmaurice, Suzanne Bastid, Manfred Lachs, MB Landheer, Miguel A Marin Luna, and Jaroslav Zorek *The General Principles of International Law Considered from the Standpoint of the Rule of Law* (AW Sijthoff 1957) p.71.

⁴² AFM Lauterpacht, ‘State Contracts in Contemporary International Law: Monist versus Dualist Controversies’ (2001) 12 *European Journal of International Law* 309.

⁴³ Visar Morina, Fislak Korenica and Dren Doli, ‘The Relationship between International Law and National Law in the Case of Kosovo: A Constitutional Perspective’ (2011) 9 *International Journal of Constitutional Law* 274.

⁴⁴ E Neumayer, ‘Do International Human Rights Treaties Improve Respect for Human Rights?’ (2005) 49 *Journal of Conflict Resolution* 925.

actors; and theories in which there are multiple actors in a state. In the first approach state-to-state behaviour in the international arena can be viewed from a (neo-)realist, institutionalist or regime theory perspective. The second approach is concerned with the interaction between states and domestic groups. These theories include the transnational legal process model,⁴⁵ the liberal international relations perspective, and the theory of transnational human rights advocacy networks, as well as other theories highlighting domestic actors.

1.1.2.1 Theories dealing with states as unitary actors

1.1.2.1.1 Realism and Neo-realism

Following the Second World War, the dominant international relations theory among academics and policymakers was known as ‘classical realism’. This theory was characterised by the idea that IHRL existed because powerful states sought to protect their geopolitical interests. According to this view, international law benefits powerful states and is used as a tool to force less powerful states to accept the international law system.⁴⁶ However, the classical realism approach was superseded by a more nuanced approach termed neo-realism or structural realism.⁴⁷ The neo-realist international relations perspective regards “countries as unitary actors with given preferences maximising their own utility without regard to the welfare of other actors”.⁴⁸ Thus, neo-realist theory agrees with classical realism that states are unitary actors and the chaotic international system is a relevant level of analysis.

In this view, states comply with international law norms not because of its effectiveness, but because of the state’s self-interest “in a world governed by anarchy and relative state power”.⁴⁹ However, some neo-realist scholars argue that states may comply with the norms of IHRL not because of material interests, but because of their honest desire to implement human rights.⁵⁰ Waltz explains that this may happen when powerful states force their human rights on other states.⁵¹ Thus, a powerful nation, such as the US, could play a vital role in improving human rights across the globe. For example, the US could restrict its Foreign

⁴⁵ This theory will discuss separately in Section 1.2.2.4.

⁴⁶ For a discussion of classical realism, see EH Carr, *The Twenty Year Crisis 1919-1939* (Macmillan and Company Limited 1939); George F Kennan, *American Diplomacy 1900-1950* (New American Library 1964); Hans J Morgenthau, *Politics among Nations: The Struggle for Power and Peace* (Alfred Kopf 1948); Hans J Morgenthau, ‘Positivism, Functionalism, and International Law’, 34 (1940) *Amer. J. Int’l L.* 260.

⁴⁷ Oona A Hathaway, ‘Do Human Rights Treaties Make a Difference?’ (2002) 111 *The Yale Law Journal* 1935.

⁴⁸ E Neumayer, ‘Do International Human Rights Treaties Improve Respect for Human Rights?’ (2005) 49 *Journal of Conflict Resolution* 925.

⁴⁹ Oona A Hathaway, ‘Do Human Rights Treaties Make a Difference?’ (2002) 111 *The Yale Law Journal* 1935.

⁵⁰ Jack Donnelly, ‘International Human Rights: A Regime Analysis’ (1986) 40 *International Organization* 599.

⁵¹ KN Waltz, *Theory of International Politics* (Waveland Press 2010).

Assistance Act to states that engage “in a consistent pattern of gross violations of internationally recognised human rights”.⁵² In this view, a state’s commitment to and acceptance of IHRL norms is due to coercive practices by powerful states.⁵³ However, in practice, most nations that insist on the norms of human rights treaties are not powerful nations. Krasner, among others, argues that, in fact, powerful countries are rarely willing to apply the standards of human rights norms to their foreign policy or give priority to human rights issues.⁵⁴ Moreover, Neumayer points out that powerful countries rarely force other states to improve their human rights practices by applying sanctions, whether political, economic, military or others, and are only interested when one of their own citizen’s rights are violated.⁵⁵ Furthermore, IHRL lacks monitoring and enforcement mechanisms, which means it is weak compared to other systems, such as the system of finance or trade.⁵⁶ Thus, because of these weaknesses and the disinterest of powerful countries to activate an effective international human rights regime, states might ratify treaties, not because their desire to implement the treaty’s provisions, but to maintain their poor human rights practices.⁵⁷ From the realist and neo-realist approaches, it appears that states comply with IHRL requirements not because of the effectiveness of the law but because of a coincidence on interests. Therefore, according to neo-realist theory, international human rights regimes may not contribute to improving states’ human rights behaviour; indeed, it may lead to worse practices in this regard.⁵⁸

Hathaway develops a theory that is not representative of (neo-) realism, but is relevant to realism’s fundamental assumptions, that focuses on the lack of powerful states interested in implementing effective IHRL or a lack of strong mechanisms for monitoring and enforcement of IHRL.⁵⁹ She argues that treaty ratification can worsen human rights practices, because ratification may lead to an alleviation in internal or external pressure for a state to

⁵² Foreign Assistance Act US Code Title 21, § 2151n.

⁵³ Oona A Hathaway, ‘Do Human Rights Treaties Make a Difference?’ (2002) 111 *The Yale Law Journal* 1935.

⁵⁴ SD Krasner, ‘Sovereignty, Regimes, and Human Rights’ in Volker Rittberger (ed) *Regime Theory and International Relations* (Clarendon Press 1993) and Jack L Goldsmith and Eric A Posner, ‘The Limits of International Law’ (2005) 1 *American Enterprise Institute* 451.

⁵⁵ E Neumayer, ‘Do International Human Rights Treaties Improve Respect for Human Rights?’ (2005) 49 *Journal of Conflict Resolution* 925.

⁵⁶ AF Bayefsky, *United Nations Human Rights Treaty System: Universality at the Crossroads* (Martinus Nijhoff Publishers 2001).

⁵⁷ Oona A Hathaway, ‘Do Human Rights Treaties Make a Difference?’ (2002) 111 *The Yale Law Journal* 1935.

⁵⁸ E Neumayer, ‘Do International Human Rights Treaties Improve Respect for Human Rights?’ (2005) 49 *Journal of Conflict Resolution* 925.

⁵⁹ Oona A Hathaway, ‘Do Human Rights Treaties Make a Difference?’ (2002) 111 *The Yale Law Journal* 1935.

change its human rights performance.⁶⁰ She points out that the ratification of a human rights treaty could play “an expressive role” and presents to the world the commitment of the state to IHRL norms.⁶¹ In reality, states with poor human rights records ratify treaties to show their commitment to human rights norms as a relatively cost-free approach.⁶² This is because the state can express their commitment to the treaty norms while not actually implementing these norms. In addition, when states ratify treaties “monitoring and enforcement are usually minimal”.⁶³ Thus, treaties may not be able to enforce pressure for real change in practice. However, Hathaway argues that treaties may be more effective in a strong democratic state because it is difficult for this state to breach their commitments due to the role of internal monitors.⁶⁴ Moreover, it is because “liberal democracies have a true normative commitment to the aspirations embedded in the human rights treaties”.⁶⁵ Furthermore, she argues that non-compliance with treaty standards is common among countries that ratified HRT.⁶⁶

In this context, Hathaway’s perspective supports realist and neo-realist theories on the lack of the power of IHRL to influence states’ human rights practices. Thus, states use the norms of the treaties domestically only in pursuit of their own interests and sovereignty, even if this results in the state violating their citizen’s or other nations’ citizens’ rights. In this term, if neo-realism is correct then engagement will not have made any impact on human rights, and may in lead to a worsening of the human rights record. Or where there are any improvements in human rights this would be a coincidence, the result of factors other than engagement with IHLR.

1.1.2.1.2 An Institutional Perspective

The institutionalist perspective asserts that international regimes have positive effects that mean states gain long-term benefits through cooperation.⁶⁷ Neumayer argues that this theory presents “a way out of the prisoner’s dilemma in order to achieve the Pareto optimum, which is unavailable if countries always seize their short-term selfish own interest”.⁶⁸ In relation to

⁶⁰ *ibid.*

⁶¹ *ibid.*

⁶² E Neumayer, ‘Do International Human Rights Treaties Improve Respect for Human Rights?’ (2005) 49 *Journal of Conflict Resolution* 925.

⁶³ Oona A Hathaway, ‘Do Human Rights Treaties Make a Difference?’ (2002) 111 *The Yale Law Journal* 1935.

⁶⁴ *ibid.*

⁶⁵ *ibid.* 2020.

⁶⁶ *ibid.*

⁶⁷ E Neumayer, ‘Do International Human Rights Treaties Improve Respect for Human Rights?’ (2005) 49 *Journal of Conflict Resolution* 925.

⁶⁸ *ibid.* 927.

IHRL, it is not obvious if the institutionalist perspective offers different expectations from that of the neo-realist perspective. Krasner questions whether or not respecting individuals' human rights over the nations' would present substantial mutual benefits of respecting human rights across the nations.⁶⁹ States with high levels of human rights norms might be interested in an effective system of IHRL that would protect their citizens' rights abroad.⁷⁰ However, in contrast, states with a low level of human rights norms are unlikely to be interested in sharing the benefit of such cooperation.⁷¹ This is because the states lack respect for their own citizens' rights, thus are unconcerned with the violation of their own citizens' rights by another state.⁷² Moravcsik argues that there is a difference between human rights institutions and multilateral institutions primarily concerned with government and finance. The key object of human rights institutions is not to regulate policies surrounding the interactions between countries, but to hold countries responsible for their domestic behaviour.⁷³ Furthermore, treaties are interpreted as cooperative mechanisms; however, there is doubt about the ability of such cooperation to be beneficial to all states. Neumayer comments that:

a self-enforcing and renegotiation-proof international treaty will either consist of only a small subset of countries or if many countries are parties to the treaty then the gains from cooperation relative to the non-cooperative equilibrium are very small. In other words, cooperation is either narrow (instead of wide) or shallow (instead of deep).⁷⁴

Therefore, it can be concluded that the institutionalist perspective is unlikely to produce optimistic expectations related to the impact of IHRL in promoting human rights performance.

1.1.2.1.3 Regime Theory Perspective

The third theory viewing the state from a unitary actor perspective is regime theory, which, according to Krasner, focuses on "institutions possessing norms, decision rules, and procedures which facilitate a convergence of expectations".⁷⁵ It can be understood as "a refinement of institutionalism, [in which] international treaties create binding obligations on

⁶⁹ SD Krasner, 'Sovereignty, Regimes, and Human Rights' in Volker Rittberger (ed) *Regime Theory and International Relations* (Clarendon Press 1993).

⁷⁰ Jack L Goldsmith and Eric A Posner, *The Limits of International Law* (Oxford University Press 2005).

⁷¹ E Neumayer, 'Do International Human Rights Treaties Improve Respect for Human Rights?' (2005) 49 *Journal of Conflict Resolution* 925.

⁷² *ibid.*

⁷³ Andrew Moravcsik, 'The Origins of Human Rights Regimes: Democratic Delegation in Postwar Europe' (2000) 54 *International Organization* 217.

⁷⁴ E Neumayer, 'Do International Human Rights Treaties Improve Respect for Human Rights?' (2005) 49 *Journal of Conflict Resolution* 925, 928.

⁷⁵ SD Krasner (ed.), *International Regimes* (Cornell University Press 1983).

the ratifying parties, which countries aspire to honor”.⁷⁶ In this view, Chayes and Chayes argue that states ratify treaties in the spirit of *pacta sunt servanda*, which means that agreements are to be honoured as “compliance is the normal organizational presumption”.⁷⁷ According to Franck, from this perspective, countries are expected to alter their practices if treaties arise as the result of seemingly fair and just processes.⁷⁸ However, Neumayer clarifies that the goals of the treaties are usually long term; thus, states may not comply immediately or in the future.⁷⁹ As Chayes and Chayes point out, international human rights treaties are “an extreme case of time lag between undertaking and performance”.⁸⁰ Moreover, the most important aspect of states’ compliance to human rights treaties’ norms is that compliance is to an acceptable standard because full compliance does not necessarily refer to international law’s effectiveness.⁸¹ However, some states may ratify specific treaties in order “to appease a domestic or international constituency”.⁸² Therefore, regime theory would expect that the IHRL effect in improving states’ behaviour is only moderate.

Based on the theories that consider states as unitary actors, IHRL would be an ineffective tool in terms of enhancing states’ human rights practices and behaviour. This is because the theories posit that IHRL is employed to benefit states’ interests rather than to protect and improve human rights. Thus, IHRL has been distorted from the goal of protecting human rights into achieving the goals of the powerful states, whether political, economic or strengthening their international influence. However, other perspectives are more positive in terms of the effectiveness of IHRL on states. The following section presents the dominant theories in relation to states being an area of contestation between different interest groups.

1.1.2.2 Theories based on the interaction between the state and domestic groups

This section provides a general overview of the dominant theories on IHRL and a state that view interaction between states and domestic groups parties as important. This classification

⁷⁶ *ibid.* 6.

⁷⁷ Abram Chayes and Antonia Handler Chayes, ‘On Compliance’ (1993) 47 *International Organization* 175, 179.

⁷⁸ TM Franck, *Fairness in International Law and Institutions* (Oxford University Press 1998).

⁷⁹ E Neumayer, ‘Do International Human Rights Treaties Improve Respect for Human Rights?’ (2005) 49 *Journal of Conflict Resolution* 925.

⁸⁰ Abram Chayes and Antonia Handler Chayes, ‘On Compliance’ (1993) 47 *International Organization* 175, 197.

⁸¹ Ronald B Mitchell, ‘Compliance Theory: An Overview’ in Jacob Werksman, James Cameron and Peter Roderick (eds.), *Improving Compliance with International Environmental Law* (Earthscan 2014) and Abram Chayes and Antonia Handler Chayes, ‘On Compliance’ (1993) 47 *International Organization* 175.

⁸² Abram Chayes and Antonia Handler Chayes, ‘On Compliance’ (1993) 47 *International Organization* 175, 187.

includes: state socialisation theory; the liberal international relations perspective; and the theory of transnational human rights advocacy networks.

1.1.2.2.1 State Socialisation Theory

Goodman and Jinks argue that the current literature concentrates mainly on two mechanisms; first, coercion⁸³ and, second, persuasion.⁸⁴ However, the authors highlight the importance of a third mechanism, that of socialising states, which they refer to as “acculturation”.⁸⁵ They define acculturation as “the general process by which actors adopt the beliefs and behavioural patterns of the surrounding culture”.⁸⁶ They contrast this with persuasion which they suggest “emphasizes the content of a norm, [while] acculturation emphasizes the relationship of the actor to a reference group or wider cultural environment”.⁸⁷ The touchstone of persuasion “is that actors are consciously convinced of the truth, validity, or appropriateness of a norm, belief, or practice”.⁸⁸ In contrast, “the touchstone of acculturation is that varying degrees of identification with a reference group generate varying degrees of cognitive and social pressures to conform”.⁸⁹ From this perspective, socialising states demonstrate that acculturation is “a real phenomenon that differs in important ways from both persuasion and material inducement”.⁹⁰ Goodman and Jinks further argue that states comply with treaty norms not so much because of persuasion but rather because the consistent interactions between actors and IHRL norms lead to cognitive and social pressures and, thus, state actors conform to treaty norms.⁹¹ Overall, they provide a convincing exposition of the need to include acculturation in models of human rights regimes.⁹² Koh comments that the theory of Goodman and Jinks aims to examine “the social mechanisms that actually govern the social

⁸³ Coercion is defined as when “states and institutions influence the behavior of other states by escalating the benefits of conformity or the costs of nonconformity through material rewards and punishments”. Ryan Goodman and Derek Jinks, ‘How to Influence States: Socialization and International Human Rights Law’ (2004) 54 *Duke Law Journal* 621, 633.

⁸⁴ Persuasion is when “international law influences state behavior through processes of social ‘learning’ and other forms of information conveyance and has two techniques framing and cuing” *ibid.* 635

⁸⁵ *ibid.* 626.

⁸⁶ *ibid.* 626.

⁸⁷ Ryan Goodman and Derek Jinks, *Socializing States: Promoting Human Rights through International Law* (Oxford University Press 2013) 26

⁸⁸ *ibid.* 11.

⁸⁹ *ibid.* 5.

⁹⁰ David Sloss, ‘Reviewed Work: Socializing States: Promoting Human Rights Through International Law by Ryan Goodman and Derek Jinks’ (2014) 108 *The American Journal of International Law* 576, 576.

⁹¹ Ryan Goodman and Derek Jinks, *Socializing States: Promoting Human Rights through International Law* (Oxford University Press 2013).

⁹² *ibid.*

influence of law, i.e., the microprocesses of social influence that affect what I have elsewhere called ‘norm-internalization’⁹³.

This means that states’ socialisation behaviour through acculturation cannot be ignored, as it could be an effective tool for changing the views and practices of some actors, thus promoting IHRL. Overall, this theory provides a positive prediction on the impact of human rights treaties to enhance a state’s performance in relation to human rights. However, Neumayer points out that it seems unlikely that the theory of acculturation is able to provide a rationalisation of states internalising IHRL norms or norm conformance in a situation that states “have strong incentives to maintain human rights violations” or in states that continue human rights violations in order to maintain their power under the cover that “be persuaded by the validity of human rights norms or be socially acculturated into human rights protection”.⁹⁴ Thus, the two following theories aim to address how the domestic groups could use IHRL as a tool to encourage states to comply with IHRL norms.

1.1.2.2.2 The Liberal International Relations Perspective

The liberal international relations perspective is based on the assumption that, in contrast to the unitary state in realist and neo-realist theories, states comprise competing actors with differing interests, and, therefore, domestic politics is important.⁹⁵ Helfer and Slaughter explain that the effectiveness of IHRL can be achieved when different domestic groups, such as non-governmental organisations (NGOs), protest movements and political parties, employ human rights law to put pressure on their government to promote and enhance respect for human rights.⁹⁶ Moreover, Neumayer argues that a liberal perspective considers that the international human rights system is effective when there are political democracies and when the law has primacy in governance.⁹⁷ Furthermore, Hathaway argues that in democracies, states significantly change their human rights practices due to the difficulty that they may face if they abuse the “expressive role” of IHRL treaties.⁹⁸ Thus, according to the liberal

⁹³ Harold Hongju Koh, ‘Internalization through Socialization’ (2005) 54 *Duke Law Journal* 975, 977.

⁹⁴ E Neumayer, ‘Do International Human Rights Treaties Improve Respect for Human Rights?’ (2005) 49 *Journal of Conflict Resolution* 925, 930.

⁹⁵ A Moravcsik, ‘Taking Preferences Seriously: A Liberal Theory of International Politics’ (1997) 51 *International Organization* 513.

⁹⁶ Laurence R Helfer and Anne Marie Slaughter, ‘Toward a Theory of Effective Supranational Adjudication’ (1997) 107 *Yale Law Journal* 273.

⁹⁷ E Neumayer, ‘Do International Human Rights Treaties Improve Respect for Human Rights?’ (2005) 49 *Journal of Conflict Resolution* 925.

⁹⁸ Oona A Hathaway, ‘Articles Do Human Rights Treaties Make a Difference?’ (2002) 111 *The Yale Law Journal* 1935.

international relations perspective, the effectiveness of IHRL treaties depends on the level of democracy of a state. However, Eatwell and Goodwin point out that democracy does not always guarantee that human rights can be protected; for example, populist parties, which have been gaining strength in recent years, often gain popularity for criticising the use of human rights for minorities to override those of the majority.⁹⁹

1.1.2.2.3 The Theory of Transnational Human Rights Advocacy Networks

The theory of transnational human rights advocacy networks argues that the performance of the international human rights system can be improved when such “networks are strong”.¹⁰⁰ Networks include international human rights NGOs (for example, Amnesty International or Human Rights Watch), domestic NGOs, and civil society groups, parties and media obligated to human rights.¹⁰¹ The improvement in human rights according to this perspective accrues through a “spiral model”. The spiral model of human rights change is developed in *The Power of Human Rights* (1999) by Risse *et al.* It provides an empirical framework and theoretical account of how various socialisation processes work together to influence the relationship between state domestic policies and IHRL. This influence is attained through a five-stage process: repression; denial; tactical concessions; prescriptive status; and rule-consistent behaviour.¹⁰² Risse *et al.* argue that the potential effect of this theory on human rights performance occurs when the ratified treaties attain the phase of “prescriptive status”.¹⁰³ Thus, any positive improvement in human rights is because “ratification is more a manifestation of human rights improvement rather than a cause of it”.¹⁰⁴ Importantly, states may ratify a treaty as a form of tactical concession. In this case, domestic groups, along with international transnational networks, can use the ratification as a means by which to increase the pressure on governments that violate human rights. Risse supports this argument through

⁹⁹ For more details see, Roger Eatwell and Matthew Goodwin, *National Populism: The Revolt against Liberal Democracy* (Pelican 2018).

¹⁰⁰ Stephen C Ropp and Kathryn Sikkink, *The Power of Human Rights: International Norms and Domestic Change* (Cambridge University Press 1999); W Carlsnaes et al., *Handbook of International Relations* (Sage, 2002); Emilie M Hafner-Burton and Kiyoteru Tsutsui, ‘Human Rights in a Globalizing World: The Paradox of Empty Promises’ (2005) 110 *American Journal of Sociology* 1373.

¹⁰¹ E Neumayer, ‘Do International Human Rights Treaties Improve Respect for Human Rights?’ (2005) 49 *Journal of Conflict Resolution* 925.

¹⁰² For more details regard to the process of each phases, See *ibid.* Also, Ryan Goodman and Derek Jinks, ‘Social Mechanisms to Promote International Human Rights: Complementary or Contradictory?’ in Thomas Risse, Stephen C. Ropp and Kathryn Sikkink (eds.), *The Persistent Power of Human Rights: From Commitment to Compliance* (Cambridge University Press, 2012).

¹⁰³ Stephen C Ropp and Kathryn Sikkink, *The Power of Human Rights: International Norms and Domestic Change* (Cambridge University Press 1999).

¹⁰⁴ E Neumayer, ‘Do International Human Rights Treaties Improve Respect for Human Rights?’ (2005) 49 *Journal of Conflict Resolution* 925.

his qualitative studies, which examine the changes of human rights in eleven countries. He concludes that ratification of international human rights treaties has a positive impact on enhancing states' respect for human rights.¹⁰⁵

1.1.2.3 Other theories highlighting domestic actors

Other models and theories are also used to explain the relationship between IHRL and domestic law. Simmons established a domestic politics model of treaty compliance comprising three main mechanisms: agenda setting; litigation; and mobilisation.¹⁰⁶ She argues that treaties might moderate states' behaviours under certain circumstances, such as raising the issue of human rights and granting courts even a little accountability.¹⁰⁷ In addition, Sikkink presents a theory of "human rights prosecutions"¹⁰⁸ as one of the main mechanisms by which international law improves state practices when the norms of human rights law are translated into improved practices.¹⁰⁹ Sikkink supports Simmons' argument about the importance of litigation, when considering the impact of internal and external prosecutions against the state. In addition, she finds a strong relationship between the ratification of specific types of human rights treaties and the implementation of human rights prosecutions.¹¹⁰

However, the effectiveness of the treaties on the domestic human rights regime can be positive or negative. Simmons argues that the effects of international legal obligations are positive; especially in nations that have embedded democratic accountability in which the

¹⁰⁵ Thomas Risse, 'Von der Anerkennung der Menschenrechte zu ihrer Einhaltung' (Menschheit und Menschenrechte 2002) cited in E Neumayer, 'Do International Human Rights Treaties Improve Respect for Human Rights?' (2005) 49 *Journal of Conflict Resolution* 925.

¹⁰⁶ BA Simmons, *Mobilizing for Human Rights: International Law in Domestic Politics* (Cambridge University Press 2009).

¹⁰⁷ K Sikkink, 'Human Rights Prosecutions as Mechanisms for Translating Human Rights Law into Improved Practices' (Rights and their Translation into Practice: Towards a Synthetic Framework workshop, University of Arizona, November 2012).

¹⁰⁸ Human rights prosecutions have emerged in the late twentieth century as a tool by which the volume of human rights violations can be encouraged to fall. The purpose for such trials is to punish perpetrators, but also to show accountability to prevent future violations by other governments/leaders. President Alfonsín said that the justification for the trials in Argentina was "not mainly punishment, but prevention: to avoid that this could happen again". The Deputy Prosecutor of the International Criminal Court (ICC) said that "to deter other people from committing crimes" was a principle goal of the court. Interview with Fatou Bensouda, The Hague, 10 November 2008 cited in Hun Joon Kim and Kathryn Sikkink, 'Explaining the Deterrence Effect of Human Rights Prosecutions for Transitional Countries' (2010) 54 *International Studies Quarterly* 939.

¹⁰⁹ K Sikkink, 'Human Rights Prosecutions as Mechanisms for Translating Human Rights Law into Improved Practices' (Rights and their Translation into Practice: Towards a Synthetic Framework workshop, University of Arizona, November 2012).

¹¹⁰ *ibid.*

population refuses to allow their governments to retreat on its commitments.¹¹¹ Furthermore, as Neumayer explains, IHRL norms may influence states' legal systems when they are accepted as a fair and legitimate process.¹¹² Moreover, international treaties are legally binding on the ratifying parties and likely to be effective if the state enforces the treaty in its domestic legislation.¹¹³ Similarly, Neumayer concludes that treaty ratification of human rights law has a stronger positive effect on human rights when a country is more democratic and has a strong civil society.¹¹⁴ Sikkink, among others, documents how in some Latin America states transnational activists use human rights norms to encourage a positive change in their states.¹¹⁵ Thus, the nature of a state's political system such as being democratic and the existence of an effective civil society can facilitate the IHRL bodies holding to account a state's violation of treaty norms.

The contrasting view is that treaty ratification might not lead to positive change in human rights performance. Keith concludes that there is no positive change on human rights even amongst states that have ratified the ICCPR.¹¹⁶ Indeed, Hathaway argues that human rights treaties do not necessarily lead to better practices, and may even lead to a worse human rights record. According to Hathaway, "countries with worse practices may more inclined to ratify treaties, or we may simply know more about violations committed by countries that sign human rights treaties, making countries that ratify look worse than they are."¹¹⁷ Moreover, Hafner and Tsutsui argue that although evidence shows that international laws may have a positive effect in democratic countries with a strong civil society, this positive influence is not seen in most repressive states.¹¹⁸ Most studies of repressive states have focused on those that are military dictatorships or revolutionary states, regardless of whether they are secular

¹¹¹ BA Simmons, *Mobilizing for Human Rights: International Law in Domestic Politics* (Cambridge University Press 2009).

¹¹² E Neumayer, 'Do International Human Rights Treaties Improve Respect for Human Rights?' (2005) 49 *Journal of Conflict Resolution* 925.

¹¹³ Oona A Hathaway, 'Articles Do Human Rights Treaties Make a Difference?' (2002) 111 *The Yale Law Journal* 1935.

¹¹⁴ E Neumayer, 'Do International Human Rights Treaties Improve Respect for Human Rights?' (2005) 49 *Journal of Conflict Resolution* 925.

¹¹⁵ Kathryn Sikkink, 'Human Rights, Principled Issue-Networks, and Sovereignty in Latin America' (1993) 47 *International Organization* 411.

¹¹⁶ Linda Camp Keith, 'The United Nations International Covenant on Civil and Political Rights: Does It Make A Difference in Human Rights Behavior?' (1999) 36 *Journal of Peace Research* 95.

¹¹⁷ E Neumayer, 'Do International Human Rights Treaties Improve Respect for Human Rights?' (2005) 49 *Journal of Conflict Resolution* 925, 940.

¹¹⁸ EM Hafner-Burton and K Tsutsui, 'Justice Lost! The Failure of International Human Rights Law to Matter Where Needed Most' (2007) 44 *Journal of Peace Research* 407.

or religious.¹¹⁹ The focus of this study, Saudi Arabia, does not neatly fall into either of these categories.

Overall, the domestic actor models highlight the complexity of ascertaining the effectiveness of IHRL in terms of improving and enhancing the state's human rights law and practices. Thus, the effectiveness of the IHRL is linked to different factors which can increase the effectiveness of IHRL in the protection of rights and improve them, or alternatively can undermine the IHRL's effectiveness.

Overall, this section highlights that the theories with respect to the impact of the IHRL on influence states' national law can be divided into two types: the first type views states as unitary actors, and is pessimistic about the effectiveness of international law in influencing states' promotion and protection of human rights. The second type, which focuses on interactions between states and domestic groups, is more optimistic in terms of the effectiveness of the IHRL. However, the effectiveness is perceived to be linked to various domestic factors that in turn contributed to enhancing states' compliance with the international standards. However, this ignores the impact of transnational actors, which can play a significant role in terms of encouraging state compliance with international norms. In this context, the transnational legal process model and the role transnational actors in terms of their effect of the IHRL are discussed in the next section.

1.1.2.4 The Transnational Legal Process Model

1.1.2.4.1 What is the Transnational Legal Process Model?

*“If the goal is to create greater obedience to international norms, then the challenge is to bring international law home”.*¹²⁰

Before discussing the transnational legal process theory, it is useful to first clarify the concept of 'transnational law' in order to understand the roots of the theory of transnational legal process. The term of 'transnational law' was developed in 1956 by Philip Jessup in his Storrs Lectures at Yale University.¹²¹ He defined transnational law as “all law which regulates

¹¹⁹ For more details see, EM Hafner-Burton, K Tsutsui, and JW Meyer, *International Human Rights Law and the Politics of Legitimation: Repressive States and Human Rights Treaties* (2008) 23 *International Sociology* 115.

¹²⁰ Harold Hongju Koh, 'The 1998 Frankel Lecture: Bringing International Law Home', (1998) 35 *Hous. L. Rev.* 623, 642.

¹²¹ Philip C. Jessup, *Transnational Law* (Yale University Press 1956).

actions or events that transcend national frontiers”.¹²² He emphasised “both public and private international law are included, as are other rules which do not wholly fit into such standard categories”.¹²³ In this respect, the ‘international law’ concept refers to law that regulate states’ relationships with each other, while Jessup’s concept of transnational law means the legal regulation of actions or events that exceed national sovereignty which involves “individuals, corporations, states, organization of states, or other groups”.¹²⁴

Since first discussed, a number of scholars have introduced different terms to describe the new situation of international issues that characterised the twentieth century. For instance, they have used ‘transnational’ or ‘cross-border’ to indicate the crossing of domestic boundaries, ‘supranational’ to describe the new regional arrangements such as the European Union (EU) and the term ‘global’ with reference to processes, mostly economic and technological, that together are recognised as ‘globalisation’.¹²⁵ One of the most significant definitions of transnational law was introduced by Harold Koh. He states:

Perhaps the best operational definition of transnational law, using computer- age imagery, is: (1) law that is “downloaded” from international to domestic law: for example, an international law concept that is domesticated internalized into municipal law, such as the international human rights norm against disappearance, now recognized as domestic law in most municipal systems; (2) law that is "uploaded, then downloaded": for example, a rule that originates in a domestic legal system, such as the guarantee of a free trial under the concept of due process of law in Western legal systems, which then becomes part of international law, as in the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights, and from there becomes internalized into nearly every legal system in the world; and (3) law that is borrowed or "horizontally transplanted" from one national system to another: for example, the "unclean hands" doctrine, which migrated from the British law of equity to many other legal systems.¹²⁶

The definition highlights two types of patterns in which the transnational flow of international legal norms occurs; the process “combines the vertical and horizontal

¹²² *ibid.* 2.

¹²³ *ibid.* 2.

¹²⁴ *ibid.* 3. See also, Peer C Zumbansen, ‘Evolving Transnational Law’ in Jan Smits (ed.), *Encyclopedia of Comparative Law* (2nd ed.) (Edward Elgar 2012).

¹²⁵ Maya Steinitz, ‘Transnational Legal Process Theories’ in Cesare PR Romano, Karen J Alter, and Chrisanthi Avgerou (eds.), *The Oxford Handbook of International Adjudication* (Oxford University Press 2013).

¹²⁶ Harold Hongju Koh, ‘Why Transnational Law Matters’ (2005) 24 Penn State International Law Review 745, 746.

dimensions”.¹²⁷ The result of this process of internalisation encourages a state to increase its compliance and obedience to its international law obligations.

Importantly, the use of the concept of ‘transnational law’ has increased and embraces various fields of law school courses that are considered “neither purely domestic nor international, neither purely public nor private”,¹²⁸ such as: International Trade Law; Immigration and Refugee Law; International Business Transactions; International Commercial Law; Comparative Law; and Foreign Relations Law. According to Koh, in all these laws, we find international norms are “fully recognized, integrated, and internalized into domestic legal systems”.¹²⁹

Therefore, to understand how transnational law works and how the norms of international law including human rights norms are domesticated or internalised into national law, it is necessary to understand the ‘Transnational Legal Process Model’, advanced by Harold Koh in 1996. The model offers an understanding as to why nations obey international law, or how international law, including IHRL, influences a state’s domestic law.

The transnational legal process describes:

the theory and practice of how public and private actors-nation-states, international organizations, multinational enterprises, non-governmental organizations, and private individuals-interact in a variety of public and private, domestic and international fora to make, interpret, enforce, and ultimately, internalize rules of transnational law.¹³⁰

It explains how different actors affect a state’s compliance with international law norms. According to Koh, international law norms are internalised into a state’s domestic law “whereby an international law rule is interpreted through the interaction of transnational actors in a variety of law-declaring fora, then internalized into a nation’s domestic legal system”.¹³¹ Furthermore,

Instead of focusing exclusively on the issues of 'horizontal jawboning' at the state-to-state level as traditional international legal process theories do, a transnational legal process approach focuses more broadly upon the mechanisms of ‘vertical

¹²⁷ Gregory Shaffer, ‘Transnational Legal Process and State Change’ (2012) 37 *Law and Social Inquiry* 229, 235.

¹²⁸ Harold Hongju Koh, ‘Why Transnational Law Matters’ (2005) 24 *Penn State International Law Review* 745, 746.

¹²⁹ *ibid.* 746.

¹³⁰ Harold Hongju Koh, ‘Transnational Legal Process’ (1996) 75 *Neb. L. Rev.* 181, 183-184.

¹³¹ *ibid.*

domestication,' whereby international law norms 'trickle down' and become incorporated into domestic legal systems.¹³²

In this case, Shaffer agrees with Koh that transnational norms are built, transferred, and moved by various types of actors such as state officials, international secretariat members, specialists, business representatives and civil society members.¹³³

The process of integrating international rules and norms into a state's national law requires factors that contribute to the enhancement of this process. According to Koh, there are key agents that influence the process of internalisation, which he terms "transnational norm entrepreneurs, governmental norm sponsors, transnational issue networks, and interpretive communities".¹³⁴ He clarifies what he means by these agents and the process of interaction between them as:

Transnational legal process highlights the interactions among both private citizens, whom I call "transnational norm entrepreneurs," and governmental officials, whom I call "governmental norm sponsors." The interaction among transnational norm entrepreneurs and governmental norm sponsors create transnational networks and law-declaring fora, which create new rules of international law that are construed by interpretive communities. Through the work of these "agents of internalization," these international law rules trickle down from the international level and become domesticated into national law.¹³⁵

However, Koh did not specify which of the agents has the greatest influence or is the most dominant factor in the process of domestication of international standards. He mentions that:

one of these agents triggers an interaction at the international level, works together with other agents of internalization to force an interpretation of the international legal norm in an interpretive forum, and then continues to work with those agents to persuade a resisting nation-state to internalize that interpretation into domestic law.¹³⁶

As a result of the frequent and continuous interaction between these agents and international norms through the three cycles of interaction-interpretation-internalisation, in the end, states adapt their national laws to international norms through internalising these norms domestically.¹³⁷

According to the theory of transitional legal process, the main player in the process of transitioning international legal norms into domestic law is the 'actor'. Actors, including both

¹³² Harold Hongju Koh, 'The 1998 Frankel Lecture: Bringing International Law Home' (1998) 35 *Houston L. Rev.* 623, 626-627.

¹³³ Gregory Shaffer, 'Transnational Legal Process and State Change' (2012) 37 *Law and Social Inquiry* 229.

¹³⁴ Harold Hongju Koh, 'Why Transnational Law Matters' (2005) 24 *Penn State International Law Review* 745, 746.

¹³⁵ *ibid.* 764.

¹³⁶ *ibid.* 746-747.

¹³⁷ *ibid.*

state and non-state actors, through the three-part process of interaction, interpretation, and internalisation, play an important role in the process of transferring international principles to become binding domestic laws.

The result of the transnational legal process may occur in different ways. It can take the form of social, political, or legal internalisation. Koh indicated these three forms of the process of internalisation:

- *Social internalisation* occurs when a norm acquires so much public legitimacy that there is widespread general adherence to it.
- *Political internalisation* occurs when the political elites accept an international norm and advocate its adoption as a matter of government policy.
- *Legal internalisation* occurs when an international norm is incorporated into the domestic legal system and becomes domestic law through executive action, legislative action, judicial interpretation, or some combination of the three.¹³⁸

In this respect, the IHRL norms through any one of these internalisation forms may become part of an affected state's social, political, and legal structure. Furthermore, it may lead to an increase in a state's compliance with the internalised norms of the IHRL.

However, Koh's model is criticised by Shaffer as not providing an explanation or a framework that defines the factors, circumstances and locations that encourage and lead to the process of internalisation of international principles within domestic laws. In addition, the transnational legal process model does not sufficiently explain why states internalise IHRL norms.¹³⁹

However, the complexity of the process of internalising the IHRL norms may differ from case-to-case, the fundamental dynamic remains similar:

Normally, one or more transnational actors provokes an interaction, or series of interactions, with another in a law declaring forum. This forces an interpretation or enunciation of the global norm applicable to the situation. By so doing, the moving party seeks not simply to coerce the other party, but to force the other party to internalize the new interpretation of the international norm into its normative system.¹⁴⁰

In this respect, it can be argued that the main factor in the process of the international norm internalisation is the interaction between the international actors and state actors. Hathaway

¹³⁸ Harold Hongju Koh, 'The 1998 Frankel Lecture: Bringing International Law Home' (1998) 35 *Houston L. Rev.* 623, 642.

¹³⁹ Gregory Shaffer, 'Transnational Legal Process and State Change' (2012) 37 *Law and Social Inquiry* 229.

¹⁴⁰ Harold Hongju Koh, 'The 1998 Frankel Lecture: Bringing International Law Home' (1998) 35 *Houston L. Rev.* 623, 644.

comments on the theory of transnational legal process that “the transnational legal process framework presents a coherent explanation for compliance with human rights regimes”.¹⁴¹

This brings us to the fundamental investigation of this section: how does the internalisation of IHRL norms occur according Koh’s theory? As mentioned previously, there are three phases in the process of norm-internalisation into states’ domestic law: interaction; interpretation; and internalisation.¹⁴² In the first phase, the process of norm-internalisation relies on transnational actors who are often foreign policy government officials, private norm entrepreneurs, and NGOs actors to address a legal matter.¹⁴³ For example, the interactions between transnational actors, such as diplomats, NGOs and individuals, on the texts of international human rights treaties may be concluded by agreement on a general interpretation of norms.¹⁴⁴ Moreover, intensive interactions, interpretations (in particular the final draft of the treaty refers to common interpretation of norms), and frequent meetings provide the opportunity to persuade non-complying state parties about the validity of the treaty norms; thereby, encouraging states to accept and internalise treaty norms.¹⁴⁵ In the third and final phase, internalisation, a wide range of actors (for example, government officials or departments, NGOs, the private sector and individuals) are involved in interacting with the IHRL norms.¹⁴⁶ In this phase, states promote the rules of international law as part of their domestic interest.¹⁴⁷

Generally, the result of the transnational actors’ interactions, as Koh argues, is that they create patterns of behaviours and generate types of external norms, which lead to the internalisation of the norms into the state’s executive, legislative, and judicial system.¹⁴⁸ What distinguishes the legal process is that through repeated interaction between local and international actors, the local institutions absorb the international standards rather than having them imposed. In this case, the IHRL norms became enmeshed in domestic decision-making, as states define the norms as part of their national self-interest.¹⁴⁹ Indeed, in Koh's view, “true

¹⁴¹ Oona A Hathaway, ‘Articles Do Human Rights Treaties Make a Difference?’ (2002) 111 *The Yale Law Journal* 1935, 1961.

¹⁴² Harold Hongju Koh, ‘Transnational Legal Process’ (1996) 75 *Neb. L. Rev.* 181.

¹⁴³ *ibid.*

¹⁴⁴ *ibid.*

¹⁴⁵ *ibid.*

¹⁴⁶ *ibid.*

¹⁴⁷ *ibid.*

¹⁴⁸ *ibid.*

¹⁴⁹ *ibid.*

compliance is not so much the result of externally imposed sanctions ... as internally felt norms.”¹⁵⁰

Transnational legal process model has been criticised for using transnational public law litigation such as using courts in order to encourage states to comply with international law.¹⁵¹ In this respect, Waters argues that transnational legal process suffers from a legitimacy problem because it “urged the courts to serve as ‘transmission belts’ that is, to utilize international human rights standards”.¹⁵² However, according to Koh’s model the process of internalisation requires full acceptance of the norms, socially, politically, and legally.¹⁵³ The process of internalising international norms requires that the norm be accepted by local policymakers and become part of local values.¹⁵⁴ Keohane also criticises the model for disregarding the type of state regime as a factor influencing the process of internalisation.¹⁵⁵ According to Keohane, by ignoring a state’s regime type, Koh only describes the internalisation of international legal norms.¹⁵⁶

In the same vein, Raustiala and Slaughter criticise Koh’s definition of the internalisation process, they argue that Koh has defined IHRL norm internalisation as the definition of compliance and its cause.¹⁵⁷ They claim that “rather than explaining why and when states follow international rules, Koh instead describes an empirical pathway to obedience—or, more precisely, a pathway to norm incorporation into domestic law—and details the ways in which transnational actors and practices influence this process”.¹⁵⁸ They also mention that transnational legal process model does not examine different cases.¹⁵⁹ As a result, they claim, “Koh cannot say when non-compliance should occur or what the optimal response should be”.¹⁶⁰ Goodman and Jinks points out that the “first generation” of compliance theories of state compliance suffer from a lack of empirical evidence in analysing how states are

¹⁵⁰ Harold Hongju Koh, ‘How is International Human Rights Law Enforced’ (1998) 74 Ind. Lj 1397, 1407.

¹⁵¹ Caleb J. Stevens, ‘Hunting a Dictator as a Transnational Legal Process: The Internalization Problem and the Hissène Habré Case’ (2012) 24 Pace Int’l L. Rev. 190.

¹⁵² Melissa A Waters, ‘Normativity in the New Schools: Assessing the Legitimacy of International Legal Norms Created by Domestic Courts’ (2007) 32 Yale J. Int’l L. 455, 461.

¹⁵³ Harold Hongju Koh, ‘How is International Human Rights Law Enforced’ (1998) 74 Ind. Lj 1397, 1407.

¹⁵⁴ *ibid.*

¹⁵⁵ K Harold Hongju Koh, ‘The 1998 Frankel Lecture: Bringing International Law Home’ (1998) 35 Houston L. Rev. 623.

¹⁵⁶ Christopher J. Borgen, Transnational Tribunals and the Transmission of Norms: The Hegemony of Process, (2007) 39 Geo. Wash. Int’l L. Rev. 685, 720–21.

¹⁵⁷ Kal Raustiala and Anne-Marie Slaughter, ‘International Law, International Relations and Compliance’ in Walter Carlsnaes et al. (eds.), *The Handbook of International Relations* (Sage 2002) 544.

¹⁵⁸ *ibid.* 544.

¹⁵⁹ *ibid.*

¹⁶⁰ *ibid.* 544.

persuaded to comply with international standards.¹⁶¹ In this context, the current study provides an empirical analysis that can help to explain how the domestic mechanics of inducing state compliance can aid our understanding of how the transnational legal process operate in terms of states' internalisation of international legal norms. Furthermore, an empirical in-depth examination of a single case (the KSA) may provide sufficient explanation of how the transnational legal process occurs and provide an answer to why the state complies with the norm. In addition, it may contribute to defining some of the variables influencing internalisation and thus offer insights for more ambitious comparative studies.

In short, transnational law represents a hybrid of domestic and international law that can be transferred from the international level to the domestic one or from the domestic level to the international one, or it could be transplanted from one state's system to another. Nowadays, transnational law can influence almost all states' law and consequently affect individuals' lives.¹⁶²

1.1.2.4.2. Summary

In summary, Section 1.1 highlights that there are contrasting views regarding the impact of IHRL on states, and on how effective it is in terms of developing and protecting human rights. In this context, it is found that theories that view countries as a unitary actor tend to stress the ineffectiveness of IHRL to induce states to comply with the standards stipulated in its instruments. In contrast, theories that focus on the interaction of various non-state actors with the mechanisms of IHRL highlights that the latter plays a significant role in influencing states to comply with international norms. The theories argue that international norms do not travel by themselves; indeed, they need a conveyor to become part of the state's national law. In this respect, in order to gain an in-depth understanding of how IHRL is in/effective in terms of influencing a state's law, it is useful to examine one of the core conventions of the UN human rights system treaty. Therefore, CEDAW and its effectiveness is evaluated in the following section.

1.2 The CEDAW

The UN human rights system is comprised of a number of human rights instruments which include rights that UN members suggest are fundamental and could be universal norms, as

¹⁶¹ Ryan Goodman and Derek Jinks, 'How to Influence States: Socialization and International Human Rights Law' (2004) 54 *Duke Law Journal* 621.

¹⁶² Harold Hongju Koh, 'Why Transnational Law Matters' (2005) 24 *Penn State International Law Review* 745.

well as the principles as how to promote respect for and observance of these norms. Due to the focus of this study on the development and changes pertaining to Saudi women rights that have occurred between 1990 and 2016 and the fact that the CEDAW convention, which has been ratified by the KSA, is known as the women's convention, it is adopted as a case study for this thesis.¹⁶³ This section is divided into two parts: first, it provides a background to the Convention; and second, it evaluates the effectiveness of the CEDAW in protecting and promoting women rights.

1.2.1 Background of the Convention

CEDAW is one of the main treaties of the UN human rights system. It is a legally-binding treaty that requires state parties to internalise its norms into their domestic law. The creation of the CEDAW took a number of years. It dates to 1946 when the Commission on the Status of Women (CSW) was established in order to eliminate discrimination from a gender perspective.¹⁶⁴ Initially, the CSW was a subsidiary body of the Commission on Human Rights, but later, as a result of activists' pressure, it became a full commission.¹⁶⁵ The CSW, drafted a Declaration on the Elimination of Discrimination against Women in response to the request to set international principles for the equal rights of men and women. The Declaration was adopted by the UNGA in 1967.¹⁶⁶ In 1972, the Commission was requested by the UN Secretary-General to prepare a legally binding treaty that would grant the non-binding provisions of the Declaration greater normative force.¹⁶⁷ In 1974, it was agreed to draft a binding treaty on the elimination of discrimination against women, the CEDAW. The Convention of the treaty prepared by working groups of the Commission during 1976, and between 1977 and 1979, it was discussed intensively by a working group of the Third Committee of the UNGA.¹⁶⁸ Thereafter, the CEDAW was adopted by the UNGA on 18 December 1979. On 3 September 1981,¹⁶⁹ the Convention entered into force after the twentieth Member State had ratified it, and by its tenth anniversary in 1989, almost one

¹⁶³ The KSA's engagement with the CEDAW is discussed in Chapter Two.

¹⁶⁴ 'Short History of CEDAW Convention', <<http://www.un.org/womenwatch/daw/cedaw/history.htm>> accessed 10 June 2018. See also, Margaret E. Galey, 'International Enforcement of Women's Rights' (1984) 6 Hum. Rts. Q. 463.

¹⁶⁵ *ibid.*

¹⁶⁶ *ibid.*

¹⁶⁷ Jane Connors, 'Gender in the UN: CEDAW and the Commission on the Status of Women' in Gerd Oberleitner (ed.), *International Human Rights Institutions, Tribunals, and Courts* (Springer 2018); Rebecca J Cook, 'Enforcing Women's Rights Through Law' (1995) 3 Gender & Development 8.

¹⁶⁸ *ibid.*

¹⁶⁹ 'Short History of CEDAW Convention', <<http://www.un.org/womenwatch/daw/cedaw/history.htm>> accessed 10 June 2018.

hundred nations accepted to be bounded by the treaty, but notably not the US.¹⁷⁰ As of June 2018, the Convention has 189 states parties.¹⁷¹

The CEDAW sets out women's rights and measures to ensure that governments implement their obligations towards the Convention. It consists of 30 articles and the fundamental provisions of the Convention cover different subjects; for example, Article 1 provides a definition of the discrimination against women as:

any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.¹⁷²

The definition by the Convention of discrimination against women includes any sexist practices whether in the public life or in private life. Overall, the Women's Convention is considered to be a comprehensive treaty; it is not limited to state obligations regarding public life, it also included government obligations to private or civil life.¹⁷³

As this study primarily focus on the state's engagement with IHRL and the consequences of such dealing on its domestic human rights law, this section only discusses the relevant articles of the CEDAW. In this context, with regard to the state achieving equality for women in field of politics and the civic sectors, Articles 2 through to 16 spell out measures and policies that states pledge to achieve. Article 2 encourages state parties to adopt appropriate means to achieve equality of the sexes through modifying or abolishing existing laws, regulations, customs and practices in its national laws or legislation.¹⁷⁴ Articles 7 and 8 require state parties to eliminate discrimination against women in political and public life. Article 9 requires equality between men and women in nationality provisions in relation to women's own nationality and the nationality of their children. Article 11 addresses equality in the employment field including the right to equal job opportunities, benefits, and pay.

In order to monitor state parties' national law compliance with these substantive provisions and to follow up the implementation of the Convention's norms, the CEDAW establishes, through Article 17, the Committee on the Elimination of Discrimination Against Women

¹⁷⁰ *ibid.*

¹⁷¹ 'States Parties', <<http://www.un.org/womenwatch/daw/cedaw/>> accessed 10 June 2018.

¹⁷² *ibid.*

¹⁷³ Rebecca J. Cook, Reservations to the Convention on the Elimination of All Forms of Discrimination against Women, (1990) 30 Va. J. Int'l L. 643.

¹⁷⁴ Convention on the Elimination of All Forms of Discrimination against Women, G.A. res. 34/180, 34 U.N. GAOR Supp. (no. 46) at 193, U.N. Doc. A/34/46 entered into force 3 September 1981.

(CEDAW Committee). It is a monitoring body which has particular tasks to observe state parties' implementation of their obligations.¹⁷⁵

Overall, the CEDAW is a global legally binding treaty that aims to protect women's rights and enables them to enjoy equal rights to men. The Convention is comprehensive; its provisions cover various aspects of life in which women may experience discriminatory practices. It also has the authority to oblige member states to abide and apply the Convention's provisions in their domestic laws.¹⁷⁶ The following section evaluates the effectiveness of the Convention.

1.2.2 Evaluation of the Effectiveness of the CEDAW

As discussed, the CEDAW is one of the UN human rights legally binding treaties. According to Cook, the CEDAW is "the definitive international legal instrument requiring respect for and observance of the human rights of women; it is universal in reach, comprehensive in scope, and legally binding in character".¹⁷⁷ It requires that states should implement the Convention's norms in their domestic law. However, the incorporation of the CEDAW norms into states' domestic law and its effectiveness regarding improving and protecting women rights is a controversial issue.

Thus, before discussing this issue, it is useful to highlight that the CEDAW creates a body, the CEDAW Committee, that monitors a state's compliance with the treaty. The Committee monitor states' implementation of the Convention, as well as monitoring and assessing advances made to eliminate discrimination against women.¹⁷⁸ In order to follow up the performance of the state party, the Committee has a reporting procedure, which is a mechanism to evaluate the periodic reports submitted by the state parties. It also enables the questioning of the government delegations that present the report in meeting the requirement of Article 18 which states that state parties are obliged to submit a report on the legislative, judicial, administrative or other measures adopted in accordance with convention.¹⁷⁹

¹⁷⁵ *ibid.*

¹⁷⁶ Rebecca J. Cook, Reservations to the Convention on the Elimination of All Forms of Discrimination against Women, (1990) 30 Va. J. Int'l L. 643.

¹⁷⁷ Rebecca J. Cook, Reservations to the Convention on the Elimination of All Forms of Discrimination against Women, (1990) 30 Va. J. Int'l L. 643, 643.

¹⁷⁸ Convention on the Elimination of All Forms of Discrimination against Women, G.A. res. 34/180, 34 U.N. GAOR Supp. (no. 46) at 193, U.N. Doc. A/34/46.

¹⁷⁹ The state reporting mechanism, spelt out in Article 18, obliges State Parties to submit to the Secretary-General of the United Nations an initial report within one year of ratification of the Convention, followed by periodic reports at least once every four years. See, Convention on the Elimination of All Forms of

Significantly, this accountable mechanism includes an inter-state procedure.¹⁸⁰

The discussion now turns to the effectiveness of the Convention in protecting and developing the rights of women. Because of its obligatory manner, the CEDAW should, in theory, be effective in ensuring that states implement the necessary changes in their domestic law. As Baldez argues, “ratification of CEDAW sets in motion a dynamic process”,¹⁸¹ which requires that states take on a legal obligation to comply with the Convention norms. In this regard, a number of studies have analysed the specific impact of the CEDAW on various aspects of women’s equality and rights. For example, Simmons notes that “there is some plausibility to the argument that CEDAW ratification has had an influence on domestic politics by stimulating the formation of women’s organizations, at least in some cases”,¹⁸² however, “not in the stable democracies or the stable autocracies but rather in the countries in between autocracy and democracy, so called “transitional countries”.¹⁸³ She concludes that the Convention “has given women a stronger stake in organizing to demand non-discrimination and basic rights, due at least in part to its influence on expectations and mechanisms (e.g., reporting requirements) that invite these groups to critique government policies”.¹⁸⁴ Simmons examines the influence of CEDAW on three specific rights: education; reproductive health; and employment. She concludes that ratification of CEDAW has a positive impact on girls enjoyment of their education rights and increases the ratio of girls to boys in primary and secondary school.¹⁸⁵ She found that the effects could be seen immediately after ratification and they continue for at least five years, though they may then fall off.¹⁸⁶ Furthermore, she mentions that the impact of the CEDAW is not the same in all countries; it has more influence in transition countries, in countries without a State religion, in countries “reputed for their well- developed rule of law institutions”¹⁸⁷ and “in countries where there is an active

Discrimination against Women, G.A. res. 34/180, 34 U.N. GAOR Supp. (no. 46) at 193, U.N. Doc. A/34/46, Art. 18.

¹⁸⁰ The inter-state procedure, set forth in Article 29, addresses the conflicting interpretations and applications of the Convention between State Parties. See, Convention on the Elimination of All Forms of Discrimination against Women, G.A. res. 34/180, 34 U.N. GAOR Supp. (no. 46) at 193, U.N. Doc. A/34/46, supra note 85, Art. 29 (1).

¹⁸¹ Lisa Baldez, ‘The Impact of the UN Women’s Rights Treaty: Process, Not Policy’ (International Political Science Association conference, Madrid, 2012 2).

¹⁸² Beth A Simmons, *Mobilizing for Human Rights: International Law in Domestic Politics* (Cambridge University Press, 2009) 209.

¹⁸³ *ibid.* 212.

¹⁸⁴ *ibid.* 212.

¹⁸⁵ *ibid.*

¹⁸⁶ *ibid.*

¹⁸⁷ *ibid.* 222.

presence of women's international NGOs".¹⁸⁸

In a different study, Gray, Kittilson and Sandholtz find the ratification of the CEDAW along with other factors such as "the international trade, foreign direct investment, membership in the United Nations and World Bank" are associated with improved conditions for women.¹⁸⁹

Moreover, Cho concludes that:

The interaction effect of commitments to the CEDAW with the level of democracy is positive and significant for women's social rights, regardless of choices of control variables and methods of estimation, but not for women's political and economic rights. The positive effects of commitments to the CEDAW on women's rights are partially detected but the findings are not consistent across the different estimation methods and test for robustness.¹⁹⁰

Similarly, Englehart and Miller demonstrate that ratifying the CEDAW appears to improve human rights conditions in the affected states.¹⁹¹ They conclude that, "as more countries ratify, they tend to rise up to the mean for the CEDAW parties, rather than dragging the trend line down".¹⁹² More specifically, the study indicates that the CEDAW has improved "political rights, attenuated somewhat for social rights, and [is] absent altogether for economic rights".¹⁹³

From the discussion, certain studies argue that the effectiveness of the CEDAW in terms of improving women rights appears to be associated with factors such as the level of democracy of the state, the strength of civil society and economic factors. These contribute to increasing the effectiveness of the Convention in influencing the domestic law of a state. However, in contrast, other researchers argue that the effectiveness of the CEDAW on changing and developing a state's domestic law is limited. This is because of a number of obstacles that can be classified into two broad categories: first, the weakness of the enforcement mechanisms of the Convention; and, second, the presence of states' reservations on the Convention. These are discussed in the following sections.

¹⁸⁸ *ibid.* 212.

¹⁸⁹ Mark M Gray, Miki Caul Kittilson and Wayne Sandholtz, 'Women and Globalization: A Study of 180 Countries, 1975–2000', (2006) 60 *International Organization* 293, 293.

¹⁹⁰ Seo-Young Cho, 'International Human Rights Treaty to Change Social Patterns: The Convention on the Elimination of all Forms of Discrimination against Women, (CEGE Discussion Papers, No. 93, University of Göttingen, Center for European, Governance and Economic Development Research).

¹⁹¹ Neil A Englehart and Melissa K Miller, 'The CEDAW Effect: International Law's Impact on Women's Rights' (2014) 13 *Journal of Human Rights* 22.

¹⁹² *ibid.* 38.

¹⁹³ *ibid.* 38.

1.2.2.1 The enforcement mechanisms of the CEDAW

Although the CEDAW has two monitoring components, the state reporting mechanism and the mechanism of interstate procedure, it lacks any enforcement mechanism. Thus, its power to force states to implement the Convention's provisions is limited. Furthermore, the state reporting mechanism and the mechanism of interstate procedure have their own weaknesses. In relation to the state reporting mechanism, a number of scholars of human rights law argue that reporting procedures, such as the CEDAW Committee has limited effectiveness.¹⁹⁴ This ineffectiveness is attributed to several issues. Firstly, states are often not committed to delivering the report on time and may present inaccurate information on the status of women's rights.¹⁹⁵ Consequently, this affects the ability of the Commission to follow-up on the status of women and discover rights violations. Thus, the CEDAW Committee relies on reports prepared by government officials, who may avoid including critical issues regarding women's status.¹⁹⁶ Secondly, there may not anybody within the state with credibility and transparency, this can sit alongside a lack of political will on part of the state to cooperate in this regard.¹⁹⁷ Third, the weakness of the state reporting mechanism is attributed to the lack of a mechanism that allows the Committee to impose sanctions on a state that does not comply with its obligation towards the Convention.¹⁹⁸

The functions of the CEDAW Committee start when the reports submitted by member states are examined. These reports set out which provisions of the Convention are observed in the domestic law of the state. The delegations are then subjected to questioning concerning the status of women's rights. The Committee then makes recommendations regarding the issues that need to be based on the reports.¹⁹⁹ However, as stated previously, although the Committee can make suggestions and general recommendations and can formulate a general analysis of the Convention's provisions, it cannot interpret the provisions of the Convention.²⁰⁰ In addition, it has no quasi-judicial power to pronounce a state in violation of the Convention. The Convention allow to states in the case of disputes regarding

¹⁹⁴ K Tomaševski, *Women and Human Rights* (Zed Books 1993).

¹⁹⁵ See Andrew Byrnes, 'Toward More Effective Enforcement of Women's Human Rights Through the Use of International Human Rights Law and Procedures' in Rebecca J Cook (ed.) *Human Rights of Women: National and International Perspectives* University of Pennsylvania Press 1994).

¹⁹⁶ *ibid.*

¹⁹⁷ *ibid.*

¹⁹⁸ Laboni Amena Hoq, 'The Women's Convention and Its Optional Protocol: Empowering Women to Claim Their Internationally Protected Rights' (2000) 32 Colum. Hum. Rts. L. Rev. 677.

¹⁹⁹ Convention on the Elimination of All Forms of Discrimination against Women, G.A. res. 34/180, 34 U.N. GAOR Supp. (no. 46) at 193, U.N. Doc. A/34/46, Art. 21.

²⁰⁰ *Ibid.*

interpretations or applications of the Convention to complain to the International Court of Justice for arbitration.²⁰¹ Furthermore, in contrast to other treaties, such as the Race Convention, the Civil and Political Covenant, and the Torture Convention, the CEDAW does not stipulate processes to deal with state-to-state complaints.²⁰² It is an optional approach rather than a mandatory one; therefore, states generally do not use it to address human rights issue in other states.²⁰³

The weakness in the state reporting mechanism is offset, to a degree, by the fact that the CEDAW Committee does not rely solely on government reports regarding the status of women, it also cooperates with NGOs, especially the International Women's Rights Action Watch (IWRAW).²⁰⁴ This cooperation, which includes NGO participation in the dialogue between state parties and CEDAW Committee, has improved the Committee's ability to monitor violations of human rights.²⁰⁵ This is confirmed by Afsharipou who argues that, "in order to fully address the Convention during this question-and-answer session, CEDAW relies heavily on the work of NGOs".²⁰⁶ According to one of the CEDAW Committee members, "NGOs greatly aid CEDAW's experts in their work by sharing information about the situation of women in different countries and by supporting CEDAW's decisions in international fora".²⁰⁷ Thus, it is assumed that the interaction of CEDAW with NGOs leads to an increase in state compliance with the Convention norms.

In relation to the second mechanism, that of inter-state procedure, Lecki argues that it still remains highly unlikely that the inter-state complaint procedure will be utilised effectively in term of human rights.²⁰⁸ This may be attributed to a number of reasons. Firstly, most states lack interest in intervening in the internal affairs of other states, because of the principle of sovereignty.²⁰⁹ Furthermore, countries can be particularly reluctant to intervene in relation to

²⁰¹ Convention on the Elimination of All Forms of Discrimination against Women, G.A. res. 34/180, 34 U.N. GAOR Supp. (no. 46) at 193, U.N. Doc. A/34/46, Art. 29.

²⁰² Scott Leckie, 'The Inter-State Complaint Procedure in International Human Rights Law: Hopeful Prospects or Wishful Thinking?' (1987) 10 Human Rights Quarterly 249.

²⁰³ *ibid.*, and Loveday Hodson, 'Women's Rights and the Periphery: CEDAW's Optional Protocol' (2014) 25 European Journal of International Law, 561.

²⁰⁴ Laboni Amena Hoq, 'The Women's Convention and Its Optional Protocol: Empowering Women to Claim Their Internationally Protected Rights' (2000) 32 Colum. Hum. Rts. L. Rev. 677.

²⁰⁵ *ibid.*

²⁰⁶ Afra Afsharipour, 'Empowering Ourselves: The Role of Women's NGOs in the Enforcement of the Women's Convention' (1999) 99 Columbia Law Review 129, 143.

²⁰⁷ *ibid.*

²⁰⁸ Scott Leckie, 'The Inter-State Complaint Procedure in International Human Rights Law: Hopeful Prospects or Wishful Thinking?' (1987) 10 Human Rights Quarterly 249.

²⁰⁹ Laboni Amena Hoq, 'The Women's Convention and Its Optional Protocol: Empowering Women to Claim Their Internationally Protected Rights' (2000) 32 Colum. Hum. Rts. L. Rev. 677.

women's rights as most countries are subject to criticism in this field.²¹⁰ Second, the power of the mechanism of inter-state procedure is undermined by the flexible nature of the CEDAW, which allows states to exempt themselves from this mechanism.²¹¹ Finally, inter-state procedure in practical terms has not been examined, because no State Party has ever used it.²¹² Thus, in this case it is assumed that the impact of the Convention on states may be weak and its accession only nominal.

1.2.2.2 States' reservations on the CEDAW convention

Most state parties to human rights treaties ratify the treaty with reservations. A reservation is defined in the Vienna Convention as "a unilateral statement, however phrased or named, made by a State, when signing, ratifying, accepting, approving or acceding to a treaty, whereby it purports to exclude or to modify the legal effect of certain provisions of the treaty in their application to that State".²¹³ This proviso allows states to become parties to treaties but by adding reservations to the provisions with which they might disagree. Thus, the formulation of a reservation expresses the will of a state of "excluding, in its part, certain provisions of the Treaty, not accepting certain obligations under that treaty, clarifying the meaning that it intends to give to the provisions of that Treaty".²¹⁴ Furthermore, the Vienna Convention²¹⁵ allows states to exclude themselves from implementing the provisions of the treaties with which they do not desire to comply.²¹⁶ Article 19 spells out "A State may, when signing, ratifying, accepting, approving or acceding to a treaty, formulate a reservation"²¹⁷ to reduce, for the state in question, the extent of the obligations under that treaty. Importantly, this is deemed acceptable "if the treaty so permits or the other contracting States so agree".²¹⁸ Flexibility is one of the most significant advantages of applying the Vienna Convention to the CEDAW for two reasons. First, it encourages states to protect human rights through engagement with the international human rights system, and second, state parties can accede

²¹⁰ *ibid.*

²¹¹ *ibid.*

²¹² *ibid.*

²¹³ 'UNTC' <https://treaties.un.org/pages/ViewDetailsIII.aspx?src=TREATY&mtdsg_no=XXIII-1&chapter=23&Temp=mtdsg3&lang=en> accessed 22 September 2015.

²¹⁴ Anghel I, *Dreptul tratatelor/Law of Treaties* (Lumina Lex 1994).

²¹⁵ Vienna Convention on the Law of Treaties, adopted 22 May 1969, entered into force 27 January 1980, UN Doc. A/CONF.39/27 (1969) [hereinafter Vienna Convention] United Nations, 'Vienna Convention on the Law of Treaties (with Annex) Concluded at Vienna on 23 May 1969' (1980) 1155 United Nations — Treaty Series 181, Art. 19 <<https://treaties.un.org/doc/publication/unts/volume%201155/volume-1155-i-18232-english.pdf>> accessed 10 January 2019.

²¹⁶ See, *ibid.* Article 2(d)

²¹⁷ *ibid.* Art. 19.

²¹⁸ *ibid.* Art 17.

to the Convention while ensuring their traditions and sovereignty.

Nevertheless, states' reservations to the CEDAW have received considerable attention in terms of the impact of those reservations on the effectiveness of the treaty and its ability to achieve its objectives. Cook argues that "the volume of reservations brings this Convention among the most heavily reserved of international human rights conventions".²¹⁹ This is because Article 28 of the Convention allows states to ratify the Convention with reservations, on the condition that the reservations are not "incompatible with the object and purpose of the present Convention".²²⁰ Mullins argues, the Convention was created by different thinkers over the world, thus, no need for reservations on CEDAW because "CEDAW is not exclusively geared toward accommodating any specific type of culture or religion".²²¹ While, Merry recommends that human rights law has to be framed locally by local cultures and structures, otherwise it will not be embraced or effective.²²²

However, the treaty "contains no objective criteria to determine if this requirement has been met".²²³ According to Hoq, the Convention does not provide a specific mechanism to ascertain if the reservation complies with Article 28.²²⁴ Furthermore, there is no authority to assess state reservations or limit reservations that conflict with the terms of Article 28.²²⁵ Therefore, these factors have the potential to limit the effectiveness of the Committee and affect its role in enforcing states to withdraw their reservations towards the Convention's provisions. As Donner points out, "the weak provisions governing the reservations regime in the Women's Convention caused not only a high number of States to adopt expansive reservations, but contributed to the sense of disagreement and conflict over the meaning and purpose of the Convention".²²⁶

²¹⁹ Rebecca J. Cook, Reservations to the Convention on the Elimination of All Forms of Discrimination against Women, (1990) 30 Va. J. Int'l L. 643, 644.

²²⁰ Convention on the Elimination of All Forms of Discrimination against Women, G.A. Res. 34/180, 34 U.N. GAOR Supp. (no. 46) at 193, U.N. Doc. A/34/46, entered into force on 3 September 1981, Art. 28(2).

²²¹ Mullins L. Bock, "CEDAW: The Challenges of Enshrining Women's Equality in International Law." (2018) 20.3 Public Integrity 257.263

²²² Merry Sally Engle, "Human rights and gender violence: Translating international law into local justice" (2nd ed) (Chicago, IL: University of Chicago Press 2009)

²²³ Julie A Minor, 'An Analysis of Structural Weaknesses in the Convention on the Elimination of All Forms of Discrimination Against Women' (1994) 24 Ga. J. Int'l & Comp. L. 137, 144.

²²⁴ Laboni Amena Hoq, 'The Women's Convention and Its Optional Protocol: Empowering Women to Claim Their Internationally Protected Rights' (2000) 32 Colum. Hum. Rts. L. Rev. 677.

²²⁵ Convention on the Elimination of All Forms of Discrimination against Women, G.A. Res. 34/180, 34 U.N. GAOR Supp. (no. 46) at 193, U.N. Doc. A/34/46, entered into force on 3 September 1981.

²²⁶ Laura A Donner, 'Gender Bias in Drafting International Discrimination Conventions: The 1979 Women's Convention Compared with the 1965 Racial Convention' (1993) 24 Cal. W. Int'l LJ 241, 253.

However, the influence of states' reservations on the CEDAW is contested. The Committee on the Elimination of Discrimination against Women believes the CEDAW's role is undermined by the existence of reservations; thus, it encourages state parties to withdraw reservations, or at least, narrowly formulate them.²²⁷ Among the scholars who have examined the issue of CEDAW reservations, Englehart finds the CEDAW has a statistically significant and positive effect on developing women rights in states party to the treaty, despite any reservations.²²⁸ Meanwhile, Landman finds that democratic countries tend to ratify treaties with fewer reservations. In contrast, less democratic states that tend to have higher levels of human rights violations.²²⁹ Therefore, there does not seem to be a significant correlation between the number or types of reservation and the human rights conditions in a country. In contrast, Keller argues that reservations prevent the achievement of the Convention's targets as it allows states to disregard the Convention in eliminating discrimination between the two sexes.²³⁰ Reservations can also be interpreted as an unwillingness by states to adhere to the convention's provisions.²³¹

Thus, it can be argued that states' reservations can limit the CEDAW's ability to rapidly tackle violations of women's rights. Nevertheless, the reservations do not prevent states from improving human rights. For instance, in many states that have ratified the CEDAW with reservations, the condition of women's rights has improved. Reservations towards substantive provisions of the convention are "closely related to the fundamental normative controversies that challenge the universal commitment to international women's rights".²³² However, states may accept the objectives and provisions of the Convention, but are concerned with how these objectives and reservations are applied. The concern often revolves around religious and cultural issues that differ from the provisions of the Convention. For example, most of Muslim states' reservations to the CEDAW are based on cultural or

²²⁷ For more details see, See states' reports
<https://tbinternet.ohchr.org/_layouts/treatybodyexternal/TBSearch.aspx?Lang=en&TreatyID=3&DocTypeID=29> accessed 21 January 2019.

²²⁸ Neil A Englehart and Melissa K Miller, 'The CEDAW Effect: International Law's Impact on Women's Rights' (2014) 13 Journal of Human Rights 22.

²²⁹ Todd Landman, *Protecting Human Rights: A Comparative Study* (Georgetown University Press 2005).

²³⁰ Linda M Keller, 'The Impact of States Parties' Reservation to the Convention on the Elimination of All Forms of Discrimination against Women' (2014) Mich. St. L. Rev. 309.

²³¹ Rep. of the Comm. on the Elimination of Discrimination against Women, 18th Sess., 19th Sess., Jan. 19-Feb. 6, 1998, June 22-July 10, 1998, at 47, U.N. Doc. A/53/38/Rev.1; GAOR, 53d Sess., Supp. No. 38 (1998), at 49.

²³² Laboni Amena Hoq, 'The Women's Convention and Its Optional Protocol: Empowering Women to Claim Their Internationally Protected Rights' (2000) 32 Colum. Hum. Rts. L. Rev. 677, 689.

religious norms.²³³ Thus, reservations concern the tension between universal rights and certain interpretations of Islam that qualify this universal norm and definition of sexual equality.²³⁴ In this context, Articles 2 and 16 of the CEDAW have received the greatest share of reservations from Muslim states as is discussed in the next section.

To sum up, although the CEDAW is a legally binding treaty on states, its ability to force states' compliance with its norms is limited. Overall, the CEDAW has had some positive affect regarding improving women's political and social rights, but no impact on the economic rights of women. This insufficient influence is due to multiple reasons related to the power of the Convention to force states to implement its objectives into their domestic law. Some of these reasons were related to the nature of the enforcement mechanisms, the reporting procedure, the interstate mechanism and the weakness of the role of the Committee of the Convention. Although CEDAW experiences the most reservations amongst HRT, it seems that the impact of reservations may be exaggerated in terms preventing its positive influence on women rights. Instead, it seems that a reservation could express the state willingness to cooperate with IHRL despite some of the Convention's standards posing a threat to the state's identity and local values. In this context, the following section discusses Muslim states' reservations to the CEDAW and analyses their position towards its international norms.

1.3 Muslims States and IHRL

This section outlines Muslim states'²³⁵ interaction with IHRL in two parts. The first one focuses on Muslim states' positions and reservations to the CEDAW, while the second part examines the issue of universality and relative standardisation in international human rights instruments for Muslims.

1.3.1 Muslim States' Positions towards the CEDAW

A number of Muslim states have ratified the CEDAW but with reservations on the grounds

²³³ Michele Brandt and Jeffrey A Kaplan, 'The Tension between Women's Rights and Religious Rights: Reservations to CEDAW by Egypt, Bangladesh and Tunisia' *Journal of Law and Religion* (1995) 12 105.

²³⁴ Laboni Amana Hoq, 'The Women's Convention and Its Optional Protocol: Empowering Women to Claim Their Internationally Protected Rights' (2000) 32 *Colum. Hum. Rts. L. Rev.* 677.

²³⁵ For the definition of Muslims States see fn. 21.

that certain of the Convention articles contradict the norms of *Shari'ah*.²³⁶ Some Muslim states explicitly invoked *Shari'ah* as a justification for their reservations including the KSA,²³⁷ Iraq, Egypt, Bangladesh, Kuwait, Libya, Malaysia, Maldives and Morocco.²³⁸ In contrast, Pakistan, Algeria, Indonesia, Jordan, Turkey and Yemen implicitly referred to *Shari'ah* as a justification for their reservations.²³⁹ The most critical article for Muslim states such as Egyptian, Morocco and Saudi Arabia is Article 2. Article 2(f) requires states to “take all appropriate measures including legislation to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women”,²⁴⁰ while Article 2(g) requires the repeal of penal laws that discriminate against women.²⁴¹ Thus, Iraq made reservations to Article 2(f) and (g),²⁴² while Libya and Oman made general reservations expressing there is no conflict with Islamic laws on personal status and accession to the Convention.²⁴³

Article 16 is another contentious article for Muslim states and is concerned with achieving equality between men and women in marriage and family matters.²⁴⁴ Egypt made a reservation to Article 16,²⁴⁵ as did the Kingdom of Bahrain due to its conflict with *Shari'ah*.²⁴⁶ In addition, Bangladesh reserved on Articles 2(13)(a) and 16(1), (c) and (f) because “they conflict with *Shari'ah* law”,²⁴⁷ while Malaysia made reservations on Articles 9(2), 16(1)(a), 16(1)(c), 16(1)(f) and 16(1)(g).²⁴⁸

One of the main reasons that states enter a reservation about a treaty is because they want to

²³⁶ Bharathi Anandhi Venkatraman, ‘Islamic States and the United Nations Convention on the Elimination of All Forms of Discrimination Against Women: Are the Shari'a and the Convention Compatible?’ (1995) 44 Am. U.L. Rev. 1949, 1951-52.

²³⁷ The KSA ratification and reservations to the CEDAW are discussed in detail in Section 3.2.2.

²³⁸ ‘CEDAW Sessions’ <<http://www.un.org/womenwatch/daw/cedaw/reservations-country.htm>> accessed 22 March 2018.

²³⁹ *ibid.*

²⁴⁰ United Nations, ‘CEDAW 29th Session 30 June to 25 July 2003’, Art 2(f), <<http://www.un.org/womenwatch/daw/cedaw/text/econvention.htm>> accessed 22 March 2018.

²⁴¹ *ibid.* Art. 2(g)

²⁴² ‘CEDAW Sessions’ <<http://www.un.org/womenwatch/daw/cedaw/reservations-country.htm>> accessed 22 March 2018.

²⁴³ *ibid.*

²⁴⁴ Convention on the Elimination of All Forms of Discrimination against Women, G.A. Res. 34/180, 34 U.N. GAOR Supp. (no. 46) at 193, U.N. Doc. A/34/46, entered into force on 3 September 1981, Art. 16.

²⁴⁵ Bharathi Anandhi Venkatraman, ‘Islamic States and the United Nations Convention on the Elimination of All Forms of Discrimination Against Women: Are the Shari'a and the Convention Compatible?’ (1995) 44 Am. U.L. Rev. 1949.

²⁴⁶ *ibid.*

²⁴⁷ *ibid.*

²⁴⁸ *ibid.* Also, for more details regarding states’ reservations on Women Convention see, <https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-8&chapter=4&lang=en> accessed 10 January 2019

be part of the treaty, but they consider that the treaty contains articles that clash with the national laws and cultural practises.²⁴⁹ The benefit of a general reservation is that it contributes to maintaining the balance between the purpose and object of the covenant and the states' consent.²⁵⁰ In this context, the CEDAW aspires to a universal standard of values that takes no consideration for the cultural diversity of societies and different customs and values. Therefore, many states, particularly Muslim states argue that a number of the CEDAW's principles, such as the norm of equality between men and women and matters related to marriage and family relationships, contain a Western bias and contradict Islamic provisions.²⁵¹ In this context, the norms of the international law are not to fully accepted by Muslim states because they contradict the norms of *Shari'ah*. As An-Na'im points out: "International standards are meaningless to Muslim women unless they are reflected in the concrete realities of the Muslim environment. Like members of other cultural traditions, Muslims tend to be suspicious and unreceptive towards what they perceive to be an attempt to impose alien standards."²⁵² He suggests that, "We need to provide Islamic legitimacy for the international standards on the rights of women."²⁵³ Therefore, while Muslim states engage with IHRL they do so with their particular reservations towards unaccepted international norms.

It may be worth noting that although Muslim states' reservations are accepted as part of the CEDAW treaty, they have been subject to heavy criticisms by different states. In this context, a number of European countries objected to the reservations, which they have request be withdrawn. According to the Vienna Convention on the Law of Treaties, in the case of an state party objection to another state party, this action does not stop the treaty from coming into force between the two states except if the objector state is specific in its objection.²⁵⁴ Indeed, although a number of states parties have objected to other states' blanket reservations

²⁴⁹ RW Edwards Jr, 'Reservations to Treaties' (1989) 10 Michigan Journal of International Law 362.

²⁵⁰ M Bydoon, "'Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)'" Based on Islam and Its Practical Application in Jordan: Legal Perspectives' (2011) 25 Arab Law Quarterly 51.

²⁵¹ *ibid.*

²⁵² A An-Na'im, 'The Rights of Women and International Law in the Muslim Context' (1987) 9 Whittier Law Review 49, 515.

²⁵³ *ibid.* 515.

²⁵⁴ Vienna Convention on the Law of Treaties, adopted 22 May 1969, entered into force 27 January 1980, UN Doc. A/CONF.39/27 (1969) [hereinafter Vienna Convention] United Nations, 'Vienna Convention on the Law of Treaties (with Annex) Concluded at Vienna on 23 May 1969' (1980) 1155 United Nations — Treaty Series 181, <<https://treaties.un.org/doc/publication/unts/volume%201155/volume-1155-i-18232-english.pdf>> accessed 10 January 2019.

and to the specific reservations to Articles 2 and 16,²⁵⁵ they have not endeavoured to stop the treaty coming into force.²⁵⁶ Nevertheless, the Committee of the Convention have concluded that states' reservations to Articles 2 and 16 of the CEDAW or broad reservation are not acceptable, and broad reservations as well. However, due to the CEDAW's lack of an enforcement mechanism, the Committee can only repeatedly demand state parties remove their reservations through its general comments or when its review state reports.²⁵⁷ For example, in the case of Egypt and Bangladesh reservations, a number of European countries and Mexico objected to their reservations.²⁵⁸

Academics have also been critical of the reservations. According to Pellet, the problem with Muslim states' reservations is not because they derive from Islamic law, or due to their contradiction with the object and purpose of the convention, rather, it is because they are very broad and ambiguous.²⁵⁹ He specified that the problem with ambiguous reservations is that the meaning of reservation is unclear therefore other states cannot make objections to the reservation. In addition, it is difficult to assess the compatibility of broad reservations with the object and purpose of the treaty.²⁶⁰ In contrast, Clark highlighted the relevance of Muslim states' reservations to religion. He states: "Islamic countries accused Western countries of cultural insensitivity and interference with their sovereign right to make reservations."²⁶¹ In the same vein, Monforte argues that since 2000, several new states have ratified CEDAW with reservations based on Islam or *Shari'ah* norms, to which European states have objected. However, the same states have not expressed their objection toward other states' reservations because they are non-religious in character.²⁶² In this case, it appears that the problem with the objection toward Muslim states is one of double standards; states objected to "Islamic reservations" while ignoring other state reservations although these may encourage

²⁵⁵ Linda M Keller, 'The Impact of States Parties' Reservation to the Convention on the Elimination of All Forms of Discrimination against Women' (2014) Mich. St. L. Rev. 309.

²⁵⁶ *ibid.*

²⁵⁷ *Ibid.*

²⁵⁸ For more details see 'Reservations, Declarations, Objections and Derogations CEDAW', <<http://www.bayefsky.com/docs.php/area/reservations/treaty/cedaw/opt/0/node/3/state/54>> accessed 23 January 2019.

²⁵⁹ U.N. Report of the International Law Commission, 63rd Sess., U.N. Doc. A/66/10 (2011).

²⁶⁰ *ibid.* See also Alain Pellet, 'The ILC Guide to Practice on Reservations to Treaties: A General Presentation by the Special Rapporteur' (2013) 24 Eur. J. Int'l l. 1061, 1097.

²⁶¹ Belinda Clark, 'The Vienna Convention Reservations Regime and the Convention on Discrimination against Women' (1991) 85 American Journal of International Law 287.

²⁶² Tanya Monforte, 'Broad Strokes and Bright Lines: A Reconsideration of Shari'a Based Reservations' (2017) 35 Colum. J. Gender & L. 1. See, the text of the reservations and objections on <<http://www.bayefsky.com/docs.php/area/reservations/node/2/treaty/cedaw/opt/0>> accessed 10 January 2019

discrimination between men and women.²⁶³ Monforte notes for example that Spanish objections to Muslim reservations while it makes a declaration on the Convention of the CEDAW that aims to legalise a male heir for the monarchy—which constitutes an explicit contradiction to the achievement of gender equality in accordance with the CEDAW’s standards.²⁶⁴ Furthermore, in the case of the GCC states that ratified CEDAW after 2000, although their reservations are more specific, they triggered the most objections from other states. While Israel place a blanket reservations to CEDAW, no state has objected to its reservation.²⁶⁵ Thus, states should, in the event of raising objections to reservations, apply equality in their criticisms. In addition, they need to understand the real purpose of behind any reservations, which would contribute to the creation of an environment that promotes human rights rather than expand the circle of conflict and accusation between the two laws (Islamic and international law).

Taken together, it is apparent that the reservations by Muslim states are designed to protect their domestic laws, especially those of a religious nature, from the consequences of acceding to an international convention with universal standards. Thus, it can be argued that the reason for the formulation of reservations by Muslims states is to integrate with international law that does not conflict with religious norms while at the same time protecting certain domestic norms that do not conform to international standards. In other words, reservations by Muslim states maintain a balance between the requirements of adherence to international treaties and the national values and standards of the state. As pointed out by Cook: “Reservations offer a middle path by which a convention's universality can be served by selective amendments that permit a state party to adjust its relations with other states parties while preserving the Convention's integrity”.²⁶⁶ This can be seen in the case of the KSA making changes to its domestic legislation to comply with CEDAW, despite its reservations.²⁶⁷ Tanya comments that the 20% representation of women in the Saudi consultative council this higher than the female representation in the International Law Commission.²⁶⁸

In brief, Muslims states have placed reservations to the CEDAW in order to engage with the

²⁶³ Tanya Monforte, ‘Broad Strokes and Bright Lines: A Reconsideration of Shari'a Based Reservations’ (2017) 35 Colum. J. Gender & L. 1.

²⁶⁴ *ibid.*

²⁶⁵ *ibid.*

²⁶⁶ Rebecca J. Cook, Reservations to the Convention on the Elimination of All Forms of Discrimination against Women, (1990) 30 Va. J. Int'l L. 643, 683.

²⁶⁷ For more details see Chapters Six and Seven.

²⁶⁸ Tanya Monforte, ‘Broad Strokes and Bright Lines: A Reconsideration of Shari'a Based Reservations’ (2017) 35 Colum. J. Gender & L. 1.

international community while protecting their national laws, which are connected to religious or societal norms. Therefore, the next section discusses the issue of universality and relative standardisation in international human rights instruments for Muslims.

1.3.2 Muslims States, Universalism and Cultural Relativism in IHRL Norms

The implementation of IHRL in the context of Muslims states raises fundamental questions about the nature of human rights, and its universality.²⁶⁹ Certain Muslim states argue against the universality of international human rights, positing that consideration must be given to cultural diversity. Although a number of the UDHR rights have become legally binding, some rights have failed to be accepted as universal, particularly those connected to family and marriage.²⁷⁰ Since 1948, a number of Muslim states have rejected certain provisions related to the private sphere or personal life of the individual because these rights are claimed to contradict Islamic provisions and cultural norms. For instance, the second clause of Article 18 of the UDHR, which states “this right includes freedom to change his religion or belief”,²⁷¹ was rejected by a number of Muslim states including the KSA. In this context, *Shari'ah*, which is applied by certain Muslim states, involves fundamental provisions such as the charge of apostasy for changing from Islam to another religion. For example, the Egyptian representative mentioned the country’s honest desire to vote for the UDHR, but expressed his reservation about the right to change religion or belief. In the same vein, the Yemeni delegate expressed his concern regarding the right to change religion. He also referred to the binding nature of the Convention and by including the phrase “the right to change religion” in this formula, he argued would make it difficult for many countries that do not agree with it to ratify the Convention.²⁷² Thus, fundamental Islamic provisions are one of the criteria that determine the acceptance or rejection of Muslims states to international standards.

²⁶⁹ There are two schools of thought that theorise about the implementation of international human rights law: universalism and relativism. Universalists adhere to the idea that human rights are fundamental and therefore there should be no exclusions. They depend on the definition of human rights in CIL, international agreements, and the International Bill of Rights as a normative standard to human rights. In contrast, relativists adhere to the idea that culture is relative and therefore assert that human rights definition should consider nations’ local customs and traditions. See, S Mahmud, ‘Cultural Human Rights; the Need for Qualified Universality’ (2003) 11 *Tilburg Foreign Law Review* 560.

²⁷⁰ *ibid.*

²⁷¹ ‘The Universal Declaration of Human Rights’ Article 18
<<http://www.un.org/en/documents/udhr/history.shtml>> accessed 10 March 2015.

²⁷² UNGA Third Committee, 5th Sess., at 109 (1950). See, S Waltz, ‘Universal Human Rights: The Contribution of Muslim States’ (2004) 26 *Human Rights Quarterly* 799.

Another critical point in the debate around universality is the idea that human rights are basically a ‘Western’ conception and merely reflect Western civilisation and its values. Human rights in the Western tradition were originally religious, but after the Enlightenment took on a secular perception.²⁷³ Thus, the “atomised and ‘private’ individual, abstracted from the social and political context of his or her surroundings, is seen as a product of the rational aspects of modernisation and the spread of science and technology”.²⁷⁴ In contrast, in Islamic tradition, human rights are completely owned by God “and individuals (as vice-regents of God) can only enjoy them in their relationship with God. Their conceptual bases are teleological and their moral foundations theological; they can be realised insofar as obligations owed to God have been fulfilled”.²⁷⁵ Therefore, human rights are a function of human commitment and not their antecedent.²⁷⁶ Cultural relativists, such as Pollis, Schwab and Huntington, refute the idea of universal human rights “as a manifestation of Euro centric arrogance or as an illusion doomed to collapse”.²⁷⁷ Furthermore, according to Huntington, “differences in culture and religion create differences over policy issues” such as human rights.²⁷⁸ He argues that Western concepts “differ fundamentally from those prevalent in other civilizations”.²⁷⁹ These concepts involve individualism, liberalism, constitutionalism, human rights, equality, liberty, democracy, free markets, etc...²⁸⁰ According to Huntington, the idea of “the universality of human rights by the West is counterproductive”, and has contributed to provoking tensions with “the particularism of most Asian Societies and their emphasis on what distinguishes one people from another”.²⁸¹ He asserts that the idea of universalism of human rights will fail.²⁸²

In this context, An-Na’im argues human rights norms that are formulated by Western states could only be accepted by non-western states as a universal standard if they, from their

²⁷³ Heiner Bielefeldt, “‘Western’ versus ‘Islamic’ Human Rights Conceptions?: A Critique of Cultural Essentialism in the Discussion on Human Rights’ (2000) 28 *Political Theory* 91.

²⁷⁴ Mahmood Monshipouri, ‘Islamic Thinking and the Internationalization of Human Rights’ (1994) 84 *The Muslim World* 217, 217.

²⁷⁵ Mahmood Monshipouri, ‘The Muslim World Half a Century after the Universal Declaration of Human Rights: Progress and Obstacles’ (1998) 16 *Netherlands Quarterly of Human Rights* 287, 291.

²⁷⁶ See Seyyed Hossein Nasr, ‘The Concept and Reality of Freedom in Islam and Islamic Civilization’ in Alan S. Rosenbaum (ed), *The Philosophy of Human Rights: International Perspectives* (Greenwood Press 1980) and Aryn B. Sajoo, ‘Islam and Human Rights: Congruence or Dichotomy’ (1990) 4 *Temple International and Comparative Law Journal* 23

²⁷⁷ Heiner Bielefeldt, “‘Western’ versus ‘Islamic’ Human Rights Conceptions?: A Critique of Cultural Essentialism in the Discussion on Human Rights’ (2000) 28 *Political Theory* 91, 91.

²⁷⁸ P Samuel Huntington, ‘The Clash of Civilizations’ (1993) 72 *Foreign Affairs* 22.

²⁷⁹ *ibid.* 40.

²⁸⁰ *ibid.*

²⁸¹ *ibid.* 40-41.

²⁸² *ibid.*

perspectives, accept their validity and legitimacy.²⁸³ Similarly, Mahmud submits that the current human rights advocacy success will eliminate cultural differences.²⁸⁴ Bielefeldt supports these authors' claims, arguing that, "human rights can meaningfully and productively be connected with different traditions".²⁸⁵ Thus, it is necessary to "take the rights to culture and religion as an integral part of our individual rights and to develop models of the relationship between communal, traditional and individual rights".²⁸⁶

In contrast, Mayer argues that human rights are universal but there is a difference in their conceptual interpretation and scope.²⁸⁷ Nevertheless, she considers that human rights would be worthwhile if they could become universally accepted, as this will eliminate the favouritism and selectivity that may affect the promotion of human rights or criticisms of violations.²⁸⁸ As Weston argues, the fact a treaty has received widespread acceptance it does not mean that there is a complete agreement on its scope, nor does it mean that all the contents of its paragraphs have been fully accepted.²⁸⁹

The debate around the universality of human rights was centre-stage at the Second UN World Conference on Human Rights in 1993.²⁹⁰ Western states expressed their concerns about what would happen if there were no universality of human rights.²⁹¹ Thus, their first priority was to limit the damage to ensure "that the conference issue[d] a strong endorsement of the universality of human rights and reject[ed] the idea that such rights can be measured differently in some countries".²⁹² Moreover, the US delegation refused to countenance any

²⁸³ Abdullah Ahmed An-Na'im, 'What Do We Mean by Universal?' (1994) 23 *Index on Censorship* 120.

²⁸⁴ S Mahmud, 'Cultural Human Rights; the Need for Qualified Universality' (2003) 11 *Tilburg Foreign Law Review* 560.

²⁸⁵ Heiner Bielefeldt, "'Western' versus 'Islamic' Human Rights Conceptions?: A Critique of Cultural Essentialism in the Discussion on Human Rights' (2000) 28 *Political Theory* 91, 98.

²⁸⁶ Paul Morris, 'Dignity, Difference and Divergence: Religious and Cultural Alternatives to the Universal Declaration of Human Rights' (2003) 1 *Journal of Human Rights Research* 1.

²⁸⁷ Ann Elizabeth Mayer, 'Universal versus Islamic Human Rights: A Clash of Cultures or Clash with a Construct' (1993) 15 *Mich. J. Int'l L.* 307.

²⁸⁸ *ibid.*

²⁸⁹ Richard Pierre Claude and Burns H. Weston (eds.), *Human Rights in the World Community: Issues and Action* (University of Pennsylvania Press 1992) 300.

²⁹⁰ The Vienna Declaration and Programme of Action, adopted by The World Conference on Human Rights, 24 June 1993, U.N. Doc. A/CONF.157/24 (Part I) at 20 (1993). <<http://hrlibrary.umn.edu/instree/11viedec.html>> accessed 14 November 2016.

²⁹¹ Heiner Bielefeldt, "'Western' versus 'Islamic' Human Rights Conceptions?: A Critique of Cultural Essentialism in the Discussion on Human Rights' (2000) 28 *Political Theory* 91.

²⁹² Alan Riding, 'A Rights Meeting; But Don't Mention the Wronged' (14 June 1993) *New York Times*.

definition of human rights that took into account cultural diversity and social differences, because it argued that this encouraged oppressive states to continue their abuses.²⁹³

Despite the US's position, there have been attempts to redefine human rights by a group of nations, including Saudi Arabia, on the grounds that the current definition allows Western countries to impose their norms, in turn, justifying their interference in the internal affairs of other countries. Furthermore, ignoring cultural diversity in relation to human rights can have negative impacts on non-Western economies and trade, as well as weaken their competitiveness.²⁹⁴ Hence, states may reject the idea of the universality of human rights because the implementation of these rights conflicts with their state's interests. Thus, these states do not deem it necessary to accept the universal norms of human rights.

In an attempt to break the logjam, Muslim countries and organisations have published a number of Islamic declarations on human rights including the Cairo Declaration on Human Rights in Islam (CDHRI) in 1990.²⁹⁵ Following the Kingdom's negotiation and debate around the universality of the UN human rights regime, Saudi Arabia attempted to develop a notion of human rights from an Islamic perspective. In 1990, it called on other Islamic states to produce an Islamic human rights document that was in accordance with the *Shari'ah*.²⁹⁶ This resulted in the adoption of the CDHRI on 5 August 1990 by 45 foreign ministers of member states of the Organisation of Islamic Conference (OIC).²⁹⁷ The CDHRI's main aim is to provide an overview on the Islamic perspective related to human rights and affirms the *Shari'ah* as the basic source of those rights.²⁹⁸ The CDHRI declares its purpose to be one of general guidance for OIC member states in the field of human rights,²⁹⁹ and forbids any type

²⁹³ Heiner Bielefeldt, "'Western' versus 'Islamic' Human Rights Conceptions?: A Critique of Cultural Essentialism in the Discussion on Human Rights' (2000) 28 *Political Theory* 91.

²⁹⁴ CM Cerna, 'Universality of Human Rights and Cultural Diversity: Implementation of Human Rights in Different Socio-Cultural Contexts' (1994) 16 *Human Rights Quarterly* 740.

²⁹⁵ The Cairo Declaration on Human Rights in Islam was adopted in 1990 by the Organisation of Islamic Conference (OIC). This Declaration was presented in 1993 to the World Human Rights Conference by the Foreign Minister of Saudi Arabia as an alternative to the UDHR for Islamic states. However, in 1998, this proposal rejected by UN Secretary-General, Kofi Annan, who believed that the rights in the UDHR were universal. See, E Brems, *Human Rights: Universality and Diversity* (Martinus Nijhoff Publishers 2001) and Press Release, SG/SM/6815, HR/4390, New York (1 December 1998) <<http://www.un.org/press/en/1998/19981201.sgm6815.html>> accessed 7 October 2016.

²⁹⁶ Abdulhamid A Al-Hargan, 'Saudi Arabia and the International Covenant on Civil and Political Rights 1966: A Stalemate Situation' (2005) 9 *The International Journal of Human Rights* 491.

²⁹⁷ Cairo Declaration on Human Rights in Islam, OIC (5 August 1990 UN Doc. A/45/5/21797) 199.

²⁹⁸ *Ibid.* Art. 25

²⁹⁹ Abdullah Bin Ba'h, *Hewar A'n Bwa'ad Hawla Huqwaq Al Ensan fi Al Islam* (Dialogue on Human Rights in Islam) (Obekan 2007) 166.

of discrimination on the basis of race, colour, language, belief, sex, religion, political affiliation, social status, or other criteria:

All human beings form one family whose members are united by their subordination to Allah and descent from Adam. All men [humans] are equal in terms of basic human dignity and basic obligations and responsibilities, without any discrimination on the basis of race, colour, language, belief, sex, religion, political affiliation, social status or other considerations. The true religion is the guarantee for enhancing such dignity along the path to human integrity.³⁰⁰

The CDHRI was presented in 1993 to the World Human Rights Conference by the Foreign Minister of Saudi Arabia³⁰¹ as an alternative to the UDHR.³⁰² However, in 1998, the proposal was rejected by UN Secretary-General, Kofi Annan, who believed that the UDHR set forth universal rights that are applicable to all.³⁰³

Other attempts to address universalism are by Islamic authors who have proposed definitions of human rights from an Islamic perspective. For example, Mawdudi from Pakistan, who strongly criticises the Western approach as arrogance based on Western colonialism and imperialism history,³⁰⁴ formulates an Islamic conception of human rights constructed fundamentally on the Qur'an and the *Sunna* (the traditions of the Prophet Muhammad).³⁰⁵ While Rahman argues that the conflict between the international norms and Muslims states is not because of the differences between *Shari'ah* norms and the western model of human right but "the real reason for such violations are embedded in the political and constitutional inadequacies and the urgency to enforce a national identity".³⁰⁶

Despite these debates, Muslim states have ratified numerous international human rights treaties, which means that they are legally bound by the provisions of those treaties. However, a number of African, Asian states and even Western states have made reservations about provisions of treaties with which they do not agree. Muslim states, including Afghanistan, Egypt, Iran, Jordan, Kuwait, the Maldives, Pakistan, Qatar and Saudi Arabia, all invoked *Shari'ah* as an obstacle to the full implementation of the provisions of the

³⁰⁰ A/CONF.157/PC/62/Add.18 (1993) [English translation]

³⁰¹ E Brems, *Human Rights: Universality and Diversity* (Martinus Nijhoff Publishers, 2001).

³⁰² Abdulhamid A Al-Hargan, 'Saudi Arabia and the International Covenant on Civil and Political Rights 1966: A Stalemate Situation' (2005) 9 *The International Journal of Human Rights* 491.

³⁰³ Press Release, SG/SM/6815, HR/4390, New York (1 December 1998)

<<http://www.un.org/press/en/1998/19981201.sgm6815.html>> accessed 7 October 2015.

³⁰⁴ Heiner Bielefeldt, "'Western' versus 'Islamic' Human Rights Conceptions?: A Critique of Cultural Essentialism in the Discussion on Human Rights" (2000) 28 *Political Theory* 91.

³⁰⁵ Syed Abul A'la Mawdudi, *Human Rights in Islam* (The Islamic Foundation 1982).

³⁰⁶ Javaid Rehman, 'Accommodating Religious Identities in an Islamic State: International Law, Freedom of Religion and the Rights of Religious Minorities' (2000) 7 *International Journal on Minority and Group Rights* 139, 162

Conventions.³⁰⁷ However, as mentioned previously, several Western countries, including Austria and Denmark, objected to these reservations on the grounds that the reservations are incompatible with the object and purpose of the Conventions.³⁰⁸

In summary, it is clear that the complexity of the subject of the universality of international human rights norms especially for Muslims states. It is indicated that the most contested rights in Muslim countries are those related to *Shari'ah*, such as in the right of 'Religious Freedom and the Right to Change Religion', were one of the five issues that were raised by Muslim delegations.³⁰⁹ In Islamic terms, this issue challenges the concept of the universality of human rights because it is based on religious and cultural practices. The other challenged issue for Muslims relates to the perceived unilateral source of international norms, that of 'Western cultural' standards, which neglect the values of other cultures, leading to the creation of a thorny debate between East and West about universal standards. Thus, it can be concluded that there can be universal agreement on the importance of protecting the essential rights that every individual seeks, including the right to life, protecting human dignity, ensuring an individual's safety and security, and preventing any type of torture. However, in relation to human rights that are associated with religion, culture and private life, it is more difficult to apply universal norms without taking into account the cultural diversity of societies.

1.4 Chapter Summary and Conclusion

This chapter investigated the theoretical framework of the relationship between IHRL and states' domestic laws. It also discussed CEDAW and evaluated its effectiveness in terms of promoting and protecting the rights of women. The chapter examined Muslim states' position toward the CEDAW, the reservations made by Muslim states to the Convention and the issue of universality and relative standardisation in international human rights instruments for Muslims.

³⁰⁷ For further information about states' reservations, see <<http://www.bayefsky.com/docs.php/area/reservations/node/2/treaty/cedaw/opt/0>> accessed 10 January 2019.

³⁰⁸ For more details regarding the KSA's reservation and other states' positions towards its reservations see, Chapter 2.2.2. Also, see 'Reservations, Declarations, Objections and Derogations - CEDAW - Saudi Arabia' <http://www.bayefsky.com/html/saudi-arabia_t2_cedaw.php> accessed 17 September 2015.

³⁰⁹ Other issues were gender equality regarding marriage, social justice and the indivisibility of rights, the right to self-determination and the 'Colonial Clause', and measures of implementation and the right to petition. For more details, see S Waltz, 'Universal Human Rights: The Contribution of Muslim States' (2004) 26 Human Rights Quarterly 799.

With regard to the relationship between IHRL and states' domestic laws, the chapter highlighted that there are two dominant approaches: the dualist approach in which human rights treaties work as a guide for the national law, not as its main source; while in the second monist approach international law and treaties seem to be combined with national law in a single system. However, the chapter found that in practical term it is difficult for either of the two 'ideals' to provide a sufficient explanation of the complex situation of the state relationship with IHRL.

The chapter highlighted a number of theories that attempt to explain how IHRL influences a state's domestic law and practice. These theories can be classified into two broad categories. The first category are theories, included realism, neo-realism, institutionalism, and regime theory, that highlight the limited effectiveness of IHRL in changing states' practices. They acknowledge that the IHRL can marginally improve states' behaviour. The second category of theories provide a positive prediction on the impact of human rights treaties on enhancing states' performances; these include the transnational legal process model, the liberal international relations perspective, and the theory of transnational human rights advocacy networks. They agree that treaties can have favourable impacts on human rights. However, it is noted that this effect is conditional on several factors including the level of democracy of a state and the role of the interaction of domestic groups with IHRL treaties. Furthermore, the theories recognise that the goals of the treaties are long term. It is concluded that IHRL treaty ratification may affect states' human rights practices positively or negatively. In this context, the transnational process model presents an explanation of the internalisation of international norms into states' domestic laws. The evidence highlights a complex process of interaction, interpretation, and internalisation, before states comply with the norms of the treaty.³¹⁰

After the theoretical examination of IHRL's impact on state's law, the effectiveness of IHRL in promoting and protecting human rights was evaluated through a discussion of CEDAW. This part assessed the general structure of the Women's Convention and its enforcement mechanisms. This chapter highlighted that CEDAW is a comprehensive treaty that protects and enhances women's rights and in particular aims to eliminate against women. Although it enjoys multiple mechanisms by which to monitor the protection of women rights in state parties, it lacks enforcement mechanisms. Thus, its effectiveness appears to be limited in terms of improving women rights. The chapter highlighted the potential role of reservations

³¹⁰ This model is given a particular focus in the thesis as the empirical results support its theoretical basis. For more details see Chapter Seven.

to the Convention in limiting its impact.

In order to understand the role of states' reservations to the Convention, the chapter discussed Muslim states' reservations on the CEDAW and evaluated their position towards the universality of the norms of IHRL. The evidence showed that Muslim states ratified the CEDAW with their reservations on the grounds that certain articles, such as Articles 2 and 16, contradict the norms of *Shari'ah*. However, Muslim states want to be part in the IHRL and have therefore ratified the convention but with reservations in order to protect their national laws. The chapter found that many Muslim states reject the idea that human rights are universal, instead they posit that for the successful implementation of IHRL, culture relativism and diversity should be taken into account. The most critical issues relate to the private sphere, such as religion and the status of women, where the IHRL rights are claimed to contradict Islamic provisions and cultural norms. The evidence from this chapter suggested that in order to promote human rights over the world and increase the effectiveness of HRTs it is essential to take into account cultural diversity and local norms and to understand local norms and values in the context of that society.

While this chapter has outlined some of the issues and concerns that have been raised in the debate on human rights by a range of Muslim states, the focus of this thesis is KSA. Thus, the next chapter provides a more detailed examination of the KSA's interaction with the IHRL system and it evaluates its engagement with CEDAW.

Chapter Two:

The Kingdom of Saudi Arabia and International Human Rights Law

In the previous chapter, a possible positive relationship between states ratifying human rights treaties and developing state practices was discussed. This association is likely to be stronger when the relationship between state parties and domestic human rights groups are strong. This interaction between IHRL and states is affected by several factors such as the nature of the state's domestic law. For example, the KSA, since its establishment has adopted Islamic religion as its main source of legislation; thus, any law including IHRL should be compatible with the provisions of Islam. In this regard, this chapter argues that although the KSA's engagement with IHRL is conditional on its agreement and compliance with *Shari'ah*, which is the main source of its domestic law, its engagement with IHRL has led to the inclusion of a number of norms of human rights in its domestic law. Thus, in order to investigate this argument, it is essential to theoretically understand how the KSA engages and interacts with IHRL, understanding first the nature of the Kingdom's law and Saudi human rights law in particular, and clarifying its relationship and dealings with IHRL. Therefore, the chapter is organised in the following way. First, it presents an overview of the KSA in order to provide an outline of the history of the Kingdom and the nature of Saudi society that are relevant to the thesis. It discusses the KSA's law with a focus on human rights in the KSA's legal system in order to provide a comprehensive understanding of the human rights norms that are guaranteed in Saudi law (Section 2.1). Second, the chapter analyses the KSA's relationship with the IHRL instruments. It evaluates the KSA's involvement with IHRL in order to clarify how the Kingdom engages with IHRL. It does so by focusing on the Kingdom's interaction with the core of IHRL instruments: the UDHR, ICCPR and the CEDAW. As this thesis particularly focuses on the development of the human rights of Saudi women, it analyses the Kingdom's international obligations under IHRL, including assessing its engagement with the CEDAW (Section 2.2). Section 2.3 provides the chapter summary and conclusion.

2.1. The Kingdom of Saudi Arabia's History and Legal System

2.1.1 Overview of the Kingdom of Saudi Arabia

The KSA is home to Makkah and Medina, the cities that were the birthplaces of Islam. It is the largest Arab state and is located in Western Asia. In the nineteenth century two territories

of the Arabian Peninsula, *Hasa* and *Asir*, came under Muslim Ottoman control.³¹¹ However, the rest of the peninsula was ruled by local *amirs*.³¹² After the First World War, “Arabia was not to become a colony similar to other colonies [in the region] in the British Empire”.³¹³ The modern state was established in 1932 when King Abdul Aziz Al Saud (1880-1953) announced its foundation and declared that Saudi Arabia was to be a monarchy ruled by his sons and grandsons. Importantly, he stated that the Holy Qur’an was to be the constitution of the Kingdom, and was therefore governed on the basis of Islamic law (*Shari’ah*).³¹⁴ In this context, the struggles for political power in Arabia from the time of the Prophet in the seventh century were within the context of Muslim rule, and the area that is now the KSA was never colonised by European powers. Importantly, this factor has a significant effect on the law of the Kingdom as it is based on *Shari’ah* without being influenced by the law of colonial powers.

In terms of the demographics of Saudi Arabia, in 2017, its population was estimated at 32,552,336.³¹⁵ Although the majority of the population is ethnically Arab, other ethnicities are represented including Turks, Iranians, Indonesians, Indians, and Africans; most of whom immigrated as pilgrims.³¹⁶ 57.48% of the population are male and 42.52% are female,³¹⁷ Arabic is the official language, while English is used as a second language and the language of business.³¹⁸

Furthermore, the unique feature of the Saudi community is that Islam shapes individuals’ daily lives. Islam is considered to be an entire way of life: a religion, an ethic, a lifestyle, and a legal system, all in one. Menoret explains that Islam is a significant part of Saudi awareness and national pride, because, first, the KSA contains the holy places of Makkah and Medina and, second, the Kingdom was the only Arab-Muslim country that resisted foreign occupation.³¹⁹ According to Vogel, Muslims believe that God revealed his final religion to the last prophet, Muhammad, between 610CE and 632CE.³²⁰ In this vein, the demographics

³¹¹ M Al-Rasheed, *A History of Saudi Arabia* (Cambridge University Press 2010).

³¹² *ibid.*

³¹³ *ibid.* 2.

³¹⁴ H Al Angari, *Auditing in the Kingdom of Saudi Arabia* (Sarawat 2004); A Al-Turaiqi, *The Political System of Saudi Arabia* (Ghainaa Publications 2008).

³¹⁵ <<https://www.stats.gov.sa/ar/indicators/1>> accessed 12 June 2018.

³¹⁶ ‘Saudi Arabia’ <<http://www.state.gov/r/pa/ei/bgn/3584.htm>> accessed 10 November 2015.

³¹⁷ *ibid.*

³¹⁸ ‘The Basic Law of Governance’ <https://www.saudiembassy.net/about/country-information/laws/The_Basic_Law_Of_Governance.aspx> accessed 24 June 2016.

³¹⁹ P Ménoret, *The Saudi Enigma: A History* (Zed Books 2005).

³²⁰ FE Vogel, *Islamic Law and Legal System Studies of Saudi Arabia* (University Microfilms 1996).

and social fabric of the Kingdom vary from other states. Importantly, in the Muslim faith, *Shari'ah* is not only divine but is also central to their beliefs: it is the fundamental law which governs both domestic and international behaviour.³²¹ Therefore, the social fabric of Saudi Arabia and their fundamental belief in the sanctity and justice of Islam colours the way in which a Muslim, and more broadly a Muslim society, accepts changes in their lives, including accepting the norms of international human rights. Thus, the next section explains the nature of Saudi legal system and human rights law that are guaranteed in Saudi law.

2.1.2 The Legal System of the Kingdom of Saudi Arabia

It is important to understand the nature of the Kingdom's law before discussing human rights in Saudi Arabia. This discussion helps to appreciate the similarities and differences between IHRL and the KSA's law and, thus, reflect a better understanding of the interaction of the Kingdom with IHRL. Therefore, the following section examines the sources of the KSA's law.

2.1.2.1 The sources of the Kingdom of Saudi Arabia's legal system

It is important to recognise that Islam permeates every aspect of a Muslim's life and, therefore, every aspect of the KSA, including its legal system. The KSA is described as "an Islamic state in terms of its legal system and in general terms, and adheres to Islamic regulations".³²² As already emphasised, the legal system of Saudi Arabia is based on *Shari'ah*, which means that the law is seen as divine. *Shari'ah* is based on two primary sources, the Qur'an and the traditions of the Prophet Mohammed (*Sunnah*). These two sources are widely characterised as the most fundamental principles of Islamic law. In addition, the legal system of Saudi is influenced by secondary sources such as *ijma'* (consensus) and *qiyas* (analogical reasoning). These sources are explained in greater depth in the following sections.

³²¹ Ahmed Ali Sawad, *Reservations to Human Rights Treaties and the Diversity Paradigm: Examining Islamic Reservations* (DPhil Thesis University of Otago 2008).

³²² AAM Al-Harkan, *An Investigation into the Emerging Corporate Governance Framework in Saudi Arabia* (DPhil Thesis Cardiff University 2005).

2.1.2.1.1 Primary sources

2.1.2.1.1.1 *The Holy Qur'an*

Islamic law cannot be understood without studying the Qur'an because it is the foundation of the Islamic religion. Therefore, it is necessary to understand the meaning of Qur'an and its value for Muslims. The word 'Qur'an' means that which should be recited, read, or studied and refers to the book embodying the revelations from Allah (God) to Muhammad (peace be upon him).³²³ Muslims believe that the Qur'an is the actual word of Allah as it was revealed to Muhammad over a period of 22 years, from 610CE to 632CE.³²⁴ Therefore, Muslims consider the Qur'an as the immortal miracle.³²⁵ The Qur'an is known as a holy text for Muslims, and that the Prophet Mohammed emphasised the importance of Muslims following and implementing its content by considering it to be the source of legislation and regulating their life affairs. Significantly, the text contains a number of different definitions and references in relation to human rights and the duties of Muslims. Furthermore, the texts also consider and explain issues regarding the relationship between God and individuals such as prayer, fasting and other types of worship.³²⁶ In this respect, the Qur'an is the essential source that organises Muslims' relationships and behaviour.

2.1.2.1.1.2 *Sunnah*

Sunnah is an Arabic term meaning 'way'.³²⁷ In an Islamic jurisprudence context, *Sunnah* has been defined by Muslim scholars as 'deed', and these comprise the sayings and approvals of the Prophet Mohammed.³²⁸ The *Sunnah* is recognised as the second most important source of legislation after the Qur'an, when attempting to extract legal rules. Moreover, *Sunnah* provides an explanation of the key behavioural sides of society and the individual and their duties and rights. The *Sunnah* provides support for, and further highlights what is stated in the Qur'an. Moreover, the *Sunnah* also describes particular prohibitions, which may be mentioned in the Qur'an; for instance, the forbidding of discrimination, injustice, and oppression. Notably, most of Prophet Muhammad's *Sunnah* was recorded in writing after his

³²³ Irshad Abdal-Haqq, 'Islamic Law: An Overview of Its Origin and Element' (2002) 7 *Journal of Islamic Law & Culture* 29.

³²⁴ *ibid.*

³²⁵ *ibid* and Ahmad Al-Ghazali, *Muqadimat ash-Shari'ah Al-Islamiyah, (Introduction to Islamic Law)* (Dar An-Nahdah al Arabia, 2007).

³²⁶ Said Ramadan, *Islamic Law, Its Scope and Equity* (by the author 1970).

³²⁷ *ibid.* 13.

³²⁸ *ibid.*

death. The writing of the *Sunnah* was undertaken to distinguish his sayings from the Qur'an.³²⁹

2.1.2.1.2 Secondary sources

Secondary sources are used where the Qur'an and *Sunnah* do not provide specific guidance on a new issue; the Muslim community is directed to exert reasoning to deduce the law. Thus, a jurist or legislator is required to exercise a degree of individual reasoning (*ijtihad*) in formulating determinations.³³⁰ These secondary sources are *ijma* and *qiyas*.³³¹

2.1.2.1.2.1 *Ijma* (Consensus)

The term '*ijma*' is recognised as 'consensus'.³³² *Ijma* is required and practised "where the Qur'an and Sunnah do not provide specific guidance on an issue, the Muslim community is directed to exert reasoning to deduce the law".³³³ Nevertheless, it is commonly recognised that the *ijma* is obligatory, as the third source after the Qur'an and *Sunnah*.³³⁴

Furthermore, in order for there to be *ijma*, agreement is necessary among scholars in the same era, but not across different eras. In addition, consensus is often exercised in cases with a more legal context than a private context, because *Shari'ah* allows individuals to make judgments regarding their personal lives issues on the basis of the Prophet's saying "you have more knowledge in matters of your life".³³⁵ However, regardless of such a general rule, *ijma* could be implemented in relation to a person's private life as well. Importantly, *ijma* can be practised in the context of modern life, although any evidence should be based on the main sources of Islamic law. In reality, there have been a number of examples *ijma* dealing with issues on a sequential basis, such as the way the companions of the Prophet appointed an appropriate head of state at that time.³³⁶ However, a point of contention surrounds the question of who may participate in *ijma* decision making. The general view is that only

³²⁹ Six books of the *hadith* were compiled by scholars that are highly acclaimed both for their knowledge and character, namely: (1) Sahih Al-Bukhari by Muhammad ibn Isma'il ibn Al-Mughirah Al-Bukhari, (2) Sahih Muslim by Abu Al-Hasan Muslim ibn Al-Hajjaj, (3) Sunan Abu Dawud by Sulayman ibn Al-Ash'ath, (4) Sunan At-Tirmidhi by Abu 'Isa Muhammad ibn 'Isa At-Tirmidhi, (5) Sunan An-Nasa'i by Abu 'Abdur-Rahman Ahmad ibn Shu'ayb, and (6) Sunan Ibn Majah by Muhammad ibn Yazid Ibn Majah. See *ibid*.

³³⁰ *ibid*.

³³¹ *ibid*.

³³² *ibid*.

³³³ Irshad Abdal-Haqq, 'Islamic Law: An Overview of Its Origin and Element' (2002) 7 *Journal of Islamic Law & Culture* 29, 54.

³³⁴ *ibid*.

³³⁵ *Saheeh Muslim, Hadith* no. 2363

³³⁶ Irshad Abdal-Haqq, 'Islamic Law: An Overview of Its Origin and Element' (2002) 7 *Journal of Islamic Law & Culture* 29.

qualified Islamic scholars who are Muslim and who are qualified for *ijtihad* are permitted to participate when the purpose is to settle an issue dependent upon the exercise of analogical deduction. Being qualified means a jurist should be knowledgeable of the Qur'an and *Sunnah*, and be able to read, understand and interpret them.³³⁷

2.1.2.1.2.2 *Qiyas*

The meaning of *qiyas* is 'analogy'. Whereas *ijma* represents a form of collective *ijtihad* (reasoning), *qiyas* is an individual form based on analogical deduction.³³⁸ *Qiyas* is a method to find and make a decision in cases where no answer is found in the first three sources of *Shari'ah*.³³⁹ Technically, *qiyas* means "the extension of a *Shari'ah* value from an original case, or *asl*, to a new case, because the latter has the same effective cause as the former".³⁴⁰ Four conditions apply to the concept of *qiyas*: there should be no contradiction between *qiyas* approach and the stronger sources of Islam (Qur'an, *Sunnah* and *ijma*); the old case should be in the Qur'an or *Sunnah* in order to apply and extract the judgment on the new case; and the effective cause (*illah*) "or denominator shared by both cases".³⁴¹ Significantly, *qiyas* can be an effective approach in terms of legislation in the context of *Shari'ah*, especially in the case of a newly emerging modern issue. Furthermore, other methods of deriving *Shari'ah* can be used in addition to the four sources discussed above such as *Istihsan*, *Istihab* and *Urf*. However, these methods are less significant than the first four.³⁴²

2.1.3 Schools of Thought in Islam

It is important to note that there are a number of schools of thought in Islam. There are five main schools of jurisprudence: the *Hanafi*,³⁴³ the *Shafi*,³⁴⁴ the *Maliki*,³⁴⁵ and the *Hanbali*,³⁴⁶

³³⁷ *ibid.*

³³⁸ *ibid.*

³³⁹ Nabil Shehaby, 'Ila and Qiyas in Early Islamic Legal Theory,' (1982) 102 *Journal of the American Oriental Society* 27.

³⁴⁰ Muhammad Hashim Kamali, *Principles of Islamic Jurisprudence* (Islamic Texts Society, 1991) 197.

³⁴¹ David Drennan, *Introduction to Islam* (Cambridge University Press 2003) 80.

³⁴² For more details, see Nabil Shehaby, 'Ila and Qiyas in Early Islamic Legal Theory,' (1982) 102 *Journal of the American Oriental Society* 27 and Irshad Abdal-Haqq, 'Islamic Law: An Overview of Its Origin and Element' (2002) 7 *Journal of Islamic Law & Culture* 29.

³⁴³ The *Hanafi* school was established from the rules of interpretation developed by *Abu Hanifa* who was born in the city of Kufa (Iraq) and lived from 702CE to 767CE. Followers of the *Hanafi* School are found principally in Afghanistan, Guyana, India, Iraq, Pakistan, Surinam, Syria, Trinidad, Turkey and, to a more limited extent, Egypt. Irshad Abdal-Haqq, 'Islamic Law: An Overview of Its Origin and Element' (2002) 7 *Journal of Islamic Law & Culture* 29.

³⁴⁴ The *Shafi* School is based on the methodology developed by Muhammad *Idris ash-Shafi* (769-820CE), *Shafi* *fiqh* methodology predominates in Egypt, Indonesia, Kenya, Malaysia, Philippines, Sri Lanka, Surinam, Tanzania, and Yemen, *ibid.*

are accepted as the four mainstream Sunni schools of law in Saudi Arabia and Qatar,³⁴⁷ and *Jafari Madhhab* which is a Shi'a school of jurisprudence.³⁴⁸

All four Sunni schools agree on the primacy of the four fundamental *fiqh* methodologies, namely, the Qur'an, *Sunnah*, *ijma*, and *qiyas*. However, differences arise in applying the law because of the rules of process specific to each school. According to Abdal-Haqq, these differences may be attributed to three things: (1) the rules of interpretation of word meanings and grammatical construction; (2) the availability, authenticity, conditions of acceptance, and interpretation of *hadith*³⁴⁹ and the treatment of conflicting *hadiths*; and (3) methods of using, and even the very decision to use, certain principles of reasoning and the emphasis placed on each, including *ijma* and *qiyas*.³⁵⁰ Consequently, the interpretation and acceptance of the norms of IHRL can differ from one school to another according to their interpretation.

2.1.4 The Formal Legal System in Saudi Arabia

These fundamental sources of the law in Saudi Arabia were the basis for the initial unwritten constitution of the Kingdom. At the outset, there was an informal alliance between the royal family (the al Sauds) and the traditional religious *ulama* (clergy). Thereafter, the KSA was "governed by the monarch with the assistance of a 'Council of Ministers', which has been functioning according to statutes enacted in 1958".³⁵¹ The reign of King Fahad ibn Abdul-Aziz (1982-2005) witnessed the establishment of the Kingdom's constitution. On 1 March 1992, he announced three essential laws, established by Royal Decrees, namely: the Basic

³⁴⁵ The *Maliki* school takes its name from Malik Ibn Anas ibn Amir, who lived from 717CE to 801CE. Adherents of *Maliki fiqh* methodology are found in Algeria, Bahrein, Chad, (Upper) Egypt, Kuwait, Mali, Morocco, Nigeria, Qatar, and Tunisia, *ibid*.

³⁴⁶ The *Hanbali* school is based on Ahmad ibn Hanbal's methodology (778-855CE). It is the system of methodology upon which Saudi Arabian law is based, *ibid*.

³⁴⁷ Javaid Rehman, 'The Sharia, Islamic Family Laws and International Human Rights Law: Examining the Theory and Practice of Polygamy and Talaq' (2007) 21 *International Journal of Law, Policy and the Family* 108. See also, Donna E Arzt, 'The Application of International Human Rights Law in Islamic States' (1990) 12 *Human Rights Quarterly* 202.

³⁴⁸ The *Shia* are found principally in Iran, Iraq and Lebanon. Irshad Abdal-Haqq, 'Islamic Law: An Overview of Its Origin and Element' (2002) 7 *Journal of Islamic Law & Culture* 29.

³⁴⁹ Hadith refers to "a report of what Muhammad said, i.e., an actual verbal expression or opinion on a subject. Sunna implies the mode of life he lived, the example he set through his actions, sayings, judgments, and attitudes" see Ismail R al Faruqi and Lois L al Faruq, *The Cultural Atlas of Islam* (Marshall Cavendish 1986) 279 cited in Irshad Abdal-Haqq, 'Islamic Law: An Overview of Its Origin and Element' (2002) 7 *Journal of Islamic Law & Culture* 29 and see Javaid Rehman, 'The Sharia, Islamic Family Laws and International Human Rights Law: Examining the Theory and Practice of Polygamy and Talaq' (2007) 21 *International Journal of Law, Policy and the Family* 108.

³⁵⁰ Irshad Abdal-Haqq, 'Islamic Law: An Overview of Its Origin and Element' (2002) 7 *Journal of Islamic Law & Culture* 2, 73-74.

³⁵¹ R. Aba Namay, 'The Recent Constitutional Reforms in Saudi Arabia' (1993) 42 *International & Comparative Law Quarterly* 295, 295.

Law of Governance (the Basic Law); the Consultative Council Law; and the Regional Law.³⁵² These three laws changed the domestic political environment.³⁵³ The objective of these Royal Decrees was to transfer the unwritten constitution to a written one.³⁵⁴

The most important constitutional document of the three laws is the Basic Law. It consists of nine chapters with 83 articles. The first part of the Basic Law deals with general principles, the structure of the country, its religion, language and its capital city.³⁵⁵ The second part explains the system of governance in the KSA,³⁵⁶ while third part outlines the foundations of Saudi society. Chapter five set out the rights and duties of individuals.³⁵⁷ The remaining parts explain the provisions governing the state's resources and its financial affairs.³⁵⁸

Importantly, the KSA is an absolute monarchical state. The King of Saudi Arabia enjoys independent power in the promulgation of regulations and laws, and as mentioned in Article 44 of the Basic Law of Governance, the King has the supreme authority over all state authorities.³⁵⁹ Because he is the Head of the Kingdom and the Head of the Council of Ministers, he has the authority to repeal, endorse, or modify the state's laws and regulations by Royal Decree.³⁶⁰

The way in which the King rules the state is through a Council of Ministers. He administers Saudi Arabia through Royal Decrees and Ministerial Decrees. Individuals can participate in political life and express their opinions and suggestions to the government through the *Majlis al-Shura*³⁶¹ (Consultative Council). However, although the King may be influenced by bodies such as the *Majlis al-Shura*, the final authority to issue new legislation and amend

³⁵² The Basic Law of Governance, Royal Order, No. A-90, dated 1 March 1992. The Consultative Council Law, Royal Order, No. A-91, dated 1 March 1992. The Regional Law, Royal Order, No. A-92, dated 1 March 1992.

³⁵³ For more details regarding the KSA's law see Abdullah F. Ansary, 'A Brief Overview of the Saudi Arabian Legal System', <http://www.nyulawglobal.org/globalex/Saudi_Arabia1.html> accessed 12 June 2018.

³⁵⁴ 'King Khalid' (in Arabic)

<<http://www.kingkhalid.org.sa/Gallery/Text/ViewBooks.aspx?view=tree&BookID=57&cntrlId=1#1>> accessed 1 March 2016.

³⁵⁵ 'The Basic Law of Governance' Chapter 1,

<<https://www.boe.gov.sa/ViewStaticPage.aspx?lang=en&PageID=25>> accessed 18 June 2018.

³⁵⁶ *ibid.* Chapter 2.

³⁵⁷ *ibid.* Chapter 5

³⁵⁸ *ibid.* Chapters 3-9.

³⁵⁹ *ibid.* Art. 44.

³⁶⁰ Ayoub M al-Jarbou, 'Judicial Review of Administrative Actions: A Comparative Study between the United States and Saudi Arabia' (2002) (unpublished S.J.D. dissertation, University of Virginia) 129-130.

³⁶¹ The *Majlis al-Shura* consists of around 150 appointed members and a Chairman who is appointed by the King. See, 'Majlis As Shura' <<https://www.shura.gov.sa/wps/wcm/connect/ShuraEn/internet/Home/>> accessed 16 February 2017.

current laws rests with him.³⁶² The heads of the main departments within the various ministries have the authority to make decisions within the framework of their responsibilities which should be consistent with Islamic law, as should Royal and Ministerial Decrees.³⁶³ Importantly, Royal Decrees may adopt laws and regulations that are not directly based on *Shari'ah*, as long as they do not contradict *Shari'ah* provisions; this becomes relevant in the context of the adoption of some IHRL norms.³⁶⁴

A number of articles of the Basic Law of Governance affirm that Islam is the legal basis of the state. Thus, Article 1 states that: “The religion in Saudi Arabia is Islam and the constitution is the Book of God and the *Sunnah* of His Messenger”,³⁶⁵ while Article 7 reaffirms *Shari'ah* is the foundation of the Kingdom’s authority, and states that the Qur’an and *Sunnah* are the sources of *Shari'ah*, which governs all administrative regulations of the state.³⁶⁶ In addition, Article 48 affirms that the courts are to apply in the cases that are brought before them the provisions that are indicated in the Qur’an and the *Sunnah*, and that Royal Decrees have to be compatible with the Qur’an or the *Sunnah*.³⁶⁷ It is therefore clear from the Articles that the *Shari'ah* is the supreme legislative authority of the state; therefore, any legislation and regulations in the Kingdom’s system should be accordance with the provisions of Islam. In this respect, the bodies that have the authority to decide if laws are consistent with the *Shari'ah* are the Kingdom’s legislative bodies (the Council of Ministers and the *Shura* Council), Advisory Authorities (The Council of Senior Ulama) and the judiciary. The process of reviewing laws and regulations consists of two stages. The stage preceding the issuance of the law passes through the preparatory committees and the expert bodies, the Council of Ministers and the *Shura* Council. During this stage, those involved ensure that there is nothing contrary to the Qur’an or the *Sunnah* in the law under consideration. The next phase is the ensuring the legality of the laws and their compatibility

³⁶² AAM Al-Twajjry, JA Brierley and DR Gwilliam, ‘Around the Globe Saudi Arabia’ (2003) 60 Internal Auditor 21 and Joseph A Kéchichian, ‘Democratization in Gulf Monarchies: A New Challenge to the GCC’ (2004) 11 Middle East Policy 37.

³⁶³ AAM Al-Twajjry, JA Brierley and DR Gwilliam, ‘Around the Globe Saudi Arabia’ (2003) 60 Internal Auditor 21 and Russell E Lucas, ‘Monarchical Authoritarianism: Survival and Political Liberalisation in a Middle Eastern Regime Type’ (2004) 36 International Journal of Middle Eastern Studies 103.

³⁶⁴ For further discussion see Chapter 5.1.1.3 and Chapter 7.

³⁶⁵ ‘The Basic Law of Governance’ Art. 1,

<<https://www.boe.gov.sa/ViewStaticPage.aspx?lang=en&PageID=25>> accessed 18 June 2018.

³⁶⁶ *ibid.* Art. 7.

³⁶⁷ *ibid.* Art. 48.

with the constitution, responsibility for this usually rests with the judiciary.³⁶⁸ The KSA's legislative authority is shown in Figure 2.1.

³⁶⁸ <<https://members.imamu.edu.sa/staff/A.Sattam/Documents/Masdar.pdf>> accessed 18 June 2018.

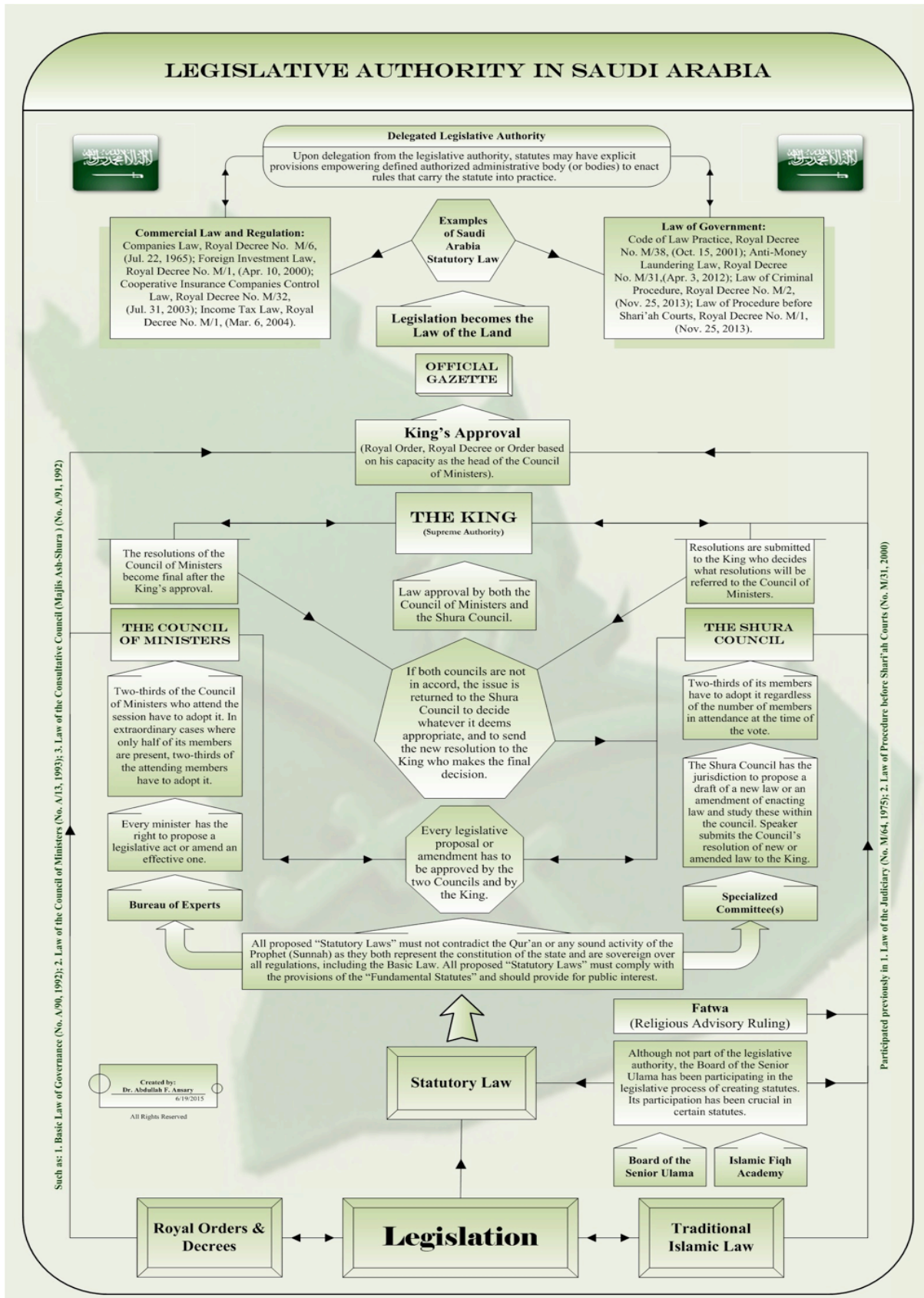


Figure 2.1: Legislative Authority in Saudi Law³⁶⁹

³⁶⁹ 'A Brief Overview of the Saudi Arabian Legal System', Abdullah F. Ansary
<http://www.nyulawglobal.org/globalex/Saudi_Arabia1.html> accessed 12 June 2018.

The question that now needs to be answered is: what is the function of the two laws, *Shari'ah* and the KSA's Basic Law? First, the KSA is governed by Islam which constructs all aspects of the civil, cultural, economic, legal, political and social fabric of the country. Second, the KSA's legal system is built on the fundamental assumption that the Qur'an and Prophet Muhammad (peace be upon him) are its essential sources. Thus, *Shari'ah* governs the content of the law and the legal norms, while the constitutional law sets out the allocation of powers and responsibilities between the various institutions of the state.³⁷⁰ In sum, *Shari'ah* represents the legislative authority of the Kingdom, while the Basic Law represents the regulatory authority in the Kingdom. The Basic Law also provides the authority to approve international treaties, agreements, regulations, and concessions.

2.1.5 Political rights in the KSA legal system

This section presents a background to the political rights of Saudi women as set out in the Saudi legal system. In this respect, there is confirmation in several paragraphs of the Basic Law that Saudi law is derived from the Holy Qur'an and *Sunna* of the Messenger. Furthermore, the Basic Law holds the principle of equality and non-discrimination to be among the fundamental imperatives of Saudi society.³⁷¹ It also mentions in Article 7 that: "Government in the Kingdom of Saudi Arabia derives its authority from the Book of God and the Sunna of the Prophet (PBUH), which are the ultimate sources of reference for this Law and the other laws of the State".³⁷² This very broad claim means that all the political rights that insured in the Islamic texts are meant to be applied to men and women impartially. More specifically, the Basic Law of Governance refers to specific political rights; for example, Article 6 states: "In support of the Book of God and the *Sunna* of His Messenger (PBUH), citizens shall give the pledge of allegiance (*bay'a*) to the King, professing loyalty in times of hardship and ease".³⁷³ It means that that women join with men in pledging allegiance to whoever is chosen king. Furthermore, Article 8 states: "Governance in the Kingdom of Saudi

³⁷⁰ Fahd ibn Abdulaziz, Speech on the Issuance of the Basic Law of Governance (11 March 1992); Saud al-Faisal, Saudi Minister of Foreign Affairs, Address at the World Conference on Human Rights Vienna, Austria (June 15, 1993); R. Abu Namay, 'The Recent Constitutional Reforms in Saudi Arabia' (1993) 42 *International & Comparative Law Quarterly* 295.

³⁷¹ Consideration of reports submitted by States Parties under article 18 of the Convention on the Elimination of All Forms of Discrimination against Women, Combined initial and second periodic reports of States Parties, Saudi Arabia, CEDAW/C/SAU/2.

³⁷² 'The Basic Law of Governance' Art. 7,

<<https://www.boe.gov.sa/ViewStaticPage.aspx?lang=en&PageID=25>> accessed 18 June 2018.

³⁷³ *ibid.* Art. 6.

Arabia is based on justice, *Shura* (consultation) and equality according to Islamic Sharia.”³⁷⁴ This indicates that men and women are equal in terms of seeking and enjoying their rights. Overall, it should be noted that political rights are not explicitly referred to in Saudi law but rather that they are generally referred to according to the *Shari’ah*.

However, it is important to understand equality of political rights within the context of the monarchical political system of the KSA, which is dominated by the King. Citizens can participate in political decisions through the two highest state councils: Council of Ministers and *Alshura* Council (Consultative Council).³⁷⁵ In this respect, women participate in the *Alshura* Council which in 2010 comprised the King, along with 150 male members and 12 non-voting women as advisors, all of whom are appointed by the King for a four year term.³⁷⁶ In 2013, 30 women were appointed as full members -they were voting members- of the *Alshura* Council, accounting for 20 per cent of the members.³⁷⁷ However, to the date, women are not present in the Council of Ministers.

In a further move towards women’s equality, in 2011, King Abdullah decreed that women would be given the right to vote and stand in municipal elections from 2015.³⁷⁸ Municipal elections are held across the country to appoint advisers to the mayors and town councils.³⁷⁹ For example, in 2018, four women were appointed heads of sub-municipalities in the city of Jeddah.³⁸⁰ Currently, Saudi women hold influential position in several governmental sectors such as leadership positions as ministers, deputy ministers and senior officials.³⁸¹

Overall, in theory the political rights of individuals within the KSA are based on equality as laid out in the Qur’an and *Sunnah*. However, in reality it is difficult to understand how these rights are applied. For example, in the case of women’s participation in political decision-making, in theoretical terms this should be applied since the formulation of the Kingdom’s

³⁷⁴ *ibid.* Art. 8.

³⁷⁵ See Chapter 2.1.4.

³⁷⁶ M Al-Rasheed, *A History of Saudi Arabia* (Cambridge University Press 2010).

³⁷⁷ Royal Order No. A/44 of 29/2/1434 A.H. (12/01/2013),

https://digitallibrary.un.org/record/851706/files/CEDAW_C_SAU_3-4-EN.pdf accessed at 5 March 2019.

³⁷⁸ No. M/61 of 4/10/1435 A.H. (1/8/2014),

https://digitallibrary.un.org/record/851706/files/CEDAW_C_SAU_3-4-EN.pdf accessed at 5 March 2019.

³⁷⁹ ‘Elections in Kingdom of Saudi Arabia’,

<<https://www.saudi.gov.sa/wps/portal/snp/pages/electionsInTheKingdomOfSaudiArabia>> accessed 5 February 2019

³⁸⁰ Four women in leading Jeddah municipality positions, <https://gulffnews.com/world/gulf/saudi/four-women-in-leading-jeddah-municipality-positions-1.2272319> accessed at 20 March 2019.

³⁸¹ Human Rights Council, Working Group on the Universal Periodic Review Seventeenth session, Geneva, 21 October–1 November 2013, National report submitted in accordance with paragraph 5 of the annex to Human Rights Council resolution 16/21, Saudi Arabia, A/HRC/WG.6/17/SAU/1.

Basic Law in 1992. However, women's actual participation only started in 2013 when King Abdallah appointed them as members in *Alshura* Council. Therefore, in order to understand the reality of women's political rights and how this is linked to the norms of *Shari'ah*, further research is suggested.

2.1.6 Human Rights in the KSA's Law

Human rights in the KSA are assured through the Basic Law, and the institutions and programmes established to protect and enhance human rights. In this section, the role of human rights in the Saudi legal system are outlined and the institutions for the protection of human rights are discussed.

2.1.6.1 Human rights in the Kingdom's Basic Law

In relation to human rights in the KSA domestic law, the Basic Law has a number of articles that confirm the equality of all citizens before the law. For example, Article 8 states: "Governance in the Kingdom of Saudi Arabia is based on justice, consultation and equality in accordance with the Islamic *Shari'ah*",³⁸² while Article 26 indicates the standard of the Kingdom's protection of the rights: "The State shall protect human rights in accordance with the Islamic *Shari'ah*".³⁸³ Moreover, regarding equality and non-discrimination between residents and citizens in accessing legal remedy, Article 47 states: "The right to seek legal remedy shall be guaranteed, on an equal footing, to all citizens and residents of the Kingdom and the procedures required therefor shall be defined by law".³⁸⁴

In the context of economic rights, Article 18 stipulates: "The State shall guarantee the freedom and inviolability of private property rights. No one shall be deprived of his property except in the public interest and on condition that the owner receives fair compensation",³⁸⁵ while, Article 27 set out certain social rights of individuals: "The State shall guarantee the rights of the citizen and his family in emergencies, sickness, disability and old age, shall support the social security system and shall encourage institutions and individuals to participate in charitable work".³⁸⁶

³⁸² 'The Basic Law of Governance' Art. 8,

<<https://www.boe.gov.sa/ViewStaticPage.aspx?lang=en&PageID=25>> accessed 18 June 2018.

³⁸³ *ibid.* Art. 26.

³⁸⁴ *ibid.* Art. 47.

³⁸⁵ *ibid.* Art. 18.

³⁸⁶ *ibid.* Art. 27.

In this respect, it could be suggested that the Basic Law set out the obligations of the KSA to protect and guarantee all individuals' rights in accordance Islamic provisions. These rights include the Kingdom's obligations to grant equality between males and females according to the meaning of gender in Islam, which was one of the reasons behind the Kingdom's placing reservations on the CEDAW.³⁸⁷ From these articles it is apparent that the legal system of the KSA and the nature of Saudi culture and society are strongly based on *Shari'ah*. Additionally, concepts of equality and rights are also understood within the context of *Shari'ah*. Islam shapes the lives of all Saudis and to a certain degree shapes their behaviours. Islam pervades its adherents' lives and daily affairs. It is considered to be a universal and comprehensive system of law that organises their public and private life. An-Na'im confirms the *Shari'ah's* power "to regulate the behaviour of Muslims derives from its moral and religious authority as well as the formal enforcement of its legal norms".³⁸⁸

However, it is noticeable that the rights indicated in the Basic Law are vague and do not explicitly stipulate the mechanisms of protection. In this matter, Zartner argues that while the Basic Law of the Kingdom includes a part titled 'Rights and Duties', the KSA does not safeguard individuals' rights.³⁸⁹ She mentions that the Basic Law protects the right of individuals at minimal level and does not obviously explain what exactly these rights are.³⁹⁰ Moreover, Qureshi *et al.* argue that "the principle that Islam entails limits on human rights was adopted in the Basic Law of Government promulgated by the Saudi Arabian regime in 1992"; Article 26 provided that "the state protects human rights in accordance with the Islamic *Shari'ah*". What the *Shari'ah* limits on rights would entail was not defined".³⁹¹ Therefore, the authors claim that the state should redraft the rights and duties set forth in the basic system in a more clear and normative language. This would reflect positively on the increased the protection of individual's rights and duties.

Furthermore, arguably there is tension between Articles 1 and 26 of the Basic Law and Article 81 of the Basic Law. Article 1 asserts that "The Kingdom of Saudi Arabia is a fully sovereign Arab Islamic State. Its religion shall be Islam and its constitution shall be the Book of God and the Sunnah (Traditions) of His Messenger, may God's blessings and peace be

³⁸⁷ The debate around the Kingdom's reservation is discussed in Chapter 2.2.2.1.

³⁸⁸ Abdullahi Ahmed An-Na'im, 'Human Rights in the Muslim World: Socio-Political Conditions and Scriptural Imperatives: A Preliminary Inquiry' (1990) 3 Harvard Human Rights Journal 13, 14.

³⁸⁹ D Zartner, *Courts, Codes and Customs* (Oxford University Press 2014).

³⁹⁰ *Ibid.*

³⁹¹ N Hashemi and E Qureshi, Human Rights in John L Esposito, *The Oxford Encyclopedia of the Islamic World* (Oxford University Press 2017).

upon him (PBUH)",³⁹² while Article 26 states "the State shall protect human rights in accordance with the Islamic *Shari'ah*".³⁹³ However, Article 81 stipulates "the application of the KSA's law should be compatible with the treaties and agreements to which the state has committed".³⁹⁴ Thus, international human rights treaties, as referred to by Article 81, may contain provisions that contradict *Shari'ah* referred to in Articles 1 and 26. To assess this potential tension, it is worth clarifying two issues. The first issue is the procedures of approving international human rights treaties and agreements in the Kingdom. According to Article 70 of the Basic Law, "laws, international agreements, treaties and concessions shall be approved and amended by Royal Decrees".³⁹⁵ There is a long process involved in approving international conventions by Royal Decree. Members of the *Majlis al Shura* and the Council of Ministers review the treaties and international conventions. The review is conducted in the *Shura* Council by some of its members who agree to reviewing the convention. Then, the Council of Ministers refers the proposed convention to the head of the *Shura* and the Committee of Foreign Affairs in the Council. The Committee of Foreign Affairs conducts its review of the proposed convention and carries out a consultation with governmental authorities in this regard. After this procedure and approval by the *Shura*, the convention is referred to the Council of Ministers once again for review. Finally, the convention is approved by the Council and a Royal Decree is issued for its ratification, after this it is subject to further procedures before its final ratification.³⁹⁶ The process is to refine all the articles of the covenant to ensure their compatibility with the KSA's law before being bound by ratifying the treaty. For example, on 28th August 2000, the Kingdom ratified CEDAW through a royal decree of King Fahd This decree followed: the Consultative council decision number (77/71) issued on 7th may 2000, and the ministers council decision number (123) issued on 21st August 2000 both preparing the way for the ratification process to happen.³⁹⁷

The second issue relates to the relationship between national and international law as demonstrated using monism and dualism approaches.³⁹⁸ In theoretical term, the KSA adopts a

³⁹² 'The Basic Law of Governance' Art. 1,

<<https://www.boe.gov.sa/ViewStaticPage.aspx?lang=en&PageID=25>> accessed 18 June 2018.

³⁹³ *ibid.* Art. 16.

³⁹⁴ *ibid.* Art. 81.

³⁹⁵ *ibid.* Art. 70.

³⁹⁶ Abdul Rahman A Shlhwb, *The Constitutional System in the Kingdom of Saudi Arabia* (in Arabic) (Safir Press 2005).

³⁹⁷ See appendix 6

³⁹⁸ See Chapter 1.1.1.

dualistic approach to IHRL. The Basic Law is derived from *Shari'ah*,³⁹⁹ while ratified international agreements are subject to Article 81.⁴⁰⁰ Thus, it seems that in the case of the KSA ratified international human rights treaties act as a guide not as a source for its regulations and laws. The Kingdom in its Combined Initial and Second Periodic Reports clarified that the provisions of CEDAW “are considered to be a part of domestic law. Accordingly, the provisions of the Convention may be invoked before the courts or other judicial or administrative authorities in the Kingdom”.⁴⁰¹ Furthermore, the Kingdom asserts in its reply to Paragraph 2 of the List of Issues and Questions that, since the ratification of CEDAW by Royal Order No. M/25 in 7 September 2000, the Convention has become part of its domestic law. Consequently, the provisions by which the Kingdom agrees to be bound have obtained the same status as the Kingdom’s law. This is because accession to the Convention by Royal Decree is “the same as in that the legal instrument of accession to the Convention (royal decree) is the same as the instrument by which the Kingdom’s laws are promulgated”.⁴⁰² According to Article 70 of the Basic Law of Governance: “Laws, treaties, international conventions and concession agreements shall be promulgated and amended by royal decree”,⁴⁰³ which means that all subjects that are issued by Royal Decree have legitimacy in the Kingdom’s law.

In practical terms, the Basic Law of Governance, the Law of Procedure before *Shari'ah* Courts, the Law of Criminal Procedure, and all other Saudi laws state that courts should apply the provisions of *Shari'ah*,⁴⁰⁴ along with the provisions of international agreements that the Kingdom has ratified.⁴⁰⁵ According to Almutairi, “this is typically completed using the constitution, through which all judgments are made by legal authorities, as indicated in Article 1 of the Basic Law, Article 1 of the Law of Criminal Procedure and Article 1 of the

³⁹⁹ ‘The Basic Law of Governance’ Art. 7,

<<https://www.boe.gov.sa/ViewStaticPage.aspx?lang=en&PageID=25>> accessed 18 June 2018.

⁴⁰⁰ *ibid.* Art. 81.

⁴⁰¹ Consideration of reports submitted by States Parties under Article 18 of the Convention on the Elimination of All Forms of Discrimination against Women, Combined initial and second periodic reports of States Parties, Saudi Arabia, CEDAW/C/SAU/2.P.8

⁴⁰² Committee on the Elimination of Discrimination against Women, sixty-ninth session, 19 February–9 March 2018, List of issues and questions in relation to the combined third and fourth periodic reports of Saudi Arabia, Replies of Saudi Arabia, CEDAW/C/SAU/Q/3-4/Add.1.

⁴⁰³ ‘The Basic Law of Governance’ Art. 70,

<<https://www.boe.gov.sa/ViewStaticPage.aspx?lang=en&PageID=25>> accessed 18 June 2018.

⁴⁰⁴ See Article 1 of the Basic Law of Governance, Article 1 of the Law of Procedure before *Shari'ah* Courts and Article 1 of the Law of Criminal Procedure.

⁴⁰⁵ Abdulaziz S Al-rodiman, ‘The Application of Shari'ah and International Human Rights Law in Saudi Arabia’ (PhD Thesis University of Brunel 2013).

Law of Procedure before Sharia Courts”.⁴⁰⁶ Thus, the KSA tends to apply international norms according to domestic law, except if there is a provision that obviously breaks international law. In this case, the Kingdom excludes itself from adhering to these provisions by placing reservations when it acceded to the treaty.⁴⁰⁷ However, when there is an obvious conflict, the KSA is obliged to adhere to *Shari’ah*. In this context, it is acknowledged that there is a degree of difficulty regarding to the implementation of international standards in the domestic law of the Kingdom without causing conflict between the two. It is, therefore, difficult to attribute the Kingdom's relationship with international law to any of the two dominant ideals; the monist or the dualist, in terms of the relationship between international law and domestic law.⁴⁰⁸

2.1.6.2 Human rights institutions in Saudi Arabia

The KSA has several types of the organisations that are pertinent to human rights matters. In general, in the KSA NGOs cannot be involved in the field of human rights without the supervision or permission of the Saudi government. In this context, organisations that work in the field of human rights can be classified into three types. First, NGOs that exist without permission or supervision from the Kingdom, and are therefore not officially recognised in Saudi Arabia. These include: 1) the Saudi Centre for Human Rights, 2) the Committee for the Defence of Human Rights in the Arabian Peninsula, 3) the Human Rights First Society, and 4) the Association for Civil and Political Rights in Saudi Arabia. Second, NGOs those operate in the Kingdom under supervision and with permission from the government, which is the National Society for Human Rights (NSHR). Third are government organisations.⁴⁰⁹

In relation to the first type of human rights institutions, these institutions cannot function within Saudi Arabia because it is not allow in the KSA law to establish such institutions. Until 2015, establishing certain types of civil service organisations was not possible.⁴¹⁰ According to paragraph 6 of the Saudi Anti-Cyber Crime Law: “production, preparation,

⁴⁰⁶ Abdullah M Almutairi, ‘The Domestic Application of International Human Rights Conventions in Saudi Arabia and the Need to Ratify Conventions on Migrant Workers’ (2018) 54 Middle Eastern Studies 48, 51.

⁴⁰⁷ The KSA’s reservations on the treaty are discussed in Chapter 2.2.2.1.

⁴⁰⁸ For more details regarding the relationship between IHRL and a state’s domestic legal system see Chapter 1.2.1.

⁴⁰⁹ See Eleanor Abdella Doumato, *Saudi Arabia: Women’s Rights in the Middle East and North Africa 2010* (Freedom House, 2010) <<http://www.refworld.org/docid/4b99011da0.html>> accessed 19 July 2016.

⁴¹⁰ In 2015 the King Salman issued a new system called Civil Society Associations and Organizations Law, Royal Decree No. (M/8) dated 19/2/1437. Anti-Cyber Crime Law, <<https://www.boe.gov.sa/ViewSystemDetails.aspx?lang=en&SystemID=217&VersionID=232>> accessed 2 November 2018.

transmission, or storage of material impinging on public order, religious values, public morals, and privacy, through the information network or computer is not permitted”.⁴¹¹

Thereafter, in 2015 the King Salman issued the law of Civil Society Associations and Organisations,⁴¹² which permits the establishment of civil society associations, albeit with government permission. However, the effects of this law in the Kingdom are under-studied and under-theorised. Therefore, it would be useful to have future research on these civil institutions.

Thus, in this context, it could be considered that the functional human rights institutions in the KSA can be classified into two categories: civil society organisations; and government organisations. The following sections outline the nature of these institutions and explains their functions in term of human rights protection and dealing with the matter of human rights treaties.

2.1.6.2.1 Civil society organisations: The National Society for Human Rights

The NSHR was founded on 9 March 2004.⁴¹³ While is a non-NGO that operates with permission and supervision of the state there is no direct link to any government agency. Although, it is not clear how independent it is, it appears financially and administratively independent of government.⁴¹⁴ Moreover, the NSHR’s members include male and female academics and specialists in areas relating to human rights. It aims encompass tasks similar to those of the Human Rights Commission:

To protect and defend the human rights of citizens, residents, and visitors within and outside the Kingdom of Saudi Arabia in accordance with the ordinances of Islamic Law, the Kingdom’s national system, and along with abiding to the Declarations and Covenants of Human Rights issued by the Arab League, the Organization of Islamic Cooperation, and the United Nations instruments.⁴¹⁵

One of the most significant duties of the NSHR is that it interacts with government agencies, NGOs and international organisations to achieve the objectives set forth in its charter. Some of duties are assigned to the NSHR, include:

⁴¹¹ See, <https://www.citc.gov.sa/en/rulesandsystems/citcsystem/pages/cybercrimesact.aspx> accessed 2 November 2018

⁴¹² *ibid* (n407)

⁴¹³ ‘National Society for Human Rights, The Foundation of the Society’ <http://nshr.org.sa/en/?page_id=52> accessed 18 June 2018.

⁴¹⁴ *ibid*.

⁴¹⁵ *ibid*.

- Ensure the implementation of human rights in the local law of the Kingdom as well as in government agencies.
- Ensure that the Kingdom's domestic law complies with international human rights norms that the Kingdom's are committed to.
- Receive and follow up complaints from citizens and residents against the violation of their rights
- It deals with international human rights treaties and examines their applications in the context of the KSA.
- It organises international, regional, and national conferences, seminars, and courses connected to human rights.⁴¹⁶

A number of activities that are organised by the NSHR include events that support human rights such as the seminar in 2013 entitled “The Duties and Rights of Young People”, and in 2012 “Dialogue about Tolerance and Rights Assurance” on the occasion of the International Day for Tolerance. In 2012, the NSHR met a delegation from the UN's Office of the High Commissioner for Human Rights.⁴¹⁷

2.1.6.3. Government organisations

2.1.6.3.1 The Human Rights Commission

The Human Rights Commission is a government body established in September 2005 by Cabinet Decision No. 207 of 8/8/1426 (12/09/2005).⁴¹⁸ Its statute grants it comprehensive authority to act independently and freely. One of the main concerns of the Commission is to protect and strengthen human rights based on *Shari'ah* and international standards. Article 5(1) sets out the Commission's duties, including the dissemination of human rights awareness and contributing to ensuring the application of human rights according to the provisions of *Shari'ah*. The most significant responsibilities of the Commission are to: it can express opinions on regulations concerning human rights projects; review existing regulations and propose amendments in accordance with statutory procedures; and receive, investigate, and take legal action regarding human rights complaints, as well as formulate a general policy for developing human rights awareness.⁴¹⁹

In particular, in relation to human rights law, the Commission is able to address and express its opinions prior to the KSA ratifying and accepting IHRL treaties. It is responsible for the

⁴¹⁶ *ibid.*

⁴¹⁷ For more details see *ibid.*

⁴¹⁸ ‘Human Rights Commission’ <<http://www.hrc.gov.sa/ar-sa/AboutSection/Pages/AboutSection.aspx>> accessed 14 November 2016.

⁴¹⁹ *ibid.*

preparation of the KSA's human rights universal periodic reports, following them up with government agencies, and ensuring the application of the norms of the international human rights instruments to which the Kingdom has acceded. It also cooperates with national bodies and international human rights associations and organisations to achieve its objectives. Finally, it reports directly to the King.⁴²⁰

2.1.6.3.2 Committee on Human Rights of the *Majlis al Shura*

It is useful to clarify the role of the *Majlis al Shura* (Consultative Council) before explaining the role of the Committee on Human Rights of the *Majlis al Shura*. *Shura* means 'consultation'⁴²¹ and is rooted in Islamic history.⁴²² In the Qur'an, *shura* is mentioned on two occasions,⁴²³ while in the *Sunnah* a number of *Hadith* encourage people to practice *shura*. In the Saudi legal system, *shura* is applied through the Consultative Council that was established in 1992.⁴²⁴ It consists of 150 members who are nominated by the King. The Consultative Council addresses the state's legislation and regulations. Although the Consultative Council is formally only an advisory government body, in reality it plays a vital role in the Kingdom's legal development, as well as changes in relation to international human rights treaties and covenants. According to Al-Jarbou:

Even though the council has an advisory role, the Shura council will play a major role in the development and modernization plans as it evident from its establishment of law, it has been authorized to discuss and give opinion concerning the general plans for social and economic development.⁴²⁵

It has a number of specialised committees, one of which is the Committee on Human Rights of the *Majlis al Shura*. This committee is accountable for studying issues connected to human rights and the ratification of international, regional, or bilateral human rights agreements.⁴²⁶ It has a central role with regard to the enhancement and development of human rights. It is able to investigate and analyse human rights violation, examine international conventions relating to human rights, study the bilateral human rights agreements between Saudi Arabia and other countries and, perhaps in its most significant role, receives and addresses individual

⁴²⁰ *ibid.*

⁴²¹ Ibn Mandoor, *Lisan al-Arab* (Dar Al Maarif 2011).

⁴²² R Hrair Dekmejian, 'Saudi Arabia's Consultative Council' (1998) 52 Middle East Journal 206.

⁴²³ Surah *Shura* (38:487), Surah *Al-Imran* (159:71).

⁴²⁴ Shura Council Law, Royal Decree Number A/91, 1412 (1992).

⁴²⁵ Ayoub M Al-Jarbou, 'Judicial Independence: Case Study of Saudi Arabia' (2004) 19 Arab Law Quarterly 5, 76.

⁴²⁶ 'Majlis Ash-Shura - Committees'

<<https://www.shura.gov.sa/wps/wcm/connect/shuraen/internet/committees>> accessed 16 February 2017.

complaints, with a report that should be provided to the *Shura* Council on this matter.⁴²⁷

2.1.6.3.3 The Standing Committee for Combating Trafficking in Persons

The Committee against Human Trafficking was created by a Cabinet decision⁴²⁸ in 2009. A Cabinet decision in the Saudi context means a written decision expressing the will of the Council of Ministers, signed by the President of the Council (the King/Prime Minister) or the First or Second Vice-Chairman as deputies to the Prime Minister. These are considered to be important decisions as they affect daily life, have a legislative, regulatory and executive form⁴²⁹ and require effective and immediate action. In this case, the standing Committee for Combating Trafficking members included representatives of the Ministries of Interior, Foreign Affairs, Justice, Social Affairs, Labour, Culture and Information, as well as the Bureau of Investigation and Prosecution. This committee is the main domestic mechanism for enforcing the Anti-Trafficking in Persons Offences Law that was issued in 2009.⁴³⁰ It is the main Saudi national mechanism for applying the Trafficking in Persons (Offences) Act and has following tasks:

- Paying attention to victims of trafficking, following up their issues, and ensuring their safety.
- Coordinating with various authorities to enable victims to be delivered to their countries or countries of their choice.⁴³¹

This Committee, which is the only formed as a result of a Cabinet decision, focuses specifically on the issue of human trafficking including women who could be more vulnerable to human trafficking than men. In contrast, the Committee of the *Majlis al Shura* on Human Rights deals with human rights matters in a comprehensive form as well as being responsible for the KSA's interaction with the UN human rights system.

⁴²⁷ *ibid.*

⁴²⁸ The Council of Ministers, also called the Cabinet, advises the King and facilitates the country's development. It represents 23 different government ministries and is presided over each week by the King or his deputy. For more detail see <<https://www.saudiembassy.net/council-ministers-system-0>> accessed 2 November 2018.

⁴²⁹ A Cabinet decision in the context of the KSA's system means a written decision that expresses the will of the Council of Ministers, signed by the President of the Council (the King) or his First or Second Vice-Chairmen as deputies to the Prime Minister. These are considered to be one of the most important decisions as they are issued continuously and affect daily life and have a legislative, regulatory and executive form.

⁴³⁰ The Law of Anti-Trafficking in Persons Offences issued by Royal Decree No. M / 40 dated 21/7/1430 AH, 14/07/2009, <<https://www.boe.gov.sa/ViewSystemDetails.aspx?lang=en&SystemID=275&VersionID=255>> accessed 19 June 2018.

⁴³¹ Human Rights Council, Working Group on the Universal Periodic Review Seventeenth session, Geneva, 21 October–1 November 2013, National report submitted in accordance with paragraph 5 of the annex to Human Rights Council resolution 16/21, Saudi Arabia, A/HRC/WG.6/17/SAU/1.

2.1.6.3.4 Saudi Bar Association

The Saudi Bar Association was launched by Cabinet Decision in 2015.⁴³² The Association aims to strengthen the role of Saudi lawyers in protecting human rights. Article 2(1) of the statute set out the main objective of the Bar as: “The association aims at raising the level of the practice of lawyers to their profession, ensuring their good performance, and increasing their awareness of their professional duties pursuant to this Charter and other applicable regulations”.⁴³³

2.1.6.4 Human rights programs and laws in the KSA

The KSA, in the period between 1990 and 2016, issued a number of programmes and laws that aim to protect certain rights or groups. In the following section, the most relevant programmes and laws in the context of this thesis are highlighted.

2.1.6.4.1 The National Family Safety Programme

The programme was established by Royal Decree.⁴³⁴ It is a national non-governmental programme that aims to protect women and children against domestic violence. It is similar to Law of Protection from Abuse (discussed below) in its aims and objectives; however, this law focuses more on abuse against children and women. The programme works with different sectors in the Kingdom such as the health care sector. It contributes to a national register of child abuse that is kept by the health sector.⁴³⁵ A key mechanism of this programme is the provision of a child support telephone hotline for children below the age of 18 who experience abuse or other types of violations. When a case needs urgent intervention, it is transferred to the relevant child welfare authorities.⁴³⁶

2.1.6.4.2 Law of Protection from Abuse

The Law on Protection from Abuse was promulgated by Royal Decree.⁴³⁷ It is an integral element within the national framework for combating abuse in its different forms. The law is aimed to: guarantee protection of women from abuse of their rights; provide assistance and treatment to the victims of abuse; provide shelter and social care to those who need protection

⁴³² Cabinet Decision No. 317 of 8/17/1436 A.H. (27/4/2015).

⁴³³ Saudi Bar Association, <<https://sba.gov.sa/en/saudi-bar-association-charter/>> accessed 19 June 2018.

⁴³⁴ Royal Decree No. 11471/MB of 16/10/1426 A.H. (18/11/2005).

⁴³⁵ The National Family Safety Programme, <<https://nfsp.org.sa/en/Pages/default.aspx>> accessed 10 January 2019.

⁴³⁶ *ibid.*

⁴³⁷ Royal Decree No. M/52 of 15/11/1434 A.H. (20/09/2013).

from their abusers; provide psychological and health care; and raise the level of awareness in society about the issue of abuse and its negative effects on the community.⁴³⁸

2.1.6.5 Summary of human rights in the KSA's law

Overall, the human rights institutions, programmes and laws discussed above have had an influence over the issue of human rights in the Kingdom. The establishment of the human rights institutions was an important step for the human rights movement in Saudi Arabia.⁴³⁹ In this respect, a number of questions have been raised about the establishment of such legal institutions in the Kingdom, such as: what were the reasons behind their establishment? and to what extent are they independent and free in their work? In terms of the first question, the human rights institutions appear to have been established because of the interest of the Kingdom in this field, which has been encouraged by the global interest in human rights. According to Al-Dossary, the Committee that studied the establishment of the Human Rights Commission pointed out that the increase in international and regional interest in enshrining the principles of human rights in international relations requires the KSA to take practical measures to improve its commitment to a level that is compatible with the Kingdom's international standing and to protect its national interest.⁴⁴⁰

In relation to the second question, all the institutions were established by Royal Decrees or cabinet decisions, which means that they are government institutions and act under the government supervision. However, arguably, they appear to act independently in that they are free from government influence and pressure and work freely in terms of fulfilling their aims.⁴⁴¹

Another significant question that needs to be addressed is: what is the relationship between the establishment of these institutions and laws and the KSA's engagement with the IHRL. This question is addressed in-depth in the forthcoming chapters.⁴⁴² In this context, in the following sections, the KSA's relationship with the IHRL is evaluated theoretically.

⁴³⁸ Law of Protection from Abuse, <https://www.nfsp.org.sa/ar/awareness/DocLib/english_law.pdf> accessed 19 June 2018

⁴³⁹ Richard Dekmejian, 'The Liberal Impulse in Saudi Arabia' (2003) 3 *The Middle East Journal* 400.

⁴⁴⁰ Abdulrahman Hassen Barak Aljuraif Al-Dossary, 'Saudi Human Rights Institutions and Their Role in Rights Protection: Applied Deep-rooted Study' (in Arabic) (Masters' Thesis, Nife Arab university for security sciences 2007).

⁴⁴¹ I have searched extensively in the literature in relation to the nature of the work and independence of the legal institutions in the Kingdom, but have not found any studies that deal with this subject in depth.

⁴⁴² See Chapters 4, 5, 6 and 7.

2.2 The KSA's Relationship with the IHRL Instruments

This section focuses on the KSA's interaction with the IHRL. It is divided into three phases. The first phase covers the period from the creation of the human rights instruments in 1945 until 1990. It focuses particularly on the Kingdom's position toward the UDHR because this declaration forms the basis of international human rights law. The Kingdom's position towards the ICCPR as it one of the main binding treaties is also discussed. The second phase, between 1990 and 2008, involves an examination the KSA's engagement with the CEDAW, because it is the most important UN convention for protecting the rights of women. The third phase, 2008 until 2016, is the period explored in the interview data in this study. This section, discusses the characteristics of the Kingdom's engagement with the IHRL in that period.

2.2.1 The first phase (1945-1990): The Kingdom's Position towards the UDHR and ICCPR

The KSA was one of the founding members of the UN and was therefore involved in the drafting of its Charter,⁴⁴³ with its reference to human rights as well as the drafting of the UDHR and ICCPR. Thus, this section focuses on particular articles of the UDHR and ICCPR to which the KSA raised objections based on religion. In the context of the KSA's position towards the UDHR, it was one of the Muslim countries that contributed to the early drafts of the UDHR.

Saudi Arabia raised a number of issues in relation to Articles 16 and 18 of the UDHR. Article 16 is concerned with equal rights in marriage and declares: "Men and women of full age, without any limitation due to race, nationality or religion, have the right to marry".⁴⁴⁴ In addition, it stipulates: "Marriage shall be entered into only with the free and full consent of the intending spouses".⁴⁴⁵ Saudi Arabia raised three concerns regarding this article: the age of marriage; gender equality in marriage; and abolishing any restrictions on marriage because of nationality or religion.⁴⁴⁶ The Saudi delegate argued that this concept reflected western civilisation⁴⁴⁷ and ignored other cultures.⁴⁴⁸ Thus, Saudi Arabia requested that Article 16 be

⁴⁴³ The Kingdom was one of the 51 original members of the UN which was established following the Second World War. The KSA helped to draft the UN's Charter, which is the most significant instrument of the UN as the Charter's articles bind all UN members. See Muhammad al-Hadi, `Afifi, *The Arabs and the United Nations* (Longmans 1964).

⁴⁴⁴ 'UNHDR', <<http://www.un.org/en/universal-declaration-human-rights/>> accessed 17 July 2016.

⁴⁴⁵ *ibid.*

⁴⁴⁶ Abdulaziz M Alwasil, 'Saudi Arabia's Engagement In, and Interaction With, the UN Human Rights System: An Analytical Review' (2010) 14 *The International Journal of Human Rights* 1072.

⁴⁴⁷ In the wake of World War II, European nations had experienced a number of forms of genocide and injustice.

amended to state that men and women should be “entitled to the full rights as defined in the marriage laws of their countries”.⁴⁴⁹ However, this proposal was rejected by most delegates, as it would be incompatible with the aim of the Declaration, which is the universality of human rights.⁴⁵⁰ The second concern about Article 16 related to the phrase “of full age”, which Al-Baroody argued ignored the notion of physiological development. Therefore, he suggested the wording should be replaced with the term “legal matrimonial age”.⁴⁵¹ Under Islamic law in the KSA, the age of marriage is linked to the physical maturity of the individual.⁴⁵² The third concern was related to the lack of restrictions on marriage due to race, nationality, or religion.⁴⁵³ This article contradicts the Islamic provisions in marriage, which prohibit a Muslim woman from marrying a non-Muslim man. Also, under Saudi law, a Saudi man or woman cannot marry a non-Saudi without the permission of the government.⁴⁵⁴

The second article of the UDHR to which Saudi Arabia objected was Article 18, which deals with freedom of thought, conscience, and religion. The draft stated that “this right includes freedom to change his [sic] religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his [sic] religion or belief in teaching, practice, worship, and observance”.⁴⁵⁵ The Kingdom objected to the right to change one’s religion and proposed that phrase should be replaced with “everyone has the right to freedom of thought, conscience and religion”.⁴⁵⁶ During the debate on this article, Al-Baroody expressed his surprise that the article emphasised the right to change one’s religion, when it was individual freedoms that the article sought to guarantee.⁴⁵⁷ The Saudi delegation viewed this provision through the experiences of colonialism. They argued that an emphasis on religion and religious conversion had led to crusades and religious wars, arguing that “throughout history

In 1948, the United Nations Organisation was established, along with the adoption of the Convention on the Prevention and Punishment of the Crime of Genocide. Furthermore, the idea of human rights treaties emanated from Europe and in the 1950s and 1960s the majority of Western states ratified human rights treaties. See Henry J Steiner, Philip Alston and Ryan Goodman, *International Human Rights in Context: Law, Politics, Morals: Text and Materials* (Oxford University Press 2008) 58.

⁴⁴⁸ Abdulaziz M Alwasil, ‘Saudi Arabia’s Engagement In, and Interaction With, the UN Human Rights System: An Analytical Review’ (2010) 14 *The International Journal of Human Rights* 1072.

⁴⁴⁹ UNGA Third Committee, 3rd session, (1948), 370.

⁴⁵⁰ Abdulaziz M Alwasil, ‘Saudi Arabia’s Engagement In, and Interaction With, the UN Human Rights System: An Analytical Review’ (2010) 14 *The International Journal of Human Rights* 1072.

⁴⁵¹ UNGA Third Committee, 3rd session, (1948), 371.

⁴⁵² Abdulaziz M Alwasil, ‘Saudi Arabia’s Engagement In, and Interaction With, the UN Human Rights System: An Analytical Review’ (2010) 14 *The International Journal of Human Rights* 1072.

⁴⁵³ *ibid.*

⁴⁵⁴ *ibid.*

⁴⁵⁵ ‘The Universal Declaration of Human Rights’ <<http://www.un.org/en/documents/udhr/history.shtml>> accessed 10 March 2015.

⁴⁵⁶ UNGA Third Committee, (1948), 3rd Session, 391.

⁴⁵⁷ *ibid.*

missionaries had often abused their rights by becoming the forerunners of a political intervention, and there were many instances where peoples had been drawn into murderous conflict by the missionaries' efforts to convert them".⁴⁵⁸ However, the Indian delegate, Mohammed Habib, commented that Al-Baroody's amendment, if accepted, would lead to "tragedy" in India, as the "Indian constitution provided the right to convert or be converted".⁴⁵⁹ The disagreement highlighted that universal rights specified by the UDHR could create difficulty when applied in every society, because it ignored the identity of certain societies, particularly those which are strongly connected to their religion.

Additionally, the Saudi delegates argued that the authors of the draft text of the UDHR ignored cultural diversity and different civilisations because they considered human rights criteria only according to standards recognised by Western civilisation.⁴⁶⁰ He proposed an amendment to Article 16 that men and women should be "entitled to the full rights as defined in the marriage laws of their countries".⁴⁶¹ However, most delegates rejected this proposal because it contradicted the universality of human rights.⁴⁶² UN records of the debate on Article 16 show that the Saudi representative argued "it was not for the Committee to proclaim the superiority of one civilisation over all others or to establish uniform standards for all the countries in the world".⁴⁶³ Al- Baroody indicated that Muslim women enjoy many rights, involving the right to inherit and sell property, and may have indemnity in divorce situations.⁴⁶⁴ Against this background, Saudi Arabia abstained from signing the UDHR after the committee responded negatively to the Saudi delegate's proposal.⁴⁶⁵

In a similar vein, during the negotiations for the ICCPR by the UNGA's Third Committee, the KSA's delegation raised similar issues. The first issue concerned the right of the individual to change his/her religion, based on Article 18 of the UDHR.⁴⁶⁶ This Article proclaims the universal rights of every individual concerning their religion and faith.

⁴⁵⁸ *ibid.*

⁴⁵⁹ Johannes Morsink, *The Universal Declaration of Human Rights: Origins, Drafting, and Intent* (University of Pennsylvania Press 2010) and S Waltz, 'Universal Human Rights: The Contribution of Muslim States' (2004) 26 *Human Rights Quarterly* 799, 815.

⁴⁶⁰ UNGA Third Committee, 9th Session (1954), 100.

⁴⁶¹ 'The Universal Declaration of Human Rights', Art. 16,

<<http://www.un.org/en/documents/udhr/history.shtml>> accessed 10 March 2015.

⁴⁶² UNGA Third Committee, 9th Session (1954), 100.

⁴⁶³ *ibid.*

⁴⁶⁴ *ibid.*

⁴⁶⁵ Abdulaziz M Alwasil, 'Saudi Arabia's Engagement In, and Interaction With, the UN Human Rights System: An Analytical Review' (2010) 14 *The International Journal of Human Rights* 1072.

⁴⁶⁶ 'International Covenant on Civil and Political Rights' Art. 18

<<http://www.ohchr.org/EN/ProfessionalInterest/Pages/CCPR.aspx>> accessed 5 September 2015.

However, this right may be considered incompatible with certain cultural norms and religious provisions, which is why the representative of Saudi Arabia, Al-Baroody, argued for deleting the phrase “freedom to maintain or to change his [sic] religion”.⁴⁶⁷ He repeated his arguments expressed during the UDHR deliberations that this article could enhance the ability of missionaries to abuse their rights and it could promote proselytism.⁴⁶⁸ However, many UN members rejected his proposal, arguing that being able to change religion would achieve the target of the covenant which is to guarantee the right of freedom to believe.⁴⁶⁹ In the final version of Article 18, the committee amended the phrase “freedom to change” to “freedom to have or to adopt”.⁴⁷⁰

The second crucial issue raised was that of gender equality. Article 3 proclaims that states should ensure equality between men and women on the rights that the Covenant recognises.⁴⁷¹ Also, Article 23 of the ICCPR ensures equal rights for men and women in the matter of marriage. It states that all state parties must “take appropriate steps to ensure equality of rights and responsibilities of spouses as to marriage, during marriage and at its dissolution”.⁴⁷² The HRC removed the phrase “without limitation due to race, religion or nationality” which caused huge controversy. Furthermore, it approved changing the term “full age” in Article 16 of the UDHR to “marriageable age” in the ICCPR.⁴⁷³ Saudi Arabia had considered this article to be incompatible with the provisions of marriage in Islamic law. Although the Kingdom voted in favour of the two legally binding covenants, the ICCPR and the ICESCR, it abstained during the UNGA voting on the Optional Protocol to the ICCPR.⁴⁷⁴

In the light of this discussion, it can be argued that the KSA’s position toward the IHRL prior

⁴⁶⁷ S Waltz, 'Universal Human Rights: The Contribution of Muslim States' (2004) 26 Human Rights Quarterly 799.

⁴⁶⁸ Abdulaziz M Alwasil, 'Saudi Arabia's Engagement In, and Interaction With, the UN Human Rights System: An Analytical Review' (2010) 14 The International Journal of Human Rights 1072.

⁴⁶⁹ UNGA Third Committee, 5th session (1950), 153.

⁴⁷⁰ Marc J Bossuyt, *Guide to the 'Travaux Préparatoires' of the International Covenant on Civil and Political Rights* (Martinus Nijhoff Publishers 1987).

⁴⁷¹ 'International Covenant on Civil and Political Rights' Art. 3

<<http://www.ohchr.org/EN/ProfessionalInterest/Pages/CCPR.aspx>> accessed 5 September 2015.

⁴⁷² *ibid.* Art. 23.

⁴⁷³ Abdulaziz M Alwasil, 'Saudi Arabia's Engagement In, and Interaction With, the UN Human Rights System: An Analytical Review' (2010) 14 The International Journal of Human Rights 1072.

⁴⁷⁴ UN document, GA Plenary Meeting, 21st Session (1966), Vol. III, 6. The Optional Protocol to the ICCPR adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI) of 16 December 1966 entry into force 23 March 1976, in accordance with Article 9. The purpose of this covenant is to receive and consider communications from individuals who claiming to be victims of violations their rights that set forth in the ICCPR. Available at: United Nations General Assembly, 'Optional Protocol to the International Covenant on Civil and Political Rights (UNTS Vol. 999)' <<http://www.ohchr.org/EN/ProfessionalInterest/Pages/OPCCPR1.aspx>> accessed 6 March 2017.

to 1990, was distinguished by the Kingdom being involved in discussions over the norms of the international law without actually signing or ratifying any of the IHRL instruments. The Kingdom's dealing in this period were dominated by questioning the conformity of international standards in comparison to the national standards of the Kingdom, especially the provisions of Islamic law. Thus, the tensions between certain norms of the UDHR and ICCPR and the norms of *Shari'ah*, such as the disagreement on the norms of gender equality between men and women, were the main barrier to the KSA accepting human rights treaties in full. Therefore, the Kingdom's domestic law was not affected by the interaction with IHRL in this stage. In the following section, the second phase of the Kingdom's dealing with IHRL is investigated

2.2.2 The Second Phase (1990-2008): The KSA Ratifies IHRT including the CEDAW

In the second phase, 1990-2008, the KSA acceded to and ratified the majority of human rights treaties, including: the Convention against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment (CAT)⁴⁷⁵ on 23 September 1997⁴⁷⁶; the International Convention on the Elimination of All Forms of Racial Discrimination (CERD)⁴⁷⁷ on 23 September 1997⁴⁷⁸; the Convention on the Rights of the Child (CRC)⁴⁷⁹ on 26 January 1996⁴⁸⁰; and the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)⁴⁸¹ on 7 September 2000.⁴⁸² Because of the focus of this thesis, this section gives particular focus on the Kingdom's position toward the CEDAW.

⁴⁷⁵ Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, adopted and opened for signature, ratification and accession by General Assembly, Resolution 39/46 of 10 December 1984, entered into force 26 June 1987, in accordance with Article 27 (1). G.A. Res. A/RES/57/199, entered into force 22 June 2006.

⁴⁷⁶ 'Ratification Status for Saudi Arabia',
<https://tbinternet.ohchr.org/_layouts/TreatyBodyExternal/Treaty.aspx?CountryID=152&Lang=EN> accessed 11 January 2019.

⁴⁷⁷ International Convention on the Elimination of All Forms of Racial Discrimination, G.A. res. 2106 (XX), Annex, 20 U.N. GAOR Supp. (No. 14) at 47, U.N. Doc. A/6014 (1966), 660 U.N.T.S. 195, entered into force 4 January 1969.

⁴⁷⁸ 'Ratification Status for Saudi Arabia',
<https://tbinternet.ohchr.org/_layouts/TreatyBodyExternal/Treaty.aspx?CountryID=152&Lang=EN> accessed 11 January 2019.

⁴⁷⁹ Convention on the Rights of the Child, G.A. res. 44/25, annex, 44 U.N. GAOR Supp. (No. 49) at 167, U.N. Doc. A/44/49 (1989), entered into force 2 September 1990.

⁴⁸⁰ 'Ratification Status for Saudi Arabia',
<https://tbinternet.ohchr.org/_layouts/TreatyBodyExternal/Treaty.aspx?CountryID=152&Lang=EN> accessed 11 January 2019.

⁴⁸¹ Convention on the Elimination of All Forms of Discrimination against Women, G.A. res. 34/180, 34 U.N. GAOR Supp. (no. 46) at 193, U.N. Doc. A/34/46, entered into force 3 September 1981.

The KSA position towards CEDAW should be placed in the context of KSA's engagement in the formulation of the CEDAW. In this respect, the UN's records show all members participated both in the General Assembly's plenary and the Third Committee meetings but the KSA's contribution was limited.⁴⁸³ The KSA did not actively engage either in the Declaration on the Elimination of Discrimination against Women⁴⁸⁴, or the debate during the CEDAW's drafting process, in contrast to its participation in previous instruments.⁴⁸⁵

It is unclear why the Kingdom did not participate in the formulation of the CEDAW. However, its position towards the CEDAW can be understood through its debate with the CEDAW Committee during its reports' reviews. In this respect, the Kingdom in relation to Article 1 of the Convention referred to the provisions in its Basic Law of Governance and other laws that ensure non-discrimination between men and women in the Kingdom.⁴⁸⁶ It pointed out that Saudi laws are derived from *Shari'ah*. Thus, equality norms that apply in its law incorporate the principle of equality between men and women as ensured in the *Shari'ah*,⁴⁸⁷ taking into account the differences in the features and characteristics between the two sexes.⁴⁸⁸ In this context, the Kingdom believed that "complementarity in the relationship between the two sexes is the best way to strengthen and protect human rights, including women's rights, and to eliminate discrimination against women."⁴⁸⁹ Thus, it is apparent that the Kingdom's definition of equality differs in some aspects from the CEDAW's definition.

The difference in interpretations of equality meant that in most cases it abstained from voting, "except when the proposed amendment limited the scope of the text, such as voting to delete

⁴⁸² 'Ratification Status for Saudi Arabia', <https://tbinternet.ohchr.org/_layouts/TreatyBodyExternal/Treaty.aspx?CountryID=152&Lang=EN> accessed 11 January 2019.

⁴⁸³ Abdulaziz M Alwasil, 'Saudi Arabia's Engagement In, and Interaction With, the UN Human Rights System: An Analytical Review' (2010) 14 *The International Journal of Human Rights* 1072.

⁴⁸⁴ The Declaration on the Elimination of Discrimination against Women Proclaimed by United Nations General Assembly Resolution 2263 (xxii) of 7 November 1967, <<http://www.un-documents.net/a22r2263.htm>> accessed 11 January 2019.

⁴⁸⁵ UNGA Third Committee (1979), A/C.3/34/SR.72 of 2 December 1979, 3–4. See also Abdulaziz M Alwasil, 'Saudi Arabia's Engagement In, and Interaction With, the UN Human Rights System: An Analytical Review' (2010) 14 *The International Journal of Human Rights* 1072, 1077.

⁴⁸⁶ Consideration of reports submitted by States Parties under article 18 of the Convention on the Elimination of All Forms of Discrimination against Women, Combined initial and second periodic reports of States Parties, Saudi Arabia, CEDAW/C/SAU/2.

⁴⁸⁷ *ibid.*

⁴⁸⁸ *ibid.*

⁴⁸⁹ Committee on the Elimination of Discrimination against Women, Consideration of reports submitted by States Parties under article 18 of the Convention on the Elimination of All Forms of Discrimination against Women Combined third and fourth periodic reports of States Parties, Saudi Arabia, 2016, CEDAW/C/SAU/3-4 20.

the phrase ‘in all its forms’ from Article 2”.⁴⁹⁰ Article 2 stipulates “States Parties condemn discrimination against women in all its forms, agree to pursue by all appropriate means and without delay a policy of eliminating discrimination against women”.⁴⁹¹ For example, it proclaims all states are required “to take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women; and to repeal all national penal provisions which constitute discrimination against women”.⁴⁹² This is interpreted as applying the CEDAW norm of equality regardless of other considerations, whether religious, social or cultural of different societies.

However, the KSA ratified the CEDAW on 7 September 2000,⁴⁹³ although it is apparent that there are a number of fundamental articles that contradict with its national law. Importantly, its ratification was with two types of reservations, general reservations and specific reservations regarding Article 9(2).⁴⁹⁴ These are discussed in Section 2.2.2.1, while its increased cooperation with the CEDAW mechanism is explained in the Section 2.2.2.2.

2.2.2.1 The KSA’s reservations to the CEDAW

2.2.2.1.1 The KSA’s general reservations to the CEDAW

The KSA, when it ratified the CEDAW, entered a general reservation in order to incorporate the CEDAW norms into the Kingdom’s domestic law without conflicting with its domestic norms. The reservation stated: “In case of contradiction between any term of the Convention and the norms of Islamic law, the Kingdom is not under obligation to observe the contradictory terms of the Convention”.⁴⁹⁵ One of the main justifications for the KSA’s general reservation was explained by a Saudi delegate who clarified that the Convention was generally compatible with Saudi legalisation, although some articles could be contradictory

⁴⁹⁰ Abdulaziz M Alwasil, ‘Saudi Arabia’s Engagement In, and Interaction With, the UN Human Rights System: An Analytical Review’ (2010) 14 *The International Journal of Human Rights* 1072, 1077.

⁴⁹¹ Convention on the Elimination of All Forms of Discrimination against Women, G.A. res. 34/180, 34 U.N. GAOR Supp. (no. 46) at 193, U.N. Doc. A/34/46, entered into force 3 September 1981.

⁴⁹² *ibid.* Art 2(f and g).

⁴⁹³ ‘Ratification Status for Saudi Arabia’,

<https://tbinternet.ohchr.org/_layouts/TreatyBodyExternal/Treaty.aspx?CountryID=152&Lang=EN> accessed 11 January 2019.

⁴⁹⁴ Convention on the Elimination of All Forms of Discrimination against Women, G.A. res. 34/180, 34 U.N. GAOR Supp. (no. 46) at 193, U.N. Doc. A/34/46, entered into force 3 September 1981.

⁴⁹⁵ Reservations, Declarations, Objections, and Derogations - CEDAW - Saudi Arabia’ <http://www.bayefsky.com/html/saudiarabia_t2_cedaw.php> accessed 11 January 2019.

to Islamic law.⁴⁹⁶ The delegation asserted that:

Judgements about whether or not such a disparity exists are made on the basis of the texts of the Islamic *sharia* and the relevant provisions of the Convention on a case-by-case basis. This demonstrates the extent to which the Government of the Kingdom is seriously committed to fulfilling its obligations under the Convention and ensuring women's rights. Legal interpretation of the provisions of the Convention is left to the judicial authorities, which take their decisions based on the facts in each case.⁴⁹⁷

The delegate added that the Kingdom's general reservation "does not affect the core of the Convention or detract from its legal force before the judicial and executive authorities".⁴⁹⁸ Therefore, Saudi Arabia entered its reservation as a precautionary measure as the concept of human rights was changeable and also against any possible interpretations of the provisions of the Convention that might be contrary to the Kingdom's national law.⁴⁹⁹ Moreover, the Kingdom clarified that the formulation of its reservation was clear and did not interfere with its obligations under the CEDAW. The KSA argued that the overlap between the Kingdom's Islamic law and its regulations with regard to women's rights and the principles of the Convention clearly showed that there is no contradiction in this matter.⁵⁰⁰ Additionally, the majority of Saudi society believes in the *Shari'ah*. Therefore, the general reservation to the Women's Convention was to protect women's rights from an Islam perspective which works in their favour.⁵⁰¹

What, then, was the position of the CEDAW Committee towards the KSA's general reservation on the convention? The CEDAW Committee commented that the general reservation of Saudi Arabia "is drawn so widely that it is contrary to the object and purpose of the Convention".⁵⁰² Ertürk, a member of the mission to Saudi Arabia in 2008, commented that language used in the KSA reservation "does not clearly define the extent to which Saudi Arabia accepts its international obligations".⁵⁰³ After the Committee asked them to withdraw

⁴⁹⁶ Committee on the Elimination of Discrimination against Women, Pre-session working group, fortieth session, 14 January-1 February 2008, Responses to the list of issues and questions contained in document number CEDAW/C/SAU/Q/2, A.H. 1428 (A.D. 2007).

⁴⁹⁷ *ibid.* 2.

⁴⁹⁸ *ibid.* 2.

⁴⁹⁹ *ibid.*

⁵⁰⁰ *ibid.*

⁵⁰¹ *ibid.*

⁵⁰² Committee on the Elimination of Discrimination against Women Fortieth session 14 January-1 February 2008, Concluding comments of the Committee on the Elimination of Discrimination against Women, Saudi Arabia, CEDAW/C/SAU/CO/2 2.

⁵⁰³ Human Rights Council, eleventh session agenda item 3, 14 April 2009, report of the special rapporteur on violence against women, its causes and consequences, Yakin Ertürk, A/HRC/11/6/Add.3 6.

the reservation the KSA delegation gave their assurance that there was no contradiction.⁵⁰⁴ Moreover, the Committee enquired about the “precise scope of Saudi Arabia’s general reservation to the Convention on the basis of the norms of Islamic Law”.⁵⁰⁵

In this case, it could be argued that a general reservation, by its very nature, contradicts the object and purpose of a treaty. Under the Vienna Convention and the CEDAW, a reservation can be refused when it contradicts with the aims and purpose of the treaty.⁵⁰⁶ For example, in the case of Belilos,⁵⁰⁷ “neither the European Commission nor the Court of Human Rights addressed the argument raised by the Swiss Government that its interpretative declarations did not offend the object and purpose of the European Convention and that other states had tacitly accepted its declarations by raising no objections”.⁵⁰⁸ Thus, general reservations are subject to IHRL bodies’ criticisms and examinations; for example, when they ask the state party to review their general reservation while discussing the states’ reports.

Furthermore, under the Vienna Convention, when a state party to a treaty objects to another state’s reservation, this action will not affect the treaty enforcement between the two states, unless the state’s objection is specified.⁵⁰⁹ While a number of state parties have objected to blanket reservations and reservations to Articles 2 and 16 (among others), Austria has examined the reservations of Saudi Arabia and notes that:

The fact that the reservation concerning any interpretation of the provisions of the Convention that is incompatible with the norms of Islamic law does not clearly specify the provisions of the Convention to which it applies and the extent of the derogation there from raises doubts as to the commitment of the Kingdom of Saudi Arabia to the Convention. Given the general character of this reservation a final assessment as to its admissibility under international law cannot be made

⁵⁰⁴ Ibid.

⁵⁰⁵ Committee on the Elimination of Discrimination against Women, Pre-session working group, fortieth session, 14 January - 1 February 2008, Responses to the list of issues and questions contained in document number CEDAW/C/SAU/Q/2, A.H. 1428 (A.D. 2007).

⁵⁰⁶ United Nations, ‘Vienna Convention on the Law of Treaties (with Annex) Concluded at Vienna on 23 May 1969’ (1980) 1155 United Nations — Treaty Series 181, Art. 19 <<https://treaties.un.org/doc/publication/unts/volume%201155/volume-1155-i-18232-english.pdf>> accessed 10 January 2019.

⁵⁰⁷ Belilos organised a demonstration in the streets of the city on 4 April without obtaining permission from the Lausanne police in advance. She called for people to join the demonstration to encourage Lausanne municipality to provide an autonomous youth centre. For more details see *Belilos v. Switzerland*, Application No. 10328/83, Judgement of 29 April 1988, <[https://hudoc.echr.coe.int/eng#{"itemid":\["001-57434"\]}](https://hudoc.echr.coe.int/eng#{)> accessed 10 August 2018.

⁵⁰⁸ Ineta Ziemele and Lāsma Liede, ‘Reservations to Human Rights Treaties: From Draft Guideline 3.1.12 to Guideline 3.1.5.6’ (2013) 4 *European Journal of International Law* 1135, 1142.

⁵⁰⁹ United Nations, ‘Vienna Convention on the Law of Treaties (with Annex) Concluded at Vienna on 23 May 1969’ (1980) 1155 United Nations — Treaty Series 181, Art. 19 <<https://treaties.un.org/doc/publication/unts/volume%201155/volume-1155-i-18232-english.pdf>> accessed 10 January 2019.

without further clarification. Until the scope of the legal effects of this reservation is sufficiently specified by the Government of Saudi Arabia'.⁵¹⁰

However, states' objections to blanket reservations do not affect the implementation of the convention; Austria concluded that its objection is "not affecting any provision the implementation of which is essential to fulfilling the object and purpose of the convention".⁵¹¹

The KSA in its clarification to the Committee's questions asserted that the general reservation is an action to prevent conflict with the Islamic norms when the treaty norms were implanted into its national law.⁵¹² In this respect, states may enter reservations to incorporate the convention within its domestic law. Bassiouni argues that "nothing in Islamic international law precludes the applicability of these international obligations to the domestic legal system of an Islamic state, provided these obligations are not contrary to the *Shari'ah*".⁵¹³ In the same vein, Al-Rodiman points out that the KSA entered its general reservation to the convention so as to "give the CEDAW the legitimacy to be applied under domestic regulations and before the courts".⁵¹⁴ He comments that this reason may be more important than the others included in the Kingdom's report because it relates to the application of the treaty as part of the Saudi state's national law.⁵¹⁵ Importantly, the Kingdom's use of reservations to international conventions is guaranteed by international law. In this context, the KSA considers that its reservations to the treaties it has signed or acceded to do not contradict the objects and purposes of treaty.⁵¹⁶

2.2.2.1.2 Specific reservations of Saudi Arabia towards the CEDAW

In addition to the general reservation, the KSA applied reservations to certain articles of CEDAW. The reservation states, "The Kingdom does not consider itself bound by paragraph

⁵¹⁰ Reservations, Declarations, Objections and Derogations CEDAW, <<http://www.bayefsky.com/docs.php/area/reservations/treaty/cedaw/opt/0/node/3/state/54>> accessed 23 January 2019.

⁵¹¹ *ibid.*

⁵¹² Committee on the Elimination of Discrimination against Women, Pre-session working group, fortieth session, 14 January - 1 February 2008, Responses to the list of issues and questions contained in document number CEDAW/C/SAU/Q/2, A.H. 1428 (A.D. 2007).

⁵¹³ M Cherif Bassiouni, 'Sources of Islamic Law and the Protection of Human Rights in the Islamic Criminal Justice System,' in M Bassiouni (ed.), *The Islamic Criminal Justice System* (Oceana Publications, 1982) 39.

⁵¹⁴ Abdulaziz S Al-rodiman, 'The Application of Shari'ah and International Human Rights Law in Saudi Arabia' (PhD Thesis University of Brunel 2013) 50.

⁵¹⁵ *ibid.*

⁵¹⁶ A/HRC/25/3/Add.1

<<https://www.ohchr.org/en/hrbodies/hrc/regularsessions/session25/pages/listreports.aspx>> accessed 18 December 2018.

2 of article 9 of the Convention and paragraph 1 of article 29 of the Convention”.⁵¹⁷ Paragraph 1 of Article 29 relates to the dispute between two or more states, while Paragraph 2 of Article 9 states: “States Parties shall grant women equal rights with men with respect to the nationality of their children”.⁵¹⁸ The Kingdom at the time of making this reservation clarified that the reservation to Article 9(2) was based its Nationality Act, which prevented dual nationality.⁵¹⁹ According to the Nationality Law, “a Saudi national is a person with a Saudi father or with a Saudi mother and a stateless father or father of unknown nationality”.⁵²⁰ In this context, the Kingdom argues that its nationally provisions do not discriminate against women, and justified that its provisions avoid dual nationality.⁵²¹

Significantly, the reason behind the reservation does not have an Islamic basis but is concerned with state legislation. In Saudi Arabia, nationality is only related to religion when it falls under the jurisdiction of *Shari’ah* in terms of a husband’s and wife’s rights and obligations.⁵²² This approach is supported by Rahman, who argues that reservations to Article 9(2) are not strongly linked to Islam.⁵²³ However, he argues that nationality could be linked to *Shari’ah* jurisdiction when it is linked with the “domiciliary status” of the husband and wife.⁵²⁴ Domiciliary status refers to “the *Shari’ah* concept of the ‘common matrimonial home’ of the spouses and the rights and obligations associated with it”.⁵²⁵ According to *Shari’ah*, a husband must provide accommodation for his wife.⁵²⁶ Thus, nationally provisions are more closely linked to state interests except in relation to the rights of the wife from the

⁵¹⁷ ‘Reservations, Declarations, Objections and Derogations CEDAW’, <<http://www.bayefsky.com/docs.php/area/reservations/treaty/cedaw/opt/0/node/3/state/54>> accessed 23 January 2019.

⁵¹⁸ Convention on the Elimination of All Forms of Discrimination against Women, G.A. Res. 34/180, 34 U.N. GAOR Supp. (no. 46) at 193, U.N. Doc. A/34/46, entered into force on 3 September 1981.

⁵¹⁹ Committee on the Elimination of Discrimination against Women, Pre-session working group, fortieth session, 14 January-1 February 2008, Responses to the list of issues and questions contained in document number CEDAW/C/SAU/Q/2, A.H. 1428 (A.D. 2007)

⁵²⁰ ‘Law of Saudi Arabian Nationality’, Article 7, <<http://gulfmigration.org/saudi-arabia-saudi-arabian-nationality-law/>> accessed 9 February 2019.

⁵²¹ Committee on the Elimination of Discrimination against Women, Pre-session working group, fortieth session, 14 January-1 February 2008, Responses to the list of issues and questions contained in document number CEDAW/C/SAU/Q/2, A.H. 1428 (A.D. 2007).

⁵²² Abdulaziz S Al-rodiman, ‘The Application of Shari’ah and International Human Rights Law in Saudi Arabia’ (PhD Thesis University of Brunel 2013) and Justice Tanzilur Rahman, ‘Maintenance of a Wife in Islamic Law’ (All Pakistan Legal Decisions 1968) cited in Niaz A Shah, *Women, the Koran and International Human Rights Law: The Experience of Pakistan* (Martinus Neijhoff Publishers 2006).

⁵²³ Justice Tanzilur Rahman, *Maintenance of a Wife in Islamic Law*, (Lahore: All Pakistan Legal Decisions, 1968) as cited in Niaz A Shah, *Women, the Koran and International Human Rights Law: The Experience of Pakistan*, (Martinus Neijhoff Publishers 2006), 160.

⁵²⁴ *ibid.*

⁵²⁵ *ibid.*

⁵²⁶ “Lodge them [in a section] of where you dwell out of your means and do not harm them in order to oppress them. And if they should be pregnant, then spend on them until they give birth”. Sura al-talaaq (559:7), <<http://quran.ksu.edu.sa/translations/english/559.html#english>> accessed 31 December 2018.

husband.

In this context, Saudi Arabia considers that gender equality is to be understood according to Islamic law which means “equality in the essence of humanity” and that Islamic law recognises the fundamental equality of all human beings (*musāwāt*) and espouses human dignity (*karāmah*). Thus, women are “equally entitled to the rights and liberties of today’s world, subject to respect for the principles of public morality as applicable to both men and women under Islamic law”.⁵²⁷ This has led Faqir to acknowledge, “it is not legislation that discriminates against us [women], but social backwardness”.⁵²⁸ Therefore, the Saudi Arabian position towards the CEDAW gender equality standard would be similar to its position towards the ICCPR due to the similarity of the concept of standard gender equality in both Conventions.⁵²⁹ Saudi Arabia had considered this article to be incompatible with the provisions of marriage in Islamic law.⁵³⁰

In summary, it can be seen that the KSA’s interaction with the CEDAW has the same position of the Kingdom to the ICCPR. The analysis shows that the disagreement between the KSA and the norms that insured in these two Conventions is related to the provisions of marriage and family matters that apparently contradict with *shari’ah* provisions. The Kingdom perceived some CEDAW provisions as contradicting Islamic law; these could therefore not be implemented in its domestic law. In this context, the conflict over these standards falls within the dialectical debate over the compatibility and incompatibility between East and West standards. For the KSA, the norms of gender equality guaranteed in the CEDAW are incompatible with *Shari’ah* provisions. Therefore, applying incompatible norms of CEDAW would be considered as overruling Islamic norms and imposing foreign standards. As Freeman points out, for religious Muslims, submitting to any authority other than the divine law is problematic from perspective of personal piety.⁵³¹ Moreover, An-Na’im argues, an attempt to impose different standards on Muslims societies often leads to

⁵²⁷ Mashood A Baderin, *International Human Rights and Islamic Law* (OUP 2003). 65

⁵²⁸ F Faqir, ‘Engendering Democracy and Islam in the Arab World’ (1997) 18 Third World Quarterly 165.

⁵²⁹ For more details see Chapter 2.2.1.

⁵³⁰ UN document, GA Plenary Meeting, 21st Session (1966), Vol. III, 6. The Optional Protocol to the ICCPR adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI) of 16 December 1966 entry into force 23 March 1976, in accordance with Article 9. The purpose of this covenant is to receive and consider communications from individuals who claiming to be victims of violations their rights that set forth in the ICCPR. Available at: United Nations General Assembly, ‘Optional Protocol to the International Covenant on Civil and Political Rights (UNTS Vol. 999)’

<<http://www.ohchr.org/EN/ProfessionalInterest/Pages/OPCCPR1.aspx>> accessed 6 March 2017.

⁵³¹ Michael Freeman, ‘The Problem of Secularism in Human Rights Theory’ (2004) 26 Hum. Rts. Q. 375.

suspicion. He suggests that Muslims are often unreceptive to different, external standards.⁵³² Therefore, the Kingdom's ratification of the CEDAW with reservations to paragraphs that contradict the standards of *Shari'ah* can be considered as an expression of the Kingdom's desire to engage and cooperate with international law without violating *Shari'ah* standards.

The discussion highlights that the KSA entered reservations in order to protect certain Islamic values and *Shari'ah* provisions. However, reservations should not prevent states from developing their legislation relating to the treaty requirements. Therefore, in order to understand the actual relationship of the CEDAW with the KSA's national law and its obligations towards IHRL, the first part of the KSA's national reports submitted to the CEDAW Committee are assessed in the following two sections. This highlights the most critical issues pertaining women rights.

2.2.2.2 The obligations of the KSA towards the CEDAW

The Kingdom's ratification of the CEDAW obligates it to take serious steps to eliminate to all forms of discrimination against women in the country. The Convention obliges Saudi Arabia

to pursue by all appropriate means and without delay a policy of eliminating discrimination against women' including 'any distinction, exclusion or restriction made on the basis of sex which has the purpose of impairing or nullifying the recognition, enjoyment or exercise by women ... of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.⁵³³

In order to monitor a state's progression after ratification of the CEDAW, Article 18 states that state parties have to submit a report to the Secretary-General of the UN to be considered by the Committee. This measure starts one year after ratification of the Convention and then every four years thereafter or when the committee requests it of a state party.⁵³⁴ The report allows the committee to assess the progress and measures that have been taken by the state, as well as to make recommendations. Furthermore, the Committee reviews the state's reservations and may ask the state to limit or withdraw its reservations when not in compliance with the Convention's objectives and core values.⁵³⁵ The review of the state's

⁵³² A An-Na'im, 'Rights of Women and International Law in the Muslim Context, The' (1987) 9 Whittier Law Review 49.

⁵³³ Convention on the Elimination of All Forms of Discrimination against Women, G.A. Res. 34/180, 34 U.N. GAOR Supp. (no. 46) at 193, U.N. Doc. A/34/46, entered into force on 3 September 1981.

⁵³⁴ *ibid.* Art. 18.

⁵³⁵ *ibid.*

report is termed “constructive dialogue”.⁵³⁶ In addition to discussing human rights violations, the report aims to encourage state parties to implement the provisions of the treaty.⁵³⁷ This can be seen in the Committee’s final recommendations and comments on the Report. Therefore, in order to understand the KSA’s dealing with and obligations to IHRL, as well as to understand the potential influence of such dealings with respect to enhancing human rights and impacting the national law of the Kingdom, the following section sheds light on the KSA’s national reports.

2.2.2.2.1 National reports submitted to the Committee

In relation to the KSA’s international obligations towards the CEDAW, as mentioned previously, the Kingdom ratified the CEDAW on 7 September 2000,⁵³⁸ and submitted its combined initial and second periodic report to the Committee on 29 March 2007. The CEDAW Committee considered the report on 17 January 2008.⁵³⁹ In addition, Saudi Arabia submitted its third and fourth reports on 23 August 2016, which the Committee considered on 27 February 2018.⁵⁴⁰

The KSA’s 48-page initial report systematically addresses its fulfilment to the first 16 articles of the Convention. Generally speaking, the Report declares that the Kingdom acceded to the treaty because there is a general consistency in the contents of the Convention with the country’s approach to enhancing and protecting women’s rights, taking into account the reservations made that are consistent with Articles 19 and 23 of the Vienna Convention on the Law of Treaties concerning reservations.⁵⁴¹ Additionally, the Report confirms that *Shari’ah* is the basis of its laws. Article 1 of the Basic Law of Governance stipulates: “The Kingdom of Saudi Arabia is a fully sovereign Arab Islamic State. Its religion shall be Islam

⁵³⁶ Twenty-sixth meeting of chairpersons of the human rights treaty bodies, Constructive dialogue between treaty bodies and States parties, Geneva, note by the secretariat, 23–27, June 2014. HRI/MC/2014/3.

⁵³⁷ *ibid.*

⁵³⁸ Treaty Bodies Sessions’,

<http://tbinternet.ohchr.org/_layouts/treatybodyexternal/SessionDetails1.aspx?SessionID=353&Lang=en> accessed 17 September 2015.

⁵³⁹ *ibid.*

⁵⁴⁰ ‘CEDAW: Country Reports- UN.org’,

<https://tbinternet.ohchr.org/_layouts/treatybodyexternal/TBSearch.aspx?Lang=En&CountryID=152&ctl00_PlaceHolderMain_radResultsGridChangePage=2_20> accessed 21 January 2019.

⁵⁴¹ Consideration of reports submitted by States Parties under article 18 of the Convention on the Elimination of All Forms of Discrimination against Women, Combined initial and second periodic reports of States Parties, Saudi Arabia, CEDAW/C/SAU/2.

and its constitution shall be the Book of God and the *Sunnah* of His Messenger”.⁵⁴² Therefore, any domestic and international laws have to comply with Article 1.⁵⁴³

In Part Two of the report, information relating to Articles 1-16 of the Convention is provided.⁵⁴⁴ It asserts that there is no discrimination between females and males in various fields. Women are considered equal with men in the public and private domains and this equality is derived from Islamic law.⁵⁴⁵ In general, the Report confirms that there has been a “change in the traditional view of women” in Saudi Arabia due to certain practises against women that had no Islamic legal basis. Thus, women are now able to practice and fully participate in various spheres including the political, economic, and social spheres.⁵⁴⁶

In its report, the Kingdom mentions that since the Convention entered into force, the Kingdom has developed a comprehensive development plan for all women's rights in Saudi Arabia such as ensuring equality between men and women in field of human resource development and protection their family and maternity rights.⁵⁴⁷ Furthermore, in order to achieve gender equality, there are a number of articles whether in the Basic Law of Governance, the Civil Service Law or in the Labour and Workers Law, stipulate equality between both sexes without discrimination.⁵⁴⁸ Also, the state regulations and the judicial authorities through a number of their bodies ensure women enjoy their rights. Additionally, these regulations guarantee that women can complain through the different state bodies when their rights are violated.⁵⁴⁹ In relation to the judiciary, the Kingdom clarifies that Article 46 of the Basic Law of Governance stipulates that the authority of the *Shari'ah* is above judges in their judicial function. In addition, Article 46 clarifies that the judiciary is independent in order to guarantee that it is just and balanced.⁵⁵⁰

Moreover, in order for the state to increase the protection of women’s rights against discrimination the report notes that KSA established departments within various government

⁵⁴² ‘The Basic Law of Governance, Art. 1,’ <https://www.saudiembassy.net/about/country-information/laws/The_Basic_Law_Of_Governance.aspx> accessed 24 June 2016.

⁵⁴³ Consideration of reports submitted by States Parties under article 18 of the Convention on the Elimination of All Forms of Discrimination against Women, Combined initial and second periodic reports of States Parties, Saudi Arabia, CEDAW/C/SAU/2.

⁵⁴⁴ *ibid.* 10-48.

⁵⁴⁵ *ibid.*

⁵⁴⁶ *ibid.*

⁵⁴⁷ *ibid.* 16-18.

⁵⁴⁸ *ibid.* 12.

⁵⁴⁹ *ibid.*

⁵⁵⁰ *ibid.*

bodies for human rights which involve women; for instance, the Ministry of Interior, Ministry of Justice, and Ministry of Islamic Affairs.⁵⁵¹ In addition, the government established an independent National Organisation for Human Rights, which was formed by Royal Decree No. 24/2 (9 March 2004). This organisation deals with human rights and aims to ensure that the Kingdom honours its commitments towards human rights. Furthermore, it receives complaints from individuals who suffer violations of their rights and investigates any allegations in this regard.⁵⁵²

Despite these assurances, the Committee of CEDAW raised various issues concerning women's rights in the kingdom. There have been a number of issues that have been consistently raised by the UN HRC and the CEDAW Committee in their examination of the KSA's reports and NGOs reports.⁵⁵³ Similarly, the criticism is present in reports from NGOs or national and supranational organisations including the Association for Defending Women's Rights: for example, the First Report,⁵⁵⁴ the Shadow Report,⁵⁵⁵ the Human Rights Watch Report concerning Saudi women,⁵⁵⁶ and the Freedom House Report concerning women's rights in the KSA,⁵⁵⁷ as well as during review of the Kingdom's Universal Periodic Report (UPR) by the working group.⁵⁵⁸

The two most controversial issues that predominate every report concerned with Saudi women rights are male guardianship and participation in political life. These issues provide the starting point for examining and understanding the impact of IHRL on KSA, and the ways in which the IHRL has shaped changes in the domestic law in these areas. Therefore,

⁵⁵¹ *ibid.*

⁵⁵² *ibid* and Committee on the Elimination of Discrimination against Women, 14 March 2018, Concluding observations on the combined third and fourth periodic reports of Saudi Arabia, CEDAW/C/SAU/CO/3-4.

⁵⁵³ *ibid.*

⁵⁵⁴ Association for Defending Woman's Rights, 'Attitudes to Women Rights Issue in Saudi Arabia 2009' [in Arabic] <http://www.sawomenvoice.com/news_view_2942.html> accessed 14 June 2012.

⁵⁵⁵ 'The Shadow Report for CEDAW Prepared by 'Saudi Women for Reform' Saudi Arabia The Executive Summary' (2007) <http://tbinternet.ohchr.org/Treaties/CEDAW/Shared_Documents/SAU/INT_CEDAW_NGO_SAU_40_10011_E.pdf> accessed 6 March 2017.

⁵⁵⁶ For example 'Perpetual Minors: Human Rights Abuses Stemming from Male Guardianship and Sex Segregation in Saudi Arabia' <<https://www.hrw.org/report/2008/04/19/perpetual-Minors/human-Rights-Abuses-Stemming-Male-Guardianship-and-Sex>> accessed 3 March 2017; Human Rights Watch, 'Looser Rein, Uncertain Gain - A Human Rights Assessment of Five Years of King Abdullah's Reforms in Saudi Arabia' <<http://www.hrw.org/sites/default/files/reports/saudi0910webwcover.pdf>> accessed 6 March 2017; and Human Rights Watch, "'Steps of the Devil' Denial of Women's and Girls' Rights to Sport in Saudi Arabia" <<http://www.hrw.org/sites/default/files/reports/saudi0212webwcover.pdf>> accessed 6 March 2017.

⁵⁵⁷ 'World Freedom 2015: Saudi Arabia' <<https://freedomhouse.org/report/freedom-world/2015/saudi-Arabia>> accessed 3 March 2017

⁵⁵⁸ For more information on the UPR see Office of the High Commissioner for Human Rights, 'Basic Facts about the UPR' <<http://www.ohchr.org/EN/HRBodies/UPR/Pages/BasicFacts.aspx>> accessed 7 December 2015.

following parts shed light on these two issues.

The first critical issue is male guardianship, The role of male guardianship (*walee*) has received particular attention from the CEDAW committee and the UPR working group, as well as NGOs due to its influence on women. Therefore, it is worth clarifying the concept of the male guardianship and others Islamic concepts that may overlap with male guardianship, such as the concept of ‘wardship’ (*qawammah*) that is also often highlighted in the observations of the CEDAW committees, and by other human rights organisations when dealing with the human rights situation in the Kingdom.

In *Shari’ah* (Islamic law) a *walee*, who can be male or female, is a person who is a legitimate guardian for those who need support, such as children and those with special needs. Guardianship by a *walee* includes the financial affairs of minors by a trustee.⁵⁵⁹ By contrast, wardship (*qawammah*) means assigning a man, whether a spouse or a father, to attend to the affairs a woman, this can include an obligation to make financial provision for her welfare. Importantly, it is not intended to justify male dominance over the woman or underestimate the value of the woman.⁵⁶⁰ Thus, it could be understood that the issue of male guardianship and *qawammah* according to Islamic texts are practises by male relatives of women that in certain circumstances protects and supports women.

In this regard, the IHRL mechanisms see male guardianship as an issue that restricts all aspects of a woman’s life and limits her autonomy. Members of the CEDAW Committee argued that the system of guardianship restricts women’s rights as women require the consent of their male guardians, before they can enjoy their rights such as studying, accessing health care, choosing their husband, travelling or running their own business.⁵⁶¹ In response, the Saudi delegation explained that male guardianship was a misconception and “had no legal basis”,⁵⁶² and that women could access all services and make their own decisions without the permission of a male.⁵⁶³ Thus, Dr. Al-Usaimi, a Saudi Arabian delegate, indicated that in the

⁵⁵⁹ Abdullah Al-Ahsan, “Law, Religion And Human Dignity In The Muslim World Today: An Examination Of Oic's Cairo Declaration Of Human Rights” (2008) 24.2 Journal of Law and Religion 569.

⁵⁶⁰ Committee on the Elimination of Discrimination against Women, Consideration of reports submitted by States Parties under article 18 of the Convention on the Elimination of All Forms of Discrimination against Women Combined third and fourth periodic reports of States Parties, Saudi Arabia, 2016, CEDAW/C/SAU/3-4.

⁵⁶¹ Committee on the Elimination of Discrimination against Women, Fortieth session, Summary record of the 815th meeting, 17 January 2008, CEDAW/C/SR.815

⁵⁶² Committee on the Elimination of Discrimination against Women, sixty-ninth session, 19 February–9 March 2018, List of issues and questions in relation to the combined third and fourth periodic reports of Saudi Arabia, Replies of Saudi Arabia, CEDAW/C/SAU/Q/3-4/Add.1 5.

⁵⁶³ *ibid.*

Saudi context the practise come under *qawammah*, meaning that it aimed to protect their rights and dignity. The other delegates clarified that guardianship in the area of education only applies to children and there is a difference between guardianship within the family and the concept of wardship, which has different interpretations in different religious schools of thought.⁵⁶⁴ Overall, the Saudi delegation highlighted that women lack awareness of their responsibilities and their rights under Islamic law; in addition, they are victims of traditional stereotyping. This is consistent with CEDAW recognition that women's rights abuses often derive from social and cultural norms.

Thus, male guardianship can be linked to non-religious social and tradition norms.⁵⁶⁵ In this context, the Kingdom clarified that its domestic law and regulations aim to protect women from male domination, do not promote guardianship, and do not include any exclusion or separation between women and men.⁵⁶⁶ The Kingdom pointed out that its system is consistent with the intent of Islam from a guardianship perspective in that it guarantees the rights of women and helps the cohesion of the family and its proper structure. Furthermore, when women's rights are abused or violated under the pretext of guardianship, there are many remedies to which they have recourse including judicial remedies.⁵⁶⁷ This could be the second understanding of the issue male guardianship, that see male guardianship as a social/traditional practices that can violate women's rights. In this respect, it seems that the main traditional obstacle that prevents women from enjoying their rights in Saudi Arabia are the practices of male guardianship that do not have an Islamic legitimacy. In this terms, it should be recognised that there is a difference between what is meant by male guardianship within an Islamic context and the social practices of male guardianship that effects women enjoying their rights. Thus, it can be argued that the state has an obligation to act to tackle these social and tradition practices that have no Islamic basis.

A third possible understanding of the role of male guardianship is presented by human rights INGOs, who view male guardianship as a systematic practice. In 2008, Human Rights Watch

⁵⁶⁴ Consideration of reports submitted by States Parties under article 18 of the Convention on the Elimination of All Forms of Discrimination against Women, Combined initial and second periodic reports of States Parties, Saudi Arabia, CEDAW/C/SAU/2.

⁵⁶⁵ A/HRC/25/3/Add.1

<<https://www.ohchr.org/en/hrbodies/hrc/regularsessions/session25/pages/listreports.aspx>> accessed 18 December 2018.

⁵⁶⁶ Report of the Working Group on the Universal Periodic Review, A/HRC/25/3/Add.1,

<<https://www.ohchr.org/en/hrbodies/hrc/regularsessions/session25/pages/listreports.aspx>> accessed 18 December 2018.

⁵⁶⁷ *ibid.*

argued that government policy lay behind the continuing exploitation of guardianship.⁵⁶⁸ The report argues that the Saudi government system is premised on the inferiority of women, and this explains the Kingdom's lack of will to tackle this issue.⁵⁶⁹ In this context, domestic law needs to pass legislations that repeals or regulates the issue of male guardianship.

From the discussion, it is apparent that the case of male guardianship can be understood either as a positive practice to support women (*Shari'ah* perspective) or as a negative social/traditional practice that can violate women's rights practices against women, or (the international perspective) that does not make this distinction or sees the two as inter-related and harmful to women's rights. This issue is made even more complex by the fact that the roots of practice can be religious, in which case it has a legal weight, or that it is accepted by the community because it has a cultural value rooted in society. Therefore, it is important to understand the dimensions of the legal and social issues in order to find the appropriate solutions that can contribute to finding a compromise with positive results rather than resisting the imposition of change.

The second critical issue raised by the international community is that of equality in political rights as laid out in Article 7 of the CEDAW. The Saudi combined initial and second periodic reports stated that women's participation in politics is not legally prohibited. The Report stated that women are equal to men in pledging allegiance to the King and were able to participate in the 2015 municipal elections.⁵⁷⁰ Furthermore, the Report stated that women can express their political opinions as freely as men and can be members of the Consultative (*Shura*) Council. Finally, the Report asserted that there is no prohibition on women holding public office, or positions in NGOs, such as the National Organisation for Human Rights.⁵⁷¹

However, committee member, Ms. Neubauer, highlighted that the Report acknowledged that women had not been able to participate in the 2004 municipal elections. This prevented women from making decisions. Committee member, Ms. Belmihoub-Zerdani, expressed her hope that the government would be able to increase the number of women in political and

⁵⁶⁸ 'Perpetual Minors: Human Rights Abuses Stemming from Male Guardianship and Sex Segregation in Saudi Arabia' <<https://www.hrw.org/report/2008/04/19/perpetual-Minors/human-Rights-Abuses-Stemming-Male-Guardianship-and-Sex>> accessed 6 March 2017.

⁵⁶⁹ *ibid.*

⁵⁷⁰ Consideration of reports submitted by States Parties under article 18 of the Convention on the Elimination of All Forms of Discrimination against Women, Combined initial and second periodic reports of States Parties, Saudi Arabia, CEDAW/C/SAU/2.

⁵⁷¹ *ibid.*

public bodies and in the judiciary.⁵⁷² The Saudi delegation in its response acknowledged the difficulty of changing the habits and traditions of the community overnight, but noted that Saudi women have started to play a key role in politics and in the decision-making process. Women were now members of the *Shura* Council and, in addition, they would gradually take up senior administrative posts such as ambassadors.⁵⁷³

In response to the Committee's enquiries, the Saudi delegation explained that there is no regulation or system preventing women from holding leadership positions, including political ones; in fact, the number of women in leadership positions had increased. This was attributed to efforts by state to promote women to leadership positions and high professional positions.⁵⁷⁴ However, the Shadow Report in 2007 mentioned that Saudi woman still did not participate in formulating or executing the government policies.⁵⁷⁵ Furthermore, women did not hold any leading positions in state institutions with the exception of Doctor Princess Aljohara bint Fahd Al Saud who was the first female university rector, albeit of The Women's University.⁵⁷⁶ In this vein, a number of recommendations were made by the Committee to the Saudi government to increase women's participation in political life, such as allowing women to vote in the 2012 municipal elections, allowing women to fully enjoy their rights as a member of the Consultative Council rather than just participate in an advisory capacity on select issues, and encouraging women to hold high-profile positions and enjoy their leadership roles.⁵⁷⁷ From the questioning and enquiries of the Committee regarding the issues of political rights, it is apparent that the 'equality' in political rights in KSA has to be understood in the overall context of the political system of KSA, that of a monarchy with a Consultative Council and not a parliamentary democracy.

In this respect, it can be concluded that the KSA's interactions with the IHRL between 1990 and 2008, a period during which the CEDAW committee considered the KSA's initial and second reports, shifted from one of debate and negotiation to an actual engagement with the IHRL. This is exemplified by the ratification of the CEDAW, which resulted in certain aspects of IHRL becoming part of the Kingdom's domestic law. The period was also

⁵⁷² Committee on the Elimination of Discrimination against Women, Fortieth session, Summary record of the 816th meeting, 27 February 2008, CEDAW/C/SR.816.

⁵⁷³ Ibid.

⁵⁷⁴ Saudi Arabia, CEDAW/C/SAU/Q/2/Add.1, Responses to the list of issues and questions contained in document number CEDAW/C/SAU/Q/2, A.H. 1428 (2007).

⁵⁷⁵ The Shadow Report for CEDAW Prepared by 'Saudi Women for Reform' Saudi Arabia, the Executive Summary (December 2007).

⁵⁷⁶ Ibid.

⁵⁷⁷ 'Saudi Arabia' <<http://www.refworld.org/docid/4b99011da0.html>> accessed 19 July 2016.

characterised by interaction with the treaty's mechanism that involved discussing controversial criteria such as male guardianship, and how the CEDAW norms could meet the norms of women rights in the KSA law.

2.2.3 Phase Three (2008-2016): Domestic Law Reforms

Through analysing the Kingdom's cooperation with the UN human rights bodies during the period 2008 to 2016 a number of events, including official meetings with human rights organisations, took place. For instance, in 2010 the High Commissioner for Human Rights visited Saudi Arabia and met the Custodian of the Two Holy Mosques, King Abdullah. The meeting was aimed at "encouraging level of governmental activity to improve human rights".⁵⁷⁸ Furthermore, in 2012, the Human Rights Commission in the KSA signed a memorandum of understanding with the Office of the High Commissioner for Human Rights.⁵⁷⁹ The memorandum related to conducting training programmes, and providing specialised seminars and courses on human rights to Saudi human rights specialists which strengthened their capacity with regard to UN mechanisms and international organisations and the issue of human rights.⁵⁸⁰ Similar to these objectives, in 2013 the Saudi Arabian Ministry of Foreign Affairs and the UN signed a memorandum of understanding regarding the provision HR experts.⁵⁸¹ In addition, the KSA claims it always attempts to support the work of the UN Human Rights Council, including resolutions aimed at promoting and protecting human rights.⁵⁸² In this regard, it has launched a number of initiatives and offers support to a number of relation international organisations.⁵⁸³

Moreover, the KSA was nominated for membership of the Human Rights Council for the period 2014 to 2016,⁵⁸⁴ and more recently, re-elected to the Human Rights Council, the UN's premier human rights body.⁵⁸⁵ While this election was the subject of intense debate in the

⁵⁷⁸ Human rights chief visits Gulf region,

<<https://www.ohchr.org/EN/NewsEvents/Pages/HCVisitsGulfRegion.aspx>> accessed 11 January 2019

⁵⁷⁹ Committee on the Elimination of Discrimination against Women, sixty-ninth session, 19 February–9 March 2018, List of issues and questions in relation to the combined third and fourth periodic reports of Saudi Arabia, Replies of Saudi Arabia, CEDAW/C/SAU/Q/3-4/Add.1.

⁵⁸⁰ *ibid.*

⁵⁸¹ Committee on the Elimination of Discrimination against Women, Consideration of reports submitted by States Parties under article 18 of the Convention on the Elimination of All Forms of Discrimination against Women Combined third and fourth periodic reports of States Parties, Saudi Arabia, 2016, CEDAW/C/SAU/3-4.

⁵⁸² Note verbale dated 6 October 2013 from the Permanent Mission of Saudi Arabia to the United Nations addressed to the President of the General Assembly, A/68/535.

⁵⁸³ *ibid.*

⁵⁸⁴ <<https://www.ohchr.org/EN/HRBodies/HRC/Pages/Year2014.aspx>> accessed 6 November 2018

⁵⁸⁵ <<https://www.ohchr.org/en/hrbodies/hrc/pages/currentmembers.aspx>> accessed 6 November 2018

international community,⁵⁸⁶ the KSA affirms its continued support to the HRC, as well as the implementation of its commitment to the decisions of the Council and cooperation with the its mechanisms.⁵⁸⁷

Furthermore, at the national level the KSA, between 2008 and 2016, increased its work protecting women's rights. For example, during this period Saudi Arabia developed a national law on the status of women political rights.⁵⁸⁸ In 2005, King Abdullah appointed six women to the *Shura* Council, with a further six appointed in 2006. Initially these appointments were advisory and so did not have the right to vote in the council. However, from 2011, 30 seats with full voting rights were reserved for women on the Council.⁵⁸⁹ This was an important step in allowing women to enjoy their political rights and participate in making political decisions. Another significant development in women rights, occurred in 2011, when women were allowed to vote and run as candidates in the municipal elections; the voting age was also lowered universally to 18 years. In the 2015 municipal elections, the Ministry of Municipal and Rural Affairs registered 131,188 women to vote (compared with 1,373,971 men), and 979 ran as candidates (compared with 5,938 men)⁵⁹⁰. Twenty-one women were successfully elected, while a further 17 were appointed to seats.⁵⁹¹

Moreover, on 4 April 2014, a statement issued by the International Parliamentary Union (IPU) noted that Saudi women participation in government was 19.9%, one of the highest levels in the world. Faisal bin Hasan⁵⁹² links this achievement to King Abdullah's decision to allocate 30 seats on the *Shura* Council to women.⁵⁹³

Furthermore, in recent years, women have been able to participate more fully in civic life. A number of women hold high positions in different government sectors as ministers, deans of a university, and directors in quasi-governmental organisations. For example, female

⁵⁸⁶ 'How Saudi Arabia Kept its UN Human Rights Council Seat', <<https://www.hrw.org/news/2016/11/01/how-saudi-arabia-kept-its-un-human-rights-council-seat>> accessed 11 January 2019

⁵⁸⁷ *ibid.*

⁵⁸⁸ Committee on the Elimination of Discrimination against Women, Consideration of reports submitted by States Parties under article 18 of the Convention on the Elimination of All Forms of Discrimination against Women Combined third and fourth periodic reports of States Parties, Saudi Arabia, 2016, CEDAW/C/SAU/3-4.

⁵⁸⁹ *ibid.*

⁵⁹⁰ For more details, see Quamar Md Muddassar, 'Municipal Elections in Saudi Arabia, 2015' (2016) 3.4 Contemporary Review of the Middle East 433.

⁵⁹¹ 'Saudi Arabia 2015 Human Rights Report' <<https://www.state.gov/documents/organization/253157.pdf>> accessed 6 March 2017.

⁵⁹² Saudi Arabia's Permanent Representative to the UN in Geneva.

⁵⁹³ 'The Royal Embassy of Saudi Arabia, Washington, DC, USA' <http://www.saudiembassy.net/latest_news/news04041401.aspx> accessed 21 September 2015.

physicians were appointed as Deputy Director of Health Affairs for the Mecca region and the head of the General Directorate of Nursing in the Ministry of Health.⁵⁹⁴ Princess al-Jawhara Fahad al-Saud, a member of the royal family, was appointed as Undersecretary of the Ministry of Education. Also, in February 2009, Nora bint Abdullah al-Fayez was appointed the Deputy Minister of Education in charge of girls' education.⁵⁹⁵ These significant changes are relevant to the political and civil rights of Saudi women which have been criticised heavily in the past by international human rights bodies and organisations.

Change in the labour market is another area in understanding the development in the rights of women. In this respect, statistics show that women's engagement in the civil service sector⁵⁹⁶ has increased by 179,065 employees between 2010 and 2017, this also represents an increase in the proportion of Saudi women compare to men employed in the civil service (see 2.1).

Year	Saudi Males	Saudi Females	Total	The proportion of women employed
2010	589,672	295,088	884,760	33.35%
2011	616,748	302,360	919,108	32.89%
2013	710,797	422,370	1,133,167	37.27%
2014	718,383	432,445	1,150,828	37.57%
2015	717,629	450,957	1,169,586	38.55%
2016	708,985	474,125	1,183,110	40.00%
2017	703,671	474,153	1,177,824	40.25%

Table 2.1: Women's employment in the civil service sector in Saudi Arabia, 2010-2017⁵⁹⁷

As the data in table 2.1 shows, in 2017 women occupied 40% of civil service position in KSA. Compared to around 33% in 2010. The figure reflects efforts made by the Saudi government to increase female labour market participation.

⁵⁹⁴ Maha Akeel, 'Woman Appointed to Top Health Post in Jeddah', (12 July 2004) Arab News.

⁵⁹⁵ Julia Borger, 'Saudi Arabia Appoints First Female Minister' (16 February 2009) The Guardian, <<http://www.guardian.co.uk/world/2009/feb/16/saudi-cabinet-woman-minister>> accessed 6 March 2017.

⁵⁹⁶ According to the Saudi definition 'civil service' means public sector <<https://www.mcs.gov.sa/En/Pages/default.aspx>> accessed 11 January 2019.

⁵⁹⁷ <https://www.stats.gov.sa/sites/default/files/labour_market_fourth_quarter_2016_ar002.pdf> accessed 6 September 2018.

Women make up a smaller share of the private sector labour market, in 2017, they accounted for 30.64% of private sector employee. However, the increase in the proportion of women in the private sector labour market in the period 2010-17 is dramatic, from 7.67% in 2010 to 30.67% in 2017 (see Table 2.2).

Year	Saudi Male	Saudi Female	Total	The proportion of women employed
2010	669,037	55,618	724,655	7.67%
2011	744,990	99,486	844,476	11.78%
2012	918,793	215,840	1,134,633	19.02%
2013	1,068,315	398,538	1466,853	27.16%
2014	1,136,897	413,071	1,549,968	26.65%
2015	1,239,364	499,590	1,738,954	28.72%
2016	1,333,129	545,158	1,878,287	29.02%
2017	1,367,680	604,401	1,972,081	30.64%

Table 2.2: Women’s employment in the private sector, 2010 to 2017⁵⁹⁸

In relation to the second crucial issue, male guardianship, the government has launched a number of initiatives. To address the exploitation of women through male guardianship, the government has established awareness-raising campaigns and holds each ministry to account for changing stereotype perceptions and raising women’s awareness of their rights and duties.⁵⁹⁹ In addition, human rights sections and commissions were founded in different government sectors such as ministries and other government agencies, including the Committee on Human Rights of the *Majlis al Shura* (Consultative Council) which receives individual complaints.⁶⁰⁰ Furthermore, a vital step that the government has taken to reduce the unlimited influence of guardians is to permit Saudi women to have their own identity card. This move protects women from arbitrary decisions by their relatives or husbands. For example, a recent Ministry of Interior decision allows woman over the age of 45 to travel without a male relative.

⁵⁹⁸ *ibid.*

⁵⁹⁹ Committee on the Elimination of Discrimination against Women Sixty-ninth session, Summary record of the 1583rd meeting, 27 February 2018, CEDAW/C/SR. Also, see, Committee on the Elimination of Discrimination against Women, Consideration of reports submitted by States Parties under article 18 of the Convention on the Elimination of All Forms of Discrimination against Women Combined third and fourth periodic reports of States Parties, Saudi Arabia, 2016, CEDAW/C/SAU/3-4

⁶⁰⁰ Note verbale dated 6 October 2013 from the Permanent Mission of Saudi Arabia to the United Nations addressed to the President of the General Assembly, A/68/535.

Where improvements in the KSA law in relation to women's rights occurred it was because the obstacles to the enjoyment of rights were not seen to have an Islamic legal basis but were attributed to cultural norms and customs. One example of this distinction between religion and culture occurred in when the HRC questioned the prohibition on women driving in KSA.⁶⁰¹ The Saudi delegate, Mr. Al Hussein, argued that the prohibition was not based on Islam as women in the early days of Islam had ridden donkeys, camels and other means of transport. Rather, the ban on women driving arose because of traditional practices and attitudes.⁶⁰² He argued that Saudi society, as a tribal society, is not very open to the idea of women's mobility. He added that he believed that the attitudes might change soon following the transformation in girls' and women's education.⁶⁰³ Thus, it can be concluded that between 2008 and 2016, the KSA's domestic law witnessed changes in issues identified in the discussions with the IHRL mechanisms and that specific measures were taken around embedding and supporting women's human rights.

2.3 Conclusion

In this chapter, the aim is to build a theoretical framework of the KSA's engagement with IHRL. In this respect, the KSA's engagement with IHRL in the period between 1990 and 2016 is evaluated by considering the nature of the KSA's legal system and how human rights are considered in the Kingdom's domestic law. The sources of the Kingdom's laws and its engagement with the core IHRL instruments, the UDHR, ICCPR and the CEDAW, were discussed. In addition, the KSA's international obligations under IHRL were analysed and the influence of human rights treaty ratifications on domestic laws was assessed.

This chapter provided an account of, and the reasons for, the importance of understanding the IHRL mechanisms in the context of the KSA's laws, which is fundamentally based on *Shari'ah*. Therefore, a clear understanding of the human rights in the KSA's legal system is essential in order to realise the differences and similarities of different human rights practices that are guaranteed in the KSA's law and IHRL.

The chapter noted that the KSA's engagement and interaction with IHRL has evolved through three phases; the debate phase (1940s to 1990) that was characterised by the

⁶⁰¹ In 2017, Saudi women were permitted to drive by Royal Decree 905, 6/1/1439A.H. (27/9/2017) <<https://www.okaz.com.sa/article/1650996>> accessed at 6 March 2019.

⁶⁰² Committee on the Elimination of Discrimination against Women, Fortieth session, Summary record of the 816th meeting, 27 February 2008, CEDAW/C/SR.816.

⁶⁰³ Ibid.

Kingdom's involvement in debating, reviewing and drafting IHRL, but not acceding to or ratifying any human rights treaties. The second phase can be described as engagement with the mechanisms of IHRL. This phase (1990 to 2008) witnessed the Kingdom ratifying a number of human rights treaties such as the CEDAW but with its reservations towards provisions believed to be incompatible with Islamic norms. The engagement of the Kingdom is exemplified in its argument that male guardianship exists to support women. The third phase (2008 to 2016), termed constructive engagement, saw the Kingdom recognise that a state's obligation should be to change discriminatory social/cultural practices in various ways such as through education and legislation. Thus, the government, in order to enhance and protect human rights and women rights in particular, promulgated legislation and established a number of organisations to promote human rights in the Kingdoms. For example, the establishment of the Human Rights Commission that tackles human rights violation and receive individual complaints.

However, the chapter highlights a number of issues that need to be considered regarding to the KSA's full engagement with human rights treaties. The main reason preventing the KSA from a full acceptance of a treaty or ratifying it without any reservations is the gap between the norms of the treaty and the norms associated with Islam. In this context, the KSA objects to the provisions of the UDHR in two areas. The first is provisions that are incompatible with Islamic law. For example, the norms of gender equality in marriage in Islam are different from those stipulated in the UDHR. Hence, it is impossible to apply these norms to Saudis because of the importance of Islam in Saudi society.

Second, Saudis believe that the norms of the instruments stem from western culture, and ignore other cultural values. For example, the culture of Saudi society is different from western culture. Thus, the diversity of culture and religion constitutes an obstacle to the application of international instruments as a universal standard for human rights. This means that IHRL cannot be accepted unless it is responsive to different cultural values and societies, at least in its development, if not in its origins.

The analysis shows that the KSA had a good attitude regarding its international obligations. The evidence is seen with the KSA ratifying the CEDAW and its cooperation with the Committee of the Convention, in particular during the annual review of the Kingdom reports. In this regard, a number of significant legal measures have been undertaken in order to improve Saudi women's rights, in particular in terms of enabling them to access their

political rights and reduce the negative role of male guardianship. For example, between 1990 and 2016 the KSA took a number of major steps to increase the number of women holding political positions such as membership of the Consultative Council.

Importantly, the discussion highlights that the criticisms by certain Committee members and NGOs reports reveal a lack of understanding of the reality of women's rights in Saudi Arabia. In addition, there is a misunderstanding by the Committees about the nature of rights of women under Islamic law. Furthermore, there is a misunderstanding of key issues, such as the real role of guardianship, within the Committees. Therefore, it would be more beneficial in terms of improving women's human rights if the IHRL mechanisms understood (and accepted) local norms in the overall context of the system of state and within its local meaning.

In summary, the KSA in its desire to maintain cooperation with the international community concerning human rights has reconsidered its position towards the human rights regime and has adopted several measures and regulations that comply first with the provisions of Islamic law and second with the norms of the treaty ratified. In this context, later chapters empirically examine the link between the improvements and domestic changes in women's rights that occurred in the third phase and the KSA's interaction with IHRL.

Chapter Three:

Research Design and Methodology

The preceding chapter reviews the theoretical literature associated with how the KSA deals with the mechanisms of IHRL, as well the actual interaction between the two elements. It indicates that regulations and legalisation have been promulgated which enhance the rights of Saudi women. The KSA has ratified the CEDAW, a treaty that aims to eliminate all forms of discrimination and abuse against women. Thus, part of the KSA's international obligation towards the CEDAW is developing and protecting women rights according to the criteria of the Convention, but on the basis that these are compatible with Islamic laws and norms.

Thus, this Chapter discusses the methods and methodology of the empirical research investigating the role of the KSA's engagement with IHRL on its human rights law and the role of the KSA's interaction with IHRL in improving and developing Saudi women rights. Section 3.1 outlines the research questions investigated in the empirical research. Section 3.2 then presents an account of the research design. Thereafter, Section 3.3 discusses those participating in the empirical research, outlining the participants' recruitment process and demographics. Next, Section 3.4 discusses the data collection methods, including semi-structured interview questions, interview procedures, pilot interviews and theoretical saturation. Section 3.5 then outlines the data quality. In this section, two issues are discussed: trustworthiness; and ethical issues. In Section 3.6 methods for analysing the empirical research data that inform this thesis are discussed. This includes the data analysis methods and thematic analysis process. Section 3.7 reflects on the research process, while Section 3.8 outlines the chapter summary.

3.1 Research Questions

This section outlines the research questions that inform this thesis. This follows the consideration of the existing literature throughout Chapters 1 and 2, and the gaps in the knowledge that were identified in the Introduction Chapter (Section 2). In brief, this study makes a distinctive contribution to the empirically informed analysis of the role of the KSA's engagement with the IHRL on influencing the KSA's domestic law and to evaluating the KSA's engagement with IHRL as it pertains to the rights of Saudi women. It also contributes to exploring and assessing the influence of IHRL on a state's domestic law, using Saudi Arabia as a case study. This examination helps evaluate the effectiveness of IHRL in

promoting women's rights within the context of Saudi Arabia, a society that appears to have greater capacity than others to resist international pressure on these issues. In this context, the research sets out four main research questions to be investigated:

- What changes have there been in the KSA's law and practice that reflect a greater engagement with IHRL?
- What are the factors to which key actors attribute these changes?
- To what extent are the changes due to the KSA's engagement with IHRL?
- Have the IHRL mechanisms been useful from the perspective of promoting and protecting women's rights?

3.2 Research Design

This section discusses the research design for the empirical research investigating the impact of IHRL on the Saudi legal system with regard to improving human rights. This section begins by outlining the research design for this thesis.

3.2.1 Research Design

The research design plays a significant role in ensuring that the study is moving in the right direction by choosing the most appropriate instruments and procedures that best fit the research context. This research applies a qualitative case study research design that utilises in-depth semi-structured interviews (as outlined below in Section 3.2.4).

In direct response to the Research Questions, the purpose of the research design is to provide a plan of study that enables an accurate assessment of the case under investigation and to instigate a dialogue with various types of interviewees (as outlined in Section 3.3) about their experiences and views on the role of the KSA's interaction with the IHRL, and how the reflection of this interaction on its national law has been understood. The aim is to investigate changes to the KSA's law and practice that reflect a greater engagement with IHRL (Research Question 1), the factors to which these changes can be attributed (Research Question 2), the extent to which these changes are due to the KSA's engagement with IHRL (Research Question 3), and the usefulness of the IHRL mechanisms from the perspective of protecting and enhancing women's rights (Research Question 4). Utilising a qualitative case study research design allows the researcher to directly respond to the exploratory and investigatory nature of these research questions. It also contributes to addressing the research questions in-depth, which would not have been possible by means of quantitative methods.

As discussed in the Introduction Chapter, Section 2, previous studies investigating the role of IHRL within the context of Saudi Arabia's legal system have generally utilised a qualitative research design, and the data was usually collected through the documentary analysis method. In contrast, this study adopts a qualitative case study method. This is because a case study design is a distinctive approach to exploring "multiple perspectives which are rooted in a specific context"⁶⁰⁴ and in the issue being investigated. It is suited for "the identification and measurement of the indicators that best present the theoretical concepts that a researcher wants to measure".⁶⁰⁵ Yin defines the case study research method "as an empirical inquiry that investigates a contemporary phenomenon within its real-life context; when the boundaries between phenomenon and context are not clearly evident; and in which multiple sources of evidence are used".⁶⁰⁶ Wilson refers to case studies as "a process which tries to describe and analyse some entity in qualitative, complex and comprehensive terms not infrequently as it unfolds over a period of time".⁶⁰⁷ Becker proposes that the purpose of case studies is "to arrive at a comprehensive understanding of the groups under study...and... to develop general theoretical statements about regularities in social structure and process".⁶⁰⁸ Thus, a case study design would seem to be the most appropriate method to utilise in this study because the strategy is ideally suited to exploring issues in-depth and following or developing a theory. According to Yin, "the distinctive need for case studies arises out of the desire to understand complex social phenomena" because "the case study method allows investigators to retain the holistic and meaningful characteristics of real-life events",⁶⁰⁹ such as the processes of law and human rights changing. In fact, case studies are an appropriate approach when 'how' or 'why' questions are being investigated, in particular when the researcher has little control over incidents, and when the focus is on a present phenomenon and to some extent within a real-life context.⁶¹⁰

⁶⁰⁴ Jane Lewis and Jane Ritchie, *Qualitative Research Practice: A Guide for Social Science Students and Researchers* (SAGE Publications 2013) p.66.

⁶⁰⁵ Adrijana Biba Starman, 'The Case Study as a Type of Qualitative Research' (2013) 64 *Journal of Contemporary Educational Studies* 36.

⁶⁰⁶ RK Yin, *Case Study Research: Design and Methods* (SAGE Publications 2013) 2.

⁶⁰⁷ Steve Wilson, 'Explorations of the Usefulness of Case Study Evaluations' (1979) 3 *Evaluation Review* 446, 448.

⁶⁰⁸ Howard Saul Becker, 'Social Observation and Social Case Studies' (1968) 11 *International Encyclopedia of the Social Sciences* 232, 233.

⁶⁰⁹ RK Yin, *Case Study Research: Design and Methods* (SAGE Publications 2013) 4

⁶¹⁰ *ibid.*

Furthermore, case studies have become one of the most significant methods used in the qualitative research.⁶¹¹ Thus, qualitative research is well-suited in efforts “to generate new knowledge of culture and social life”⁶¹², using “its gathered data to create theoretical ideas”⁶¹³. Denzin and Lincoln describe qualitative research as a “situated activity that locates the observer in the world”,⁶¹⁴ explaining that “qualitative research involves an interpretive, naturalistic approach to the world... attempting to make sense of, or to interpret, phenomena in terms of the meanings people bring to them”.⁶¹⁵ These interpretations demonstrate that a qualitative research design is beneficial when investigating social issues. This is because applying a qualitative case study approach helps to explore or describe the data in a real-life environment, in addition to providing a sufficient explanation of the complexities of real-life conditions of the phenomena under investigation that may not be captured through applying quantitative research.⁶¹⁶

Using qualitative methods to investigate the effect(s) of IHRL on national laws allows the researcher to use an interpretive approach, thereby interpreting the findings “in terms of the meanings people bring to them”⁶¹⁷ and using these meanings to generate theoretical contributions to the study of IHRL mechanisms and instruments insofar as they affect the promotion and protection of human rights.

In addition, this research utilises a documentary analysis method since this approach is accepted as a valuable tool for researchers to provide a better understanding of different texts and documents. Documentary analysis offers “a form of voice –a voice on past events and activities that provides a level of insight for the reader into these events, activities and participants”.⁶¹⁸ It is a systematic process for evaluating different documents.⁶¹⁹ As with

⁶¹¹ Norman K Denzin and Yvonna S Lincoln, *Handbook of Qualitative Research* (SAGE Publications 1994).

⁶¹² J Wagner, ‘Observing Culture and Social Life: Documentary Photography, Fieldwork, and Social Research’, in GJ Stanczak (ed.), *Visual Research Methods: Image, Society, and Representation*, (SAGE Publications 2007) 26.

⁶¹³ Martin Brett Davies and Nathan Hughes, *Doing a Successful Research Project: Using Qualitative or Quantitative Methods* (Palgrave Macmillan 2014) 11.

⁶¹⁴ NK Denzin and YS Lincoln, Introduction: The Discipline and Practice of Qualitative Research. In Denzin NK and Lincoln YK (eds), *Handbook of Qualitative Research: Second Edition*. Thousand Oaks, CA: Sage (2003).

⁶¹⁵ *ibid.*

⁶¹⁶ Zainal Zaidah, ‘Case Study as a Research Method’ (2007) 9 *Jurnal Kemanusiaan* 1.

⁶¹⁷ *ibid.*

⁶¹⁸ T Fitzgerald, ‘documents and documentary analysis’ in Ann R J Briggs, Marianne Coleman, Marlene Morrison, *Documents and Documentary Analysis in Research Methods in Educational Leadership and Leadership and Management* (SAGE 2012) 297.

⁶¹⁹ Glenn A Bowen, ‘Document Analysis as a Qualitative Research Method’, (2009) 9 *Qualitative Research Journal* 27.

other types of analytical methods in qualitative research, it requires that data should be examined and interpreted to find answers to questions that will improve the outcome.⁶²⁰ There are various advantages to using documentary analysis as it enhances the researcher's understanding of the meaning of the document content and uncovers meaning related to the issue under examination.⁶²¹ In addition, it could provide sufficient research data, information and ideas to present valuable additions to knowledge.⁶²² Finally, it is a vital tool that helps researchers examine drafts, periodic and final reports related to their research problem to trace an organisation's or a program's developments or changes over time.⁶²³ Hence, this study applies this method to examine and evaluate various resources and materials including: the KSA's UPRs; Saudi Human Rights Commission's human rights status reports; Human Rights Watch Reports; Shadow Report concerning Saudi women; the Association for Defending Women's Rights, First Report; and the Freedom House Report concerning women's rights in the KSA. In addition, there is an analysis of the Saudi government's legislation and programs that have been issued with regard to human rights. Furthermore, statements made by Saudi officials that are related to the status of Saudi women's rights are analysed as well. This type of analysis contributes to providing a real and critical engagement, as well as making an accurate assessment of the state's implementation of IHRL norms. This leads to a better understanding of the real situation with regard to the influence of the international human rights system on the KSA's legal system, which is the main aim of the research.

Additionally, this study also adopts a descriptive approach in order to describe the process and procedures of IHRL as they affect KSA domestic law. It also tries to answer questions such as who, what, where, and how—all of which are related to the effort to describe the characteristics of Saudi engagement with IHRL.

3.2.2 Case Study

For this research, the case study is the KSA's ratification of the CEDAW. The choice of the CEDAW as the case study is for a number of reasons. First, the CEDAW is a comprehensive and legally binding human rights instrument, which promotes women's rights and aims to

⁶²⁰ J Corbin and A Strauss, *Basics of Qualitative Research: Techniques and Procedures for Developing Grounded Theory* (SAGE Publications 2014).

⁶²¹ SB Merriam, *Case Study Research in Education: A Qualitative Approach* (Jossey-Bass Inc. 1988).

⁶²² Glenn A Bowen, 'Document Analysis as a Qualitative Research Method', (2009) 9 *Qualitative Research Journal* 27.

⁶²³ RK Yin, *Case Study Research: Design and Methods* (SAGE Publications 2013).

eliminate all types of discrimination and abuse perpetrated against them. Second, it regulates aspects related to the conduct of states, the private sector and NGOs, as well as the role of certain cultural practices in relation to discrimination against women. The third reason is that the KSA ratified the CEDAW in 2000, has submitted all required reports to the Committee, and discussed these reports with the UN's relevant committees and received recommendations. As a result, there are a number of issues that have been raised by the CEDAW Committee tasked with the examination of the KSA reports. Thus, the researcher focuses on the most controversial issues that were criticised by the members in relation to women's rights such as the role of women in political life and the negative role of male guardianship. As indicated in Section 2.2.2.3, the KSA government has established a number of significant legal measures to protect and improve the rights of Saudi women, particularly in terms of enabling them to exercise their political rights while undermining the negative role of male guardianship. Thus, with the KSA ratifying the CEDAW, it allows the researcher to investigate the effectiveness of IHRL in terms of improving human rights, as the CEDAW is one mechanism of the IHRL.

3.2.3 Interview Design

This research used in-depth semi-structured interviews with 13 participants. The researcher conducted these interviews with participants in a face-to-face format in order to gather data on the role of the KSA's interaction with the IHRL on improving its national law relating to human rights. In the context of this exploratory and investigatory research, utilising semi-structured interviews makes it possible to obtain in-depth data on the complex social and legal issues pertaining to the impact of IHRL mechanisms on KSA's national law. It is a vital tool that allows the interviewer to question further or clarify the meanings of any unclear answers, thereby adding significance and depth to the data obtained.⁶²⁴ In addition, the data obtained from semi-structured interviews are then used to explain or better understand many types of social issues and phenomena including a fairly precise idea of the participants' views, especially when such views and experiences are temporary, uneven, complex, and contextual.⁶²⁵ Due to the potentially sensitive and divisive nature of the subject matter, group interviews were not deemed suitable for this research as it is necessary to ensure that the interview environment remains confidential, non-judgmental, and safe for the individuals

⁶²⁴ M Saunders, P Lewis, and A Thornhill, *Research Methods for Business Students*, (Essex Pearson Education Limited 2012).

⁶²⁵ Hilary Arksey and Peter T Knight, *Interviewing for Social Scientists: An Introductory Resource with Examples* (Sage 1999).

participating in the research, and that the findings accurately reflect the interviewees' interactions with and perspectives on the influence of IHRL on the KSA's national law. Also, a face-to-face interview format allows the researcher to explain the ethical issues and to assure participants about the confidentiality of their input, thereby encouraging them to contribute to the research. In addition, interviews are efficient in terms of gathering data. The strengths and efficiency of semi-structured interviews stem from the fact that the interviewee may use words or ideas in a particular way while the interview itself provides an opportunity to probe these meanings in order to add significance and depth to the data obtained.⁶²⁶ The interview can also lead the discussion into important areas that were not previously anticipated by the research questions and objectives.⁶²⁷ In other words, it creates new areas for research based on the interviewee's answers. Thus, semi-structured interviews provide more flexibility in this respect compared with the structured interview, as it does not follow any scheduled outline.⁶²⁸ This is consistent with an exploratory study and interpretivist approach because the interviewer can obtain immediate feedback about whether or not the answers are relevant and adequate. Moreover, if further details are required, the interview provides the opportunity to ask more questions and seek clarification.⁶²⁹ For the purpose of this research, the researcher selected this type of interview as it would allow the various issues related to the study to be explored in-depth.

The setting can also help interviewees tease out words or phrases they want to use. Finally, it also allows for facial expressions and body language to be taken into account. Accordingly, face-to-face interviews are used in this research to collect data, especially as semi-structured interviews are found suitable for gaining an understanding of the influence of IHRL on the KSA's domestic law. This format is especially apt, given that the issue under investigation involves complicated and highly confidential information, not to mention being a potentially controversial issue due to its connection to the Kingdom's law and social context.

To sum up, conducting face-to-face semi-structured interviews is a well-established empirical research method within qualitative research. This is because it allows for a 'less-rigid' approach while creating the space to discover and discuss the issue under investigation more openly and provide an opportunity for participants to express their perceptions and ideas by

⁶²⁶ M Saunders, P Lewis, and A Thornhill, *Research Methods for Business Students*, (Essex Pearson Education Limited 2012).

⁶²⁷ *ibid.*

⁶²⁸ Emma Bell, Alan Bryman and Bill Harley, *Business Research Methods* (Oxford University Press 2018).

⁶²⁹ WG Zikmund, *Business Research Methods* (Thomson/South-Western 2009).

using their own words; all of which are very useful in terms of exploring the topic in depth. The use of empirical data to test or develop existing theories is often considered as an ‘inductive approach’. Thus, this study adopts an inductive approach due to its suitability for exploring the dynamics of the IHRL mechanisms and their impact(s) on the Saudi legal system. Furthermore, such an inductive approach can be used to build new theories or improve existing ones from the data analysis. The approach allows data to emerge from the themes that are repeated or dominant, without being subject to the limitations of a structured methodology. Thus, applying an inductive approach in this study contributes to determining which theories of IHRL provide a sufficient explanation for the KSA’s compliance with the international norms.

However, the limits of the ‘knowledge’ that come from semi-structured interviews should also be acknowledged. This is because semi-instructed interviews need to involve a sufficient number of individuals in order to make general comparisons possible. Furthermore, “standardized working of questions may constrain and limit naturalness and relevance of questions and answers”.⁶³⁰

3.3 Participants

This section discusses the sample of interviewees who participated in the empirical research. Beginning with an outline of participant recruitment in Section 3.3.1, Section 3.3.2 then discusses the demographic profiles of the participants, including gender identity, nationality, country of residence, and occupation.

3.3.1 Participant Recruitment

This section outlines the participant recruitment process. It also outlines the procedure for recruiting participants for the empirical research. Qualitative research usually focuses on understanding a specific phenomenon or issue within a given context. Therefore, conducting qualitative research requires working with a small sample in a specified context.⁶³¹ A total of 13 participants were recruited from four different places between March 2017 and June 2017, with the interviews taking place in accordance with the participant recruitment process. The participants were all resident in Saudi Arabia except for one non-Saudi who was based abroad.

⁶³⁰ M Britha, *Methods for Development Work and Research: A New Guide for Practitioners* (SAGE 2005) 171.

⁶³¹ MB Miles and AM Huberman, *Qualitative Data Analysis: An Expanded Sourcebook* (2nd ed., SAGE 1994).

The starting point for identifying the participants is to focus on those who have a relationship in the field of human rights in the Kingdom, whether as decision-makers in the Kingdom or are active in the field of human rights. Search engines for the most famous names in this field were used, first looking at government and human rights institutions in the Kingdom in order to identify those responsible for the Kingdom's dealing with the mechanisms of IHRL. With regard to determining the appropriate member of the UN, I wanted to select members of the CEDAW Committee who participated in reviewing and discussing the Kingdom's reports submitted to the Committee. There was considerable communication with several members but only one member agreed to participate in the study.

In this case, the interviewees are classified into four categories: the first category is those who participated as representatives of the KSA government which includes members of the Committee on Human Rights Control of Commissions of the *Majlis Alshura*, and members of the Saudi Human Rights Commission. The interviewees chosen from these two government bodies are very active in the issue of human rights and are able to study and review the KSA-ratified IHRL agreements. The second category of interviewees is civil society representatives. They are members of the National Society for Human Rights, and represent civil society organisations that deal with human rights in the KSA. In the third category are participants from civil society who work as human rights activists; they were involved in the interviews to ensure as broad a perspective as possible. The fourth category of participants is from the UN human rights bodies. In order to gain an insight into the perspective of international institutions and organisations, interviews were also carried out with a member of the CEDAW Committee who had taken part in the review of the KSA periodic reports (see Table 3.1).

The rationale for choosing this range of participants is because they are best placed to inform the research questions and enhance an understanding of the phenomenon. In this context, the case study needs to empirically address the perspectives of its four roles: government actors; UN human rights members; human rights activists; and civil society members. Most of the participants in the interviews are experts who deal with the CEDAW regardless of whether they are engaged in the process of KSA ratifying the convention, involved in the preparation of the Kingdom's reports, or participated in the examination of the Kingdom's reports. This variety in the sample of interviewees contributes to enhancing the data of the research and avoiding research bias. This is achieved because such a sample ensures different perspectives around the issues investigated. Also, it made it possible to investigate the project

comprehensively, which helped to yield significant results. Moreover, such a sample makes it possible to achieve the objectives of this study in terms of evaluating the impact of IHRL on the KSA's human rights practices and domestic law.

It should be acknowledged that it may have been beneficial to carry out interviews with INGOs of human rights such as Human Rights Watch and Amnesty International. However, the researcher excluded these organisations due to the difficulty of contacting them. However, not conducting these interviews does not undermine the study as the research is focused on the interaction between the KSA and IHRL, and examine the relationship between the Kingdom and IHRL rather assessing the human rights situation in the KSA, which is the focus of the INGOs.

Recruitment Place	Type of Contact(s)	Method of Contact	No. of Participants Recruited
Saudi Arabia	Civil Society Organisations: The National Society for Human Rights.	By email.	3
Saudi Arabia	Human rights activists.	By text message followed by email.	3
Saudi Arabia	Government body. Human Rights Committee of <i>Majlis Alshura</i> .	By email.	2
Saudi Arabia	Government body. Human Rights Commission.	By email.	3
Saudi Arabia	Academic doctorate – interested in human rights	By email.	1
Non-Saudi national	The UN member of the CEDAW Committee	By email.	1
Total			13

Table 3.1: Participant recruitment method

As outlined in Table 3.1, a total of 13 participants were recruited for the empirical research from five different backgrounds: the four in Saudi Arabia included the KSA government, NGOs, human rights activists and those interested in human rights; and one from the UN CEDAW Committee. Contact was made with interviewees from the Human Rights Commission, the National Society for Human Rights, and the *Majlis Alshura* Human Rights Committee after sending emails to the heads of the organisations for their permission to carry out interviews with some of their members. In relation to the human rights activists, I contacted them personally via email, letter or text, depending on the most appropriate and

efficient method of communication available, while taking into account the ethical requirements for this research (outlined in Section 3.4). For contacting participants from the CEDAW committee, I got in touch with more than one committee member, but only received replies from two. I contacted one via email and the other via Twitter but the latter failed to reply. I also sent a letter explaining the research and seeking permission to recruit participants (see Appendix 1), as well as the researcher’s information sheet that includes information about the research and their rights as well as the process with the data (see Appendix 2). When the contacts from Human Rights Commission, the National Society for Human Rights, and the *Majlis Alshura* Human Rights Committee approved the request for participants, contact with members was then made using the methods outlined in Table 3.1.

3.3.2 Participant Demographics

This section presents the demographic profiles of the interviewees, outlining their gender identity, nationality, country of residence and occupation (see Table 3.2 for a summary).

Demographic	Variable	Number
Gender	Male	6
	Female	7
Nationality	Saudi Arabian	12
	Non-Saudi	1
Occupation	Employee in government sector	5
	Employee in civil society sector	3
	Lawyer and human rights activist	1
	Human rights activist	1
	Human rights activist	1
	Interested in human rights	1
	Member of the CEDAW committee	1

Table 3.2: Summary of participants

In terms of gender, the sample was fairly evenly split between males and females, with a slightly greater number of male participants. Splitting the sample between female and male is very important for enhancing the data as it is assumed that it would allow for multiple perspectives regarding the issue under investigation. It also avoids gender bias in the interviews, by asking the same basic interview questions.

Second, in relation to participants' nationality and country of residence, the vast majority were Saudi residents living in Saudi Arabia at the time of the interview. One participant was a non-Saudi national. As mentioned above, the researcher tried to make contacts with a number of the CEDAW Committee members involved in the review of the KSA reports, but unfortunately only one responded.

Third, five participants were employees in various government sectors (human rights commission and the consultative council), while three were working at the time in the civil society sector. Of the three human rights activists, one was a lawyer. Another described herself as interested in human rights. The final participant was a member of the CEDAW Committee. The different occupational backgrounds ensure that the information obtained comes from a variety of experiences. Consequently, this diversity in the sample underpins the strength of the data collected through the interviews.

3.4 Data Collection

This section outlines the data collection phase of the research. Section 3.4.1, outlines the semi-structured interview questions, while Section 3.5.2 explains the pilot interview process.

3.4.1 Semi-structured Interview Questions

As mentioned previously, this research adopts a qualitative case study design that used in-depth semi-structured interviews. It aims to address the impact of human rights law on the KSA's domestic law by specifically focusing on the influence of human rights mechanisms, such as the CEDAW, on developing and protecting the rights of Saudi women between 1990 and 2016. Therefore, nine questions were formulated with a view to understanding the impact of IHRL on Saudi domestic law, as well as the effectiveness of IHRL in the promotion and development of human rights in the context of the KSA. These questions are divided into three broad groups, based on the four research questions. The first group of questions is designed to cover general information about the KSA's engagement with IHRL. The second group of questions concerns specific issues related to women's rights, the changes in those rights, and the role and effectiveness of IHRL with respect to these changes. The third group mainly focuses on how the KSA interacts with the IHRL treaty mechanisms and their examination of human rights issues (see Appendix 3).

The semi-structured interview questions were derived from prior studies that address the issue of KSA vis-à-vis IHRL. Those studies also offered propositions that are consistent with the objectives of this research (see Table 3.3).

Interview Question	Literature Review
Research Question 1: What changes have there been in KSA law and practice that reflect a greater engagement with IHRL?	
<p>1-How would you describe the Kingdom of Saudi Arabia's level of cooperation with international human rights law?</p> <p>2-Have there been any changes in KSA law and practice that reflect a greater engagement with IHRL?</p>	<p>The KSA was one of the 51 original members of UN which was established following the Second World War. The KSA helped to draft the UN's Charter,⁶³²</p> <p>According to Alwasil, the first phase of the Kingdom's engagement with IHRL ran from the late 1940s and until the 1990s. This phase was characterised by the Kingdom's involvement in debating and discussing human rights instruments.⁶³³</p> <p>The Kingdom's position changed from one of debate to one of engagement, in which it interacted with and responded to the UN instruments' requirements, cooperated with the Special Rapporteurs and Working Groups, and ratified a number of the core human rights treaties.⁶³⁴</p> <p>Saudi Arabia, as a result of its interaction and cooperation with the international human rights system, is working on developing a national law on the status of women. In 2005, King Abdullah appointed six women to the Consultancy Council, with a further six appointed in 2006. From 2011, there are up to 30 seats reserved for women who have the right to vote.⁶³⁵</p>
<p>3-What have been the main issues in relation to women's rights that have been raised before international human rights organisations like the</p>	<p>The Committee has expressed concerns that guardianship restricts all aspects of a woman's life and limits her autonomy.⁶³⁶</p> <p>Ms. Neubauer, highlighted that the Report acknowledged that women had not been able to participate in the 2004</p>

⁶³² Muhammad al-Hadi `Afifi, *The Arabs and the United Nations* (Longmans 1964).

⁶³³ Abdulaziz M Alwasil, 'Saudi Arabia's Engagement In, and Interaction With, the UN Human Rights System: An Analytical Review' (2010) 14 *The International Journal of Human Rights* 1072.

⁶³⁴ *ibid.*

⁶³⁵ Committee on the Elimination of Discrimination against Women, Consideration of reports submitted by States Parties under article 18 of the Convention on the Elimination of All Forms of Discrimination against Women Combined third and fourth periodic reports of States Parties, Saudi Arabia, 2016, CEDAW/C/SAU/3-4.

⁶³⁶ Concluding observations on the combined third and fourth periodic reports of Saudi Arabia, 14 March 2018 CEDAW/C/SR.815.

CEDAW Committee?	municipal elections. This prevented women from making decisions. Another committee member, Ms. Belmihoub-Zerdani, expressed her hope that the government would be able to increase the number of women in political and public bodies and in the judiciary. ⁶³⁷
4-What have been the main changes in women's rights in Saudi Arabian law between 1990 and 2016?	<p>The KSA in its reports submitted to the Committee of the CEDAW in 2013⁶³⁸ indicates a number of positive developments in terms of the rights of Saudi women. The reports mention that Saudi women now have the opportunity to represent the government at the regional and international level through their work in the diplomatic corps in embassies, consulates and missions. In addition, they can participate in official delegations to conferences, forums and regional and international organisations. Significantly, the number of Saudi women who worked in the diplomatic jobs was 81 in 2014; in 2008 there were no Saudi women employed in the diplomatic service.</p> <p>This was an important step in allowing women to enjoy their political rights and participate in making political decisions. In 2011, women were allowed to vote and run as candidates in the municipal elections. In the 2015 municipal elections, the Ministry of Municipal and Rural Affairs registered 131,188 women to vote (compared with 1,373,971 men), and 979 ran as candidates (compared with 5,938 men). Twenty-one women won seats, while a further 17 were appointed to seats.⁶³⁹</p>
Research Question 2: To what factors can these changes be attributed?	
5-What are the other factors that have contributed to these changes and development?	In light of the combined political science literatures, eight factors have been identified that are important to the post-ratification effects of UN rights treaties in the GCC. These factors are: inter-state pressure; international socialisation; international non-governmental pressure; regional acculturation; political economy; domestic leadership; domestic pressure; domestic law; and constitutional rules. ⁶⁴⁰

⁶³⁷ Committee on the Elimination of Discrimination against Women, Fortieth session, Summary record of the 816th meeting, 27 February 2008, CEDAW/C/SR.816.

⁶³⁸ Committee on the Elimination of Discrimination against Women Consideration of reports submitted by States Parties under Article 18 of the Convention on the Elimination of All Forms of Discrimination against Women Combined third and fourth periodic reports of States parties, Saudi Arabia, 2016, CEDAW/C/SAU/3-4.

⁶³⁹ 'Saudi Arabia 2015 Human Rights Report' <<https://www.state.gov/documents/organization/253157.pdf>> accessed 6 March 2017

⁶⁴⁰ B Çali, N Ghanea and B Jones, 'Big Promises, Small Gains: Domestic Effects of Human Rights Treaty Ratification in the Member States of the Gulf Cooperation Council' (2016) 38 Human Rights Quarterly 21, 27.

Research Question 3: To what extent are the changes due to IHRL itself?

6-To what extent, if at all, are the changes influenced by engagement with IHRL?

The permanent mission of Saudi Arabia to the UN asserted that the KSA's interest in developing human rights through "national institutions, regulations and mechanisms is clearly reflected by its cooperation with international human rights treaty and non-treaty bodies".⁶⁴¹

The institutionalist perspective asserts that international regimes have positive effects that means states gain long-term benefits through cooperation.⁶⁴²

Research question 4: Have the IHRL mechanisms been useful from perspective of protection and protecting women's rights?

7-What are the criteria that the KSA has considered and adhered to in terms of development of women's rights?

An-Na'im highlights the importance of *Shari'ah* factor with regard to international human rights in the following terms:

"As a Muslim, I appreciate the extralegal power that Shari'a has on the minds and hearts of Muslims. Given this power, it is difficult to see how Muslim governments can honor their obligations to promote and protect human rights, even if they wish to do so, where those obligations are perceived to be contrary to Shari'a".⁶⁴³

Royal Decrees may adopt laws and regulations that are not

⁶⁴¹ Note verbale dated 6 October 2013 from the Permanent Mission of Saudi Arabia to the United Nations addressed to the President of the General Assembly, A/68/535.

⁶⁴² E Neumayer, 'Do International Human Rights Treaties Improve Respect for Human Rights?' (2005) 49 Journal of Conflict Resolution 925.

⁶⁴³ Abdullahi Ahmed An-Na'im, 'Human Rights in the Muslim World: Socio-Political Conditions and Scriptural Imperatives: A Preliminary Inquiry' (1990) 3 Harvard Human Rights Journal 13, 21.

	directly based on <i>Shari'ah</i> ; however, they must not contradict <i>Shari'ah</i> provisions, such as the adoption of some IHRL norms. ⁶⁴⁴
8-How has the KSA responded to examination by international human rights organisations whether intergovernmental organisations such as the UN or NGOs including Amnesty or Human Rights Watch with regard to the human rights situation in the Kingdom?	The criticism was raised by the UN Committee on the CEDAW on 17 January 2008 in response to Saudi Arabia's combined initial and second periodic report. ⁶⁴⁵ Similarly, the criticism is present in reports from NGOs or national and supranational organisations including: the Association for Defending Women's Rights' First Report; ⁶⁴⁶ the Shadow Report; ⁶⁴⁷ the Human Rights Watch Report concerning Saudi women; ⁶⁴⁸ and the Freedom House Report concerning women's rights in the KSA, ⁶⁴⁹ as well as during review of the Kingdom's UPR by the working group. ⁶⁵⁰
9-Some of the women's rights have always been enshrined within Islam, which is the basic law of the government. But how is it that women have not enjoyed these rights until now or only after they were raised by the international human rights organisations? What are your comments and/or explanations for that?	When the HRC questioned why women were prohibited by law from driving, the Saudi delegate Mr. Al Hussein clarified that the prohibition was not based on Islam as women in the early days of Islam had ridden donkeys and camels. In fact, the ban on women driving was because of traditional practices. ⁶⁵¹ He also argued that Saudi society is a tribal one and is not very open to the idea of mobility. Additionally, he believed that the attitudes might change soon following the transformation in girls' education. ⁶⁵²

⁶⁴⁴ 'The Basic Law of Governance Art. 81', <https://www.saudiembassy.net/about/country-information/laws/The_Basic_Law_Of_Governance.aspx> accessed 24 June 2016.

⁶⁴⁵ Consideration of reports submitted by States Parties under article 18 of the Convention on the Elimination of All Forms of Discrimination against Women, Combined initial and second periodic reports of States Parties, Saudi Arabia, CEDAW/C/SAU/2.

⁶⁴⁶ Association for Defending Woman's Rights, 'Attitudes to Women Rights Issue in Saudi Arabia 2009' [in Arabic] <http://www.sawomenvoice.com/news_view_2942.html> accessed 14 June 2012.

⁶⁴⁷ 'The Shadow Report for CEDAW Prepared by 'Saudi Women for Reform' Saudi Arabia The Executive Summary' (2007) <http://tbinternet.ohchr.org/Treaties/CEDAW/Shared_Documents/SAU/INT_CEDAW_NGO_SAU_40_10011_E.pdf> accessed 6 March 2017.

⁶⁴⁸ For example 'Perpetual Minors: Human Rights Abuses Stemming from Male Guardianship and Sex Segregation in Saudi Arabia' <<https://www.hrw.org/report/2008/04/19/perpetual-Minors/human-Rights-Abuses-Stemming-Male-Guardianship-and-Sex>> accessed 3 March 2017; 'Human Rights Watch, 'Looser Rein, Uncertain Gain - A Human Rights Assessment of Five Years of King Abdullah's Reforms in Saudi Arabia' <<http://www.hrw.org/sites/default/files/reports/saudi0910webwcover.pdf>> accessed 6 March 2017; and Human Rights Watch, 'Steps of the Devil Denial of Women's and Girls' Rights to Sport in Saudi Arabia' <<http://www.hrw.org/sites/default/files/reports/saudi0212webwcover.pdf>> accessed 6 March 2017.

⁶⁴⁹ 'World Freedom 2015: Saudi Arabia' <<https://freedomhouse.org/report/freedom-world/2015/saudi-Arabia>> accessed 3 March 2017.

⁶⁵⁰ For more information on the UPR see Office of the High Commissioner for Human Rights, 'Basic Facts about the UPR' <<http://www.ohchr.org/EN/HRBodies/UPR/Pages/BasicFacts.aspx>> accessed 7 December 2015.

⁶⁵¹ Committee on the Elimination of Discrimination against Women, Fortieth session, Summary record of the 816th meeting, 27 February 2008, CEDAW/C/SR.816.

⁶⁵² *ibid.*

Table 3.3: Semi-structured research questions and their basis

3.4.2 Interview Procedures

The face-to-face interviews were held in Arabic which is the native language of the researcher and 11 of the participants. This ensured the interviews were effective in that they can help participants understand the interview questions, regardless of whether the questions are fairly basic or nuanced.⁶⁵³ The questions were translated from English into Arabic by the researcher (see Appendix 4), in order to make sure the translated questions achieved equal value to the source language.⁶⁵⁴ One participant had Arabic as mother tongue but he preferred to conduct the interview in English. For the participant from the UN, the interview was conducted in English which is what she preferred. Also, with the non-Saudi participant the interview was conducted in English.

All the interviews were carried out in a comfortable place chosen by the participants at a time convenient to them. Before starting the interview, the topic of the research, ethical issues and the purpose of the interview were clearly explained to the participants. In addition, the interviewees were asked to sign an informed consent form to grant their permission to record the interview in order to ensure precise transcriptions for analysis, with names remaining confidential at all times. All participants allowed their interview to be recorded. All interviews were uploaded directly onto the university's server via the Student L folder. Figure 3.1 outlines the interview procedure which consisted of seven steps.

⁶⁵³ Craig D Murray and Joanne Wynne, 'Using an Interpreter to Research Community, Work and Family' (2001) 4 *Community, Work and Family* 157.

⁶⁵⁴ Anthony Pym, 'Natural and Directional Equivalence in Theories of Translation' (2007) 19 *International Journal of Translation Studies* 271.

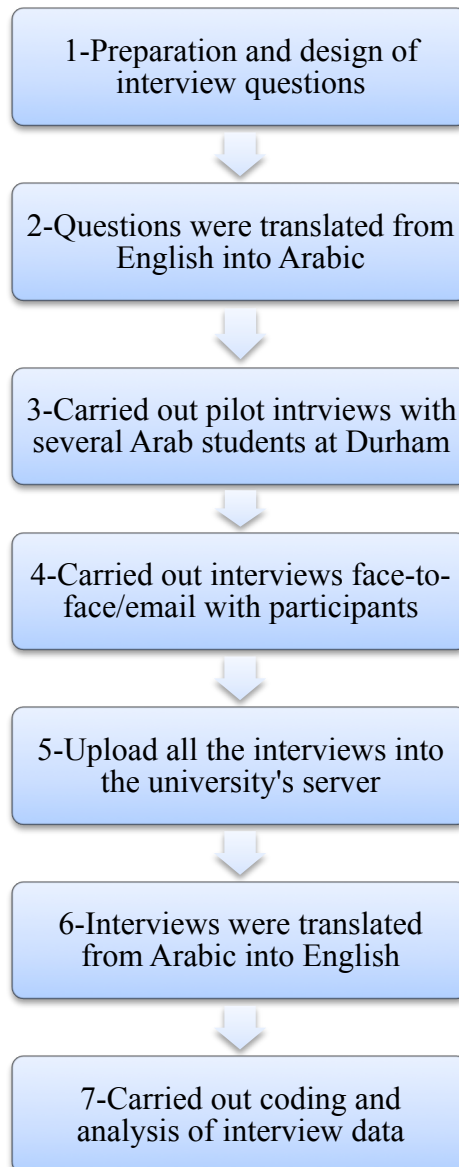


Figure 3.1: Interview Procedures

3.4.3 Pilot Interviews

This section outlines the pilot interview process, conducted prior to the main data collection phase. The pilot interview is generally considered best practice in empirical research before conducting the planned empirical research. According to Davies *et al.* the pilot interview process is vital to ensuring that “the language and phraseology [the researcher] is using is [a] language and phraseology that [the] research subjects will understand and be able to relate to”,⁶⁵⁵ thereby confirming that the interview design is clear, noteworthy and understandable to all interviewees. According to Simmons, there are two initial steps prior to conducting the

⁶⁵⁵ Martin Brett Davies and Nathan Hughes, *Doing a Successful Research Project: Using Qualitative or Quantitative Methods* (Macmillan International Higher Education, 2014) 49.

empirical research project: first, a review of the interview design to be carried out by colleagues (which in this research was conducted by the researcher's academic supervisor); and second, piloting the interview "with group must have similar characteristics to those of population to be studied".⁶⁵⁶ In this research, the pilot interview process was conducted during the spring of 2017. For the pilot interviews, the researcher carried out the interviews with a number of Arab students at Durham University. The researcher arranged to hold face-to-face interviews with the participants, who were informed beforehand about the purpose of the research and content of the interviews. The participants were asked to provide their feedback at the end of each interview with regard to the overall structure and design, the interview questions, and the interview delivery. Their feedback was positive; they confirmed that the interview questions were understandable and that the overall interview design was quite clear to them. Therefore, no change was made to the interview structure and design nor the interview questions.

3.4.4 Interviews Format and Duration

Twelve interviews were conducted using the face-to-face format while the other was conducted by email at the participant's request. Most interviews lasted between 30 and 45 minutes, with the shortest lasting 18 minutes and 35 seconds, and the longest one hour and 12 minutes. The amount of data collected from the 12 interviews amounted to about eight hours 40 minutes of recording. These differences in the interview duration suggests that conducting the interviews was affected by in-depth dialogue with participants, participant's level of interest and capacity to engage with the interview questions. For the interview conducted by email, the answers were provided in English. The data collected from all interviews provided rich and nuanced information on the impact of the KSA's engagement with IHRL on its domestic law and its role in enhancing human rights, especially for Saudi women.

3.4.5 Theoretical Saturation

Theoretical saturation is defined as the phase in the qualitative research when the researcher can no longer collect new data and all the concepts of the theory are well developed.⁶⁵⁷ Thus, it "entails bringing new participants continually into the study until the data set is complete,

⁶⁵⁶ Rosemarie Simmons, 'Questionnaires' in Nigel Gilbert (ed.), *Researching Social Life* (Sage 2008) 203.

⁶⁵⁷ Michael Lewis-Beck, Alan E Bryman and Tim Futing Liao, *The Sage Encyclopedia of Social Science Research Methods* (Sage Publications 2003).

as indicated by data replication or redundancy”.⁶⁵⁸ Specifically, within a more inductive approach, “saturation suggests the extent to which ‘new’ codes or themes are identified within the data, and/or the extent to which new theoretical insights are gained from the data via this process”.⁶⁵⁹ Thus, data saturation occurs when the researcher gathers sufficient data to replicate (complete) the study and no new information is being added from the next participant.⁶⁶⁰ Data saturation is related to the purpose of the qualitative interview, which according to McCracken

is not to discover how many, and what kinds of people, share a certain characteristic. It is to gain access to the cultural categories and assumptions according to which one construes the world, qualitative research does not survey the terrain. It is, in other words, much more intensive than extensive in objectives.⁶⁶¹

In this context, the researcher stopped conducting interviews after 13 interviews, because after ten interviews the data reached theoretical saturation and the researcher could find no new significant data. At this stage, the later interviewees just repeated ideas without significant variations. In addition, the most significant themes that related to the issue under investigation were identified within the first nine transcripts. Additional themes were identified in the next two transcripts, but nothing emerged in the final two transcripts, giving a total of 122 codes. Therefore, I stopped at interview 13 in order to save time, especially as the possibility that new themes would appear relevant to the issue under investigation was unlikely.

3.5. Ethical Considerations

This section outlines the ethical considerations that informed the empirical research design and implementation. The ethical framework for the research directly accords with the University’s research ethics policy and was approved and signed by the Chair of the Ethics Sub-committee on 20 March 2017.

To protect participants’ anonymity and confidentiality, the researcher applied the appropriate

⁶⁵⁸ Glenn A Bowen, ‘Naturalistic Inquiry and the Saturation Concept: A Research Note’ (2008) 8 *Qualitative Research* 137, 140.

⁶⁵⁹ B Saunders, J Sim, T Kingstone, S Baker, J Waterfield, B Bartlam and C Jinks, ‘Saturation in Qualitative Research: Exploring its Conceptualization and Operationalization’ (2018) 52 *Quality & Quantity* 1893, 1898.

⁶⁶⁰ Michelle O’Reilly and Nicola Parker, ‘‘Unsatisfactory Saturation’: A Critical Exploration of the Notion of Saturated Sample Sizes in Qualitative Research’ (2013) 13 *Qualitative Research* 190 and Janiece L Walker, ‘Research Column: The Use of Saturation in Qualitative Research’ (2012) 22 *Canadian Journal of Cardiovascular Nursing* 37.

⁶⁶¹ Grant McCracken, *The Long Interview* (Vol. 13) (Sage 1988) 17.

steps in accordance with the University's research ethic policy. These steps are undertaken to protect the confidentiality of the participants' records and to ensure compliance with the requirements of the research ethics policy. These steps include the following:

1. Participants' contact details (names, e-mail addresses, and phone numbers) are saved in a locked file and on a password-protected Word document, to which only the researcher has access.
2. All interview data is uploaded directly onto the University's server via the student L folder, to which only the researcher has access.
3. Anonymity is ensured for each participant when recording, storing, transcribing, analysing, and presenting the empirical research data, or when the researcher discusses her research with the research supervisors, academic colleagues, and at academic conferences.
4. Transcripts and translation of the interviews were carried out by the researcher herself, and are fully anonymised, carefully changing or deleting any possible identifying factors from such accounts.

Lee explains the importance of ensuring the confidentiality and anonymity of participants in the research process. "Telling another about those aspects of one's self which are in some way intimate or personally discrediting ... is a difficult business. It becomes less so where privacy and anonymity are guaranteed and when disclosure takes place in a non-censorious atmosphere".⁶⁶² Thus, in the context of discussing complex and sensitive issues, "privacy, confidentiality and a non-condemning attitude are important because they provide a framework of trust".⁶⁶³ Therefore, the researcher allocated a pseudonym for each participant, and all participants were informed how their information was to be recorded and (re)presented in the research. It is important to note that the researcher is to keep the data fully secured until she graduates in line with Creswell's advice,⁶⁶⁴ while Seiber recommends keeping data for a period of five to ten years.⁶⁶⁵

Another step taken by the researcher was to fully inform participants about the purpose of the research and contents of the interviews and how the data would be dealt with and protected. This is because when the research involves ethical issues, it is necessary that participants

⁶⁶² RM Lee, *Doing Research on Sensitive Topics* (Sage 1993) 97.

⁶⁶³ *ibid.* 98.

⁶⁶⁴ John W Creswell, *Research Design: Qualitative, Quantitative and Mixed Method Approaches* (SAGE Publications 2013).

⁶⁶⁵ Joan E Sieber and Martin B Tolich, *Planning Ethically Responsible Research* (Vol. 31) (Sage 2013).

should be sufficiently informed about the research’s scope, nature and requirements.⁶⁶⁶ When prospective participants contacted the researcher, they were given information about the research and the content of the interviews (see Appendix 2). This encouraged participants to participate fully in the interviews. Furthermore, all participants had to provide their informed consent to participate in the research by signing the Informed Consent form (see Appendix 5) after having been given the time to read it carefully.

Risk/Discomfort	Likelihood	Severity	Overall Risk	Precautions
Curtailement of free speech, interviewees may be reluctant to express views and opinions that are critical of KSA human rights records.	Low	Low	Low	<ol style="list-style-type: none"> 1. Fully brief participants prior to each interview. 2. Encourage participants to stop or take breaks if and when required. 3. Prepare and distribute the researcher’s Information Sheets and details of the project.
They may feel uncomfortable with the recording of the interviews.	Low	Low	Low	<ol style="list-style-type: none"> 1. Give the option of being interviewed without being recorded, with only notes taken. 2. Use personal recorder. All tape recordings and any written transcriptions will be destroyed at the end of the study. 3. Interviewees will be informed that they will not be identified in anything that emerges from the research. 4. To maintain anonymity, the researcher herself will transcribe and translate the interviews.

Table 3.4: Risk/discomfort assessment for participants

Importantly, prior to conducting the interviews, the researcher undertook a full University Fieldwork Risk Assessment for both participants and the researcher. With respect to the participants, two potential discomforts were classified (see Table 3.4). These potential discomforts were: the possibility that participants may become uncomfortable with or distressed by the materials discussed in the interviews; and the possibility that participants

⁶⁶⁶ Kristin G Esterberg, *Qualitative Methods in Social Research* (McGraw-Hill Higher Education 2002).

may feel uncomfortable with the recording of their interviews. Due to these potential discomforts, a number of precautions were put in place in order to mitigate the likelihood of participants experiencing discomfort. The researcher ensured that the participants were fully briefed prior to participating in the research; this briefing took place by e-mail and again in person at the beginning of each interview. Participants were encouraged to attend the interview on days in which they had few other commitments to ensure they had the space and time to do the interview with ease. This required flexibility on the part of the researcher as well as an understanding and positive attitude if participants cancelled or rescheduled interviews at short notice due to other commitments.

At the beginning of each interview, participants were encouraged to take breaks or stop the interview whenever they felt the need to and for any reason. Participants were also given the opportunity to withdraw from the interviews whenever they wished to. Overall, the researcher attempted to ensure that the participants felt at ease, safe, and valued as active agents in both the context of the interview and the research process.

3.6 Data Analysis Procedure

This section outlines the data analysis procedures for analysing the empirical research data gathered through the in-depth empirical research interviews. Section 3.6.1 outlines the data analysis method, while Section 3.6.2 discusses the thematic analysis process.

3.6.1 Data Analysis Method

As mentioned previously, qualitative semi-structured interviews were the primary method through which the perspectives of the participants were gathered in relation to the research questions. The method of analysis adopted is the thematic analysis method. Thematic analysis is a method commonly used in the qualitative approach for analysing interviews. According to Braun and Clarke, thematic analysis “is a method used for identifying, analysing, and reporting patterns (themes) within the data”.⁶⁶⁷ The study’s theoretical framework of the thematic analysis is primarily built on Braun and Clarke’s approach. The rationale for utilising the thematic analysis method is because a “rigorous thematic approach can produce an insightful analysis that answers particular research questions”.⁶⁶⁸ Furthermore, thematic analysis is a flexible method “that is essentially independent of theory

⁶⁶⁷ Victoria Braun and Victoria Clarke, ‘Using Thematic Analysis in Psychology’ (2006) 3 *Qualitative Research in Psychology* 77, 79.

⁶⁶⁸ *ibid.* 97.

and epistemology, and can be applied across a range of theoretical and epistemological approaches”.⁶⁶⁹ Thus, “through its theoretical freedom, thematic analysis provides a flexible and useful research tool, which can potentially provide a rich and detailed, yet complex, account of data”.⁶⁷⁰ It also allows for applying inductive research because themes or patterns are strongly identified as related to the data themselves, which would “allow research findings to emerge from the frequent, dominant or significant themes inherent in raw data, without the restraints imposed by structured methodologies”.⁶⁷¹

A theme is identified as something which captures the key idea about the data in relation to the research question, and which represents some level of patterned response or meaning within the dataset.⁶⁷² According to Bazeley, “themes only attain their full significance when they are linked to form a coordinated picture or an explanatory model: ‘Describe, compare, relate’ is a simple three-step formula when reporting the results”.⁶⁷³ Thus, identifying themes is an important phase when applying this type of analytical method.

3.6.2 Thematic Analysis Process

The data collected through interviews with policymakers, human rights activists, civil society representatives, and a representative from the UN member were analysed based on three phases. The first phase was transcribing and translating the interview in order to prepare the data for analysis. The second was the coding process to reduce the data, which occurred by creating themes. The third was representing the data.⁶⁷⁴ The themes were identified through three rigorous process: first, process of data familiarisation; second, data coding; and third theme development and review.⁶⁷⁵ The researcher used the data NVivo software for the analysis.

In detail, to perform the above process, data analysis was carried out in three phases: the first phase was familiarisation with the data during the interview phase (data collection) by making notes and writing down a number of themes and concepts that emerged during the

⁶⁶⁹ *ibid.* 78.

⁶⁷⁰ *ibid.* 78.

⁶⁷¹ David R Thomas, ‘A General Inductive Approach for Analyzing Qualitative Evaluation Data’ (2006) 27 *American Journal of Evaluation* 237, 238.

⁶⁷² *ibid.* 82.

⁶⁷³ Pat Bazeley, ‘Analysing Qualitative Data: More than Identifying Themes’ (2009) 2 *Malaysian Journal of Qualitative Research* 6, 10.

⁶⁷⁴ JW Creswell and CN Poth, *Qualitative Inquiry and Research Design: Choosing among Five Approaches* (SAGE Publications 2017).

⁶⁷⁵ Victoria Braun and Victoria Clarke, ‘Using Thematic Analysis in Psychology’ (2006) 3 *Qualitative Research in Psychology* 77.

interviews, and their transcription and translation. The researcher listened to the audio recordings a number of times to ensure a precise translation and transcription. The researcher translated eleven of the interviews from Arabic into English, verbatim. This process was carried out using Microsoft Word Office and to ensure there were no mistakes: the researcher re-listened and re-read the interview a number of times, using dictionaries to check the appropriate language. The remaining two interviews were conducted in English.

In the second phase, the translated transcriptions and others were imported into the NVivo software, which the researcher used to manage and analyse the data extracted from the 13 interviews. The NVivo program is a very useful tool for dealing with data, organising and making the process more accurate, as the programme can be used to facilitate the coding, retrieval and categorisation of data, and it can also store large amounts of data.⁶⁷⁶ It is also used to enhance the research, since according to Richards and Richards, using qualitative data analysis software helps add rigor to the qualitative research.⁶⁷⁷ Moreover, it is an efficient and time-saving tool because it is an easy program to deal with, particularly for a beginner in qualitative research. In this phase, line-by-line coding was conducted to generate the initial codes. These codes identified types of the data that link to the research question. Additionally, as is essential to the method, the whole empirical data set was given equal attention in order to ensure that all frequent codes within the data received an equal consideration.

The third phase is theme development in which the researcher worked on the initial codes in NVivo. This was done by reading and re-reading to identify significant broad patterns of meaning (potential themes) from the interviews. It involved searching for themes; these were created by collecting different codes that are similar or have the same aspects and meaning in the data. Then, all initial codes that link to the research questions were combined into a theme. When all codes combined under themes, the researcher created thematic maps that help in generation of themes.⁶⁷⁸ These helped the researcher to visualise and realise the links and relationships between various themes (See Appendix 6). At this stage, the researcher discarded themes that did not have sufficient data to support them or had no relevance. This process of altering the themes was done through two levels: first, the coded data confirmed

⁶⁷⁶ Elaine Welsh, 'Dealing with Data: Using NVivo in the Qualitative Data Analysis Process' (2002) 3 Forum Qualitative Sozialforschung/Forum: Qualitative Social Research.

⁶⁷⁷ Lyn Richards and Tom Richards, 'From Filing Cabinet to Computer' in Alan Bryman and Robert G Burgess (eds.), *Analysing Qualitative Data* (Routledge 1994) 146.

⁶⁷⁸ Victoria Braun and Victoria Clarke, 'Using Thematic Analysis in Psychology' (2006) 3 Qualitative Research in Psychology 77.

they created a coherent pattern; and second, when a coherent pattern was created the themes related to the whole data set were examined and considered. The benefit of this stage is to ensure the themes precisely reflected what was obvious in the whole data.⁶⁷⁹

Once each identified theme became clear, the analysis moved to identifying the themes. This involved defining and naming the themes. During this phase, it is important to consider the overall story within the data, not only the story expressed within individual themes. In addition, it was essential to develop short but punchy terms that quickly transmitted the substance of the theme. Thus, the whole data empirical set was categorised into codes and then classified into initial themes (see Figure 3.2).

Saliency analysis of themes includes the consideration of the regularity of data within the theme and the observed significance of that theme.⁶⁸⁰ Themes were identified as significant and salience if supported by participant statements such as “the most important thing is...”, “it is important that...” and by other similar phrases that highlighted the importance of the statement, as well as when the same theme was raised frequently by the participants. When themes were identified as neither salient nor frequent, they were discarded.⁶⁸¹ Identified themes after that were revised, refined and considered in connection to each other in a ‘theme map’.

At this stage, a thematic saturation stage was reached, which demonstrated that an appropriate sample size had been obtained. All stages of analysis were peer reviewed with the relevant participant as proposed by Robson.⁶⁸² This review was done via email or phone, based on choice of the participant. Furthermore, in order to ensure the final themes were supported by the original data, the original interview transcripts were again re-read. The analysis came up with a number of main categories with their sub-categories such as changes in Saudi law, the KSA’s dealing with IHRL, factors that influence human rights development, IHRL’s effectiveness, and controversial issues relating to women (see Figure 3.3).

⁶⁷⁹ *ibid.*

⁶⁸⁰ Stephen Buetow, ‘Thematic Analysis and Its Reconceptualization as ‘Saliency Analysis’’ (2010) 15 *Journal of Health Services Research & Policy* 123.

⁶⁸¹ *ibid.*

⁶⁸² Colin Robson, *Real World Research: A Resource for Social Scientists and Practitioner-researchers* (Wiley-Blackwell 2002).

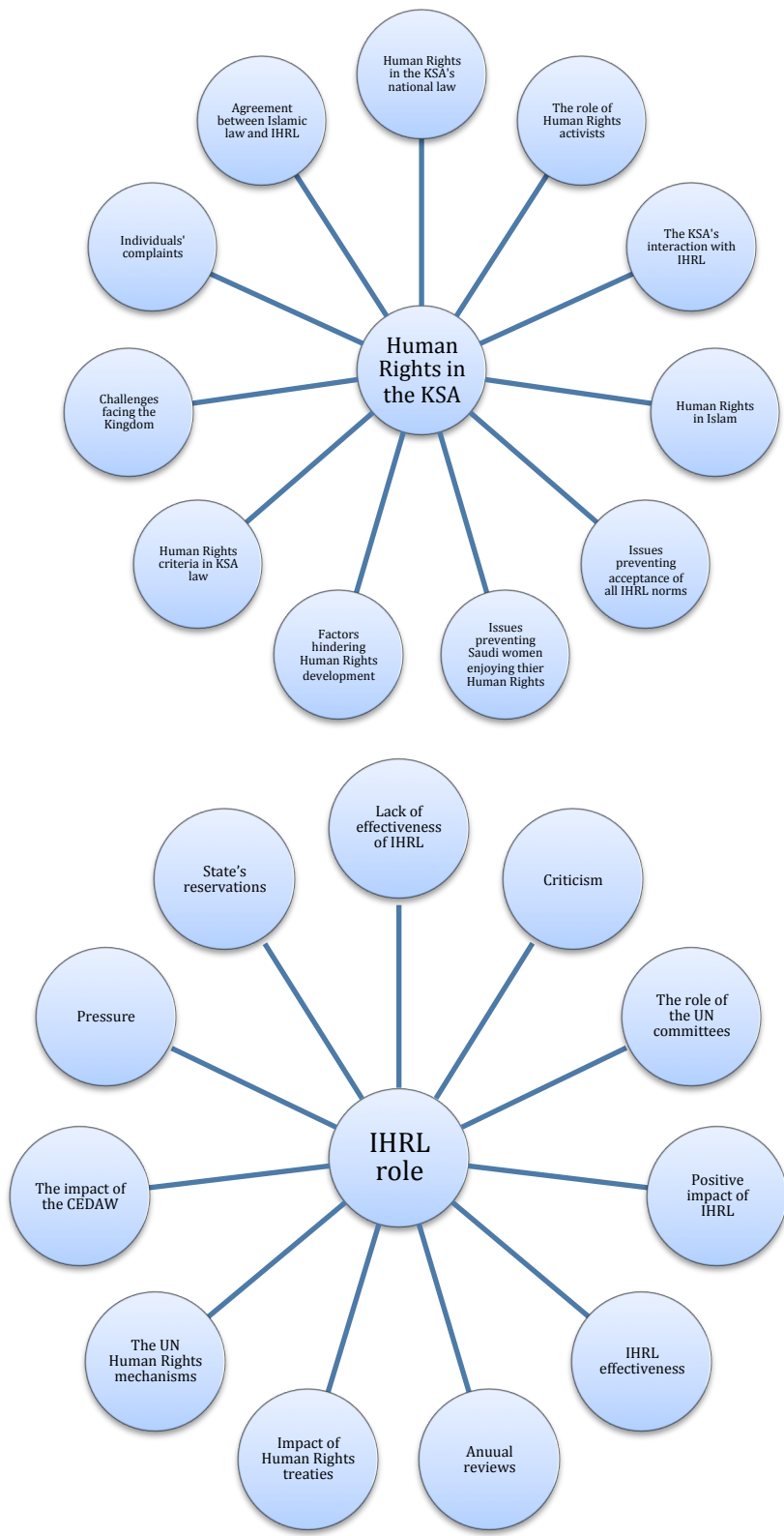


Figure 3.2: Second Themes Map

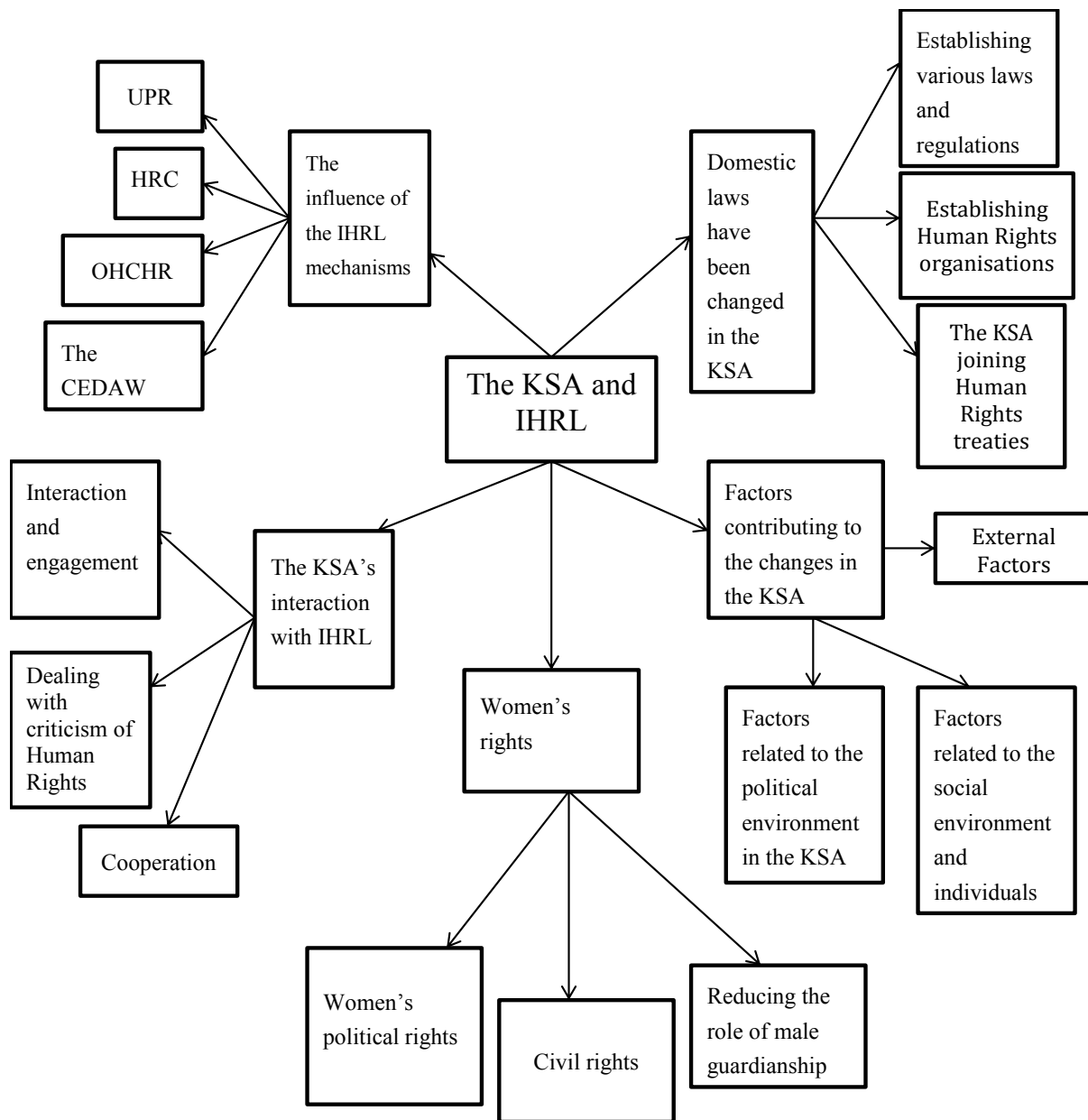


Figure 3.3: Final Themes Map

However, it should be acknowledged that although NVivo is a useful and helpful program, it has certain limitations that can negatively affect the data analysis. According to Ishak and Bakar, “NVivo is just another set of tools that will assist a researcher in undertaking an analysis of qualitative data”.⁶⁸³ Consequently, following the completion of the data thematic analysis, the researcher used a manual-checks method to double check the data analysis. The benefit of using these two methods is that using both the NVivo software and manual checks enhances the trustworthiness of the research, as well as the credibility and validity of the

⁶⁸³ Noriah Mohd Ishak and Abu Yazid Abu Bakar, ‘Qualitative Data Management and Analysis Using NVivo: An Approach Used to Examine Leadership Qualities among Student Leaders’ (2012) 2 Education Research Journal 94, 102.

findings. In order to increase the trustworthiness of the interview data and avoid any bias that might be created by the interviewee process, interview training had been undertaken. In addition, the coding was reviewed manually and refined more than once by the researcher. In addition, the coding was checked by three researchers at Durham University; all of whom were in the third or fourth year of their doctoral studies. They did not have any previous idea or knowledge about the topic. Thereafter, it was discussed and checked with the supervisors of the thesis. Moreover, the steps related to interpreting the data and themes which emerged from the data analysis met the criteria for interpreting, as is seen in the next chapter. This contributes to increasing the reliability of this study.

3.7 Reflections on the Research Process

This section discusses the researcher's experiences of and reflections upon the research process. While overall the process of conducting the research was a fascinating and invaluable experience, the researcher encountered certain difficulties during the research. This section is written in the first-person, in order to articulate these reflections in the terms in which I experienced them.

The first difficulty encountered during the research was to obtain the consent of the participants who were selected to participate in this study. When I contacted individuals, who appeared to be appropriate to participate in the study, I faced the issue that they were not interested, while others ignored my emails and messages. I overcame this issue by introducing myself and presenting the subject in a way that was interesting in order to motivate them to participate, as well as highlighting the value of their participation to my study and how their participation would contribute to the success of the project.

I also worked on creating a back-up list for other candidates in case the first candidates did not respond. For example, one issue that I have experienced one person I contacted welcomed his participation, but then ignored further communications from me. In this case I chose an alternative participant.

The second difficulty was related to finding the best time for the interviews. There was difficulty in reconciling the time that allowed me to travel for interviews because I had to go where the participants were and the time that suited my family circumstances. The initial plan was to conduct interviews in December 2016 during the official holidays, but due to a delay in obtaining the approval of the ethical research committee I had to delay the interviews for

six months which impacted on the progress of the research. The delay in data collection was difficult, and temporarily caused concerns that the planned empirical research would not come to fruition.

A more positive experience was conducting the in-depth research. This challenging area enabled me to develop and hone my interview skills and nurtured my ability to confidently discuss complex and sensitive issues. It was also personally empowering and reassuring to listen to the perspectives of individuals who are experts in the field of human rights and IHRL.

In addition to the content of the research, I have improved certain personal skills in relation to how deal with life issues especially when linked to my family. I have learnt to keep a balance between the research requirements and family duties and responsibilities. In this matter I have attended a number of training courses regarding time management.

As is the nature of Doctoral research, it is easy to feel isolated when conducting research. I was very fortunate in that if I needed to reach out and discuss issues I had encountered, my supervisors, Mr. Choudhury and Dr. Pillay, were only an e-mail or phone-call away. Likewise, I had a friend also conducting Doctoral research on a sensitive topic who understood the challenges this type of research can present.

Among the positive experiences gained during my studies, is that the study was conducted in English which is not my first language. I had just studied English for one year before attending the doctoral project. During the course of the study, my language skills developed significantly, especially in the field of my research, which reflected positively on increasing my self-confidence and promoting better research.

In addition, I learned and understood a lot about this type of research in terms of preparing, conducting and following such a study. I attended different courses in the field of research development.

3.8 Chapter Summary

This chapter set out the research design and methodology that the research adopts in order to empirically investigate research questions regarding IHRL influencing states' domestic law (Chapter 1) and the role of the KSA's engagement with IHRL on changing its human rights law. Thus, Section 3.1 presents the research questions, while Section 3.2 outlines the research

design. Then, Section 3.3 highlights the participants, and provides an account of the participants' recruitment process and demographics. Next, Section 3.4 discusses the data collection methods including semi-structured interviews, interview procedures, pilot interviews and theoretical saturation. Ethical issues are discussed in Section 3.5. Thereafter, Section 3.6 outlines the methods employed for the analysis of the empirical research data, the findings of which are discussed in Chapters 4, 5 and 6. In Section 3.7, the chapter closes with an account of the researcher's reflections on the research process.

Having established the methodology and methods utilised for the research, the following three chapters present the findings from the empirical research investigating the influence of the KSA engagement and dealing with IHRL on its domestic law of human rights.

Chapter Four

Data Analysis and Findings 1: Changes and Development in the KSA's Human Rights Law, 1990-2016

As highlighted in Chapter 3, this research is a qualitative case study which applies thematic analysis to the empirical research data gathered through semi-structured interviews conducted with 13 participants from different sectors: stakeholders, human rights activists, civil society members and the CEDAW committee member. Chapter 3 also indicates that the theoretical framework of the thematic analysis is built upon Braun and Clarke's position that thematic analysis is "a method used for identifying, analysing, and reporting patterns (themes) within the data".⁶⁸⁴ In terms of the data analysis, several themes emerged in relation to the role of a state's engagement and interaction with IHRL on changing and improving its domestic law. Therefore, Chapters 4-6 focus on the description, interpretation, and analysis of the data pertaining to the research questions: What changes have there been in the KSA's law and practice that reflect a greater engagement with IHRL? What are the factors to which key actors attribute these changes? To what extent are the changes due to the KSA's engagement with IHRL? and Have the IHRL mechanisms been useful from the perspective of promoting and protecting women's rights?

This chapter provides the data analysis and findings pertaining to the first question. In this part of the data analysis, three sub-themes emerged from the interviews; namely, changes in the human rights and policy and laws of the KSA in general (see Section 4.1.1), changes in the KSA's domestic law resulting from its interaction with IHRL (see Section 4.1.2), and changes in women's rights, with an emphasis on political and civil rights, the male guardianship issue and establishing human rights organisations (see Section 4.1.3). Thereafter, Section 4.2 presents the chapter summary and findings.

4.1 Analysis of the Changes in the KSA's Domestic Law between 1990 and 2016

The first part of the interviews aimed to establish each participant's perception of the development and changes in the KSA's domestic law between 1990 and 2016. As mentioned previously, the reason behind the interest of the perceptions of the participants regarding legal changes and development rather than just 'objectively' describing the developments and the changes is because it aims to understand how the Kingdom interacts and engages with

⁶⁸⁴ Victoria Braun and Victoria Clarke, 'Using Thematic Analysis in Psychology' (2006) 3 *Qualitative Research in Psychology* 77, 79.

IHRL, and how changes in the laws are perceived and understood, and in which way the subsequent developments are perceived to have occurred. It also helps to discover the linkage made by participants between the changes and the Kingdom's interaction and engagement with the IHRL. In this respect, under this theme three sub-themes emerged in this respect which are discussed in the following sections.

4.1.1 Changes in the KSA's Human Rights L between 1990 and 2016

This sub-theme emerged when participants responded to the question on whether there have been any changes in the KSA's law between 1990 and 2016, regardless of whether or not these changes occurred as a result of interaction of the Kingdom with IHRL. In this case, in a face- to- face semi- structured interviews, participants were invited to have conversations on the laws that have been changed and improved in the KSA' domestic law. Participants have simply asked the following questions: Have there been any changes in KSA human rights law over the past 26 years? Also, if there are any, what have been the main changes in women's rights in Saudi Arabian law over the past 26 years?

In response two the above questions, the participants identified several new laws and regulations that were established or amended in connection with enhancing and promoting human rights in the KSA. As Participant 2 states:

In the past twenty-six years, many laws have been promulgated...If you have a glance at the laws in the Kingdom of Saudi Arabia, you will find there is a significant development in them during the period you mentioned as many laws have been promulgated (INTV2).

The statement supports the view that since 1990 the human rights system in the KSA has witnessed huge change. This view is endorsed by Participant 1 and Participant 3, who also point to many of laws that were issued in this period. Participant 10 provides more details about the changes. She argues different types of laws target different segments of the Saudi community:

After 1990, there were many laws that were introduced in the country such as the Law on Domestic Violence, the Law on the Concern with People with Impairment (People with Special Needs), the Law on the Rights of the Child and the Law on Provision of Health Services. We find that all these evolved after 1990, for the [benefit of] Saudi women in particular (INTV10).

These statements from Participants 2 and 12 emphasise that from 1990, there was a remarkable transformation in laws protecting human rights in the KSA. Several laws were

introduced in order to enhance and promote human rights in general, and it seems for Saudi women in particular.

Furthermore, the changes in the KSA's national law are obvious even if people do not follow the situation closely. Thus, Participant 4 states:

I am not following precisely this legislative activity, but I believe that there is some sort of leap in the case of human rights issue (INTV4).

Participant 7 also supports this view:

I would like to inform you that my understanding regarding legal aspects is inadequate, but I think that the very establishment of the Human Rights Commission and the National Association, as two relevant institutions, is considered the most prominent changes in human rights that notably elevated the status of women and vigorously defended their rights (INTV7).

These statements demonstrate an improvement in the laws related to human rights. In particular, the establishment of human rights organisations that support abused women and help defend their rights is significant. It shows a perception by the interviewee that the creation of these bodies has increased the status of women's rights and led these bodies to play a role in protecting women's rights. The relationship between the creation of these human rights institutions and the KSA's engagement with the IHRL is discussed in Chapter 6.

However, interviewees commented that the shift in the pace and scale of change is perceived to have increased with the rule of King Abdallah from 2005. Participant10 confirms:

I am of the opinion that the changes started in 1990, but during the reign of Late Custodian of the Two Holy Mosques King Abdullah ibn Abdul Aziz Al-Saud, there was indeed a qualitative move in women's rights (INTV10).

This means that from 2005, when King Abdallah ascended to the throne, is considered a period in which laws and policies supporting Saudi women's empowerment increased significantly.⁶⁸⁵ There was a quantum leap in the field of reforming Saudi women rights.

Participant 12 perceived the changes that occurred in Saudi women rights to have taken place as a result of the King's leadership role. She suggested:

However, the real changes in the status of women came directly from orders by the King himself due to their cultural sensitivity (INTV12).

The statements by Participants 10 and 12 indicate that role of the King was seen as the main factor in the process of human rights development especially those related to women rights. In particular, as Participant 12 in the above statement indicates the reason for this is because

⁶⁸⁵ The role of the KSA leadership in the legislative changes is discussed further in Chapter 5.

of culture which exerts a strong influence on Saudi Arabian society. Thus, changing deeply embedded cultural norms requires the authority of the King in order to gain acceptance from the populace. Thus, for a number of participants, change was not seen as the consequence of the interaction with IHRL, but because of the leadership by the King.

She also added:

The non-religious aspects of the legal system in the KSA are called *Nizam* such as *Nizam* for retirement, *Nizam* for nationality, etc. These are adopted as well as amended by the *Shura* Council after they are submitted by the government for ratification. The *Shura* Council can amend such laws or can propose new ones as well. But any changes or any new proposed *Nizam* are only recommendations to the King who has the sole authority to accept or refuse them (INTV12).

This quote clarifies two important types of law in the KSA: first, laws based on religious texts. These laws are seen as fixed and unchanging as their legitimacy is derived from the two fundamental sources of Islamic law (the Qur'an and Prophet Mohammed's *Sunnah*). The second type are laws based on non-religious texts, are called *Nizam* (regulations). These are issued to regulate different aspects, such as nationality and employment. These types of law are seen as more flexible and open to review and change by government departments when necessary. Notably, the final decision on the implementation of *Nizam* rests with the King. However, the view of Participant 12 does not contradict the view that effective interaction between the KSA and IHRL helps develop human rights in the Kingdom. It merely confirms that the final decision to issue regulations and laws rests with the King.

The changes in the KSA's law are perceived to be part of a strategy as Participant 12 described:

There have been some changes that happen quietly (the Saudi way) and over time (INTV12).

Along with Participant 12, Participant 13 describes the changes as:

Saudi Arabia is advancing but it is very slow (INTV13).

These quotes describe the strategy that the Kingdom follows in the matter of developing its national law; changes evolve slowly which the participant described as "the Saudi way". This raises the interesting tension in the interviews because on the one hand the changes are identified as "dramatic" and "significant" but at the same time they are "quiet" and "gradual".⁶⁸⁶

⁶⁸⁶ This issue is discussed in depth in Chapter 7.

To conclude, this section analyses participants' perspectives pertaining to changes in the KSA's domestic law in relation to human rights that occurred between 1990 and 2016. It shows that 'silent' changes relating to human rights have occurred in the period. Significantly, 1990 is considered as the start of real changes in the KSA's law pertaining to the improvement of the human rights situation. However, it is found that the reign of King Abdallah starting in 2005 was distinguished by actual changes in women's rights, although the changes were subject to the KSA's strategy of slow evolution. It also emphasises the importance of the role of the King in bringing about domestic law changes and improving the rights of Saudi women. In brief, this section focuses on analysing perceptions of changes in KSA law at a general level. The following sections focus on changes in relation to women's rights in particular.

4.1.2 Changes in the KSA's Law because of Interaction with IHRL

In the interviews, the participants were invited to discuss their views on whether any changes in the KSA's domestic law from 1990 were a direct result of greater engagement with IHRL. In order to investigate this issue, participants were asked the following questions: Have there been any changes in KSA law and practice that reflect a greater engagement with IHRL? To what extent, if at all, are the changes influenced by engagement with IHRL. The majority of participants simply agreed with the questions, considering that such interaction had significant consequences in the context of changes in the KSA's law and also providing evidence for this. Thus, Participant 1 states:

Yes, certainly they did (INTV1).

As did Participant 11:

Yes, of course (INTV11).

The statements confirm the participants' belief that the Kingdom's interaction with the system of international human rights brought about changes in the field of human rights through the development of its domestic law. They point to efforts made by the Kingdom to comply with the norms of IHRL. In this context, Participant 3 explains:

Yes, they did. There were in fact positive changes. By virtue of the fact that I am a human rights student, and that because I am a man working in this field, I can say that the State has made positive changes in this area (INTV3).

Thus, the increased opportunities to study human rights in academia in the KSA is understood as having contributed towards creating a generation of graduates that are familiar

with human rights. These students have become familiar with the normative framework of IHRL.

An important example of the result of the interaction between the KSA and IHRL is the establishment of human rights organisations in the KSA, as Participant 7 highlights:

Yes, some changes did occur. The existence of human rights institutions, such as the Human Rights Commission and the National Association for Human Rights and the very establishment of these two institutions are considered a qualitative leap in the laws of the country (INTV7).

Participant 3 agrees:

This is in addition to the establishment of civil society organisations such as the National Association for Human Rights (INTV3).

Thus, the participants highlighted three consequences of the KSA interaction and engagement with the IHRL: firstly, specific legal change; secondly, the creation of institutions concerned with human rights; and thirdly, the emergence of human rights as a legitimate area of study/work.

In terms of cause and effect, participants believed that the changes in the law of the KSA were a natural result of the relationship between the state and IHRL. Participant 7 perceived:

There is no doubt that rights are in a state of development as regards cause and effect and as an ordinary postulate (INTV7).

Likewise, Participant 2 argues:

When the Kingdom of Saudi Arabia joined the agreements, it studied them and was of the opinion that there was a need to re-develop certain laws to be in conformity with those of international conventions (or agreements) and to be consistent and not contradictory to the Conventions (INTV2).

Furthermore, Participant 9 asserts:

Yes, they have, as most of the laws and regulations that have been enacted in the recent period are actually enforceable and in conformity with the concerned international human rights conventions (INTV9).

The quotes from interviewees 2, 7 and 9 make clear connections between the SA's officials and policy-makers interactions and engagement -when it joined IHRT- and the legal changes and the KSA's engagement with IHRL.

This is also supported by Participant 13, who indicates that:

There is a strong influence of the CEDAW committee because CEDAW committee only develop rights for women and governments are ratified the CEDAW and their bound to apply the CEDAW requirements in their own legal system to bring advancement in their own countries. So, if the Saudi government

submits its next reports then it will be visible how far they have changed (INTV13).

Participants 2, 7, 9, and 13 are emphatic about the role of the Kingdom's interaction and engagement with IHRL in influencing the changes that have taken place in the Kingdom's human rights law. It appears that state engagement with IHRL increases after ratification of UN human rights agreements or conventions. This is because when the state signs a particular treaty it has to review and amend (if necessary) its national law to comply with the treaty/convention provisions.

However, Participant 4 is more circumspect in evaluating the role of the state's interaction with IHRL on bringing about the changes of the law.

Yes, it is due to some extent to the Kingdom of Saudi Arabia joining international conventions (INTV4).

The statement reveals that joining the international conventions may not be the sole or perhaps even the main driver for change but contributes 'to some extent' to develop human rights in the KSA domestic law.

Participants also discussed how the Kingdom's interaction and engagement with IHRL contribute to the domestic changes in its human rights law. First, state party national law can be influenced by implementing the treaty's committee recommendations as Participant 1 states:

I do not have specific information about this matter, but we have certainly we received, for example, many recommendations on the dissemination of the culture of rights, which has been actually implemented (INTV1).

The statement reveals that the interaction between state's officials and representatives with the CEDAW Committee's members during the review and examination process of the state's reports could provide a chance of state's cooperation with IHRL mechanisms, and increase the state's compliance with IHRL norms. It seems that committee's recommendations can increase awareness of gaps in human rights protection.

Another method of interaction that participants indicated is the interaction of the state's actors with Working Group Report on the UPR, as Participant 1 explains:

If you glance at the UPR issued six years ago and the last report in terms of the recommendations that were accepted and implemented, you will see that there is noticeable interaction, which has tangible results. The reason is that the Committee usually asks what is done regarding the implementation of previous recommendations before considering the new ones (INTV1).

The quote indicates that one type of interaction between the Kingdom and IHRL is responding to the recommendations of committees and the UPR Working Group. This interaction is effective because of the follow-up mechanism to ensure the implementation of the recommendations provided to the state. Thus, the KSA internalises the international norms of treaties that it has ratified. However, the statements reveal that the KSA would not accept all the treaty norms and Committee's recommendations. It seems that the acceptance of the CEDAW norms are limited and subjected to its compliance with the Kingdom's legal system.

Also, a number of participants indicated different form of the Kingdom's interaction with international norms which is related to the statue of the signed treaty in the state's national law. In the case of the KSA, a treaty or convention becomes part of the Kingdom's national law as Participant 2 explains:

Once the Kingdom of Saudi Arabia joins a particular Convention or agreement that instrument becomes an integral part of its rules and regulations, and that it is taken as a legal argument for implementation. In fact, the Commission has offered to re-consider, review and study many laws for due amendment; and that many laws have been duly amended (INTV2).

The quote suggests that the direct application of the laws provides a basis for the Commission to "re-consider, review and study laws" due for amendment. It points out that the IHRL triggers a review process of domestic law in which the Commission has a role to play. This means that the international norms of the treaty are incorporated into the Kingdom's domestic law and therefore gain greater legal legitimacy. Similarly, Participant 10 cites the CEDAW as evidence of the positive impact of the engagement.

Yes, certainly many changes did occur. It is true that we have many laws that have been developed, thanks to the international community's Conventions Committees such as Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) Committee, despite our opposition to certain of its provisions (INTV10).

The above quote highlights the impact of joining an international human rights treaty on developing a state's domestic law. Furthermore, it confirms that despite tensions between certain provisions of the CEDAW and the Kingdom's law, the positive impact on the rights of women cannot be ignore. The statements also reveals that CEDAW is not fully implemented as a legal regime within KSA law as it subjected to its compatibility with *shari'ah* norms.

In this context, Participant 2 states:

Likewise, many laws have been issued, for example, the Law on Protection against Abuse, which pertains to domestic violence and violence in its different forms, whether at school, in social welfare homes or in comprehensive rehabilitation homes. Furthermore, a child protection law was promulgated. This is a new child protection law against any form of violence in any institution, whether it is his home, school, social up-bringing institutions or a so-called juvenile home. There are also laws relating to the verdict execution law, which is part of the laws in the judicial system that speeds up the execution of verdicts. Of course, there are judicial rulings that have been duly passed on non-criminal cases or law-suits, in which there is, unfortunately, a remarkable slowness in implementation and therefore a negligence of rights. Thus, the task of the verdict execution law is to see to it that courts issue judgements as required by their judicial function; and that there is a body that follows direct implementation of the rulings passed by the courts (INTV2).

Similarly, Participant 9 states:

If we have a glance at the Law on the Protection against Harm, we find that it is compatible with the Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW). Likewise, if we apply the same criterion to the Child Protection Law, we also find that it is compatible with the Convention on the Rights of the Child. Likewise, if we take the relevant regulations in some of the decisions issued with regard to the protection of the elderly, we find that they are compatible with the United Nations standards issued in this regard (INTV9).

The above statements highlight a number of laws and programs that have been issued by the KSA in order to enhance human rights, such as protecting women and children against violence. These laws were seen as being introduced as a result of engaging with IHRL. Importantly, these laws take into account compatibility with international norms.

A further critique of the interaction between the KSA and IHRL on human rights is provided by Participant 8 who argues:

Yes, certain changes have occurred, but they haven't been to the required degree to which we aspire. It is important to focus on the positive indicators, especially if we consider the fact that change is not easy and simple, whether it is at the level of procedure or at the level of awareness of individuals. In fact, we measure change at both levels (INTV8).

The statement reveals that Participant 8 believes the changes in the KSA's law have been insufficient. She attributes this insufficient development to the difficulty in changing the laws. Nevertheless, it confirms there has been a positive improvement in the domestic laws of the Kingdom in relation to human rights.

In summary, this section analyses the empirical data in relation to the question "What changes have there been in the KSA's law and practice that reflect a greater engagement with IHRL?" The analysis finds that most of the participants in this study from different groups

(state actors, members of civil society, human rights activists and the CEDAW committee member) perceived the interaction of the KSA with IHRL to have played a key role in changing and developing human rights law in the Kingdom. In this respect, the impact of the Kingdom's interaction with IHRL was found in three ways; first, the establishment of human rights organisations; second, the KSA ratifying international human rights treaties and conventions; and, third, the KSA promulgating a number of laws and regulations that agree with the norms of international treaties and conventions. Overall, it is perceived that IHRL triggers a review process of domestic law in order to encourage a state comply with the ratified treaty. It has been also identified that although the interaction of SA with CEDAW has lead to a positive influence on Saudi women rights, the CEDAW limits as a legal regime within the KSA domestic law due to the acceptance of its norms is subjected to its agreement with Islamic norms.

The next two sections shift the focus specifically to women's rights in Saudi Arabia. Thus, the next part analyses the empirical data in the context of the prominent changes in Saudi women's rights.

4.1.3 How Women's Rights Have Evolved since 1990

Saudi women's rights made remarkable progress between 1990 and 2016. There have been a number of programs, regulations and laws issued, which enhance, protect and empower Saudi women. These changes involve different aspects of women's rights. Based on the empirical information derived from the discussion on how the rights of Saudi women evolved because of the Kingdom interaction with the IHRL mechanisms , three sub-themes emerged; political rights, civil rights and male guardianship.

4.1.3.1 Political rights

Under this sub-theme two main political rights were mentioned by the majority of participants in the interviews: Saudi women becoming members of the *Shura* (Consultative Council), which is the formal advisory body of Saudi Arabia; and women, like men, were permitted to participate as candidates and vote in municipal elections. Participants argued that women's representation in decision-making positions is a significant improvement in their rights, as the following quote indicates:

During the reign of Late Custodian of the Two Holy Mosques King Abdullah ibn Abdul Aziz, there were developments as I said before in this regard, but the most significant one, which occurred in 2011, was represented in the passage of the

Royal Decree pertaining to giving women the right to both join *Shura* Council as members and participate as voters and candidates in the municipal election (INTV8).

Participants 6, 8, and 9 admit that enabling Saudi women to enjoy these political rights are considered milestones in Saudi women's rights in 2011.

As Participant 12 asserts:

Certainly, during the reign of King Abdullah two major events are considered milestones: the first is the Royal Decree to appoint 30 women to the *Shura* Council, with a proviso that such representation should not be less than 20% of the total constituency (150 members), and the second is allowing women to vote and be elected in the municipal elections. In both cases, women are to be treated on an equal footing with their male colleagues in terms of responsibilities, rights and privileges (INTV12).

The statement highlights that females comprise at least 20% of the *Shura* council, as well as participating in the municipal elections.⁶⁸⁷ It also confirms that these developments were achieved through the Royal Decree of King Abdallah. Participant 3 supports this view:

Let us say that in 2013, 30 women were appointed to the Consultative Council as a result of the belief of the political leadership that women should have a role to play in society and that they must contribute towards building society. This is a conspicuous proof that the Kingdom of Saudi Arabia is striving hard to enhance and empower women in the Saudi society (INTV3).

It seems that from the perspective of state actors the changes in Saudi women's rights are seen as one of the most significant changes that occurred as a result of the Kingdom's official interaction with IHRL. The statement shows that interviewees emphasise the importance of the Saudi policy maker-the king- and the state's actors in initiating change. In particular, when state actors argue that a change is because of a Royal Decree, they indicate the role of state's officials and actors' interaction with the IHRL in term of raising the outcomes of the kingdom's meeting with the IHRL during the review process of reports of the King of the Kingdom. Thus, the perception of a number of participants is that the interaction between the SA's official and leaders and IHRL is relevant in the field of political rights' changes. This improvement in Saudi women political rights is agreed with the information that heightened in Saudi third and fourth reports.⁶⁸⁸

⁶⁸⁷ According to the latest information, the number of women in *Shura* Council is still 30. See <<https://www.shura.gov.sa/wps/wcm/connect/shuraarabic/internet/home>> accessed 17 June 2018.

⁶⁸⁸ Committee on the Elimination of Discrimination against Women Consideration of reports submitted by States Parties under article 18 of the Convention on the Elimination of All Forms of Discrimination against Women Combined third and fourth periodic reports of States parties, Saudi Arabia, 2016, CEDAW/C/SAU/3-4. For more details see Chapter (7.2.3) p.229-230

Participant 4 acknowledges the significant impact of appointing women to the *Shura* council as previously this was taboo. He argues:

Thus, matters such as appointing a woman to be a member of the *Shura* Council was among the first taboos [to be broken] but these have now become ordinary matters; and that in future it is not ruled out that a Saudi woman will become a member at the Council of Ministers (INVT4).

The statement highlights that the gaining of the two political rights could lead to further development in women's rights. Thus, the interviewee believes this to be a starting point for further gains. The influence of the kingdom engagement with IHRL on empowering Saudi women concerning these political rights is indicated in the Kingdom third and fourth reports. These reports refer to the information on the fulfilment of the commitments made by Saudi Arabia in respect of the provisions of the Convention and the concluding comments of the CEDAW Committee. The reports clarified that "Royal Order No. A/44 of 29/2/1434 A.H. (12/01/2013) amending article 3 of the Shura Council Law. The order provides women with the right to serve as full members of the Shura Council and to hold a minimum of 20 per cent of the seats on the Council, whereas previously women participated in its proceedings only as advisors. Royal Order No. A/45 of 29/2/1434 A.H. (12/1/2013) was also issued to appoint members to the Shura Council in its sixth session (15/1/2013-2/12/2016). Thirty women were appointed to serve as members of the Shura Council."⁶⁸⁹ It seems that these improvements were accomplished in order to fulfil the recommendations made by the Committee to the Saudi government which sought to increase women's participation in political life, such as allowing women to vote in the 2012 municipal elections, allowing women to fully enjoy their rights as a member of the Consultative Council rather than just participate in an advisory capacity on select issues, and encouraging women to hold high-profile positions and enjoy their leadership roles.⁶⁹⁰

In this section, the empirical data regarding political rights of Saudi women is analysed. In this respect, the participants confirm the improvement in Saudi women political rights between 1990 and 2016. In particular, two significant changes occurred: first, Saudi women were appointed to the *Shura* council; and, second, Saudi women were able to participate in municipal elections as both voters and candidates. Additionally, it is shown that these

⁶⁸⁹ Committee on the Elimination of Discrimination against Women Consideration of reports submitted by States Parties under article 18 of the Convention on the Elimination of All Forms of Discrimination against Women Combined third and fourth periodic reports of States parties, Saudi Arabia, 2016, CEDAW/C/SAU/3-4. P.20 For more discussion see Chapter (7.2.3)

⁶⁹⁰ 'Saudi Arabia' <<http://www.refworld.org/docid/4b99011da0.html>> accessed 19 July 2016. For more discussion see Chapter (2.2.2.1)

improvements in women's rights were achieved as a result of Saudi official and policy makers' engagement with the IHRL mechanisms, which reflects the importance of state's official interaction with the IHRL on enhancing women's rights. The next section analyses changes in Saudi women's civil rights.

4.1.3.2 Civil rights

The concept of civil rights covers a number of rights that are guaranteed for a state's citizens and residents in its domestic law. When participants discussed the question related to the changes in the rights of Saudi women since 1990 that could be influenced by the Kingdom's interaction with the IHRL, they highlighted three themes around civil rights; namely, education, identity cards and the labour law. These three aspects are considered in the following sections.

4.1.3.2.1 The right to education

Access to education is considered one of the most significant changes in developing women's rights in the KSA's domestic law. Before 1990, education was not widely available for women. Participant 9 describes the situation of women's education at that time:

Women were not able to access to education and learning at a certain level, but the matter has now become socially required (INTV9).

Thus, the interviewee indicates that certain women's rights can be prohibited at a given time but may become acceptable and socially necessitated rights with time; for example, education for girls. In 1956, Saudi society considered it unacceptable to send their daughters to primary school,⁶⁹¹ but now it has become socially acceptable for girls to go to school and women to university.

In recent years, the Saudi government has developed the education system in favour women. Thus, there has been a huge transformation from a situation where there were a limited number of schools for girls to a situation where female students can receive scholarships to pursue postgraduate studies whether inside the KSA or abroad. As Participant 1 states:

At first, there were only a limited number of schools for women and now we see a huge qualitative jump in women's education, which has resulted in a scholarship program for both male and female Saudi students to study abroad, and in which the women's proportion is higher than that of men. This is despite the fact that

⁶⁹¹ For more details about the education of Saudi women see Haya Saad Al Rawaf and Cyril Simmons, 'The Education of Women in Saudi Arabia' (1991) 27 *Comparative Education* 287.

sending women to study abroad costs more than sending men, because women need to be accompanied by a [male] relative (INTV1).

Thus, Participant 1 highlights that the improvement in women's education was not limited to the undergraduate stage, but also involved postgraduate studies. When the King Abdallah Program for Scholarship was established, women were able to receive government scholarships to study at different European or American universities. It seems that the improvement in women education state was because of the kingdom implemented the comments that placed by the CEDAW committee.⁶⁹²

Participant 2 confirms that the percentage of women in the scholarship program is higher than men:

The level of education for women exceeds that of men. In the scholarship program offered by the country for the Saudi male and female students to study abroad, we notice that the percentage of women enrolled in the higher education program is higher than that of men (INTV2).

Furthermore, Participant 3 supports this view:

I can quote another example, which is focused on the fact that the latest recorded percentage of young Saudi females currently benefiting from the scholarships for studying abroad within the framework of the Saudi Program, is greater than that of young Saudi males (INTV3).

The statements highlight that the rights of women in education are considered by the participant to be equal to men. The increased participation of women in education is seen as a key driver for increasing the participation of women in Saudi society.

However, Participant 5 argues that there is a difference between enabling women to access their basic rights and their achievements in the field of education:

It means that it is emphasised that Saudi women have achieved much in education. In my opinion, I consider that the achievement of women in education or their securing a high academic qualification or assuming a prominent position at work doesn't properly reveal their position in field of rights (INTV5).

Participant 5 goes on to argue the success is down to personal achievement and not because the state has developed the education system for women:

If we say that 20 women, for instance, are now holders of doctorate degrees in a particular field, their remarkable academic achievement is linked to mere luck, and not attributed to the enforcement of laws (INTV5).

⁶⁹² For more details see Committee on the Elimination of Discrimination against Women Consideration of reports submitted by States Parties under article 18 of the Convention on the Elimination of All Forms of Discrimination against Women Combined third and fourth periodic reports of States parties, Saudi Arabia, 2016, CEDAW/C/SAU/3-4. Part Three (arts. 10-14) Article 10 and paragraphs 29 and 30 of the concluding comments. P.35-37

However, this view contradicts other participants' perceptions that the role of regulation, such as the King Abdallah Program, has provided the necessary changes to allow women to complete their higher education in different universities across the world.

In summary, this section analyses the empirical data regarding the changes to women's civil rights in relation to education between 1990 and 2016 in the KSA's domestic law. The results indicate that the education system has witnessed a significant change with regard to women's education. It found that after 1990 women became more equal to men in terms of the opportunities in accessing general education and in the higher education levels of education. It also found that the establishment of a particular program for scholarship reflected positively on women achieving their ambitions and participating in building Saudi society. When participants discussed the question related to the changes in the rights of Saudi women since 1990 they said that this could be the result of the influence played by the Kingdom's interaction with the IHRL. It seems, for instance, that the improvement in women's education was because of the kingdom implemented the comments that it received by the CEADW committee. These improvements in the education system apparently occurred due to this interaction.

4.1.3.2.2 Identity Cards and Family Certificates

Until 2001, Saudi females could not have their own identity card; they only could obtain a family card. However, in 2001, the KSA law was changed to allow women to hold an independent national identity card. This law is described by participants as one of the most significant advances in women rights when they were asked; To what extent, if at all, are the changes influenced by engagement with IHRL? Participant 11 states:

One of the most prominent achievements is [gaining] an identity card (INTV11).

Participant 10 supports this opinion:

Furthermore, we have to acknowledge that the national identity [card] for women has been approved (INTV12).

These two statements reveal that allowing women to obtain an independent national identity card is a major improvement in Saudi women's rights. Previously, women faced obstacles in establishing their business and investment. Importantly, national identity cards allow women to manage their affairs without the need to obtain the consent of male relatives, in particular in cases that relate to their personal business.

Another significant law enhancing women rights was issued by the Saudi government in 2016. The law allowed women to obtain copies of a family certificate in the same way as men. This right was highlighted by Participant 12:

The right for mothers to obtain a duplicate of the family certificate of the family, just like the one issued to the father, so that she can manage her children affairs. This was achieved in late 2016 (INTV12).

This right is particularly supportive of divorced women who previously suffered in relation to their children's rights, such as custody, attending school and other affairs.

Along with this law, the Ministry of Justice issued new regulations relating to the use of fingerprint identification in court reviews, as Participant 5 pointed out:

But, I think the activation by the Ministry of Justice of the use of the personal fingerprint of individuals instead of demanding that a person brings a trustworthy individual to witness that he knows the person in question (INTV5).

The old judicial system adversely affected women who were unable to meet the condition of bringing a trustworthy individual. Abolishing the requirement for a reliable witness to establish their identity enables them to submit complaints to the courts easily and confidentially. Participant 6 confirms:

Many regulations and laws pertaining to women have been promulgated in the Kingdom of Saudi Arabia, the judicial system has greatly improved [for women] and women have been able to submit their problems and issues to the concerned authorities (INTV6).

Furthermore, participants perceived changes to the judicial system as some of the most important improvements to women's rights. Updating the judicial system to serve various categories of Saudi society helps women obtain their rights. It seems that the updating in Personal Status Law was occurred in response to the concern of the CEDAW Committee regarding certain provisions of the Saudi Arabian Nationality Code, the Kingdom amended by Royal Decree Article 67 of the Personal Status Law to make it compulsory for women to obtain a national identity card, whereas previously it was optional.⁶⁹³

To conclude, participants believed that changes in Saudi women's civil rights included access to individual national identity cards, family certificates and improvements in the judicial system. The results indicate that one of the major improvements in women rights was access to the legal system that enabled women to obtain a national identity card independent of any male relative. It also found that the use of personal fingerprints in courts instead of providing

⁶⁹³ Committee on the Elimination of Discrimination against Women, Consideration of reports submitted by States parties under article 18 of the Convention, Combined third and fourth periodic reports of States parties due in 2013, Saudi Arabia, 2016, CEDAW/C/SAU/3-4. 20. For more discussion see Chapter (7.2.3).P.232.

a male witness was another significant improvement in Saudi women rights. These improvements in women's rights apparently ascribe to the role of the kingdom joining the CEDAW, and the kingdom policy makers responding to the committee's recommendations.

4.1.3.2.3 The Labour Law

Participants indicated that a number of laws were issued by the Ministry of Labour to improve certain aspects of women's affairs in relation to work and commercial practices, as Participant 6 explains:

Likewise, via the development of labour laws, women were able to obtain their rights in the private sector, which changed the regulations pertaining to delivery leave⁶⁹⁴, whose duration was previously only two weeks, but has now been extended to eight. Furthermore, leave granted to a woman on the death of her husband (IDAT) that did not exist before. However, these two types of leave have now been endorsed and incorporated into the law (INTV6).

The statement reveals that the new regulations now take into consideration the circumstances of working women. During these leaves of absence, women receive a full salary, as Participant 2 confirms:

All vacations, including delivery leave, maternity leave⁶⁹⁵, IDAT (days counting) leave (which extends for a period of four months and ten days) and the leave for care of the new born baby are all given to women with full payment [of salary] (INTV2).

Furthermore, Participant 2 adds:

These laws have been promulgated for women in accordance with their circumstances and in line with the teachings of Islam (INTV2).

The statement reveals that the protection of women's rights in the labour market are seen as derived from *Shari'ah* texts and instructions. This provides an illustration of the way in which *Shari'ah* influences the Saudi government's practices towards developing women rights.

⁶⁹⁴ According to the Saudi system of leave, female employees are entitled to delivery leave with a full salary for 60 days. See <<https://www.mcs.gov.sa/en/Pages/default.aspx>> accessed 19 October 2018.

⁶⁹⁵ Female employees are entitled to maternity leave which starts from the last day of delivery leave for up to three years with one-quarter of monthly salary. See *ibid*.

Moreover, Participants 10 and 12 indicated that the Ministry of Labour has developed policies for the improvement in the working environment for women workers. The following quotes highlight such improvements:

The Ministry of Labour has adopted policies that allow women and others to enjoy flexible work conditions including part-time, working from home, etc. Also, the Ministry of Labour requires businesses that employ 50 or more women to provide child care facilities [this is a work in progress] (INTV12).

If you compare The Law of Labour and Labourers with the relevant Conventions issued in this regard, you will find that it prevents children working and grants male and female labourers their due rights. For example, if a commercial establishment has more than 50 female workers in its overall workforce, it is required by law to provide them with a nursery to help them look after their babies; and that the Law stipulates that an establishment should have a health centre for every hundred female workers (INTV10).

Furthermore, it is not compulsory for women to do night shifts, as Participant 10 states

We find that the Law provides that the woman shall not work evening shifts, but if she prefers or chooses to do so, in this case, she must be given additional financial compensation (INTV10).

These changes in the rights of women workers reflect the government's desire to acknowledge the circumstances of women.

Furthermore, women are now able to open and register a company independently of men, as described by Participant 1:

Moreover, women have also become independent in regard to the issue of the commercial registration of companies and accounts in their own names (INTV1).

Thus, women have become more independent by being able to practice and manage their own businesses, without the consent of a male relative. This reduces the restrictions that affect women's participation in the business sector. In this context, Participant 9 states:

We also remark that there is a progress in the application of laws, not just in adopting the text of laws, especially in regard to the economic and social rights of women (INTV9).

Thus, Participant 9 believes that legislation is now being adhered to, which supports women's economic and social rights. Any weakness in the implementation would undermine the legislation and thus impact on the rights of women.

Another significant development raised by a number of participants is that Saudi women can now be employed in a wider range of jobs, such as working as cashiers, advisers, and

directors, as well as being a President of a University. This change was confirmed by Participant 8:

This is considered a qualitative leap in women's rights in the country as it opened for women different work fields.... The above in my opinion is the most significant development on female issues in our country (INTV8).

Participant 10 supports this view:

Firstly, as for the Saudi woman in particular, we find that the most prominent achievement is that she is given the opportunity to assume any job and enjoy equality of treatment in work with a man, who now can't be above her in employment just because he is male (INTV10).

Thus, Participant 4 believes that females being able to work as a cashier next to a male colleague is one sign of the positive changes that have occurred women rights:

I believe that there is some sort of leap in the case of the human rights issue. At least, the solution in regard to allowing women to work with men in supermarkets or malls as cashiers, even if this is a simple matter (INTV4).

The statement supports the participants' beliefs on the progress on the rights of women to hold different jobs instead of restricting certain functions to males.

According to Participant 9 the transformation in allowing females to work in specific jobs that were previously banned could be a result of social demand:

It was undesirable in the past that women join the workforce as employees beside men, but it has now become a demand that women work, and that families seek to help their daughters to join workforce, as they will be of great benefit economically (INTV9).

However, participant 10 attributes the change to the Kingdom joining CEDAW:

We have to admit that there are certain positive aspects in CEDAW, because it achieved for Saudi women due progress in terms of giving them the right to jobs and their equality with men in relation to various job types and degrees. The jobs for women were in the past confined to only grade six or seven rank but after application of CEDAW as an international convention, Saudi women can assume high positions, including those of advisers and directors, as well as even that of the president of a university (INTV10).

The participant believes that the KSA joining the CEDAW has positively affected the development of women rights. This is because signing the CEDAW led to the Kingdom amending its Labour Law and opening various jobs to women, as well as enabling women to participate in high positions. Thus, the domestic implementation of the CEDAW Convention resulted in many positive changes pertaining to Saudi women's civil rights. The linkage between these improvements and the state engagement with the IHRL could be seen throughout the Kingdom's reports, written in fulfilment of the concluding comments of the Committee. It is indicated that the king issued a "Royal Order No. A/121 of 2/7/1432 A.H.

(4/6/2011). This order covers programmes, procedures and directives designed to open up employment opportunities for Saudi women in the industrial, economic and services sectors and provide the necessary support for the employment of women and for boosting their participation in economic activity in the labour force to support the implementation of decisions issued in this regard.”⁶⁹⁶

To conclude, this section investigates the empirical data from the interviews in relation to the changes in Saudi Arabia’s domestic laws. The focus is on the changes to the civil rights of women in relation to the labour market. The results show that between 1990 and 2016 there were significant changes in the Labour Law regarding working women’s rights. Three important changes are discussed: first, the modifications to the regulations of women worker’s paid leaves of absence to bring them into line with their male colleagues; second, laws were issued to support women to be independent of men in practicing and managing their own business and personal affairs; and, third, changes in the law opened the door to Saudi women to be employed in a wider range and level of jobs. This analysis also highlights participants proposed three different reasons for these changes; first, the influence of *Shari’ah*, second, social demand, and third the impact of IHRL.

4.1.3.3 The male guardianship issue

Male guardianship was one of the dominant issues raised by participants throughout the interviews. Participants indicated that male guardianship could prevent women being treated as full citizens and undermine their rights, such as political rights or social rights. Participant 5 highlights certain negative aspects of male guardianship:

However, let me give you the example of 30 women who were appointed as members at the *Shura* Council; if a guardian of any of the appointed women refused to allow his daughter or sister to participate as member in the said Council, no one would be able to compel him to revoke his decision and allow her to go for participation as he is protected by the male guardianship law over females. There is no law to support the woman and let her say that I have been appointed as a member to the *Shura* Council and I should participate in the Council deliberations, if her guardian refuses to let her leave the house and participate as she demanded; everything is finished (INTV5).

Thus, women holding a high political position in the KSA could be affected by the role of guardianship as there is no law to protect women from the practice of her male guardian.

⁶⁹⁶ Committee on the Elimination of Discrimination against Women, Consideration of reports submitted by States parties under article 18 of the Convention, Combined third and fourth periodic reports of States parties due in 2013, Saudi Arabia, 2016, CEDAW/C/SAU/3-4.p.21.

Thus, participants assert that the Saudi government is working to minimise the impact of male guardianship. In this respect, there is a connection between allowing women to obtain their national identity card and tackling the issue of male guardianship, as Participant 10 confirms:

We have to acknowledge that the national identity of women has been approved; and that there was re-consideration of the issue of male guardianship over females, together with an explanation of its limits and organisational aspects (INTV10).

The statement reveals that the law to allow women to obtain their identity cards reduces male control over females. In this context, the government has begun to tackle the issue of male guardianship in two ways: by defining the areas of practice of male guardianship; and issuing laws to manage this issue.

Another step to tackle this issue, which is also related to women obtaining their identity card, is that of movement and travel. Before the issuing of the national identity card, men practicing male guardianship were able to restrict women's movements. However, once women were able to obtain an identity card, they were able to move with freedom, as indicated by Participant 10:

Yes, there has been some sort of enactment. In fact, there are now relevant circulars to government departments. These comprise allowing woman to travel with the usage of a national identity card instead of a male guardian, reconsidering the status of the women who provide sustenance for her family, and reconsidering the law on giving the women the right to carry an identity card for herself and her children. Likewise, in the past a woman used to have a place-restricted custody and child care, but now she has unrestricted legal child care and custody as she has equal rights to the father which include the one [right] for the registration of children and travelling, as well as moving with them to the different parts of the country (INTV10).

Thus, Participant 10 indicates that there is a development in the law to limit the impact of male guardianship on women. Male guardianship has prevented women from enjoying certain rights, for example, widows have suffered in securing custody of their children and registering them in schools or hospitals. Thus, establishing new regulations, including the woman's national identity card to solve this complex issue, is seen as a positive move on reducing male influence over females. Participant 10 is supported by Participant 9, who confirms that the issue of male guardianship is being address through the law:

In regard to procedures pertaining to obtaining the approval of the guardian of the female for pursuing her education or joining workforce as a working individual, these have been reduced substantially in practice because of the so-called public

law, which covers and adequately addresses such cases, and whose provisions must be respected and fully complied with (INTV9).

The issue of male guardianship is rooted in different aspect of women's life because it may be connected to religious aspects or practices based on traditional culture and customs. However, recently, the King has requested existing laws be reviewed. In doing so, he sought to draw a distinction between practices with a legal basis (i.e. an Islamic interpretation) and those with a cultural basis. The following quote from Participant 10 clarifies this:

Furthermore, King Salman's most recent directives also required all government ministries to review procedures related to services provided to women that require the approval of the male guardian and to identify those that have a legal basis and those that do not have any legal basis and to report to King Salman in three months, which is due to end soon (INTV10).

The statement reveals the importance of the role of the King as a policymaker in developing Saudi women's rights and tackling the obstacles that may affect their rights. It indicates that the Royal Directive to the relevant government bodies will help women receive services without the need for a male relative's agreement. Participant 10 explains this point in more detail:

They [women] are treated equally with men in the judicial system for any criminal actions. Thus, the contradiction of the guardianship system is obvious and I believe King Salman's directives will solve many every-day problems faced by women, such as requiring the approval of the guardian for medical treatment, or employment or registering in schools and universities and such every day matters (INTV10).

Participant 10 is optimistic that many issues related to the guardianship practices will be resolved. However, in cases where guardianship is underpinned by an Islamic authority, such as women travelling with male relatives or with the permission of her guardianship, then these cases will remain unchanged. This is because they are based on Islamic texts, as Participant 10 explains:

However, the requirement for the guardian to approve the issue of a passport and the travel permit for the family woman has a legal basis. Thus, these will remain hanging until such time a decision is made to remove this restriction (INTV10).

Thus, legal changes that are unrelated to *Shari'ah* provisions but have a traditional basis have occurred. Changing the law has been easier in relation to the behaviours and practices of men that stem from traditional culture than have a legal (Islamic) base.

The above statements also indicate the efforts of policymakers and the government to address the issue of guardianship over women. These efforts compliment the impact of the IHRL mechanisms, which have focused attention on the male guardian issue. The CEDAW

Committee members and the UPR have made recommendations relating to the issue of women having to obtain male consent to register at university. Participant 1 explains:

We have received a recommendation for cancelling the condition pertaining to the agreement of the guardian of the female student for entering the university; we complied with the recommendation and cancelled the condition (INTV1).

In this case, the Kingdom has implemented the Committee's recommendations as this norm is not against *Shari'ah*. This shows how IHRL can be an effective tool in changing laws and regulations that have a cultural basis. In this vein, the kingdom in its recent reports clarified in response to the Committee of CEDAW concluding comments that: "The Ministry of Islamic Affairs, Call and Guidance undertakes..... to correct objectionable practices that are based on a misunderstanding of guardianship and custodianship and the complementary roles of men and women enjoined by the Islamic Sharia."⁶⁹⁷ These reports were examined by the relevant committee which provided comments and recommendations to the Kingdom and to the HRC. The feedback indicated that the Kingdom should amend its laws to comply with the accepted recommendations, such as reducing the role of male guardianship.⁶⁹⁸

However, Participant 6 highlights the differences between the IHRL mechanisms and the Kingdom's understanding of some of the issues related to Saudi women. She states:

To these claims and what they [IHRL] term restrictions on women, they added the issue of a male guardianship over every female in any social matter. They demanded that all these claims and restrictions on women must be lifted from women in the Kingdom of Saudi Arabia. Additionally, there are many matters promulgated in Islamic law but are seen by these organisations as condoning violence against women. In international law, they use attractive terminologies that are positively described, such as reproductive health which comprises the dissemination of sexual culture and sexual practice (INVT6).

Thus, Participant 6 suggests that international norms ignore different societal values. In the case of the KSA, there are certain norms that have Islamic legitimacy for Muslims, but are seen by international human rights organisations as restrictions on women. Furthermore, IHRL may assert specific rights that are forbidden in Islamic law. In this context, Participant 6 provides an example regarding reproductive health; he argues that according to *Shari'ah* sexual relations outside the framework of marriage are prohibited, whereas according to international law standards such relations are acceptable and within the rights of the individuals even if they are not married. Thus, it can be seen that there is conflict over

⁶⁹⁷ Committee on the Elimination of Discrimination against Women, Consideration of reports submitted by States parties under article 18 of the Convention, Combined third and fourth periodic reports of States parties due in 2013, Saudi Arabia, 2016, CEDAW/C/SAU/3-4. P.28-30

⁶⁹⁸ This issue will be discussed in depth in Chapter (7.2.3)

cultural differences, that can affect the ability of IHRL to influence changes in improving human rights. Participant 6 confirms:

This [IHRL] culture completely contradicts both Islamic culture and Islamic law and herein lies the issue that affects the identity and culture reference and this matter is true, because it is the issue of the international human rights set (INVT6).

Thus, issues raised by IHR organisations that are closely connected to social identity and local culture are unlikely to be accepted by the impacted society, which resists the international norms and maintains their religion, identity and social privacy. This means that changes in these are unlikely to occur as Saudi laws are built upon Islamic law.

To sum up, this section analyses the empirical data from the interviews related to the issue of male guardianship. It finds that the issue of male guardianship is complex but have been the focus of attention by human rights organisations, as well as Saudi government. The findings show that there have been a number of regulations issued to tackle the practices of male guardianship over women. The most significant change in this respect was allowing women a right to obtain their independent national identity card. This law reduced the practices of male guardianship because it allows women to move freely and practice their rights without male consent. However, male guardianship in certain issues have an Islamic basis, for example, consent of a male guardian is one of the conditions of marriage for women. In such cases, change is likely to be resisted. On the other hand, male guardianship that is based on traditional culture is being abolished. The driver for change in this respect was the result of the IHRL mechanisms and government cooperation with these mechanisms. This occurred when the KSA responded to the requirements of the CEDAW committee and the UPR working group. Overall, the results show that although there can be conflict between the KSA's law (*Shari'ah*) and the law of human rights in certain norms, the IHRL has impacted positively on the law of KSA in other areas.

4.1.3.4 Establishing organisations and laws to protect women's rights

The participants in their interviews highlighted various laws, human rights programs, and institutions established by the KSA to enhance and protect human rights in general and women rights in particular. The participants saw that the establishment of the Basic Law of Governance in 1992, which stipulates equal rights for all citizens as a significant step taken by the government in the field of human rights. Participant 2 explains:

In the past twenty-six years, many laws have been promulgated, the first of which was the Basic Law of Governance. This Basic Law did not deal with a specific category with the exclusion of the other; it dealt with all equally and with due justice. The Basic Law of Governance clarifies the rights, duties and obligations, as well as responsibility of citizens towards the state and that [responsibility] of the state towards the citizens (INTV2).

Participant 3 also underlines the relevance of establishing the Basic Law:

This is evidence that the preservation of human rights is stipulated in the said Basic Law (INTV3).

These two statements indicate that protecting and enhancing human rights is the state's responsibility. Thus, the KSA issued the Basic Law of Governance to ensure the human rights of citizens and clarify their duties toward the state. Therefore, the Basic Law underpins the equality of women with men in Saudi Arabia.

Another step highlighted by participants regarding the changes in the KSA's domestic law is the establishment of human rights bodies. The participants consider the establishment of the Human Rights Commission and National Society for Human Rights as milestones in the development of human rights in the KSA, as Participant 7 confirms:

I would like to inform you that my readings regarding legal aspects is inadequate, but I think that the very establishment of the Human Rights Commission and the National Association, as two relevant institutions, is considered the most prominent changes in human rights that notably elevated the status of women and vigorously defended their rights (INTV7).

Participant 2 and Participant 3 support this view, as the latter states:

When the Kingdom of Saudi Arabia establishes an Independent Human Rights Commission, this is seen as a clear evidence for the enhancement of the human rights for all the inhabitants of the country, not just the Saudi citizens (INTV3).

The establishment of human rights bodies was important because these organisations protect the human rights of everyone who live within the Kingdom including women. Information on the fulfilment of the obligations made by the kingdom regarding the Convention's provisions and the Committee's final comments indicates that "they promote the establishment or support the establishment of institutions intended to strengthen and protect human rights, including women's rights. These institutions include the Human Rights Commission, National Society for Human Rights and other institutions mentioned in chapter I of the

present report as well as government agencies.”⁶⁹⁹ Thus, it could be seen that there is a link between the Committee’s comments on state’s reports and the establishment of human rights institutions.

In addition, there was an overall consensus among the participants that laws specifically issued to protect certain groups rights such as vulnerable women and children against abuse is another significant change in the Kingdom’s laws. Participant 10 indicates:

Secondly, women should not forget the enactment of Law on Family Protection, Law on Protection Against Domestic Violence, and Law on the Formation of Apparatus and Mechanisms that have been passed (INTV10).

These laws have been issued to protect against the abuse of women and children, without the need for them use human rights organisations that receive a huge number of complaints from different sectors of society. Thus, the laws that deal with certain issues help tackle the issue quickly.

More specifically, Participant 8 highlights a significant law which protects women against harm:

The Law of Protection against Harm is considered very positive as a starting point; particularly for me as I have been working for a long time in the field of fighting violence (INTV8).

Furthermore, Participant 3 highlights the Royal Decree to prevent human trafficking including women:

there are other Laws such as the human anti-trafficking law. Moreover, we have a committee, an affiliate of the Human Rights Commission, titled Anti-Human Trafficking Committee, which was created by a Royal Decree to effectively curtail and combat human trafficking crimes (INTV3).

Thus, the participants believe that one of the indications of the improvements in protecting women’s rights is the passing of new laws.

To conclude this section, the analysis focuses on changes that have occurred in the KSA’s domestic law. The results show that three steps have been taken by the government to protect women rights: first, establishing the Basic Law of Governance; second, creating human rights organisations and institutions; and, third, introducing legislative programs against various types of abuse. These domestic law changes are attributed to two main factors: the efforts of the King and political leaders; and the influence of the KSA’s engagement with IHRL. In

⁶⁹⁹ Committee on the Elimination of Discrimination against Women, Consideration of reports submitted by States parties under article 18 of the Convention, Combined third and fourth periodic reports of States parties due in 2013, Saudi Arabia, 2016, CEDAW/C/SAU/3-4. P.20-21

order to ascertain the exact role of these two factors, the next chapter examines the data from the interviews in this respect.

4.2 Chapter Summary

The chapter analysed the data relating to the development of and changes in the KSA's domestic law pertaining to human rights. In Section 4.1.1 the general changes in the domestic law of the KSA regarding human rights were analysed. The vast majority of participants agreed that different laws were changed or promulgated between 1990 and 2016 which enhanced human rights in general in the Kingdom. However, the participants argued that the real changes in this respect were achieved by King Abdallah following his accession to the throne in 2005.

Section 4.1.2 assessed the changes in the KSA's domestic law that the participants believed occurred as a result of the Kingdom's interaction with the IHRL. The findings indicated that the interaction resulted in the development of the Kingdom's domestic law in relation to human rights. The consequences of this interaction are noticeable in three measures: first, the establishment of Saudi human rights organisations; second, the KSA joining international human rights instruments; and third, the KSA establishing various laws and regulations that comply with the IHRL norms. However, the findings indicate that acceptance of the norms of the IHRL are subject to compliance with the rules of *Shari'ah*.

In Section 4.1.3, the data pertaining to the changes to Saudi women's rights from 1990 to 2016 were analysed. Four main changes were found. The first was Saudi women's political rights with women being appointed as members of the *Shura* Council, and they were also able to participate in municipal elections as both voters and candidates. Second, the data highlighted a significant change in the civil rights of women, including in the education sector, being able to obtain an independent national identity card and changes in the Labour Law. The third change involved addressing the issue of male guardianship by issuing regulations that reduced its impact on women; however, where male guardianship was legitimised by *Shari'ah* then changes have not been possible. Fourth, the government of Saudi established different laws, human rights institutions, and various programs to attempt to stop domestic violence against women. These domestic law changes are attributed to two key factors: the efforts of the King and political leaders; and the influence of the KSA's interaction with IHRL and its joining the IHRT such as the CEDAW. In this respect, the next

chapter assesses the data from the interviews in order to understand the role of these and other factors that potentially influence the human rights changes in the context of the KSA.

Chapter Five:

Data Analysis and Findings 2: Factors Contributing to Changes in the KSA's Domestic Laws in Relation to Human Rights

In the previous chapter, the positive developments that have occurred since 1990 in the KSA's domestic law regarding human rights, in particular those rights related to women, are analysed. This chapter analyses how and why this change occurred and answers Research Question 2 'What are factors to which these changes can be attributed?'. In this context, the chapter presents the relevant empirical data and findings. It is divided into two sections; first, it analysis the themes and sub-themes that emerged from the data collection; and, second, it brings together the findings presented throughout the thesis.

5.1 Factors Contributing to the Changes in Human Rights Law in the KSA

In the interviews, the participants were invited to discuss their views on the factors that they believed had contributed to the changes that have occurred in the KSA's human rights in general and women's rights in particular since 1990. Participants believed that there were a number of factors that resulted in the changes. These factors can be classified into three themes: first, the political environment in the KSA, including *Shari'ah*, political will, Royal Decrees, and policymakers' and state officials' efforts; second, factors outside the political environment of the Kingdom, including the role of individuals, citizens and women, education, economics, urbanisation and the media; and third, external factors which include IHRL and its mechanisms.

5.1.1 Factors Related to the Political Environment in the KSA

Participants in the interviews highlighted that the promulgation of the Basic Law (constitution) of the KSA was a major factor impacting on the changes and development that occurred in the last two decades. In this respect, they highlighted the role of *Shari'ah* which underpins the Basic Law of the Kingdom along with political will, Royal Decrees, and policymakers' and state officials' efforts.

5.1.1.1 *Shari'ah*

The participants believed that an influential factor that has encouraged the Kingdom to be interested in human rights is Islamic principles, which are the basis of the KSA's legal system. The following quotes highlight this belief:

The standards or criteria are based on the Holy Qur'an and Sunnah. The Kingdom of Saudi Arabia has an explicit law which is based on the recognition of rights in accordance with the provisions of *Shari'ah* and *Sunnah* (INTV2).

I argue that Islamic law is an influential and decisive factor in this matter. (INTV7).

Participant 3 extends this argument by linking *Shari'ah* with human rights:

I am personally of the opinion that the enhancement of human rights in the Kingdom of Saudi Arabia stems from the Islamic faith, which is deeply rooted in the country, and whose principles call for the protection and promotion of human rights (INTV3).

As I mentioned to you regarding the matter which the Basic Law of Governance stipulates in one of its articles that the state protects human rights in accordance with *Shari'ah* (INTV3).

In line with them, Participant 13 believes that:

The Qur'an provides the highest justice for mother and for women and wives; highest justice in the family courts and family life and marriage and everywhere (INTV13).

These statements indicate the participants' beliefs that the KSA applies *Shari'ah* norms, and that these support the norms of human rights. Furthermore, these statements reveal the view that Islamic principles have encouraged the Kingdom to improve its human rights legislation because Islam calls for the protection of and respect for human rights and dignity.

Participant 7 indicates that the state must take into account *Shari'ah* when developing women rights:

The state considers the development of women's rights but it does not object to the *Shari'ah* and its restrictions (INTV7).

In this context, Participant 12 argues that the religious interpretation of Islamic norms could, for some issues, have a greater impact on promoting women's human rights than the issuing of regulation or laws by the government:

Some of the issues facing women are solved by religious interpretations rather than by legislation, such as considering the issue of tribal lineage as not being accepted religiously (INTV12).

The statement reveals the participant's view that Islam may exert a stronger influence on modifying individuals' behaviours and practices than does the regulations established by the government, in particular regulations that have no relation to religion. Thus, in the context of Saudi Arabia, certain issues can be solved by Islamic scholars' interpretations, known in Arabic as *fatwas*. These *fatwas* can be verbal interpretations and are accepted by Saudi society because of their Islamic authority. For example, Saudi women may be abused because of tribal customs or practices, which have not been banned by legislation but can be

forbidden in a *fatwa*. Thus, *Shari'ah* may be more effective in eliminating certain violations of women's rights than a domestic law passed to eliminate these practices. This highlights the status and impact of *Shari'ah* on Saudi society because it has its religious sanctity and legitimacy.

Thus, the participants strongly believe that the *Shari'ah* has been a significant factor in influencing the KSA's human rights development. In this context, the participants also indicated that any change in the law of the Kingdom should comply with the norms of Islam. Arguably, then, human rights norms in the KSA appear to be protected due to the role of religious norms and they are articulated within the normative framework of that society, such as through *fatwas*. It was posited that *fatwas* could be an effective way of enhancing women's rights because they have Islamic legitimacy.

5.1.1.2 Political will

Several participants asserted that the changes in the domestic law of the KSA regarding human and women rights have been achieved because of the state's leadership and political will. Thus, Participant 2 argued:

I do not have a perception of the factors that led to this change, but I believe that the Kingdom of Saudi Arabia was granted successful, sagacious leadership with political will, which helped it to recognise and approve the rights without having the need to listen to others or in response to the pressure exerted on the country to implement certain matters (INTV2).

Participants 6, 7, 10, and 13 supported this view:

Additionally, the political will has assisted directly and significantly in developing numerous matters pertaining to women in the Kingdom of Saudi Arabia (INTV6).

As regards the factor of political will, I think it is an echo. The State pays attention from one side to the internal affairs and coherence as well as satisfaction of society and from the other to the outside world, its pressures, correspondences, contacts and statements. The State is attempting to reconcile the two sides as much as possible and I am sure that the State has a certain ambition to raise the ceiling of change, but it doesn't not want to collide with the public opinion (INTV7).

However, what is significant is that the government's will and support are still with us; and that we have now had a particular imprint on the work pertaining to human rights, an act which is known internally and externally (INTV10).

The government is trying and the present King and Crown Prince have tried hard to provide women full autonomy (INTV13)

The quotes indicate that the government's role in improving the human rights position is achieved through maintaining a balance between the internal and external requirements. In

this context, Participant 1 signposts the importance of the role of the Saudi government's support for developing Saudi women's rights:

This attitude reflects the real intention of the State in caring for women. If the Kingdom of Saudi Arabia had not been interested in this matter, it would have left the status of women to remain as it was (INTV1).

The statement reveals the participant's belief in role of the political will in terms of bringing about changes and improving the rights of women.

Participation in the HRC was cited as evidence for the political will to enhance the Kingdom's domestic human rights situation:

I consider that the membership of the Kingdom of Saudi Arabia in the said Council reflects a sincere intention to improve the status of women and to take care of their rights (INTV1).

In contrast, Participant 13 indicates the will of the government to cooperate with IHRL:

I see that SA is progressing toward IHRL roles and regulations (INTV13)

Another institutional development was also highlighted by Participant 1:

If the Kingdom of Saudi Arabia had not been interested in the issue of human rights, it would not have established both the Human Rights Commission, which has 400 employees and branches throughout the country, as well as the National Association for Human Rights (INTV1).

In addition to the will of the government, Participant 11 also highlights the political will of the King, in his response to human rights activists in the country:

The Monarch demanded to meet personally those who have signed the document. He kindly met some of the signatories and told them their project is the same as his current project, which is the reform project; and he was very glad about meeting them (INTV11).

Similarly, Participant 8 highlights the role of officials in the Kingdom in improving human rights through government bodies, such as the Ministry of Labour and Social Affairs.

There have been certain responses from official and responsible circles such as Ministry of Labour and Social Affairs (INTV8).

In relation to the political will factor in improving the rights of women, a number of participants believed in the power of the government to bring about positive change. For example, Participant 12 stated in reply to the question related to the factors behind the recent changes in Saudi women rights:

And it also takes place as part of government power to bring about change as a necessity for the development of the country absorbing the demands of citizens (INTV12).

Participant 6 supports this view:

The Kingdom of Saudi Arabia makes achievements, whether at the level of internal development or at the level of developing women, legislative or law environment and the provision of means that facilitate for women to obtain their rights (INTV6).

As do Participants 3 and 8 who argue:

However, in recent years and as a result of education and the support of the State in this field, sincere efforts have been made in reinstating this absent role; and it has become impossible, in my view, that women won't retreat from the notable point they have diligently reached and achieved pertaining to their tangible role in society (INTV3).

Moreover, the Saudi government has now said that female Saudi elements must be present in the said Council, like their male compatriots; and this is a marvellous and positive matter. ... Furthermore, the participation of women in public affairs is considered an integral part of the country's strategy. There was a response to this initiative, on which there was focus on the status of women (INTV8).

Overall, political will and the desire of the State's officials, the King and government are considered by the participants as vital factors that have impacted on the recent changes in the Kingdom's domestic law in relation to human rights. The importance of this factor has been seen through the advancement in the situation of Saudi women's rights. In this context, the state's efforts are evidenced through Royal Decree are discussed in the next section.

5.1.1.3 Royal Decrees

Several participants highlighted that a number of laws, regulations and legislations had been promulgated directly by Royal Decrees. Participant 5 described the process of issuing new law in the KSA:

All that took place were political decisions as we are in an absolute monarchy system. As you know in absolute monarchy countries there are no parliaments, parties or supervisory bodies. ... It has to be known that change only takes place through Royal Decrees, because when a Royal Decree is issued everyone complies with it. When a Royal Decree was issued appointing women to serve as members of the *Shura* Council besides their male compatriots and participate in the Council's deliberations, this was not due to the impact of anybody or at the request of any foreign human rights organisation or any foreign entity (INTV5).

The participant highlighted the absolute monarchical system of governance in the KSA. This means that change is difficult without the authority of the King, who provides such authority through Royal Decrees. In this context, Participant 5 highlighted how powerful Royal Decrees are and how they are accepted immediately by society:

This is because we are a State exercising absolutely all powers; and whenever a Royal decree is issued, it cannot be rejected or disobeyed. (INTV5).

Furthermore, Participant 2 stressed the strong influence of the Decrees on government institutions:

We, of course, know that when the Royal Decrees are issued to the government authorities, their implementation becomes binding on them. (INTV2)

Thus, the orders of the King are an effective tool for improving the human rights situation in the Kingdom.

In this context, Participants 2 and 3 identified examples of improvements in the rights of women that were obtained through Royal Decrees. Specifically, they raised the issue of women's participation in the *Shura* Council. Participant 2 stated:

I can give evidence as a witness to what I say the Royal Decree of the late Custodian of the Two Holy Mosques King Abdullah ibn Abdul Aziz Al Saud pertaining to granting women membership of *Shura* Council besides men. This was taken or adopted by a political will; all people were surprised by the Royal Degree, which was indeed political will on behalf the Monarch; and it wasn't imposed by anyone (INTV2).

But the country considers priorities and takes the initiative, and sometimes precedes the citizens in their aspirations. The best example was the Royal Decree pertaining to the participation of women in the *Shura* Council as members, and which was a surprise; and which at that time had not been raised in different circles or its issuance expected. The decision was indeed the political will of the Monarch in which he preceded the aspirations of the citizens (INTV3).

Furthermore, Participant 2 highlighted the gaining of the right to participate in the municipal elections as candidate and voter:

Thus, Royal orders were duly issued for women to participate as voters and candidates in the election of municipal (INTV2).

Going further back, Participant 3 pointed out that a Royal Decree, issued in the 1980s by King Faisal, allowed girls to study at primary school at the time when girl's education was socially unacceptable.

But, if we measure, since the inception of the Kingdom of Saudi Arabia, the achievements made, such as the issuance of the Royal degree of late King Faisal ibn Abdul Aziz for opening schools for young Saudi females, with the achievements made in European or North American countries, we find the span of time taken by the country was short when compared with the volume of achievement (INTV3).

Meanwhile, Participant 3 gave other examples of institutional improvements created following a Royal Decree:

Moreover, we have a committee, an affiliate of Human Rights Commission, and titled The Anti-Human Trafficking Committee, which was created by a Royal Decree to effectively curtail and combat human trafficking crimes (INTV3).

In summary, the participants believed that Royal Decrees are important elements in bringing about change in the KSA in relation to enhancing women's rights, including political and social rights. This is because Royal Decrees have supreme authority and are accepted by society immediately. The statements also reveal that state's actors highlight that changes made by Royal Decree can be a 'surprise'. Furthermore, when assessing the impact of Royal Decrees, there is an emphasis on the determination, will and vision of the King and a reluctance to accept the role of other factors, such as IHRL, in influencing these changes to the KSA's human rights environment.

5.1.1.4 Policymakers and state officials

The participants believed that there have been significant efforts undertaken by the political leadership⁷⁰⁰ with respect to enabling Saudi women to access their rights. The importance of the role of decision-makers in the KSA was highlighted by Participant 5:

What I mean is that when the decision-maker decides something, we as a society accept it and comply with (INTV5).

In this context, Participant 10 stated:

Moreover, the political leadership has a strong desire to develop women's rights and issues (INTV10).

Participants 2, 4 and 6 presented similar views.

Participant 3 broadened the debate by mentioning the role of the political leadership on women's participation in human rights organisations. He stated:

Let us say that in 2013, twenty women were appointed to the Human Rights Council as a result of the belief of the political leadership that women should have a role to play in society and that they must contribute towards building society. This is a conspicuous proof that the Kingdom of Saudi Arabia is striving hard to enhance and empower women in the Saudi society (INTV3).

The Human Rights Council is one of the most important bodies in Saudi Arabia for enhancing and protecting human rights. In this context, Participant 4 pointed out that the body plays an important role in spreading the culture of human rights to Saudi society:

I was a member of the Human Rights Council, which aims to raise awareness of the rights among people and disseminate the culture of rights among the people and intensify the study of rights in the curricula as well as enhance the belonging to the homeland, keeping away from sectarianism, non-exclusion and adoption of

⁷⁰⁰ The term political leadership is used to mean policy-makers and state's officials and to distinguish this political leadership from the King. The term refers to policy-makers and states officials who have the ability to create systems and suggest policy solutions particularly members of Cabinet and *Shura* council. It remains the case that the final decision on whether to approve or reject laws remains with the King. For more details see Chapter 2.1.4.

flexible cooperation with those with whom you disagree. One of the objectives of the Commission is to include the principles of human rights in the curricula of young people, as this matter is very significant. (INTV4).

Participant 3 also presented an example of policy-makers enhancing women's right in education:

But, based on his own belief that women have a role in society, the political decision-maker intervened in the matter and imposed the free provision of education for girls, the whole scene has changed to the positive aspect of women participation in all fields. The best proof is sending you and other young Saudi females abroad to study on government scholarships at different European or American universities, like your male compatriots (INTV3).

Participant 13 emphasised the role of the Kingdom's officials and leaders in terms of bringing about changes in the KSA legal system that resulted from their interaction with the IHRL mechanisms and in particular with the CEDAW Committee:

Yes, because you know the people they are political, they are leaders, and they are Ministers. I mean the person who has the power and right to implement all these national and international laws and regulations in power. So, political leadership is very important to bring changes in any societies. So, CEDAW committee is giving all this knowledge and translating all these knowledges to the Saudi officials and policy maker and Saudi government political leaders who has the power in Saudi society. So, they have the power and they have the capacity to change in the legal system or in the society and in the implementation through the ministries through the policy and the programme. And not only the CEDAW delegation and government delegation, includes INGOs as well. In two ways people in the committee are getting the information through the INGOs and through the government and government has the real power to implement any changes they want. (INTV13)

The statements emphasize the role of the state's official and leaders interaction and engagement with the CEDAW Committee in bringing about human rights improvements. It seems that frequent meeting between the UN delegations and the Saudi officials and policy makers have provided forums of dialogs and discussions the norms of HR that in turn increase the state cooperation with the IHRL mechanisms.

Thus, human rights in general and women rights in particular have developed as a result of efforts undertaken by policymakers and state officials. They review the existing legislation and create new laws that aim to enhance women rights.

This section finds that the decisions taken by the officials of the state were effective and influence the community because of their authority. In conclusion, factors related to the KSA's political environment were believed by the participants to have a significant positive

impact in the field of human rights. These factors include the influence of Islam through *Shari'ah*, which underpins the constitution. In addition, the role of the King and policymakers and state officials is also important, as is their political will.

5.1.2 Factors Related to the Social Environment and Individuals

Participants identified other non-political factors that positively impacted the national law of the KSA regarding the development of human rights. These factors are related to the social environment and individuals and can be classified as the role of people, education, economics, modernisation and the media.

5.1.2.1 The role of individuals and citizens

Participants highlighted the role of individuals in changing the KSA's domestic law in relation to human rights in the period between 1990 and 2016. From the analysis of the interviews, two sub-groups were identified, those of citizens⁷⁰¹ and Saudi women, as a particular sub-group of citizens. Both are discussed in this section.

The participants pointed out that citizens as part of society influence their societal development through observing social issues, criticising them and then helping to solve them. Participant 4 mentioned the desire of people to develop the law:

One notices that the individual Saudi citizen wants to solve the problem of women (INTV4).

In this context, Participant 9 signposted the importance of citizens in creating laws that aim to protect their rights:

The rights of people are not enshrined in laws except when they have defenders (INTV11).

Thus, Participant 1 mentioned the practical role of citizens in developing the law of the Kingdom:

Indeed, they were problems and we discovered them by ourselves and solved them (INTV1).

More specifically, Participant 8 explained how this influence occurred:

The "law of Protection against Harm" is considered very positive as a beginning action; particularly for me as I have been working since long time in the field of fighting violence. It was like a dream to me that we have relevant legislation issued. Furthermore, this law has just been enacted and was put forward for people

⁷⁰¹ According to Saudi law, citizens are those who have Saudi nationality. See <<http://gulfmigration.org/saudi-arabia-saudi-arabian-nationality-law/>> accessed 9 February 2019.

for discussion and criticism; and that there have been certain responses from official and responsible circles such as Ministry of Labour and Social Affairs (INTV8).

Thus, citizens are able to contribute to the amendment of national law as the government responds to their criticisms and suggestions. Citizen's complaints are taken into consideration by state's officials as Participant 3 noted:

Moreover, the Royal Court is open for anyone who has a complaint or a claim to submit for due consideration study. ... Furthermore, for anyone having a complaint, there are channels through which they can communicate with the concerned judicial body. Likewise, at the Human Rights Commission there is a section to receive complaints. When the Commission receives a complaint, it writes to the concerned body concerning the complaint submitted by an individual, whether he or she is a Saudi or non-Saudi, with a view to finding an appropriate solution for the problem pertaining to the lodged complaint (INTV3).

Thus, there are several channels through which citizens can submit their complaints such as the Royal Court where the King meets with the public, as well as departments in certain government bodies that are able to receive to the views of the people.

The participants also highlighted the increase in the public's awareness over the past two decades in relation to human rights in KSA. Participants 1, 4, 7, 8, 10 and 11 believed that this awareness has contributed to citizens actively seeking their rights and thus influencing the domestic law, as illustrated in the following quotes:

The knowledge of people about these issues and their sympathy with them from a humanitarian point of view, in itself constitutes a pressure that leads to the necessity of responding in a positive manner (INTV8).

The factor of societal awareness (INTV4).

I think that the awareness of people has played a role (INTV7).

Public awareness of human rights (INTV11).

There was some sort of awareness of and demand of women's rights, which many of them have been gained (INTV10).

The increase in the level of citizen's awareness and knowledge leads to the expansion of their perceptions and understanding, and, thus, to them demanding the recognition of their rights.

Participant 5 explained one way in which citizens' awareness is able to expand:

I always think that the local awareness started to increase due to various social networking means and sites, as people began to form virtual communication groups and communicate with their friends through social networking (INTV5).

Thus, Saudis have employed social networking and social media to communicate with others to discuss human issues and rights.

Some participants highlighted that influential citizens have been able to affect change in the KSA's national law. These individuals promote a vision towards certain issues, such as human rights, and can propose resolutions. Thus Participant 8 stated:

The awareness of certain elites and their seeking to effect change and concern with the human rights (INTV8).

In this context, Participant 11 provided an example:

In fact, we have written a document titled "Vision for Present and Future of the Country", comprising the names of 300 to 400 individuals; and that it was signed by 104 signatories, including intellectuals, poets and businessmen (INTV11).

Furthermore, a number of participants asserted that the efforts of women in the KSA were an influential factor in the recent improvement in their rights. In this respect, Participant 5 explained the role of women in tackling the issue of male guardianship:

After collecting and understanding the relevant group of the Qur'anic verses on guardianship we started, in conjunction with a Law Office, to conduct a study on the concept of guardianship. The study was completed in 2013, without intervention from any foreign organisation. We started to send letters to the *Shura* Council and Commission of Senior *Ulama* (scholars). In fact, we sent 150 letters to the *Shura* Council; a letter to each member. We sent a letter to the Custodian of Two of Holy Mosques King Abdullah ibn Abdul Aziz Al-Saud and HRH Crown Prince Muhammad ibn Naif ibn Abdul Aziz. However, we haven't received any answers, except from three female *Shura* Council members, who said that they weren't members of the committee affiliated to Human Rights and informed us that we were supposed to direct our letters to the Human Rights Committee at the *Shura* Council. In 2016, before the display of the blog posting (*Hashtag*), we tried to convey the same information to HRH Deputy Crown Prince Mohammed ibn Salman ibn Abdul Aziz Al-Saud and augmented this by sending a letter to the Royal Court (INTV5).

This statement highlights the different steps taken by women in trying to overcome the issue of male guardianship, including compiling a study, writing letters to key officials and undertaking a social media campaign. In addition, she also emphasised the importance of the social media campaign:

But the girls, who participated in the blog posting (*Hashtag*), drew the attention of the people to the report. On the contrary, it was not the Human Rights Watch affected the issue, but the above-mentioned girls who have actually drawn attention of the people to it. ... In fact, the videos released by these girls, who participated in the blog posting (*Hashtag*) were much better than the videos published by Human Rights Watch (INTV5).

It is worth noting here that the interviewee emphasises how the changes have been achieved without any external involvement.

In line with Participant 5, Participant 6 supported the idea that women played a significant role regarding the recent developments in their political rights:

Furthermore, women have gained a reasonable degree of education, entered the field of work, gained adequate experience and have become similar to men in many competencies. Therefore, she has the right to enjoy representation at the *Shura* Council, as well as other legislative and regulatory councils (INTV6).

This evidence implies that there are a number of elements such as education, employment, and experience that have given impetus to women to participate in enhancing their rights. The education and media factors are discussed further in Sections 5.1.2.2 and 5.1.2.4.

In conclusion, the participants highlighted the role of citizens in enhancing human rights in the KSA, through observing specific issues, raising criticisms and demanding resolution, which resulted in the issuing of regulations such as the Protection against Harm. Women have used various means such as campaigns, studies and the social media. The participants believed that citizens were able to adopt this role because their awareness has been raised over the past two decades.

5.1.2.2 The role of education

A number of participants believed that changes in the education sector have been beneficial in promoting human rights in general, and women rights in particular, as evidenced by the following quotes:

Education is one factor (INTV13)

There is no doubt that the main tool is education and curricula at the level of the university for future generations (INTV1).

However, in the recent years and as a result of education and the support of the state in this field (INTV3).

All these gains are associated to educational or occupational centres; and this is an excellent matter (INTV5).

The participants believed that the improvements in education and the increase in those holding university degrees have led to better decision-making:

The increase in the number of those holding higher academic degrees in the country in general and at decision-making circles in particular (INTV9).

When the decision is made, those working in government agencies, who constitute part of society, take part in the decision, because some of them have adequate and influential share of education, have received good training or have an idea about the various experiences they brought from abroad and they want to apply them, after due amendment, in the country (INTV2).

Thus, it is argued that better education helps in creating the conditions for changes in the law of the Kingdom. In particular, those with educational experiences from abroad can bring models and regulations related to human rights and apply them domestically.

Moreover, most participants commented that the improvement in women's education has been a significant influence in changing the human rights situation in the KSA. For instance, Participant 6 stated:

Moreover, the foundation of all the above in my opinion is due to education to which women have unrestrictive exposure (INTV6).

Participant 12 raised the point about gaining experience outside Saudi in relation to women:

With the growing number of young women, many who have studied outside of KSA, there are expectations that some change should take place (INTV12).

Specifically, Participant 7 mentioned the role of the scholarship program, the Custodian of the Two Holy Mosques for External Scholarship, in this process. Thus, the changes in the KSA's human rights environment are influenced by those returning from abroad bringing back fresh norms rather than simply drawing on the external ideas through IHRL.

In conclusion, the improvement in the education system, particularly for women, was seen by the participants as a vital factor in leading the process of the change in the KSA's human rights law. The improved system has resulted in more appropriate decision-making and also students gaining experience abroad and bringing back fresh ideas about human rights.

5.1.2.3 The economic factor

Participants also highlighted that the development of human rights law in Saudi Arabia was caused by economic factors, among others. Thus, Participant 9 stated:

We can add a number of social, cultural, economic and societal means that led to such progress (INTV9).

Similarly, Participant 6 argued:

There are very many factors and the most notable of which is the economic factor, because if there had been no oil and abundant financial resources, we could not have secured both adequate education and good health care for our male and female citizens and expatriates living in the country (INTV6).

In particular, Participant 4 raised the point that women were now able to work in different sectors:

There are many factors that led to the empowerment of the woman to enjoy her rights. Moreover, the situation regarding the woman is characterised by two opposite aspects: payment of salary and unemployment. Thus, women started to

receive employment in several areas, such as working as cashiers and lawyers (INTV4).

The increased employment opportunities have increased the number of women who participate in public life and work either in the public or private sectors. Thus, this may reflect positively on women enjoying other rights.

Overall, the economic factor was deemed by the participants to be significant in influencing the changes in the human rights law of the KSA. It is argued that there is a link between the improvement that the KSA witnessed in its economic situation and the improvement in other life aspects, such as the rights of women in various fields.

5.1.2.4 The role of social media

The theme of media was also highlighted by most participants as having a positive influence on the human rights issues. For example:

The modern electronic media is very influential (INTV11).

The wide usage of modern communication means and social networking sites (INTV9).

First, these factors include media in general, especially honest media as well as constructive criticism given by visiting delegations and column articles by moderate journalists (INTV1).

It highlights the most important regulations and legislation that are needed to solve a particular problem. The level of human rights in the Kingdom of Saudi Arabia is known through the media and may be considered one of the reasons for the interest in women's rights (INTV10).

Thus, participants believed that the role of the media in discussing human rights in the Saudi society raises people's awareness of the issue and encourages the state to improve the situation, Thus, Participants 4 and 10 highlighted:

But for the major part it occurred as a result of social media whose impact was really substantial. During this era of Internet expansion and influence, we notice now everything has become exposed and that any matter published is dealt with the moment it is circulated widely; and this social media publication process helped detect many things (INTV4).

In fact, the media shows, for instance, whether there is a problem pertaining to the rights of women, and determines where we are now. The media performs the role as to whether there is legislation, addressing techniques, regulations and awareness-raising activities on women's rights (INTV10).

Participant 11 explained that part of the reason behind the effectiveness of the media was the increased access for the populace:

What increased pressure was that technology began to appear, develop and surface. People started to have easy access to information; and then it becomes factual that whoever opposes the principle of respecting and observing human rights is doomed to be defeated (INTV11).

In particular, he added:

Today the defence of human rights in information technology and electronic media is very huge. Like what happened yesterday in the case of the marriage of seventy⁷⁰², as soon as the news spread to the media issued a decision to stop the decision, in the past did not happen such interference. The media is the most important factor in the Kingdom's incorporation of international human rights law (INTV11).

The statement explains how the media is important in improving women rights. First, it indicates that the media is used extensively by human rights defenders to promote their agenda. Second, media pressure encourages the government to tackle human rights violations. Third, the media have helped the IHRL norms to be applied domestically. In terms of the encouraging the government to tackle these issues, Participant 6 stated:

Undoubtedly, social networking sites have a significant impact; and that the executive organs at the Saudi Ministry of Justice when they receive such cases through such sites, they have to respond and react to them (INTV6).

Meanwhile, Participant 5 focused on the role of social media networks as a means by which women rights were improved in the KSA:

I always think that the local awareness started to increase due to various social networking means and sites, as people began to form virtual communication groups and communicate with their friends through social networking. ... Thus, social networking plays a substantial role in this connection; and the campaigns that appeared were due to social networking and not due to external pressures (INTV5).

Women have been able to use social networking to demand their rights. Furthermore, Participant 5 believed that the power of the social networks was greater than that of the international human rights organisation, Human Rights Watch. Similarly, she pointed out:

If you review when the Royal Decree on the appointment of women as members of the *Shura* Council and taking part in the municipal election as voter and candidate... it wasn't necessarily from the Human Rights Commission; it might have been from the media or other circles that women have to be involved (INTV5).

Furthermore, Participant 8 raised the point that the use of social media enables the dominant views prevailing in a society to be challenged:

⁷⁰² The case was an 81-year-old man marrying a minor girl under the age of fifteen. See <<https://www.alaraby.co.uk/society/2016/3/28/الزواج-القصير-من-فتاة-تزوجت-زوي>> accessed at 1 February 2019

Moreover, I am of the opinion that the participation of women in the topics that are frequently raised in the newspapers and social networking means and sites, and the television channels and reportages give women the opportunity to present a view which is different from what is dominant (INTV8).

Thus, women in Saudi Arabia have been able to challenge issues that were previously accepted as the norm, thereby enhancing their human rights. In this context, Participant 4 argued that social media enabled an expansion of the freedom of expression:

The use of social media has expanded in the frame of freedom of expression, which was increased in the era of the late King Abdallah ibn Abdul Aziz and is still expanding especially in the issues of women and their rights (INTV4).

In particular, participants highlighted effectiveness of using Twitter in improving women rights in the case of male guardianship and other issues. For example, Participant 12 stated:

There was also a hashtag and activism around this issue (INTV12).

Social networking means and sites, especially Twitter, together have made a significant impact. Thus, in such virtual sites many issues are raised and people interact with them (INTV8).

Moreover, the use of Twitter can increase the response from the State:

It is true that the Human Rights Watch in September 2001 published its report, which lacked traction as no one paid attention to it, but the girls, who participated in the blog posting (*Hashtag*), that drew the attention of the people to the report (INTV5).

However, Participant 3 pointed out the negative influence of the social media. He indicated that a lack of objectivity in social media applications such Twitter, Facebook and YouTube have reinforced negative stereotype images regarding human rights in KSA:

Furthermore, we should not forget the role played very recently by the media, especially Twitter, Facebook and YouTube, which collectively and unfortunately form a stereotyped negative image about the Kingdom of Saudi in Western society as they hasten to pick up and believe negative aspects pertaining to the Kingdom of Saudi Arabia. All this occurs because of the influence of the media in general and the social media in particular on the information transmitted about the country (INTV3).

This is supported by Participant 6 who argued:

With regard to media, I think its role is bad and I do not like the media, because it unfortunately marginalises fundamental issues in the rights of women and highlights insignificant issues based on the individuals who own the media and those who exploit the pen such as commentators, and opinion or column writers at different newspapers or journals as well as certain editors at such organs, who convey a bad image of human rights in the Kingdom of Saudi Arabia. (INTV6).

Thus, the media in general and the social media in particular are perceived to have positive or negative impacts in relation to the human rights situation in the KSA, as posited by Participant 3:

Although social media played a remarkable role in educating people but in turn it plays a major role in delivering the image negatively or positively (INTV3).

Thus, according to the participants, social media is an effective factor in the context of improving the human rights situation in the KSA. The media enables people in general and women in particular easy access to information on issues of human rights. It, then, allows people to network through social media and challenge prevailing dominant views. In turn, this leads to increased interaction with and positive response from the State. However, the international media can portray a biased view of the human rights situation in the KSA.

5.1.2.5 Urbanisation

In relation to urbanisation,⁷⁰³ participants highlighted the change in Saudi society in recent decades, which has demanded new laws in order to organise the new lifestyles, such as the urbanisation of the population. As Participant 10 argues:

As you know urbanisation is the systematic and regular movement of people from villages and farms to the cities for settlement and to earn a living. Furthermore, such urbanisation and social change occurred as a result of contact with other countries (INTV10).

This urbanisation of the population requires different regulation as explained by Participant 10:

And that you have shortfalls in local laws and regulations, whereas the various population groups in world today are similar in their way of life and behaviour. Therefore, all these changes and urbanisation aspects, as well as the work of women in the public and private sectors and the development of material life, are considered factors that have produced the latest developments; some of which have positive aspects and others negative ones (INTV10).

In this context, Participant 12 mentioned that urbanisation in the KSA has been affected by Saudis living, working and being educated outside the country:

But KSA finds itself now facing a different challenge, more women and men are educated outside in western countries and they return to KSA wanting a form of an open life, while retaining basic values of respect. ... living outside the country for years changes the view of young people and so when they return they desire

⁷⁰³ Urbanisation refers to “the increasing concentration of people (relative to base population) in urban style settlements at densities that are higher than in the areas surrounding them” Antar A Aboukorin and Feaz Saad Al-shihri, ‘Rapid Urbanization and Sustainability in Saudi Arabia: The Case of Dammam Metropolitan Area’ (2015) 8 Journal of Sustainable Development 52.

change. They pursue it in their own ways through mixing together in malls, undertaking joint projects or working together on the same projects, or through entrepreneurship activities in which both are partners. It is change by doing and not by demanding (INTV12).

Participant 10 argued that changes in societal norms usually require reviewing the extant laws or establishing new ones:

The world seeks to reform societies and the Kingdom of Saudi Arabia is an integral part of this world. Change creates problems; and regulations and laws are solutions for these problems. The Kingdom of Saudi Arabia needs these laws and regulations to regulate people's life within its boundaries (INTV10).

This is supported by other participants:

Such law is enacted when the needs and social problems that require its issuance arise (INTV9).

In fact, laws in the country develop according to the newly emerging incidents in life and the world, as the world has now become one global village (INTV10).

There is no doubt that in every country that have laws, it needs to review them from time to time (INTV1).

Furthermore, urbanisation is also an important factor in the process of societal acceptance of change and coexistence, as Participant 9 argued:

However, this societal dispute over this matter requires sometimes reasonable time to be changed or improved (INTV9).

However, he added that change cannot occur overnight. Saudi Arabia is a young country and has faced considerable change, therefore it needs time to adapt to modernisation:

I would like to add that we are always in our meeting with human rights organisations, asking them to consider the time factor in regard to the Kingdom of Saudi Arabia as you need to consider the huge developments that the country has achieved in many fields. Our problem is that we need time to change and reach an advanced stage (INTV1).

Thus, the participants believed that human rights development in the Kingdom has been influenced by urbanisation and greater integration with other cultures and countries. This is because societal changes that follow these processes require different legislation and regulation. Thus, urbanisation has positively affected human rights in the KSA.

5.1.2.6 Summary

In summary, factors related to the social environment and individuals such as the role of people, education, economics, modernisation and the media, are believed by the participants to have positively affected human rights legislation in the KSA.

5.1.3 External Factors

IHRL emerged from the interviews as an external factor that influences the human rights changes in the KSA. Under this theme two sub-themes were highlighted: the state's interaction and engagement with the IHRL mechanisms; and the state's responses to the criticisms of the IHRL. In this context, the participants believe IHRL plays a role in developing the law of human rights in the KSA.

5.1.3.1 The state's interaction and engagement with the IHRL mechanisms

A number of participants mentioned that IHRL mechanisms have been a vital factor contributing to the development of certain human rights issues in the KSA. In particular, they highlighted that a number of laws, regulations and legislation have been developed as a result of the state's interaction and engagement with IHRL. Thus, Participant 10 stated:

It is required to fill the gap between what we are now standing at and what we aspire to. Therefore, we have taken advantage of the international experiences and the solutions that have been achieved by the international conferences and have applied all of them in the Kingdom of Saudi Arabia (INTV10).

The above statements reveal that the KSA follows up the development of human rights at international level and it takes the advantages of international experience in this regard. It seems that the international human rights conferences and the presentation of SA in these events provide opportunities of interaction between state and IL.

In line with Participant 10, Participant 8 highlighted the role of international human rights organisations:

Likewise, there are external factors such as human rights and international organisations, which I am sure are among the factors that contributed to pushing for the enactment of this law (INTV8).

In this context, Participant 12 explained how the government of Saudi Arabia's interaction with the IHRL bodies:

CEDAW and HRC reports are important in that they push the government to respond to peer-group questions in both committees and to provide answers showing that the country is undergoing change and the government is responding through reform. So, in this sense, pressure from outside provides an opportunity for the government to take actions for change (INTV12).

The statement reveals that one type of the Kingdom's interaction with HR bodies and

organisations is through its interaction and engagement with the CEDAW's Committee and the HRC. It seems that reviewing state's reports by peer -group provides a room for discussion and debating between the state's actors and the UN human rights members and delegations. The statement also indicates that this type of interaction leads to the Kingdom positively response to the requirements of concerned committee by reforming and improving certain of its national laws.

Other participants highlighted the role of the KSA engagement with the HRC when its being member on the Council as a significant factor that contribute to the Kingdom improving women rights. Participants 1, 3 and 4 in relation to the HRC:

I consider that the membership of the Kingdom of Saudi Arabia of the Human Rights Council reflects a sincere intention to improve the status of women and to take care of their rights (INTV1).

There is no doubt that the Kingdom of Saudi Arabia, which is a member of the Human Rights Council, as mentioned above, attempts to resist the embarrassment it faces and improve its image (INTV4).

I would like to add that the membership of the Kingdom of Saudi Arabia in the Human Rights Council has been recently renewed for four years; and this is evidence that the said country is determined to take the initiative in the field of human rights, both internally and externally (INTV3).

The three quotes emphasis the role that HRC creates through 'peer pressure'. The statements reveal that the state being member in the HRC reflected positively on encouraging the state to improve its human rights. Thus, it seems that the state's interaction and engagement with the IHRL mechanisms could be an effective method that may enhance human rights condition.

However, Participant 10 highlighted that any interaction between the KSA and IHRL is subject to the Basic Law, which is predicated on *Shari'ah*:

Since our country is a member of the international community and that the changes to the present needs to be taken into account, we have to solve this problem; and that we consider from time-to-time all the laws that are at odds with the provisions of Islam. In this connection, we refer to the relevant concerned bodies in the Kingdom of Saudi Arabia, such as the Human Rights Council and Ministry of Justice, to study these laws and re-consider them many times, as well as try our level best to find any possible way out (INTV10).

Thus, according to the participants, state interaction and engagement with the IHRL mechanisms is an important factor in enhancing human rights laws in the KSA. Membership of IHRL motivates member states to work to develop their own human rights. However, in the case of the KSA, applying Islamic law prevents it from full compliance with international

norms.

5.1.3.2 Criticisms of the human rights situation

Criticisms of the human rights situation in a particular state by the IHRL mechanisms or by INGOs is supposed to encourage the state to respond positively to the critique. As Participant 3 stated:

To this we add that this international attention on human rights issues encouraged the Kingdom of Saudi Arabia give these issues due concern (INTV3).

Thus, the international criticism is expected to generate change in a state's domestic law as Participant 12 asserted:

Change, in general, takes place in any context through both internal activism and external pressures (INTV12).

Thus, criticism by these organisations can be an effective tool by which to enhance human rights. In particular, Participant 1 referred to the response of the KSA to constructive criticism by visiting delegations and moderate journalists:

It is certain that international community closely watches and criticises the Kingdom of Saudi Arabia as a leading country in the Islamic and economic world; and the country always accepts criticism, even Custodian of the Two Holy Mosques King Salman said, "we accept constructive criticism from all countries" (INTV1).

In the same vein, Participant 13 indicated the importance of the dialogue between the state and the UN human rights mechanisms such as treaty body:

The concept of dialogue very important (INTV13)

With regard to the criticism by certain INGOs such as the Human Rights watch, Participant 13 commented:

I think quality now is working in the KSA; for example, Human Rights Watch are working in Saudi Arabia. I mean all the organisations you know they need to have respect for and belief in people and from that point they have to start their work to educate them with the international norms and principles. First, I have to show respect to the local people and their life style and then we have to discuss all the issues of the international legal rights system. So, we have to understand what is the wrong, what is the aspect that needs to be eliminated, what needs to be addressed. But if you see that you are all wrong and I am all right and you need to change according to our doctrine, people will not accept it (INTV13).

The statements reveal that there is bias in the INGOs criticism of the issue of human rights in the KSA. This is because they measure the progress and development in the field of human rights in the Kingdom in line with their own doctrines without consideration to the local values of the state and people. The statements also point out that this approach undermines

the INGOs' ability to promote human rights because ignorance of local values leads to communities rejecting external standards.

Participant 6 pointed out that human rights organisations fail to differentiate between practices that have a religious origin and those stemming from tribal customs:

A lot of pressures was brought to bear on the Kingdom of Saudi Arabia at the annual meetings of the Human Rights Council and in the reports submitted, demanding, for instance, the abolition of the death penalty and particularly defined and fixed Islamic punishments (*Hodoud*) (INTV6).

The statement indicates that some of the pressure on the KSA is related to practises that have Islamic legitimacy. In consequence, this type of criticism, such as the death penalty, may not receive a positive response from Saudi Arabia, because of its inherent Islamic principles. Therefore, external criticism is more likely to be effective if the issue has no Islamic basis. In this case, it is revealed that the role of IHRL through the annual meetings on influencing the KSA's domestic law through the interaction with domestic forces can be positive.

Overall, it can be concluded that IHRL is seen as an influential external factor contributing to the changes that occurred from 1990 to 2016 in the KSA. Its role could be seen through the state's interaction and engagement with the IHRL mechanisms and the state's responses to the criticisms by IHRL. In particular, the Kingdom's membership of the HRC and its engagement with other IHRL bodies has encouraged the state to improve its national law to comply with IHRL norms. Furthermore, the influence of IHRL on the Kingdom's domestic law has been in response to criticisms of human rights issue by the UN treaty bodies or INGOs. It is argued that IHRL has influence on traditional practises that do not have an Islamic legitimacy.

5.2 Summary and Conclusion

The research indicates that a number of factors have contributed to the development of the KSA's domestic law in relation to human rights between 1990 and 2016. According to the findings of this chapter, the changes were the result of a complex relationship between multiple factors that play a vital role in influencing the KSA's changing human rights environment. These factors are as follows:

A) Internal factors related to the Kingdom's political environment:

1. *Shari'ah* norms which underpin the Basic Law of the Kingdom.
2. The government's strategic decision-making process, which involves political will, Royal Decrees and the influence of policymakers and officials.

- B) Internal factors related to the social environment including people, the education system, economic factors, urbanisation and the media.
- C) External factor related to IHRL and its mechanisms.

The results indicate that due to certain factors related to the Kingdom's political environment, various laws were introduced which enhanced women's rights such as their participation in political life. In relation to the second group of factors, the chapter finds that Saudi citizens played a vital role in the recent changes to the human rights law of the Kingdom. The results indicate that there is an overlap between the different factors. For example, there is a relationship between the improvement in the level of education of citizens, their economic situation and an increase in people's awareness of their rights. Furthermore, individuals have been effective in influencing change through the modern media tools such as social media.

The third set of factors are the external ones, of which the most significant is the IHRL and its mechanisms. The influence of this factor in the case of the KSA occurred through two ways of the KSA interaction with IHRL. First, state membership of and engagement with the IHRL mechanisms motivated the Kingdom to integrate international human rights norms within its domestic law. Second, the state responded positively to constructive criticism of human rights issues by the IHRL bodies or INGOs. However, if the norms or criticisms conflicted with Islamic principles, then the KSA would not change its domestic laws. Thus, the results indicted the limits of CEDAW as a legal system within the KSA domestic law as it is subjected to its compatibility of Islamic norms.

In summary, the changes, and improvement in the KSA's domestic law, particularly those related to women rights, were attributed by the participants to multiple factors that interacted and affected each other. However, a greater understanding of the role of IHRL and its mechanisms in the process of human rights changes and development in the KSA domestic law is required. Thus, the next chapter analyses the data in relation to this element.

CHAPTER SIX:

Data Analysis and Findings: The Role of IHRL on the Changes in the KSA's Domestic Law and the Usefulness of the IHRL's mechanisms in term of Promoting and Protecting Women Rights

This chapter builds on the findings of the previous two chapters. Chapter 4 indicates that a number of laws and regulations were issued and modified regarding human rights, in particular in relation to the political and civil rights of women, and that Saudi human rights originations were created. Chapter 5 highlights the factors that were seen as having contributed to these changes. It is suggested that one of the primary factors that contributed to the improvement in the domestic law in relation to human rights in the KSA was IHRL. In this context, the empirical data in relation to Research Question 3, 'What is the role of the IHRL on the changes in domestic law?', and to Research Question 4, 'Have the IHRL's mechanisms been useful from the perspective of promoting and protecting women's rights?', are analysed. To answer these two questions, this chapter is divided into two sections. First, the themes that were identified through the first phase of the data analysis regarding what role do participants think IHRL played in the changes that occurred in the KSA's human rights national law are analysed. Second, themes that indicate participants' perception of the usefulness of the IHRL mechanisms with respect to protecting women rights are assessed. Finally, the findings are summarised and a conclusion is presented.

6.1 How the IHRL Has Influenced the KSA'S Domestic Law

After participants discussed the changes that occurred in Saudi Arabia's domestic law between 1990 and 2016 (see Chapter 4) and identified the IHRL as one of the main factors affecting these changes (see Chapter 5), participants discussed the questions regarding what the role of the IHRL was and how it influenced the changes, particularly in respect of women's rights. Two sub-themes emerged that help explain the ways in which the IHRL influenced the changes in the KSA's human rights law. These sub-themes were the role of human rights bodies and the state's interaction with IHRL.

6.1.1 The Role of the Human Rights Bodies

The interviews show that some participants believed that the work undertaken by the various bodies of IHRL is effective in terms of influencing and developing a state's domestic law.

They highlighted two elements: first, the role of the Office of the High Commissioner for Human Rights (OHCHR); and second, the various monitoring mechanisms in the IHRL.

6.1.1.1 The role of the Office of the High Commission for Human Rights

The OHCHR was identified by a number of participants as an important mechanism of IHRL that can influence a state's domestic law and positively influence the human rights situation.

Participant 11 stated:

Things in the international community have changed, especially after the registration of the Higher Commissioner of Human Rights, which has now become an integral part of the UN (INTV11).

The statement reveals the how the OHCHR became an important actor within the UN system, while its influence on the KSA is explained by Participant 1:

We have signed an agreement with the Office of the High Commissioner for Human Rights. Furthermore, we conduct joint symposiums. This a clear example of the influence (INTV1).

He highlighted how this influence occurs at the higher levels:

We concluded the Memorandum in June 2012 and it was implemented in 2014 and was duly renewed this year. The signing of this Memorandum aims to strengthen the capacities of specialists in the Kingdom to achieve full compliance with international human rights law (INTV1).

Then, Participant 1 described how the interaction with the OHCHR affects the KSA's domestic law:

We have already signed, with the Office of the High Commissioner for Human Rights in Geneva, a Memorandum for training leaders and judges on the latest developments in the field of human rights or on what concerns them in the field of human rights (INTV1).

Thus, the participants believed that the OHCHR is an important element with the UN human rights system that contributes to the development of international standards of human rights within Saudi Arabia. This view is supported by Participant 2 who clarified the aims of the KSA when signing the Memorandum with the OHCHR:

Under the framework of the five agreements, the Kingdom of Saudi Arabia has, of course, strengthened cooperation with the United Nations in a manner that achieves the full and comprehensive implementation of the agreements through the signing of a Memorandum of Understanding for Technical Cooperation with the United Nations High Commissioner for Human Rights in 2012; the country has almost completed the three years of the agreement, and is to enter a fourth year, meaning that the Memorandum of Understanding was duly extended. (INTV2).

The quote indicates that when a state ratifies the UN treaties it may increase state cooperation with the UN. In the case of KSA, the signing of a memorandum with the OHCHR

contributed towards it implementing their international of human rights commitments. In this case, the participants believed that cooperation between the OHCHR and human rights specialists in the KSA has led to the internalisation of the norms of IHRL in its domestic law.

As Participant 2 stated:

The aim of this Memorandum is to strengthen the capabilities of those concerned in the country in achieving full compliance with international human rights law. Since the establishment of the Saudi Human Rights Commission, there was created in the Kingdom Saudi Arabia a specialised body that is authorised to follow up implementation in accordance with the organisation of the Commission (INTV2).

Thus, it is believed that state actors such as those who work in the Saudi Human Rights Commission can be a key factor in increasing the Kingdom's compliance with UN norms. For example, individuals trained by the OHCHR may participate in decision making in the country contributing to the transference of the norms of IHRL to their state's national law. As Participant 1 indicates:

The signature of this Memorandum is one of the tools with the Office of the High Commissioner for Human Rights to convey to the officials of the country the international standard of human rights. Likewise, Saudi Human Rights Commission conducts high –level leadership training courses in the country for personnel such as officers in the Army, Police, and Public Security etc. The said Commission also reviews the existing laws and regulations; and attempts to amend them in accordance with international human rights regulations. (INTV1)

The statement reveals how the OHCHR can influence a cooperative state through its officials and human rights actors. It indicates that training and cooperation with the UN human rights mechanisms may contribute to the state amending its national law to be compatible with IHRL norms.

In this vein, it can be argued that the OHCHR is an effective part of the UN system that enhances the human rights situation in the KSA's domestic law. In addition, cooperation with the UN human rights bodies may contribute to increasing the state compliance with IHRL norms.

6.1.1.2 The role of the human rights monitoring mechanisms

Participant 1 indicates that IHRL influences a state's domestic law through the various UN's human rights monitoring mechanisms. In particular, in line with other participants, he highlights the importance of the monitoring role of the HRC and the CEDAW Committee in terms of enhancing a state's implementation of the norms of binding treaty. Participant 1 explained:

The joining of the Kingdom of Saudi Arabia with the Human Rights Council has necessitated that we submit a CEDAW report, which is on the status of women in general or on children. When we prepare the report, the Committee has the opportunity to hear from the Kingdom of Saudi Arabia, read the news and extract the required information from it and from individuals as well. Then, the Committee provides a set of questions or recommendations that it presents to the Kingdom of Saudi Arabia by handing them over to both the Saudi delegation and Human Rights Council. In our own way, we accept what we consider appropriate and submit it to the competent authorities for amendment as necessary. Therefore, you notice this is a clear influence through the mechanisms of the Human Rights Council and the most important mechanism is our presence in CEDAW (INTV1).

The statement indicates the influence of the HRC and the CEDAW committee and the interaction of the two mechanisms. The CEDAW committee is an expert committee while HRC is a council of other states' representatives. The evidence shows that the CEDAW provides the normative framework and basis for reporting while the pressure comes from being questioned by the HRC. Thus, the interviewee perceived that there is pressure from the Council but that this is interlinked with the norms of the CEDAW. It also reveals that the opportunity for interaction between the state and the IHRL mechanisms in terms of reviewing and discussing the human rights record of the state. Furthermore, the participant viewed that changes in the Kingdom's human rights environment were the result of the interaction between the KSA and the UN bodies.

Participant 2 supported this view:

When the Kingdom of Saudi Arabia joined the agreements, it studied them and was of the opinion that there was a need to re-develop certain laws in order to conform with those of international conventions (or agreements) and to be consistent and not contradictory to the Convention (INTV2).

Thus, the monitoring mechanisms of the IHRL are seen as effective in encouraging the KSA to improve its national law in order to comply with the signed treaty. Participant 12 also supported the idea that participation in the HRC and the CEDAW can enhance human rights through improvements in the legislation as the government responds to criticisms raised by these monitoring mechanisms (see Section 4.1.3):

The CEDAW and HRC reports are important in that they encourage the government to respond to peer-group questions in both committees and to provide answers showing that the country is undergoing change and the government is responding through reform (INTV12).

Participant 8 supported this belief:

I do not have any relevant study at hand to rely on in giving my opinion. But, in the Human Rights Council these matters are frequently raised and there has been a focus on it in the Kingdom of Saudi Arabia in recent times. I think that this leads to positive changes (INTV8).

From the above, it can be seen that the interviewees placed a great emphasis on the impact of peer pressure from other states through the UPR. It reveals that the system of the UN human rights law can put pressure on the state to review its domestic law and to examine its compliance with the ratified treaty.

Other participants highlighted the role of the UPR as another effective mechanism for providing a channel for state interaction with IHRL. Thus, Participant 1 stated:

The UPR is one of the tools for effective interaction with international human rights law and, therefore, we note that the international human rights law has impacted us. It is necessary to refer to the recommendations that we accepted and to consider the impact of these recommendations and this has a direct influence of the international human rights law (INTV1).

This view is supported by Participant 3 who indicated that the UN Human Rights Council reviews the human rights situation in the UN member state which may encourage the state to improve its human rights law in order to comply with international standard:

Participants who were involved in the international monitoring processes, or worked with the UN human rights bodies, such as Participants 1, 2, 3 and 12, perceived that there is a positive impact from the KSA's dealing with the UN human rights bodies on developing the human rights law in the KSA. For example, Participant 1 highlighted how the UPR mechanism has helped in this context:

If you have a glance at the UPR issued six years ago and the last report in terms of the recommendations that were accepted and implemented, you will notice that there is a strong interaction, which has had tangible results. The reason is that the Committee usually asks what is done regarding the implementation of previous recommendations before considering the new ones (INTV1).

Thus, the IHRL bodies monitoring the member states in implementing the IHRL recommendations can be an effective way to encourage the state to comply with the IHRL norms.

However, Participant 1 points that not all recommendations are accepted in the case of the KSA. He stated:

These include, for instance, the Universal Periodic Review (UPR). It is homework or an assignment. The Kingdom of Saudi Arabia, like other countries, is required to present every four years a report in which it clarifies the situation regarding human rights in the country. This report is read after due submission by all countries and all NGOs, which all submit relevant recommendations, but it is left to us whether to accept wholly or partially all recommendations or reject them. The type of recommendations that we reject includes ones such as building churches in the Kingdom of Saudi Arabia. However, I don't remember now the ones that we partially accept (INTV1).

The statement reveals that the UPR is an obligation between the state and IHRL. It also highlights that the UPR provides an opportunity for the state to engage with IHRL. However, he acknowledges that not all recommendations are fully accepted; these are ones that conflict with Islamic norms. Nevertheless, Participant 1 provided examples of where the Kingdom did comply with the recommendations:

We received a recommendation for cancelling the condition pertaining to the agreement of the guardian of the female student permitting her to enter the university; we complied with the recommendation and cancelled the condition (INTV1).

He also added:

The recommendations that we accept wholly are those such as the education of individuals on human rights and inclusion of human rights concepts in the lower educational curriculums such as in kindergartens (INTV).

The statement reveals that in the case of the KSA, the norms of IHRL can be effective for changing cultural practices such as those related to education rather than the practices that have an Islamic basis.

Another effective monitoring mechanism is highlighted by Participant 2 who pointed to the positive role of Annual Country Reports on Human Rights Practices issued by other states' foreign ministries. He stated:

We have in fact a good amount of periodic monitoring reports issued either by the UN body or by the countries that issue reports about the status of human rights such as foreign ministries in the United States of America, Britain, Sweden and Canada. The said countries issue regular reports on the status of human rights in the world and they contain a specific chapter on the Kingdom of Saudi Arabia. These reports are not only concerned with monitoring, but are also intended to collect meaningful and rational observations. They also contain negative remarks and recommendations as how to avoid them in the coming years, and to deal with them with the due positivity, credibility and transparency they deserve. Furthermore, we always submit to the King relevant recommendations to rectify the specific errors included in these reports (INTV2).

Thus, Participant 2 believed that human rights reports issued by foreign ministries can lead to an improvement in human rights in the KSA, because the state reacts to the reports' contents.

Furthermore, Participant 9 highlighted the indirect impact of these mechanisms. She suggested that Saudi law-makers take into account international norms when writing new legislation:

In addition to the consideration that they should incorporate more rights with regard to women, whose rights are raised from time to time, I think that those who prepare the drafts of regulations always bear in mind when enacting these

regulations, that there are international conventions, whose contents must be taken into account in the preparation of such laws and regulations (INTV9).

Thus, Participant 7 argued that overall the IHRL bodies have a positive impact on the human rights situation in the countries such as the KSA:

I claim that international organisations or major influential nations have a notable impact on the establishment of relevant human rights institutions and review bodies (INTV7).

Therefore, it can be concluded that IHRL through various monitoring mechanisms such as the HRC, the CEDAW, the UPR and annual country reports on human rights practices contribute to enhancing human rights in the KSA. The results indicate that the KSA's membership of the HRC provides opportunities to negotiate and discuss the norms of human rights. When agreement is reached, the norms are then transferred into domestic law. It also finds that when a state becomes a party to an international human rights convention, this generates an increased commitment on behalf of the state to IHRL. This occurs when the KSA takes into account the criteria of the signed convention and integrates the latter's norms into its national law. Thus, the interaction between the Kingdom and IHRL through the IHRL mechanisms is a useful tool for developing human rights. However, the participants also highlighted that the Kingdom does not implement recommendations that it considers are contrary to Islamic beliefs.

6.1.2 State Interaction with the IHRL

The participants identified that interaction between IHRL and states is effective in contributing to the state improving its human rights law. This section analyses two aspects: the KSA's interaction with the IHRL mechanisms; and the KSA's methods of dealing with criticism.

6.1.2.1 The KSA's interaction with the IHRL mechanisms

A number of participants believed that a state's participation with the IHRL mechanisms can be effective in enhancing human rights in that state. They mention that the KSA's early interaction with IHRL contributed to the Kingdom developing law on human rights. Participant 3 explained:

The Kingdom's cooperation in this connection has been there since 1948 when the country participated positively in the said Declaration [UNHDR]. Moreover, the visits between the Kingdom of Saudi Arabia and civil society organisations continued, so that the country is committed to various relevant international Conventions or Agreements it concluded (INTV3).

Participant 9 supported this opinion:

The Kingdom of Saudi Arabia is seen as one of the early countries that took the initiative for dealing, cooperating, benefiting and taking advantage of the international human rights law or international law in general (INTV9).

Similarly, Participants 3 and 7 indicate the satisfactory level of the Kingdom's cooperation with IHRL. Participant 7 described this as:

I see that this cooperation is satisfactory, thanks to Allah; based on my follow-up I remark that the Kingdom of Saudi Arabia is keen on having smooth communication in relation to international human rights law (INTV7).

Participant 10 also pointed to the Kingdom's presence in the formulation the UN conventions on human rights:

When the United Nations Organisation was established, the Kingdom of Saudi Arabia attended the formation all international conventions (INTV10).

Participant 2 agreed:

The Kingdom of Saudi Arabia has definitely cooperated in the framework of the five agreements to which it has become a party (INTV2).

In this respect, Participant 9 viewed the re-election of the KSA to the HRC as recognition of the Kingdom's cooperation with IHRL:

Thus, I can give my opinion and say that the international status of the Kingdom of Saudi Arabia in regard to human rights is good, as this qualified the country for re-election several times to the Human Rights Council (INTV9).

Participant 3 presented a similar opinion:

The Kingdom of Saudi Arabia was certainly a member of the Human Rights Council; and that it has been re-elected as a member. This is evidence that the country strives hard in the field of participation and interaction (INTV3).

The two quotes reveal that people in KSA see the renewed membership as an indication that its human rights practice is satisfactory and that its cooperation with IHRL is important for its re-election. Furthermore, the interviewees perceived that the KSA values its position on the HRC.

Participant 10 provided evidence of the positive interaction between the KSA and the international community including the UN system:

The Kingdom of Saudi Arabia is one of the countries that coped with development of events; and that it was very keen to make contributions to the world order or to what was approved by the international community. To confirm this point, the country's delegations attended many international conferences and made their contribution (INTV10).

The statement reveals that participants perceived that the renewal of membership of the HRC as evidence of positive interaction between the KSA and IHRL, rather than it reflecting its political and diplomatic influence.

However, Participants 10 and 12 point to the limitations of the interaction between the state and the UN system. Participant 10 stated:

All international resolutions are subject to discussion as to whether they are compatible with Islamic law. Those that agree with Islamic law are accepted and those that contradict it are subjected to further study, because in Islamic law, there is room for creating new provisions via jurisprudence of newly emerging matters in which renewed understanding of Islamic texts or provision is allowed for the interest of the community (INTV10).

Participant 12 argued:

Presently, the KSA pursues this international interaction with more willingness than previously. The recent instructions issued by King Salman call for a review of all international agreements in order to determine the position of KSA with regard to each agreement and to determine what action needs to be taken, but with a clear direction that what is contradictory to *Shari'ah* should not form an obligation (INTV12).

Thus, the participants believed that the KSA is committed to a positive interaction with IHRL as long the interaction conforms to the norms of *Shari'ah*. Thus, acceptance of international standards is subject to the extent of their conformity with Islamic law. This leaves space for IHRL to develop and improve practices that are not perceived to not contradict Islam, but are exercised because of customs and tradition.

Meanwhile, Participant 2 highlighted that the positive interaction with the UN encouraged the KSA to participate more fully with its international obligations:

The Kingdom, when it joined some of the agreements, was only as a mere international commitment. ... However, it is now more committed to the rights incorporated in these agreements, and actually the country has done more than merely fulfil these rights (INTV2).

Furthermore, he added:

Under the framework of the five agreements, the Kingdom of Saudi Arabia has, of course, strengthened cooperation with the United Nations in a manner that achieves a full and comprehensive implementation of the agreements through the signing of a Memorandum of Understanding for Technical Cooperation with the United Nations High Commissioner for Human Rights in 2012 (INTV2).

This cooperation is believed to have improved the situation of human rights domestically.

Thus, it can be concluded that the impact of state interaction with IHRL has been incrementally positive in promoting human rights in the KSA. In particular, the Kingdom has

participated in formulating the conventions and discussing the international norms, which, in turn, increased its desire to be more active in the field of IHRL. Furthermore, the participants believed that the state's desire to cooperate with the UN human rights system was an effective factor in it internalising some of the norms of the IHRL. However, requiring the norms to conform with *Shari'ah* acted as a constraint on this internalisation process.

6.1.2.2 The KSA's methods of dealing with criticism

A number of participants highlighted that criticism by IHRL can lead to an improvement in human rights in the Kingdom. Participants indicated different ways in which the KSA responds to the criticisms, whether by the UN human rights bodies or by INGOs. Thus, Participant 3 believed that the Kingdom responds positively to human rights criticisms:

Likewise, the response of the Kingdom of Saudi Arabia is reflected in its participation in the activities of the Human Rights Council that take place regularly throughout the year. Additionally, the response is consolidated in the fact that the Kingdom of Saudi Arabia has established the Saudi Human Rights Commission; and that it speeded up the promulgation of laws that enhance and protect human rights in the country. The responses also comprise matters that conform to both Islamic law and Islamic customs and values (INTV3).

The statement reveals that the KSA's response to the criticisms regarding human rights takes two forms: first, the Kingdom engages in HRC activities; and, second, the KSA has established the Saudi Human Rights Commission. However, again the constraints imposed by the norms of *Shari'ah* were acknowledged.

Participant 1 indicated that the KSA deals with the criticisms of the human rights issue through dialogue and organised visits with the relative body:

The Kingdom of Saudi Arabia is considered one of the countries in the world that adopts dialogue and the clear evidence for this is its inception of Interreligious Dialogue Centre and National Dialogue Centre. In the past, all human rights organisations have visited the Kingdom of Saudi Arabia; and, indeed, some are on scheduled visits. Even organisations that sharply criticise the Kingdom of Saudi Arabia, such as Human Rights Watch and Amnesty, have a schedule of visits. As regards delegations of states, they have permanent and continuous visits and that we do not have any problem in receiving such visits; and we accept criticism but we don't accept fabricated lies (INTV1).

The participant explains how the KSA established the Interreligious Dialogue Centre and National Dialogue Centre (IDCNDC)⁷⁰⁴ to discuss human rights issues with the relevant

⁷⁰⁴ The National Dialogue Forum was instituted in June 2003 "to debate reform and suggest remedies" following several events: the 11 September 2001 attacks in the US, terrorist attacks inside Saudi Arabia that led to the deaths of over 40 people in 2003. The King expressed his hope that it would become a channel for responsible dialogue and would be effective in spreading the noble values embodied in the virtues of justice,

bodies. Furthermore, the statement reveals that there is a distinction made by the KSA between objective criticism or constructive criticism and “fabricated lies”. Thus, Participant 1 distinguished between the criticism of human rights in the Kingdom by the UN and that by INGOs. This view is supported by a number of participants. For example, Participant 9 stated:

There is some sort of response to such examinations, provided that the reports of such organisations are objective, non-politicised, honest and impartial (INTV9).

Furthermore, Participant 8 argued:

It is not a condition that it responds to all criticisms and every remark. If the Kingdom of Saudi Arabia is of the opinion that the criticism directed to it has notable repercussions and is severe, there can be a response from the state. However, if the criticism is only a transient matter, it is not a condition that the state responds to it. But, it is certain that the country follows all the observations and criticisms directed to it (INTV8).

The statements reveal that the KSA’s interaction with the criticisms is based on the importance of criticisms themselves. Nevertheless, Participant 1 acknowledged that constructive criticism by the IHRL mechanisms is tackled by the Kingdom:

Yes, as I said that when there is constructive criticism and in certain cases the problem is not clear to some extent, meaning that I may be able to see certain problem while another individual fails to see it. Thus, if someone is able to spot a problem and is able to take it to those in charge in the different fields in the Kingdom of Saudi Arabia, it will be solved (INTV1).

In contrast to positive criticism, when the reports or the criticism are seen as lacking objective truth or viewed as biased, then they may be ignored by the KSA. As Participant 9 clarified:

Moreover, it is observed that these reports are based on individual cases and then generalised to all sectors of society. For such individual cases, you find that an organisation such as Amnesty International issued a report titled “*Minors Forever*”⁷⁰⁵. It took some local individual cases and generalised them to all sectors of society. However, this does not reflect the reality, particularly when there is a tendency to display or use such cases as pressure and extortion, and in such cases the Kingdom of Saudi Arabia does not cooperate (INTV9).

equality and tolerance, The objective of the Centre was expressed as follows: “The main objective is to combat extremism and foster a pure atmosphere that give[s]rise to wise positions and illuminating ideas that reject terrorism and terrorist thought ... the dialogue will not accept turning freedom into obscene abuse, name calling or attacking the national and good ulema”. For more details see Mark Thompson, ‘Assessing the Impact of Saudi Arabia’s National Dialogue: The Controversial Case of the Cultural Discourse’ (2011) 1 Journal of Arabian Studies 163.

⁷⁰⁵ See <<https://www.hrw.org/report/2008/04/19/perpetual-minors/human-rights-abuses-stemming-male-guardianship-and-sex>> accessed 22 November 2018.

Thus, participants believed that the KSA views criticism by the UN as positive in that it supports human rights in general, while criticism by the INGOs only appears to support individual cases. The INGOs appear to generalise from individual cases, which may be true but are not necessarily reflective of systemic human rights failures. Participant 12 argued this difference in approach explains why the government of Saudi Arabia is more responsive to intergovernmental bodies' reports than INGOs' reports:

KSA usually does not respond loudly or openly through issuing answers or explanations or clarifications to accusations and campaigns. It focuses primarily on criticism by intergovernmental bodies such as CEDAW and HRC as part of its desire to be active at the internationally level, to clarify its positions and to gain credibility. KSA appears not to respond directly to criticism by non-governmental organisations; rather it tries to respond to the criticisms within its national reports (INTV12).

The method of response to criticisms is highlighted by Participant 7, who explained:

The Saudi Ministry of Foreign Affairs always shoulders the responsibility in giving responses to the questions raised, and sometimes this takes the shape of statements, either official or otherwise from the Ministry of Foreign Affairs, sometimes statements from the Minister of Foreign Affairs himself, or from those below him or from the concerned Saudi embassies if the criticisms came from Britain, the USA or France and sometimes the responses come through delegations and academics specialising in legal matters and from Human Rights National Association (INTV7).

The statement validates the argument that the Kingdom responds to human rights criticisms raised by the UN human rights bodies, by states and by civil society actors. Participant 10 agreed:

The Kingdom of Saudi Arabia is transparent and clear for such examination; and that it receives delegations, attends conferences and listens to everything that is presented to it and responds to them on many levels, such as the official responses in addition to the special responses directed to associations and organisations such as the Human Rights Association (INTV10).

The statement highlights the level of official interest when it engages in UN conferences and responds to their examinations. The statement also highlights the role of state and civil society actors in dealing with human rights issues. In this context, Participant 12 pointed out:

The KSA also sends delegations, with women participants as members, to various fora to present its view and to respond to questions and accusations. Having women in the delegations who can respond and present KSA's point is one of its practices at international conferences of a variety of kinds (INTV12).

Thus, the inclusion of women delegates to international conferences is seen a vital strategy by the state.

In contrast to Participant 12, Participant 2 highlighted that the KSA does respond to the INGOs' human rights reports:

The Kingdom of Saudi Arabia deals seriously with the relevant reports, contrary to the practice of many other countries that do not usually give due care to the reports issued by non-governmental organisations, which may have undeclared goals and a suspect agenda (INTV2).

Participant 2 described how the Kingdom deals with such reports:

But the Kingdom of Saudi Arabia and its Human Rights Commission in particular give due attention to such critical reports, reads them in detail, and suggests certain initiatives based on the criticism in these reports. In fact, the reports are not ignored at all, on the contrary they are seriously considered and properly dealt with in respect to the credibility and transparency they deserve. The reports may contain some mistakes; thus, it is possible to take advantage to rectify these errors (INTV2)

The Human Rights Commission in Saudi Arabia considers these reports in order to promote human rights in the country. However, some participants perceived that if a misunderstanding of the real situation of human rights in the KSA is contained in the report, the Kingdom may clarify mistakes that the reports contain. Thus, the statements reveal that the interaction between the KSA and the INGOs regarding human rights could lead to a positive influence on the human rights.

However, not all participants agreed with the positive views about the effectiveness of the interaction between the state and the IHRL bodies and INGOs in enhancing human rights.

Participant 6 argued:

However, none of these developments (the participation of women in public working life regarding certain of their rights such as their internal and external representation in work field, increment of their share in some leading positions and in labour market as well as in other matters) were in any way due to the pressures of international conventions (INTV6).

The participant believed that the improvements in human rights in Saudi Arabia is solely due to the state's efforts. Similarly, Participant 5 argued:

I do not believe that external pressure has done anything other than to raise the awareness of the population, and frankly speaking, I don't believe that external pressure has a role, and I believe that foreign organisations do harm (NTV5).

However, the statement acknowledges the indirect impact of the role of the IHRL on promoting and protecting human rights by raising awareness of the population. It seems that on the one hand, the interviewee appeared to say that external pressure does raise awareness in the population, but minimises the importance of this; pressure has not done anything "other than to raise awareness". The interviewee thinks that external pressure "has no role" and at the same time that foreign organisations do harm.

In summary, it could be argued that there is a clear contradiction between participants regarding role or the usefulness of the criticisms of human rights issues in the KSA by various IHRL mechanisms. The analysis finds that the majority of participants believed interaction between the state and IHRL mechanisms and INGOs is positive in promoting human rights. They argued that the KSA reacts positively to delegations of and reports by multilateral state, state and non-state actors. The KSA responds well to objective and constructive criticism which contributes to improving human rights. Importantly, the analysis highlights the Kingdom's implementation of the international norms is subject to its compatibility with the norms of *Shari'ah*. However, a few participants argued that the criticism of human rights in Saudi has no significant influence due to the criticisms' lack of credibility. In this respect, it can be concluded that the KSA is selective in its handling of criticisms from human rights organisations. It distinguishes between deliberate and unintentional criticisms. It also seems that the Kingdom responds to constructive criticism while ignoring criticisms that attack the Kingdom's reputation rather than contributing to tackling the human rights situation.

6.2 The Usefulness of IHRL in Promoting Women Rights

Chapter 4 highlights that there have been significant advances in women's rights and their empowerment in the KSA. These changes were as a consequence of a number of factors including the IHRL mechanisms (see Chapter 5). In term of the usefulness of IHRL in promoting women's rights, two sub-themes emerged through the interviews: ratifying the IHRL Conventions; and, more specifically, the CEDAW.

6.2.1 Ratification of the IHRL Conventions

A number of participants identified that the usefulness of IHRL in protecting the rights of women could be seen through the human rights conventions. Specifically, they referred to the multilateral treaties (conventions) which, upon ratification, create a binding legal obligation. Participant 13 mentioned that:

The ratification of the CEDAW is an advancement. I mean that the government's attention is good and in 2008 Saudi government has submitted the reports to the CEDAW. The government is obligated to take action in the basis of the CEDAW requirements. So, the government is now liable to the international community to make changes in their social practises, in their laws and regulations. After the ratification it is the obligation of every state to implement the CEDAW requirements or regulations in their legal system and their practical life. I think they have now started and two or three things that I have seen such as appointing

women in high position which is one of the important issues and sporting rights are now allowed which is another issue. And it seems that women do not need to male permission to gain admission to hospital (INTV13).

This is supported by Participant 9, who argued:

In the process of legislation and enactment of regulations, the Kingdom of Saudi Arabia attempts to ensure that such enacted regulations are compatible with the international conventions which it joined, in addition to the consideration that they should incorporate more rights with regard to women, whose rights are raised from time to time. Moreover, I think that those who prepare the drafts of regulations, always bear in mind, that there are international conventions, whose content must be taken into account (INTV9).

Thus, the statement reveals that the usefulness of IHRL in promoting and developing women rights occurs when the KSA takes into account the norms of the convention as it establishes new regulations or laws. Participant 9 also provided specific examples of the Kingdom joining the IHRL conventions on promoting the rights of women:

Yes, they have, as most of the laws and regulations that have been enacted in the recent period are actually enforceable and in conformity with the concerned international human rights conventions. If we have a glance at the Law on the Protection Against Harm, we find that it is compatible with the Convention on the Elimination of all Forms of Discrimination Against Women (INTV9).

The statement highlights that the Kingdom's engagement with IHRL led the government to establish laws, which aim to protect women against harm, and that these agree with the standards of the CEDAW.

As Participant 10 explained, this is because:

The international conventions signed by the Kingdom of Saudi Arabia take the legal strength of rule as the Basic Law of Government. It has to be admitted whatever the country signed and accepted as conventions has become a law, which must be fully complied with, with the exception of the portions on which the country made reservations (INTV10).

Similarly, Participant 2 indicated:

Once the Kingdom of Saudi Arabia joins a particular Convention or agreement, that instrument becomes an integral part of its rules and regulations, and that it is taken as a legal argument for implementation. In fact, the Commission has offered to re-consider, review and study many laws for due amendment; and that many laws have duly been amended. Likewise, many laws have been issued; for example, the Law on Protection against Abuse, which pertains to family (domestic) violence and violence in its different forms, whether at school, social welfare homes and comprehensive rehabilitation homes (INTV2).

In this case, the statements refer to the role of Human Rights Commission in the KSA, which is a government body that deals with IHRL. It does so by reviewing and amending many laws to agree with the norms of the conventions.

Overall, it can be concluded that ratification of the IHRL conventions pertaining to women's rights is useful for promoting women's rights because it requires the state to improve its national law according to the ratified conventions, which are legally binding instruments concluded under international law.

6.2.2 The Role of the CEDAW in Improving Women's Rights

A number of participants specifically highlighted the usefulness of IHRL in enhancing women rights. For example, Participant 10 referred to the impact on women's rights in relation to the norms of signed conventions:

The fourth focuses on the conventions signed by the country regarding the rights of women, particularly their equality with men, non-discrimination or practice of anything against them (INTV10).

In addition, Participant 13 commented:

You know that SA ratified CEDAW 2000, and also has submitted its initial and second reports to the CEDAW in 2008. Fortunately, I was there at that time as a member of the committee in 2008. It was so fortunate to see SA in the CEDAW committee and submitted its initial and second reports. In that periodic report you know that the CEDAW committee has asked to remove male guardianship that is the most important obstacle for the advancement of women in SA because its obstacle for travel, for driving, for education, for health care and all daily life issue of women (INTV13)

The statements highlight the participants' belief in the effectiveness of the CEDAW Committee's method of reviewing and monitoring the status of women's rights in the KSA. They highlight that during the discussion of the Kingdom's report one of the controversial issues regarding the rights of Saudi women raised by the Committee was the issue of male guardianship.

In this context, it seems that the norms of the CEDAW contribute to achieving equality between men and women and reducing discrimination against women. Thus, Participant 10 explained how joining the CEDAW is useful in terms of protecting women's rights:

Yes, certainly many changes did occur. It is true that we have many laws that have been developed, thanks to the international community conventions committees such as Convention on the Elimination of All Forms of Discrimination against Women Committee, despite our opposition to a certain number of its items. We have to admit that there are certain positive aspects in the CEDAW, because it achieved progress for Saudi women in terms of giving them the right to jobs and their equality with men in relation to various job types and degrees. The jobs for women were in the past confined to only grade six or seven rank but after application of CEDAW as an international convention, Saudi women have assumed high positions, including those of advisers and directors, as well as even that of a president of a university. It has to be remarked we are not opposed to the

promotion of human rights; on the contrary, we support whatever promotes human dignity, even if the issue was raised by a non-Islamic organisation (INTV10).

The positive effects of the CEDAW in terms of improving Saudi women rights is that women and men are treated equally in relation to jobs and the levels within jobs. Thus, the ratification of the CEDAW has had a positive impact on developing women rights, although it contains certain norms that conflict with the KSA's law.

In this context, Participant 1 argued:

You notice there is a clear influence through the mechanisms of the Human Rights Council and the most important mechanism is our presence in the CEDAW. I consider that membership of the Kingdom of Saudi Arabia in the said Council reflects a sincere intention to improve the status of women and to take care of their rights. CEDAW as international convention contains many provisions that sharply conflict with our values and the values of Islam, but despite all this the Kingdom of Saudi Arabia has joined the Convention, although it recorded its reservation over certain provisions that don't suit us (INTV1).

The statement reveals that although the KSA makes reservations about certain articles in the CEDAW that are in conflict with Islamic ideals joining the Convention has increased women's rights in the Kingdom. Participant 13 agreed:

[I am] very happy with the Saudi government after the ratification, as they have taken so many initiatives to remove many obstacles. Male guardianship it is not a legal requirement. It is not a requirement by the Qur'an or *Sunnah*. It is not a requirement that women should be denied their rights to drive or need male permission to get admission to hospital or travel abroad. ... There is no written requirement but all of this is traditional (INTV13)

Furthermore, this evidence suggests that the effectiveness of the CEDAW in the case of the Kingdom could be seen through it promoting the rights that relate to traditional practices but not the practices that have religious legitimacy.

In summary, this section finds that IHRL has been useful in terms of enhancing women's rights in the KSA. This has been achieved through the state ratifying the conventions of human rights which created a binding legal obligation. This obligation resulted in the state improving the rights of women. More specifically, the CEDAW has played a significant role in developing women's rights, despite the Kingdom making reservations to certain articles of the CEDAW that contradict Islam norms.

6.3 Summary and Conclusion

This chapter analysed the participants' statements in relation to the role of IHRL on influencing positive change on the KSA's domestic law, in particular on women's rights.

Specifically, the chapter found that IHRL plays an important role in influencing the human rights law in states' domestic law through different mechanisms. It suggested that the IHRL bodies, such as the OHCHR, the HRC, and the treaty-based body of the CEDAW and their respective mechanisms such as the UPR positively influence human rights because of the monitoring and follow-up strategies they adopt. The analysis highlights that the KSA's desire to cooperate and engage with the IHRL is a significant factor in transferring the norms of IHRL into the KSA's domestic law. The interaction between the state and IHRL occurs in different ways. The first is through the signing of human rights conventions, following which the state implements the relevant norms into its domestic legislation. In addition, the state considers the norms of the conventions when it further develops national laws. Furthermore, the monitoring process ensures that the KSA addresses issues raised by the committees, with the exception of those that conflict with *Shari'ah*. The second method of interaction was through the mutual visits, delegations and the state participating in the human rights treaty formulations. This type of the interaction provides a significant opportunity to discuss and exchange views regarding human rights, and interpret the norms of human rights. The findings indicated that the consequences of this interaction increase the KSA's participation in the field of human rights.

In relation to the usefulness of the IHRL in promoting the rights of women, the findings indicated that IHRL enhanced women's rights due to the obligations created when the KSA ratified various conventions. This is because the state is required to amend its national law according to the norms of the conventions. Specifically, the KSA joined the CEDAW which then became legally binding on its national law. As a result, the norms of the CEDAW have contributed to achieving equality between men and women, particularly in the field of employment and to reducing discriminatory practices against women. It argued that although the Kingdom made reservations towards the norms of the CEDAW that are incompatible with its Basic Law, the ratification of the CEDAW has contributed to enhancing women rights and improving their situation in particular aspects.

Chapter Seven: Discussion of the Findings

This chapter discusses the main findings derived from the qualitative analysis in previous three chapters (Chapters Four, Five and Six) in relation to the influence of IHRL on a state's domestic law using the KSA as a case study. The data was collected from different stakeholder participants—state actors, civil society members, human rights activists and a member of the CEDAW Committee—in order to gain a more nuanced understanding of the influence of the KSA's engagement with IHRL and its mechanisms in terms of protecting and improving human rights in the KSA, with a particular emphasis on the changes to the rights of women from 1990 until 2016.⁷⁰⁶ In order to achieve the purpose and objectives of the research, the following questions are answered:

Research Question 1: What changes have there been in the KSA's law and practice that reflect a greater engagement with IHRL?

Research Question 2: What are the factors to which key actors attribute these changes?

Research Question 3: To what extent are the changes due to the KSA's engagement with IHRL?

Research Question 4: Have the IHRL's mechanisms been useful from the perspective of promoting and protecting women's rights in the KSA?

The findings of the study are driven inductively by applying a qualitative thematic analysis method.⁷⁰⁷ The findings obtained from the empirical evidence in Chapters Four, Five and Six are discussed as follows: Section 7.1 presents the main findings of the study in brief. In Section 7.2 the major findings are discussed in detail. Thus, Section 7.2.1 presents the discussion of the core changes in the KSA's domestic law in relation to human rights from 1990 until 2016 in relation to research question one. Section 7.2.2 assesses the results that help answer the second research question regarding the factors that have contributed to the changes in the KSA's human rights laws and situation. Thereafter, Section 7.2.3 discusses the study's findings related to research question three about the extent to which the changes in the KSA's human rights legislation was due to its engagement with IHRL. Finally, in Section 7.2.4, in answer to research question four, the findings that emerge regarding the usefulness of IHRL in terms of promoting and protecting women's rights in the KSA are analysed.

⁷⁰⁶ For further details see the Introduction Section 3.

⁷⁰⁷ For further details see Chapter 3.

7.1 The Major Findings of the Study in Brief

The major findings of the study can be summarised as follows:

1. From 1990 to 2016, the domestic situation pertaining to human rights in the KSA has undergone several changes that aim to protect and promote human rights in the Kingdom and, in particular, the rights of Saudi women. Three fundamental changes are highlighted. First, the changes to legislation in particular areas that include: the enactment of the Basic Law; introducing legislative programs to stop various types of abuses of women's rights; specific legal regulations in order to reduce the role of the male guardianship over women; and advances in the political and civil rights of women. The second core change is the creation of institutions concerned with human rights while the third is the promotion of human rights' education in schools.
2. The process of change in the domestic law of the human rights in the KSA was characterised by the participants in conflicting ways; it can be "dramatic and significant" or "quiet and gradual".
3. The changes in the domestic laws and policies of the KSA in relation to human rights are seen as the result of what can be characterised as internal and external factors. The internal factors can be further divided into two types. First, factors related to the political environment of the state including: a) the Kingdom's legal system: *Shari'ah* and the Basic Law of the Kingdom; and b) the government's strategic decision-making process, which involves political will, Royal Decrees and the influence of policy-makers and officials. However, the results show particular emphasis is placed on the role of the King in bringing about a direct change in the laws of the Kingdom. The second type of internal factors relate to the social environment. This includes the role of individuals and citizens, the education system, economic factors, urbanisation, living and working overseas, and the social media. External factors related to IHRL and its mechanisms.
4. The study finds that the KSA's human rights development officials and state policy-makers play a key role in particular in the field of political rights of women.
5. The evidence shows that changes have taken place in the KSA's human rights law and regulations because of the impact of the Kingdom's engagement with IHRL and its mechanisms. The role of IHRL in bringing about these changes can best be understood through the theory of Transitional Legal Process;⁷⁰⁸ specifically, the

⁷⁰⁸ Harold Hongju Koh, 'Why Transnational Law Matters' (2005) 24 Penn State International Law Review 745.

KSA's interaction with the UN bodies and mechanisms, interpretation of the norms of IHRL, dissection of the Kingdom's reports by and engagement with the UN human rights bodies, which has resulted in the incorporation of the accepted IHRL norms into the KSA's domestic laws and regulations.

6. The study finds that although the Kingdom made reservations about the norms of the CEDAW that are incompatible with its Basic Law, the ratification of the CEDAW has been useful in terms of enhancing women's rights and enabling them to gain certain rights, in particular those rights that they were prevented from enjoying because of traditional cultural practises.

7.2 Discussion of the Major Findings in Detail

This section presents a detailed discussion of the main findings organised according to the study questions.

7.2.1 The Core Changes in the KSA's Domestic Laws and Practice in Relation to Human Rights from 1990 until 2016

The findings of the empirical data regarding the core changes that have occurred in the KSA domestic law are supported by documentary analysis (see Sections 2.1.5 and 2.2.2.2). The empirical findings from the interviews identify a number of laws and practices that were changed to improve aspects of human rights in KSA between 1990 and 2016. These included the creation of the Basic Law of Governance in 1990,⁷⁰⁹ which was a significant step in protecting and improving human rights in two ways. First, it established an organisational basis for the rights and duties of individuals. As mentioned in Chapter Three, several paragraphs of the Basic Law set out different individual rights that are guaranteed and protected by the government.⁷¹⁰ In this respect, it is important to outline the rights of the populace within the domestic law of the state as this provides legal legitimacy for the rights. Additionally, the Basic Law works as a frame of reference for individuals claiming that their rights have been violated. Furthermore, framing the rights of individuals in the system of the state enables the populace to be aware of their rights. Thus, it is vitally important in terms of protecting and enhancing the rights of individuals in the Kingdom.

⁷⁰⁹ 'The Basic Law of Governance' <https://www.saudiembassy.net/about/country-information/laws/The_Basic_Law_Of_Governance.aspx> accessed 24 June 2016.

⁷¹⁰ *ibid.*, Articles 8, 26 and 47. For further detail see Chapter Two, Section 2.2.1.

The second important matter in relation to the creation of the Basic Law of Governance is that it is vital to framing the status of international covenants and treaties to which the KSA becomes party. Thus, Article 81 stipulates “the application of the KSA’s law should be compatible with the treaties and agreements to which the state has committed”.⁷¹¹ In addition, Article 70 stipulates that the Kingdom’s engagement with international conventions shall be issued and amended by Royal Decree.⁷¹² As mentioned in Chapter Two⁷¹³, once international treaties or conventions are ratified by Royal Decree, they became part of the Kingdom’s domestic law.⁷¹⁴ This aspect is important because it establishes the legitimacy of the IHRL treaties and conventions within the domestic legal structure. Additionally, it positively reflects the legitimacy of the ratified treaties in the Kingdom’s domestic law. Thus, the IHRL norms become effective through the KSA’s domestic law. The results highlight that the stipulated rights of individuals and the status of international treaties are conferred legal legitimacy by the Kingdom’s domestic law.

The foregoing supports the argument that international rules and norms gain legitimacy when formulated from inside the framework of the state’s legal system. This is consistent with previous studies that international human rights norms are better protected in a state when they are articulated within the legal normative framework of that state. According to Cassese, “international law cannot work without the constant help, cooperation, and support of national legal systems”.⁷¹⁵ Cortell and Davis indicate that “international rules and norms can enter national-level policy processes by two means: the actions and interests of state and/or societal actors; and the incorporation of international rules and norms into national laws”.⁷¹⁶ The statements emphasises the manner in which international rules and norms became part of domestic political institutions when the state incorporates them in its domestic laws.⁷¹⁷ In this case, it appears that when the provisions of the treaty are articulated in the state’s legal system this action contributes to the treaty norms receiving local acceptance. Thus, the

⁷¹¹ ‘The Basic Law of Governance Art. 81’, <https://www.saudiembassy.net/about/country-information/laws/The_Basic_Law_Of_Governance.aspx> accessed 24 June 2016.

⁷¹² *ibid.* Art. 70.

⁷¹³ See Chapter 2.1.6.

⁷¹⁴ See ‘Procedures for the conclusion of international conventions’

<<https://boe.gov.sa/ViewTemplate.aspx?lang=en&TemplateID=2>> accessed 22 November 2018.

⁷¹⁵ Andrew Hurrell, ‘International Society and the Study of Regimes: A Reflective Approach’ in V Rittberger (ed.), *Regime Theory and International Relations* (Clarendon Press 1993) 71.

⁷¹⁶ Andrew P Cortell and James W Davis Jr., ‘How do International Institutions Matter? The Domestic Impact of International Rules and Norms’ (1996) 40 *International Studies Quarterly* 451, 454.

⁷¹⁷ *ibid.*

domestic law reflects the IHRL norms. Thus, in order to enhance human rights, it is useful if a state promotes human rights through a national discourse and domestic laws.

The second change in Saudi human rights that the study identifies is the establishment of human rights organisations and programmes. The KSA established several human rights institutions, be they government institutions such as the Human Rights Commission (2005), or civil ones such as the National Association for Human Rights (2004) and the Committee on Human Rights of the *Majlis al Shura* (1995). In addition, the Kingdom created a number of programs and regulations aimed at protecting certain groups in society, such as women through the programme against harm and violation.⁷¹⁸

These human rights institutions were all created after 1990. What was surprising from the results of the study is that according to the participants from Saudi human rights institutions (both government and civil), the establishment of these institutions and programs are understood to have been a result of the KSA's engagement with the mechanisms of IHRL. Specifically, they believed that the annual reviews of the UPR and the CEDAW helped to establish these institutions and programmes.⁷¹⁹ In this context, the direct application of the ratified treaties by the KSA appears to have provided a basis for the Commission of Human Rights and other government bodies in the KSA to re-consider, review and study laws due for amendment. Thus, engagement with IHRL triggered a review process of domestic law as the Kingdom accepted certain international norms and amended its national law to comply with these norms. This influence, which was frequently raised by human rights organisations and the UN bodies, can be seen through the improvement in women's rights, which were previously constrained by male guardianship practices. Importantly, the process of review initiated by the engagement with the IHRL mechanisms resulted in studies that found that most practices by men against women that came under the umbrella of male guardianship had no basis in Islamic law. Rather, these practices were found to be related to local and tribal culture, and not based on Islamic law. Therefore, when this issue was raised by human rights organisations, the CEDAW Committee and activists, the government worked to limit and abolish such practices. This included the issuing of a national identity card for women that guarantees full autonomy in the practice of their own affairs. In this respect, the KSA's interaction with IHRL was positive in terms of identifying and addressing rules relating to traditional cultural practices that had no legal basis.

⁷¹⁸ For further details see Chapter Two.

⁷¹⁹ For further details see Chapter Four.

Simmons mirrors the present study's findings. He measures the impact of the treaty through investigating the substantive outcomes of specific articles of the treaty. Simmons found that the CEDAW's positive effects included improving women's education, family planning access, and employment. Simmons' investigation highlights the influence of treaty on state domestic policy has occurred though the CEDAW changing states parties' domestic leaders preferences, encourage domestic legal activates against discrimination, and enhance mobilization that support for the aims and goals of the CEDAW.⁷²⁰ The findings of Simmons agree with this study's outcomes, in terms of the positive effects of the CEDAW in enhancing the rights of women in Saudi Arabia. The ratification of IHRL conventions is useful for promoting women's rights because the state is required to improve its national law according to the ratified conventions. These are international, legally binding instruments. The findings show the positive effects of the CEDAW in terms of improving Saudi women's rights, for example, the increased and improved labour market participation rates for women. The current study finds that the KSA reacts positively to delegations of, and reports by, multilateral state, state and non-state actors. The KSA responds well to what it perceives to be objective and constructive criticism which contributes to improving human rights. Importantly, the analysis highlights the Kingdom's implementation of the international norms is subject to its compatibility with the norms of *Shari'ah*.

Furthermore, the findings regarding the effectiveness and the role of the CEDAW in terms of improving the rights of women and shaping the state's domestic law is in agreement with Baldez's findings. These showed that when a state ratifies the CEDAW, it means that it agrees to be bound by the treaty norms and also it agrees to the process of the Committee gathering information regarding women rights, in particular in relation to the availability of information on the status of women and their rights. The state also agrees to engage with experts to promote women's rights. The CEDAW, "in other words, is more about process than policy".⁷²¹ In this respect, the current study indicates that ratification of the CEDAW commits the Kingdom to participate in a process by which it attempts to comply with the elimination of all forms of discrimination against women. For example, the state's reports that submit to the Committee is an important element in allowing the Committee to follow up and gather comprehensive information regarding the situation pertaining to women rights and

⁷²⁰ BA Simmons, *Mobilizing for Human Rights: International Law in Domestic Politics* (Cambridge University Press 2009).

⁷²¹ Lisa Baldez, 'The Impact of the UN Women's Rights Treaty: Process, Not Policy' (2012) Paper prepared for delivery at the annual meeting of the International Political Science Association 18.

existing government policies related to women. This information forms the basis for discussion with the government and recommendations for future actions. Thus, this process encourages the state to undertake a diagnostic investigation of the status of certain issues raised during the review. Thus, the periodic report is a significant part of the treaty process in terms of improving and eliminating discriminatory practices against women.

Moreover, these findings seem to be consistent with other research, such as Englehart and Miller, showing the effectiveness of the CEDAW in terms of improving the rights of women.⁷²² They concluded that “as more countries ratify, they tend to rise up to the mean⁷²³ for the CEDAW parties, rather than dragging the trend line down”.⁷²⁴ The authors argue that although the CEDAW’s “effects are not always sizeable and are not manifest”⁷²⁵, it appears that the CEDAW improves women rights in states in the treaty. They found that the effects of the CEDAW are “significant for political rights, attenuated somewhat for social rights, and absent altogether for economic rights”.⁷²⁶ This assessment by Englehart and Miller of the CEDAW’s effectiveness is partly applicable to the KSA’s case. The data in the present study finds that the CEDAW enhances Saudi women’s rights, in particular eliminating social discrimination, and traditional practises associated to local cultural. As mentioned previously, when the Committee raised issues related to male guardianship practises over women and made recommendations to eliminate such social practices, the Saudi government implemented certain recommendations.⁷²⁷ Thus, the study supports Englehart and Miller’s findings regarding the usefulness of the CEDAW in term of improving women’s social rights.⁷²⁸ However, the current study places greater emphasis on the role of the Kingdom’s political leaders (the King and policymakers) in terms of improving the political rights of women (this is discussed later). This finding on its face, appears to contradict Englehart and Miller regarding the significant positive impact of the CEDAW in improving political rights.

⁷²² Neil A Englehart and Melissa K Miller, ‘The CEDAW Effect: International Law’s Impact on Women’s Rights’ (2014) 13 *Journal of Human Rights* 22.

⁷²³ Englehart and Miller clarify the measurement that they are using in their study. They state that they “employ indicators of *women’s social, economic, and political rights* kept by the Cingranelli-Richards (CIRI) Human Rights Data Project. These data provide consistent coverage of a large number of countries over an extended period of time. Each variable measures government practice, reflecting what governments actually do with respect to rights, and not simply their legal commitments. They range from 0 to 3, where 0 indicates failure to recognize women’s rights under the law and 3 indicates that rights are guaranteed under the law and strictly enforced”. *Ibid.* 25.

⁷²⁴ *ibid.* 38.

⁷²⁵ *ibid.* 38.

⁷²⁶ *ibid.* 38.

⁷²⁷ See Chapter 2.2.2.2.

⁷²⁸ Neil A Englehart and Melissa K Miller, ‘The CEDAW Effect: International Law’s Impact on Women’s Rights’ (2014) 13 *Journal of Human Rights* 22.

It could be claimed that regardless of the divergence of views regarding the effectiveness of the CEDAW and the factors influencing the process of change, it seems that there is general agreement about the effect of ratifying the Convention in shaping the domestic law of a state and developing the various rights of women. Therefore, in order to benefit from the positive aspects of IHRL treaty norms with regard to the promotion of human rights, the state should increase its cooperation with UN bodies and expedite the implementation of recommendations domestically.

The analysis of the data in this study finds evidence for positive changes in relation to political rights. It identified two positive steps in the political rights of women; women have become members in the Consultative (*Shura*) Council and are now able to participate in the municipal elections as voters and candidates. Women comprise not less than 20% of the *Shura* Council members;⁷²⁹ currently 30 women participate in the Council's sixth session.⁷³⁰ Meanwhile, the first municipal elections were held between February and April 2005, and the second elections were held in September 2011. In both, participation rates were low in part due to the limitations in terms of age and gender; only men over the age of 21 were permitted to contest and vote, while women were barred from participation.⁷³¹ Before 2011 elections, King Abdullah issued a Royal Decree regarding women's participation in the 2015 municipal elections as voters and candidates, and increased the number of elected members to two-thirds as against one-half in 2005 and 2011.⁷³² In the 2015 municipal election 81 percent of women entitled to vote cast their ballot.⁷³³

Furthermore, in 2017 and 2018 (to time of writing) a number of significant changes regarding human rights and, in particular, the rights of women occurred. The Kingdom's leaders represented by the Crown Prince announced improvements were to take effect in 2018. One of the most significant events is the Royal Decree that allows women to drive,⁷³⁴ Several remarkable changes in the social, economic and civil arenas have occurred in these two years

⁷²⁹ 'Shura Council Law'

<<https://www.shura.gov.sa/wps/wcm/connect/shuraen/internet/Laws+and+Regulations/The+Shura+Council+and+the+Rules+and+Regulations+Job/Shura+Council+Law/>> accessed 14 May 2018.

⁷³⁰ *ibid.*

⁷³¹ 'Saudi king gives women right to vote' <<https://www.reuters.com/article/us-saudi-king-women/saudi-king-gives-women-right-to-vote-idUSTRE78O10Y20110925>> accessed 14 May 2018.

⁷³² *ibid.*

⁷³³ Committee on the Elimination of Discrimination against Women, Consideration of reports submitted by States Parties under article 18 of the Convention on the Elimination of All Forms of Discrimination against Women Combined third and fourth periodic reports of States Parties, Saudi Arabia, 2016, CEDAW/C/SAU/3-4.

⁷³⁴ Royal Decree number (905), of 6/1/1439. A.H(27/9/2017) <<https://www.okaz.com.sa/article/1650996>> accessed 6 March 2019.

and more are expected.⁷³⁵ However, these fall outside the scope of this research which is limited to period up to the end of 2016. Therefore, it would be useful for future research to investigate the relationship between these changes and the influence of the KSA's engagement with IHRL.

The findings raise several anomalies. The first is that in contrast to the effectiveness of the CEDAW in terms of promoting women's civil rights, the main driver for developments in women's political rights, according to the participants, are not the result of the KSA's interactions with IHRL. Participants in the study, to varying degrees, tended to attribute the changes in political rights to the role of the King and other decision-makers in the Kingdom. This raises the question as to why the study's contributors tend to attribute the change in women's political rights to the role of policymakers in the Kingdom rather than its interaction with IHRL? First, the study indicates that due to the different backgrounds of the participants, they have different views on the impact of IHRL on the process of domestic laws. For example, interviewees who are public officials or civil servants in state institutions tend to attribute the change to the role of the state leaders (the King and policymakers), while members of civil society tend to recognise the role of both factors (leadership and IHRL) in the process of the change and development. In contrast, human rights activists tend to prioritise their role in the process of the development of human rights in the Kingdom rather than that of the state or IHRL. Meanwhile, a member of the CEDAW Committee referred to the role of the Committee in making changes in the context of women rights; however, she also referred to the role of the KSA's leadership in accepting and activating the change proposed by the Committee. Thus, although there were different perspectives on the drivers for the development of political rights, the participants tended to weigh more heavily on the role of the government in this area.⁷³⁶

Importantly, the perception that the change in women's political rights is due to the role of the King rather than other factors may reflect the nature of legislation in the Saudi system (see Figure 3.1), which ultimately depends on a Royal Decree from the King. For example, although the establishment of human rights organisations was believed to be the result of the interaction with international human rights bodies, the final decision to establish these

⁷³⁵ 'Saudi Arabia to see more momentous changes in 2018' <<https://gulfnews.com/news/gulf/saudi-arabia/saudi-arabia-to-see-more-momentous-changes-in-2018-1.2149371>> accessed 16 May 2018.

⁷³⁶ This issue is discussed in greater depth in the next section.

institutions was taken by the King when he issued a Royal Decree.⁷³⁷ Similarly, in 2013, the Law on Protection from Abuse was promulgated by Royal Decree.⁷³⁸ In this respect, it could be claimed that there is a relationship between the two factors (interaction with IHRL and political leadership) in the context of the domestic changes of the KSA.⁷³⁹ Hence, given the importance of Royal Decrees and the influence of policymakers in terms of the protection and empowerment of rights in domestic law of the Kingdom, it is important to involve the interest of KSA's policymakers in human rights. This would be reflected positively in initiatives promoting the status of human rights in the KSA.

Second, the difference between the participants' views in the drivers of change in political and civil rights may be due to the nature of the rights themselves. In this respect, it appears that participants had the courage to acknowledge the role of IHRL in improving civil issues, such as eliminating certain discriminatory practices against women in the labour market. By contrast, changes in political rights mean creating new systems in the political system of the state. It may, therefore, be very difficult to attribute the change in the political system of the state to an external factor such as international law, because this could be seen as a sign of violating state sovereignty. Moreover, the development of the rights of Saudi women, especially those related to the political field such as the appointment of female members of the *Shura* Council, are regarded as new for Saudi society. Therefore, attributing such changes to an external factor would be rejected by the conservative society. If a change is seen to be driven internally and is supported by a Royal Decree it is more easily accepted by society. This is reinforced by *Shari'ah* norms which emphasis that when a matter is decreed by the guardian of the Muslims (the King in Saudi Arabia), it must be accepted with obedience.

In this respect, in the KSA developing and improving human rights is more likely to be effective and durable when it is seen as emanating from society and the state itself. A similar conclusion was reached by An-Na'im in relation to the role of domestic cultural norms in terms of protecting and enhancing human rights. He argues:

Universality requires global agreement, a consensus between different societies and cultures, not the application of one set of standards derived from the culture and context of a particular society to all other societies. The normative system in

⁷³⁷ For more details see AAM Al-Twajiry, JA Brierley and DR Gwilliam, 'Around the Globe Saudi Arabia' (2003) 60 Internal Auditor 21 and Chapter 2.3.1.

⁷³⁸ Royal Decree, No. M/52 of 15/11/1434 A.H. (20/09/2013).

https://digitallibrary.un.org/record/851706/files/CEDAW_C_SAU_3-4-EN.pdf accessed at 6 March 2019

⁷³⁹ These two factors are discussed in detail in the next section.

one society may not necessarily be appropriate for other societies who need to elaborate their own systems based on their particular cultural context.⁷⁴⁰

Therefore, he argues “I believe that effective and sustainable protection of human rights can only be achieved by each society for itself”.⁷⁴¹ In addition, Bielefeldt supports this study, arguing “human rights can meaningfully and productively be connected with different traditions”.⁷⁴² Thus, it is necessary to “take the rights to culture and religion as an integral part of our individual rights and to develop models of the relationship between communal, traditional and individual rights”.⁷⁴³ Therefore, it is important to acknowledge the international norms are more easily accepted when they are articulated within the state’s national law, as well as showing respect for the local values and tradition.

A further reason for the differences in viewing what the driver of change is in terms of political and social rights is that violations of social rights are more clearly seen as contrary to the teachings of Islam and the domestic values of society. In this respect, Islam calls for combating injustice and such violations, as does IHRL. Therefore, there is a consensus between IHRL and Islamic law. Thus, acknowledging the role of international law in the development of social rights is acceptable, because it reinforces these local values.

A further anomaly in the findings is that the process of improvement in the human rights situation in the KSA between 1990 and 2016 is identified in contrasting ways. Certain participants viewed it as “dramatic and significant”, while others believed it was “quiet and gradual”. The reasons for this divergence of views include, as discussed previously, the different backgrounds of the participants. Thus, state actors and the members of civil society tend to portray the changes in human rights as significant and rapid, while human rights activists and members of the CEDAW Committee tend to describe the change as slow and unsatisfactory. Another factor for the different perceptions is how the situation is viewed. Thus, those who considered the changes to be “dramatic and significant” referred to the type of rights, such as the gains in women’s ‘political rights’, for example being appointed to the *Shura* council.⁷⁴⁴ Furthermore, the description of the change as dramatic may due to the

⁷⁴⁰ Abdullah Ahmed An-Na'im, 'What Do We Mean by Universal?' (1994) 23 Index on Censorship 120, 121.

⁷⁴¹ Abdullahi A. An-Na'im, 'Human Rights in the Arab World: A Regional Perspective' (2001) 23 Human Rights Quarterly 701, 703.

⁷⁴² Heiner Bielefeldt, "'Western' versus 'Islamic' Human Rights Conceptions?: A Critique of Cultural Essentialism in the Discussion on Human Rights' (2000) 28 Political Theory 91.

⁷⁴³ Paul Morris, 'Dignity, Difference and Divergence: Religious and Cultural Alternatives to the Universal Declaration of Human Rights' (2003) 1 Journal of Human Rights Research 1.

⁷⁴⁴ <<https://www.shura.gov.sa/wps/wcm/connect/shuraen/internet/home>> accessed 17 May 2018.

prevailing conditions, whether internal or external, that require to keep pace with global change in different fields.

However, those who defined the change as “quiet and gradual” tended to refer to the process for change, which goes through several stages before it is approved or rejected by the King. As discussed in Chapter Two,⁷⁴⁵ the process of legislation in the KSA passes through a number of stages. Thus, approval for a new regulation or legislation can be slow because of the need to modify the proposed system several times before it is implemented. Thus, due to these bureaucratic procedures, participants view the procedure of domestic law changes in the KSA as “quiet and gradual”. Meanwhile, delays in the process of issuing regulations and legislation may negatively affect the protection and enhancement of human rights for those who are entitled to them. Hence, the legislative framework should allow a more rapid process by reducing bureaucratic procedures for the creation of laws and regulations that protect and promote human rights.

It should be acknowledged that the description of change as dramatic or as gradual is merely a descriptive claim and does not carry a normative judgement. Therefore, it is difficult to determine if dramatic change is good or bad in the process of developing and changing some of the local laws related to human rights in the Saudi law.

In the light of the discussion, several elements are identified that influence the human rights improvement in the KSA’s domestic law since 1990 that could be divided to three phases. **First**, at the international level, by the end of the 1980s, the formation of the most important international human rights conventions were complete.⁷⁴⁶ In addition, the UN began its intensive efforts to encourage states to ratify the two International Human Rights Covenants of 1966.⁷⁴⁷ In this respect, there was a growing international interest in human rights following the end of the Cold War which reflected positively on state engagement and cooperation with IHRL.⁷⁴⁸ In the case of the KSA, its realisation and recognition of the importance of international and regional solidarity to strengthen and protect human rights lead it to ratify or accede to certain treaties through the promulgation of Royal Decrees.⁷⁴⁹ Another sign that reflected the Kingdom’s realisation of the advantages of increasing

⁷⁴⁵ For more details see Chapter 2.1.4.

⁷⁴⁶ For further detail see Chapter 2.4.1.

⁷⁴⁷ Abdullahi A An-Na’im, ‘Problems of Dependency: Human Rights Organizations in the Arab World’ (2000) 214 Middle East Report 20.

⁷⁴⁸ Harold Hongju Koh, ‘Why Transnational Law Matters’ (2005) 24 Penn State International Law Review 745.

⁷⁴⁹ B Çali, N Ghanea and B Jones, ‘Big Promises, Small Gains: Domestic Effects of Human Rights Treaty Ratification in the Member States of the Gulf Cooperation Council’ (2016) 38 Human Rights Quarterly 21, 27.

involvement in the UN human rights system was the steps it took to gain various memberships in different UN human rights bodies.⁷⁵⁰

In this context, the study finds that since 1990, the KSA has changed of its engagement with the UN human rights system. For example, in the 2000 election for the HRC, KSA was able to secure a seat for the first time with a landslide majority. Saudi Arabia was able to win another three-year term in the 2003 election.⁷⁵¹ In 2006, the time of creation of the new HRC, Saudi Arabia gained a seat for a third three-year term.⁷⁵² It was also re-elected for an additional three-year term beginning on 1 January 2017.⁷⁵³ Human Rights Watch continued to criticise the KSA regarding the issue of male guardianship arguing that it continues to discriminate against women in law and practice. However, the data in this study shows that there has been advancement in terms of eliminating male guardianship practices against women. Hence, membership of the HRC and other committees may have encouraged states to become more active and commit to its international obligations.

Second, between 1990 and 2008, it is noticeable that the Kingdom's attitude towards the UN human rights conventions shifted from just participating in the discussions concerning the UN conventions, in particular during the debates on the International Bill of Human Rights (the UDHR, the ICESCR and the ICCPR),⁷⁵⁴ to actual engagement with IHRL when it signed a large number of UN treaties including the CERD, the CEDAW, the CAT and the CRC. Consequently, Saudi Arabia has become bound by treaty norms and guidelines.

Third, between 2008 and 2016, the Kingdom not only interacted with the UN human rights treaties, but it also saw actively engaged with several IHRL mechanisms, such as OHCHR and HRC. This reflected the Kingdom's increased interest in the issue of human rights domestically. This phase of the interaction with the IHRL is distinguished by the Kingdom fulfilling the requirements of ratified treaties, such as submitting the Periodic Reports to the CEDAW Committee. In addition, it saw the domestic implementation of the treaty norms

⁷⁵⁰ For more details see Abdulaziz M Alwasil, 'Saudi Arabia's Engagement In, and Interaction With, the UN Human Rights System: An Analytical Review' (2010) 14 *The International Journal of Human Rights* 1072, and S Waltz, 'Universal Human Rights: The Contribution of Muslim States' (2004) 26 *Human Rights Quarterly* 799.

⁷⁵¹ 'Decisions 2003/201B on Elections Nominations, and Confirmations and Appointments to Subsidiary and related Bodies of the ECOSOC', UN document, E/2003/INF/2/Add.2 of 29 April 2003.

⁷⁵² 'General Assembly Elects 47 Members in the New Human Rights Council', UN document, GA/10459 of 9 May 2006, <<https://www.un.org/press/en/2006/ga10459.doc.htm>> accessed 15 May 2018.

⁷⁵³ 'General Assembly elects 14 members to UN Human Rights Council', UN document of 28 October 2016 <<https://news.un.org/en/story/2016/10/544122-general-assembly-elects-14-members-un-human-rights-council>> accessed 10 July 2018.

⁷⁵⁴ For further detail see Chapter Two.

following the implementation of the Committee's recommendations. Nevertheless, the Kingdom's implementation of international norms is still subject to these norms complying with the criteria of the primary source of its law, *Shari'ah*.

In summary, the findings confirm that the KSA's human rights laws have changed and improved in certain aspects between 1990 and 2016. A number of domestic laws and regulations have been enacted in relation to promoting human rights. These positive changes have been the result of the role of the Kingdom's leadership, as well its interaction with the mechanisms of the IHRL. Therefore, in order to understand the role of those two factors and other potential factors the following section discusses these factors.

7.2.2 Factors that Influence Human Rights Law in the KSA

The second question that this study seeks to answer is: What are the factors that influence the development in the human rights laws in the KSA? The results show that there are a number of factors that contribute to the significant changes in the domestic law, which as highlighted previously, can be divided into two different categories. The first category is internal factors which can be further divided into two sub-categories. The first is political factors that again be divided into two types: a) those related to the legal system of the state, including *Shari'ah* (the main source of the Kingdom's political and legal system), and the Basic Law of the Kingdom; and b) the government's strategic decision-making process, which involves political will, the role of Royal Decrees and the influence of Saudi policy-makers and public officials. The second type of internal factors are related to the social environment, including the role of individuals and citizens, the education system, economic factors, urbanisation, living and working overseas and the social media. The second category of factors are external ones related to the IHRL and its mechanisms.

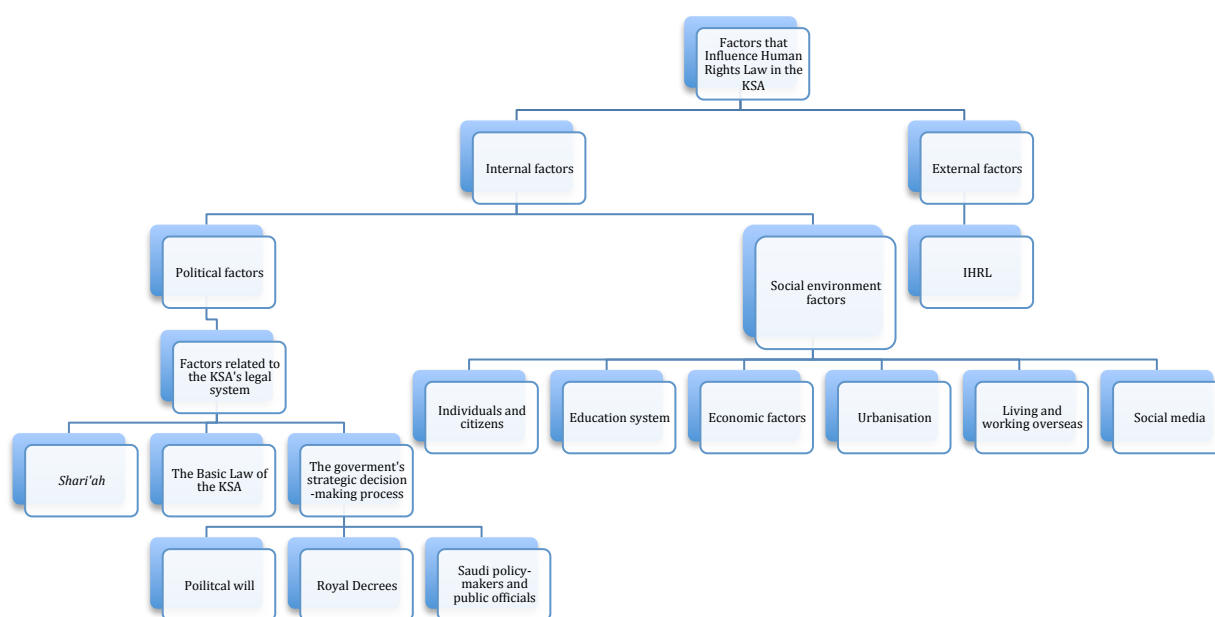


Figure 7.1: Factors that Influence Human Rights Law in the KSA

Source: Compiled by the Author

From Figure 7.1, it is apparent that a number of significant factors have played a vital role in the changes that have occurred in the KSA's human rights law. In this respect, it is important to discuss the importance of each of these categories of factors in the process of changing the human rights law and practices in the KSA. In relation to the internal factors, the study identifies that in the Kingdom's human rights context, *Shari'ah* appears to be a primary source for greater human rights protection and the protection of the rights of individuals. Participants perceived human rights as being largely consistent with Islamic law, and underpinning the values and principles of Islamic law. Therefore, they believed that it was within this framework that changes and development relating to human rights occur. In this regard, Islamic prohibition against injustice and the infringement of the rights of individuals, and calls for respect for humanity and the application of the principle of equality for all people were important. In this context, a number of Islamic texts in the Qur'an and *Sunnah* spell out the rights and duties of individuals.⁷⁵⁵ For instance, one of the basic rights is the right to life and the need to respect human life. The Holy Qur'an clarifies: "Because of that, we decreed upon the children of Israel that whoever kills a soul unless for a soul or for

⁷⁵⁵ The Qur'an and *Sunnah* are the main sources of *Shari'ah*. For more details see Chapter Two.

corruption [done] in the land - it is as if he had slain mankind entirely”.⁷⁵⁶ In addition, Allah said: “And whoever saves one - it is as if he had saved mankind entirely”⁷⁵⁷, which refers to the sanctity of life. Furthermore, Islam not only recognises absolute equality irrespective of colour, race, or nationality, but also makes an important and significant principle: “O mankind, indeed We have created you from male and female and made you peoples and tribes that you may know one another. Indeed, the most noble of you in the sight of Allah is the most righteous of you. Indeed, Allah is Knowing and Acquainted”.⁷⁵⁸

The right to justice is a very important and valuable right promoted by Islam; the Holy Qur’an states: “And do not let the hatred of a people for having obstructed you from al-Masjid al-Haram lead you to transgress. And cooperate in righteousness and piety, but do not cooperate in sin and aggression. And fear Allah; indeed, Allah is severe in penalty”.⁷⁵⁹ In another verse, Allah asserts: “O you who have believed, be persistently standing firm for Allah, witnesses in justice, and do not let the hatred of a people prevent you from being just. Be just; that is nearer to righteousness. And fear Allah; indeed, Allah is Acquainted with what you do”.⁷⁶⁰ The discourse in these Qur’anic and other texts is binding for men and women alike. Furthermore, Islamic texts stress equality between men and women in religious duties as well as in the reward of God for good deeds, “Whoever does righteousness, whether male or female, while he is a believer – We will surely cause him to live a good life, and we will surely give them their reward [in the Hereafter] according to the best of what they used to do”.⁷⁶¹ It is confirmed that women and men are equal in many things, equal in commissioning, equal in awards, but that they differ in nature; for example, women have the ability to conceive child and breastfeed. Therefore, there is equality in the beginning (worship and religious obligations), there is equality in the ends (reward and honour), but there is a difference in some rights and duties in accordance with the nature of each. Therefore, Allah asserts that “And due to the wives is similar to what is expected of them, according to what is reasonable. But the men have a degree over them [in responsibility and authority]. And Allah is exalted in might and wise”.⁷⁶²

⁷⁵⁶ Surah Al-mai’dah (5:32).

<http://quran.ksu.edu.sa/index.php?l=en#aya=5_32&m=hafs&qaree=husary&trans=en_sh> accessed 04 June 2018.

⁷⁵⁷ *ibid.*

⁷⁵⁸ Surah Al-hujuraat (49:13).

⁷⁵⁹ Surah Al-mai’dah (5:2).

⁷⁶⁰ Surah Al-mai’dah (5:8).

⁷⁶¹ Surah Al-nahl (16:79).

⁷⁶² Surah Al-baqara (1:228).

Moreover, the Islamic texts form the binding laws of the KSA in the field of the protection of human rights. Significantly, any violation of these rights is considered an abuse of the teachings of Islam, which is a fundamental belief within society in the KSA. The findings confirm other studies that emphasize the strong influence of *Shari'ah* on the political system of Muslim states and Muslims in general. According to An-Na'im, *Shari'ah* has the power "to regulate the behaviour of Muslims derives from its moral and religious authority as well as the formal enforcement of its legal norms".⁷⁶³ In addition, Sawad argues that Muslims believe that *Shari'ah* is a divine source as well as being essential to the beliefs of Muslims; "it is the fundamental law which governs both domestic and international behaviour".⁷⁶⁴

The second internal factor identified by the study is the role of the government's strategic decision-making process. In the political system of the Kingdom, the power to make change lies with the leadership represented by the King and his co-decision-makers, who can issue laws supporting human rights. This is related to the monarchical nature of the Saudi political system, which was highlighted by several of the participants who argued that the creation of laws or the approval to change an existing system could only be done with the approval of the King. In this context, the study shows that a number of Royal Decrees have been issued to tackle certain human rights issues, including enabling women to gain political and social rights, such as being allowed to drive.⁷⁶⁵ This finding corroborates those of Russell, who suggests that "the monarch is a personalistic ruler; however, he does not rule alone. The king (or *amir*) stands at the centre of a regime coalition that may be diverse and can include a broad social base".⁷⁶⁶ In this respect, it is assumed that the role of the political will of the KSA's leadership is a vital factor in bringing about change in the Kingdom.

Taken together, the results suggest that the two internal factors have had a significant impact on human rights development in the Kingdom's domestic law. Furthermore, the two internal factors are interrelated; *Shari'ah* is one of the key sources of the motivation to protect and respect human rights, while in the context of the KSA it also constitutes the human rights legal framework. It is this legal and religious basis that underpins the leadership's role in

⁷⁶³ Abdullahi Ahmed An-Na'im, 'Human Rights in the Muslim World: Socio-Political Conditions and Scriptural Imperatives: A Preliminary Inquiry' (1990) 3 *Harvard Human Rights Journal* 13.

⁷⁶⁴ Ahmed Ali Sawad, *Reservations to Human Rights Treaties and the Diversity Paradigm: Examining Islamic Reservations* (DPhil Thesis University of Otago 2008).

⁷⁶⁵ Royal Decree number (905) of 6/1/1439 A.H. (26/09/2019) <https://www.spa.gov.sa/1671323> accessed at 5 March 2019

⁷⁶⁶ Russell E Lucas, 'Monarchical Authoritarianism: Survival and Political Liberalisation in a Middle Eastern Regime Type' (2004) 36 *International Journal of Middle Eastern Studies* 103, 108.

implementing change in human rights regulations and laws. Therefore, it is essential to improve the enforcement of Islamic principles regarding human rights through the state's regulations and laws in order to further improve the human rights situation in the Kingdom.

The second categories of internal factors were those linked to the social environment. These factors include: the role of individuals and citizens, the education system, economic development, modernisation, the experience of Saudi citizen's living, studying and working overseas, and the rise of social media. As the scope of this study is primarily concerned with investigating the role of IHRL on human rights changes and development in the KSA, these broader social factors are not analysed in depth. However, it is notable that there is an overlap between these elements; progress in one is often related to progress or influence of another. Therefore, these elements have combined to positively influence the progress of human rights and the awareness of rights among the populace. Thus, the findings of this study shows that progress in the access to and level of education in the system, as well as opportunities to receive scholarships outside the Kingdom, has had a significant impact in raising the level of the awareness of individuals' rights, leading to demands for reforms to certain legislation. In this context, the empirical findings of this study indicate that the social media revolution has facilitated the delivery of the voice of the populace for reform to human rights. Moreover, social media has also drawn the attention of the international community to certain human rights issues in the KSA. This finding agrees with Alwasil who argues that one of the most important elements in the second phase of the KSA's dealing with the IHRL system

was the revolution in information technologies, as the increased flow of information has become a contributing factor in protecting human rights and advancing the process of awareness and learning. Saudi Arabia, like other states, came to realise that the possibility of subjecting the state's conduct to domestic or international publicity or scrutiny has increased substantially.⁷⁶⁷

He also argues that “on the other hand, governmental and non-governmental human rights bodies and activists, including the UN, have become more aware of the details of human rights situations throughout the world and have more effective means to communicate with states and peoples about human rights”.⁷⁶⁸ In this respect, it is difficult to isolate IHRL's influence because of its interaction with various other factors. However, as the focus of this study is mainly to examine the role of the factor of the IHRL, further research needs to examine more closely the links between the social environment factors and domestic human

⁷⁶⁷ Abdulaziz M Alwasil, 'Saudi Arabia's Engagement In, and Interaction With, the UN Human Rights System: An Analytical Review' (2010) 14 *The International Journal of Human Rights* 1072, 1086.

⁷⁶⁸ *ibid.* 1086.

rights law changes in the KSA.

The third category of factors is those of the IHRL and its mechanisms. One of the most significant findings to emerge from this study is that one of the fundamental and influential factors in the change that occurred in human rights in the KSA between 1990 and 2016 was the Kingdom's engagement with IHRL. The role of this factor in driving the changes in the KSA's domestic law is discussed in the next section. This discussion will help answer the final two research questions: to what extent are the changes due the KSA engagement with IHRL?, and have the IHRL mechanisms been useful from the perspective of promoting and protecting women's rights?

7.2.3 The KSA's Engagement with IHRL and its Influence on Changes in its Domestic Law

The findings show that, although the study is based on a small sample of key informants, the changes that have taken place in the KSA's human rights law are seen by interviewees as a result of the Kingdom's engagement with IHRL and its mechanisms. In this respect, it is useful to reiterate that the perception of those interviewed is supported by documentary evidence which shows that a number of domestic laws and regulations have been changed or created in order to comply with the norms of international treaties, which the KSA has ratified.⁷⁶⁹ Furthermore, the empirical findings discussed in Chapter Four show a number of legal changes occurred because of the KSA's engagement with the IHRL.

In answer to the final two research questions, the study finds that there are two main approaches used by the KSA in dealing with IHRL between 1990 and 2016. As mentioned previously, the first method is engagement with the UN Charter-based bodies (the Human Rights Council and its subsidiaries, including the Universal Periodic Review Working Group), while the second method is the interaction with events and criticisms raised by the UN treaty bodies (the CEDAW and its Human Rights Committee). In relation to the first approach, the KSA has engaged with the various bodies of the UN human rights law, in particular the OHCHR and the HRC. It engaged with the OHCHR by signing a Memorandum in June 2012.⁷⁷⁰ The interviewees from the Saudi Human Rights Commission argued that the KSA signed this Memorandum in order not only to achieve complete compliance with IHRL

⁷⁶⁹ For more details see Chapter 2.2.2.3.

⁷⁷⁰ 'What are Human Rights'

<<http://www.ohchr.org/EN/Countries/MENARegion/Pages/TechnicalCooperationSaudiaArabia.aspx>> accessed 31 May 2018.

norms but also to receive training for the Kingdom's specialists, leaders and judges on the latest developments in the field of human rights. Thus, engagement with the OHCHR provides an area of cooperation with the state in terms of promoting international human rights norms. Therefore, targeting stakeholders and state public officials in the Kingdom with training is seen to be an effective way to change the thinking of the trainees in relation to the standards of international human rights. In turn, this change in perceptions contributes to the transfer of the norms of IHRL into the KSA's domestic law and, thus, trainees could be seen as carriers of the IHRL norms. This result agrees with other findings, which argue that the state's and other transnational actors' engagement with IHRL result in internalisation of the international norms into a state's domestic law.⁷⁷¹

Furthermore, the study identifies another significant part of the Kingdom's engagement with the UN human rights bodies when it obtained membership in the HRC in 2012, which was renewed in 2016.⁷⁷² In this respect, the renewal of the membership of the HRC is evidence of a positive engagement between KSA and IHRL, rather than a reflection of the Kingdom's political and diplomatic influence. Thus, membership of the HRC could be a significant means for encouraging the KSA to develop its human rights regime. Furthermore, it may encourage the Kingdom to fulfil its other obligations towards the UN. In this respect, the study shows that following its membership of the HRC, the Kingdom displayed a greater commitment towards its international commitments such as the CEDAW.

In another example of the Kingdom's engagement with the UN system, it signed the CEDAW in 2000 (with reservations) and submitted its initial and second reports in 2007, and its third and fourth reports in 2013.⁷⁷³ These reports were examined by the relevant committee which provided comments and recommendations to the Kingdom and to the HRC. The feedback indicated that the Kingdom should amend its laws to comply with the accepted recommendations, such as reducing the role of male guardianship. The increased engagement by the Kingdom can be seen in the third and fourth reports, which indicate:

The combined reports cover the key measures and efforts undertaken by Saudi Arabia to give effect to those principles and provisions of the Convention to which Saudi Arabia has committed. They include an analytical description of the results of such measures and efforts, the challenges and obstacles facing women in the exercise of their rights and the measures taken to surmount them during 2008-

⁷⁷¹ Harold Hongju Koh, 'Why Transnational Law Matters' (2005) 24 Penn State International Law Review 745.

⁷⁷² See <<http://www.un.org/en/ga/67/meetings/elections/hrc.shtml>> accessed 31 May 2018.

⁷⁷³ See <http://tbinternet.ohchr.org/_layouts/treatybodyexternal/TBSearch.aspx?Lang=En&CountryID=152> accessed 13 May 2018.

2015. The combined reports also cover the measures taken to implement the commitments agreed by Saudi Arabia in response to the Committee's concluding comments as well as other information reflecting the progress that has been achieved in women's rights in general.⁷⁷⁴

In practical terms, the KSA in its report pointed out a large number of domestic changes that have been made to meet its commitments under CEDAW.⁷⁷⁵

It is worth noting that when the KSA signed the CEDAW, there was considerable focus on the impact of its reservations in undermining the protection of women's rights. The CEDAW Committee sought for the Kingdom to withdraw its reservations.⁷⁷⁶ However, notwithstanding concerns that the reservations would undermine the protection and promotion of women's rights, this study finds that engagement with IHRL has led to significant improvements in the rights of women that have been shaped by the IHRL norms.⁷⁷⁷ The findings of this study contradict with Keller who criticises various states' reservations as preventing the achievement of the Covenant's targets as it allows states to disregard the Covenant without any obligation to eliminate discrimination between the two sexes.⁷⁷⁸ Reservations can also be interpreted as unwillingness by states to adhere to the Convention's provisions.⁷⁷⁹ Furthermore, Cook notes that under the Convention, every state is required to work to achieve the goal of the convention in accordance with its own circumstances. This means, "the Convention imposes an obligation of means as its initial goal towards satisfaction of its ultimate goals".⁷⁸⁰ In this case, Cook believes that reservation may undermine a state's obligation to eliminate certain practices of discrimination against women in case of the state "denies a commitment to material means of making progressive development towards the Convention's ultimate goals".⁷⁸¹ Thus, reservations denying the means to the elimination of discrimination are the most suspect.⁷⁸² According to Hoq, the Convention does not provide a specific mechanism to ascertain if a state's reservation is compatible with the Article 28

⁷⁷⁴ Committee on the Elimination of Discrimination against Women Consideration of reports submitted by States Parties under article 18 of the Convention on the Elimination of All Forms of Discrimination against Women Combined third and fourth periodic reports of States parties, Saudi Arabia, 2016, CEDAW/C/SAU/3-4 3.

⁷⁷⁵ *ibid.* 20.

⁷⁷⁶ For more details, see Chapter 2.2.2.1.

⁷⁷⁷ The usefulness of the CEDAW in term of promoting Saudi women rights is discussed in Chapter 7.3.4.

⁷⁷⁸ Linda M Keller, 'The Impact of States Parties' Reservation to the Convention on the Elimination of All Forms of Discrimination against Women' (2014) *Mich. St. L. Rev.* 309.

⁷⁷⁹ Rep. of the Comm. on the Elimination of Discrimination against Women, 18th Sess., 19th Sess., Jan. 19-Feb. 6, 1998, June 22-July 10, 1998, at 47, U.N. Doc. A/53/38/Rev.1; GAOR, 53d Sess., Supp. No. 38 (1998).

⁷⁸⁰ Rebecca J. Cook, Reservations to the Convention on the Elimination of All Forms of Discrimination against Women, (1990) 30 *Va. J. Int'l L.* 643, 687.

⁷⁸¹ *ibid.* 687.

⁷⁸² *ibid.*

requirement.⁷⁸³ Furthermore, the CEDAW Committee does not have the authority to evaluate or limit reservations that violate the terms of Article 28.⁷⁸⁴ In addition, similar to other UN conventions, the CEDAW lacks “procedural limitations on making reservations”.⁷⁸⁵ Therefore, these limitations can limit the function of the Committee and affect its role in enforcing states to withdraw their reservations towards the Convention’s provisions. As Donner points out, “the weak provisions governing the reservations regime in the Women’s Convention caused not only a high number of States to adopt expansive reservations, but contributed to the sense of disagreement and conflict over the meaning and purpose of the Convention”.⁷⁸⁶

However, this study shows that ratifying IHRL treaties has influenced the KSA’s domestic law through engagement with the committees of the treaties. In the case of the KSA, the study finds that despite reservations made to the Convention, steps have been taken for the Kingdom to fulfil its obligations toward the CEDAW. Positive changes have taken place in women’s rights as a result of the implementation of the recommendations of the Committee of CEDAW. This finding supports the study of Monforte (2017), who points out that “it is an interesting point, which has been repeated even as countries such as Saudi Arabia have made changes in domestic legislation despite the reservations to CEDAW.”⁷⁸⁷ Thus, reservations are not as significant an obstacle to implementing international norms as is frequently assumed and raised by the UN human rights bodies.⁷⁸⁸

The last form of the Kingdom’s engagement with the IHRL is its dealings with the UPR mechanism, which is a state-driven process, under the umbrellas of the HRC.⁷⁸⁹ In this respect, in 2013, the Kingdom submitted to the HRC its latest report,⁷⁹⁰ every four years a state is required to submit a report in which it clarifies the situation regarding human rights in the country. The report is examined by the HRC and other states which then provide

⁷⁸³ Laboni Amena Hoq, ‘The Women’s Convention and Its Optional Protocol: Empowering Women to Claim Their Internationally Protected Rights’ (2000) 32 Colum. Hum. Rts. L. Rev. 677.

⁷⁸⁴ Rebecca J. Cook, Reservations to the Convention on the Elimination of All Forms of Discrimination against Women, (1990) 30 Va. J. Int’l L. 643.

⁷⁸⁵ Laboni Amena Hoq, ‘The Women’s Convention and Its Optional Protocol: Empowering Women to Claim Their Internationally Protected Rights’ (2000) 32 Colum. Hum. Rts. L. Rev. 677, 688

⁷⁸⁶ Laura A Donner, ‘Gender Bias in Drafting International Discrimination Conventions: The 1979 Women’s Convention Compared with the 1965 Racial Convention’ (1993) 24 Cal. W. Int’l LJ 241, 253, 253.

⁷⁸⁷ Tanya Monforte, ‘Broad Strokes and Bright Lines: A Reconsideration of Shari’a Based Reservations’ (2017) 35 Colum. J. Gender & L. 1, 20.

⁷⁸⁸ For more details see Chapter 2.2.2.1.

⁷⁸⁹ ‘Universal Periodic Review’ <<http://www.ohchr.org/EN/HRBodies/UPR/Pages/UPRMain.aspx>> accessed 01 June 2018.

⁷⁹⁰ Available at <<http://www.ohchr.org/EN/HRBodies/UPR/Pages/SAindex.aspx>> accessed 01 June 2018.

recommendations for changes to be made in the state human rights field. In this context, the interviewees emphasise the positive impact of peer pressure from other states through the review of the UPR as the KSA has implemented recommendations of the reports.⁷⁹¹ An example of change resulting from a UPR review is the acceptance of a recommendation in 2009 by Turkey to “continue and further increase its efforts aimed at empowering women in Saudi society”.⁷⁹² Thus, the Kingdom in the 2013 UPR report indicated:

Political and public participation: Pursuant to Royal Decree No. A/44 of 12 January 2013, article 3 of the *Shura* Council Act was amended to enable women, who had until then participated in the work of the Council as advisors only, to acquire full membership of the Council and occupy a minimum of 20 per cent of the seats. The members of the new session of the *Shura* Council were designated pursuant to Royal Decree No. A/45, promulgated on 12 January 2013, and included 30 women.⁷⁹³

In the light of this action, it can be argued that the UPR is an effective tool because it provides a forum in which states can review a country’s human rights situation with the goal of providing recommendations for rectifying violations, changing policies and improving the situation on the ground through the sharing of best practices. The system of the UPR during the national consultations allows input from NGOs, civil society groups and national government agencies through testimony, written reports or other information. These inputs can form part of the national reports or are submitted independently to the OHCHR as part of the process. The interactive dialogue of the UPR has become both a public expression of human rights values and a forum for expressly admonishing or congratulating countries on specific human rights accomplishments. Thus, this procedure encourages states to internalise the international norms of IHRL⁷⁹⁴ by accepting the recommendations of the Committee. The findings are supported by previous research that suggests “as a peer review mechanism, the UPR introduces a unique environment for considering human rights situations. Peer review structures favour policy harmonisation, policy diffusion, and sharing of best practices”.⁷⁹⁵

⁷⁹¹ For more detail see chapter 4.

⁷⁹² See ‘List of recommendations contained in Section II of the Report of the Working Group A/HRC/11/23’ <https://www.upr-info.org/sites/default/files/document/saudi_arabia/session_4_-_february_2009/recommendationstosaudiarabia2009.pdf> accessed 01 June 2018.

⁷⁹³ National report submitted in accordance with paragraph 5 of the annex to Human Rights Council resolution 16/21, Saudi Arabia, (2013) A/HRC/WG.6/17/SAU/1,

<<http://www.ohchr.org/EN/HRBodies/UPR/Pages/SAindex.aspx>> accessed 01 June 2018.

⁷⁹⁴ Harold Hongju Koh, ‘Transnational Legal Process’ (1996) 75 Neb. L. Rev. 181.

⁷⁹⁵ Constance de la Vega and Tamara Lewis, ‘Peer Review in the Mix: How the UPR Transforms Human Rights Discourse’ in William Schabas and Cherif Bassiouni (eds.) *New Challenges in the UN Human Rights Machinery* available at SSRN: <<https://ssrn.com/abstract=3055828>>.

Significantly, this study finds that there is a relationship between the effectiveness of examination of the periodic reports regarding the status of human rights whether by the CEDAW Committee or by the UPR working group and the role of the HRC. The correlation can be explained in this way. The CEDAW committee is an expert committee while the HRC is a council comprising of other state representatives. Thus, there is a correlation between the roles of the CEDAW and the HRC; the creation of the HRC increased the state's fulfilment of its treaty obligations. This may be because the creation of the HRC and the establishment of the UPR process constructed a new opportunities and challenges for the Committee role and the Convention implementation. The present findings are consistent with other research which finds that the establishment of the HRC promotes not only the issue of human rights, it also promotes the "effective multilateralism and the standing of the UN as a whole".⁷⁹⁶ Byrnes argues that the providing the HRC with the results of the review of the state report and recommendations made by the Committee on the state's report constitutes an opportunity for the Council to follow up and impose the CEDAW agreement. It also offers the opportunity for the CEDAW Committee to follow up the state implementation of the UPR recommendations and benefit from it in monitoring the development of human rights in the country concerned.⁷⁹⁷

In this respect, the influence of these two mechanisms of the UN human rights system can be seen in the case of the Kingdom, when it obtained HRC membership, which lead to the KSA fulfils its international obligations towards treaties such as the CEDAW. Thus, the study suggests that the KSA's engagement with the HRC and the CEDAW has increased the Kingdom's commitment towards its international obligations. In addition, the correlation between the UN Charter-Based Human Rights Mechanisms such as the OHCHR, the HRC and its respective mechanism (the UPR), and the treaty-based body (the CEDAW) positively influences human rights. Therefore, in order understand how the UPR and the treaty body processes interact and the relationship between the two processes in enhancing human rights protection and development, future research is recommended.

⁷⁹⁶ Morten Knudsen, 'The EU, the UN and Effective Multilateralism: The Case of UN Reform' (2008) 61 *Studia Diplomatica* 137.

⁷⁹⁷ Andrew Byrnes, *The Convention and the Committee: Reflections on their role in the Development of International Human Rights Law and as a Catalyst for National Legislative and Policy Reform* available at <https://www.researchgate.net/publication/228151355_The_Convention_on_the_Elimination_of_All_Forms_of_Discrimination_Against_Women_and_the_Committee_on_the_Elimination_of_Discrimination_Against_Women_Reflections_on_Their_Role_in_the_Development_of_Inte>.

The second method that characterises the KSA's dealing with the UN human rights system between 1990 and 2016 is the Kingdom's responses to the criticisms INGOs. While the study finds that the Kingdom responds positively to what it sees as 'constructive' criticism issued by UN mechanisms (treaty or Charter based), it appears that the Kingdom tends to ignore issues raised by INGOs by arguing that they mainstream isolated individual human rights issues as the prevailing state of human rights. In this case, although the criticisms by the INGOs of an individual's case could be objective, the criticisms tend to be viewed as unconstructive by government officials, meaning that the Kingdom formally ignores such criticisms or simply responds with a clarification as to the actual situation of the individual's case. In this case, it would be suggested that individual cases should be brought to the attention to other UN mechanisms or state to then raise with KSA, rather than directly by the INGOs.

The data in this study also indicates that the KSA responds positively to another type of external criticism, those contained in the annual country reports on human rights practices issued by other states' foreign ministries. In particular, these reports tend to draw on IHRL norms set forth in the UDHR and other international agreements. In this case, this external peer pressure may enhance a state's compliance with the IHRL norms. Therefore, further study on the role of states' reports on developing human rights is suggested.

The influence of the constructive criticism can be seen through the Kingdom's reaction to the dialogues with the CEDAW Committee members which aim to examine and review state party human rights situation and progress. In addition, the dialogue attempts to clarify any misunderstandings as well as to help interpret and understand international human rights standards. The positive results of such interaction can be seen through the KSA's amendment of certain laws and regulations after receiving the recommendations from the CEDAW or the UPR reports. For instance, in response to the concern of the CEDAW Committee regarding certain provisions of the Saudi Arabian Nationality Code,⁷⁹⁸ the Kingdom amended by Royal Decree⁷⁹⁹ Article 67 of the Personal Status Law to make it compulsory for women to obtain a

⁷⁹⁸ Committee on the Elimination of Discrimination against Women Fortieth session 14 January-1 February 2008, Concluding comments of the Committee on the Elimination of Discrimination against Women, Saudi Arabia, CEDAW/C/SAU/CO/2.

⁷⁹⁹ Royal Decree, No. M/28 of 21/5/1434 A.H. (2/4/2013).

https://digitallibrary.un.org/record/851706/files/CEDAW_C_SAU_3-4-EN.pdf accessed at 4 March 2019

national identity card, whereas previously it was optional.⁸⁰⁰ Furthermore, the Kingdom tends to deal positively with constructive dialogue because the aim of such dialogue is to promote the human rights situation and build, but not distort, the reputation of the KSA. This finding confirms the relationship between credibility and objectivity in the discussion of the Kingdom's human rights file by the IHRL mechanisms and its impact on the KSA's acceptance of the outcomes of such discussion. Relatedly, Franck argues countries are expected to alter their practices if treaties arise as the result of seemingly fair and just processes.⁸⁰¹ The evidence from this study suggests that to increase the effectiveness of the IHRL in term of enhancing a state's willingness to protect and promote human rights, it is necessary to seek and apply fairness and objectivity when discussing and examining the state's human rights files. It also suggests that if the objective of criticising the human rights issue of a country is to promote human rights, organisations, whether human rights based or otherwise, must follow positive paths that aim at achieving the goal of protecting human rights.

Overall, it can be concluded that the findings show that there is a correlation between the willingness and desire of a state to engage with IHRL and the effectiveness of the IHRL system that monitors a state's human rights file. In the case of KSA, this can be observed through the methods adopted by the Kingdom in its dealings with the IHRL bodies and mechanisms. The study shows that the influence occurs according to the following process: engagement with the UN bodies and mechanisms; the interpretation the norms of human rights; discussion, dialogue and review of human rights situation; and, finally, the incorporation of accepted international law norms into the KSA's domestic laws and regulations (see Figure 7.2).

A key outcome of this model is that the KSA integrates the IHRL norms into its domestic law through the engagement process. This process results in the norms of international law being reconstructed, conveyed, and carried by actors, including by government officials, members of international secretariats, professionals, and civil society activists. In the case of the KSA's engagement with IHRL, it is shown that international norms do not travel by themselves; they are transferred into domestic law through the process of interaction. This model reflects Koh's Theory of Transitional Legal Process, which:

⁸⁰⁰ Committee on the Elimination of Discrimination against Women, Consideration of reports submitted by States parties under article 18 of the Convention, Combined third and fourth periodic reports of States parties due in 2013, Saudi Arabia, 2016, CEDAW/C/SAU/3-4. 20.

⁸⁰¹ TM Franck, *Fairness in International Law and Institutions* (Oxford University Press 1998).

describes the theory and practice of how public and private actors-nation-states, international organizations, multinational enterprises, non-governmental organizations, and private individuals interact in a variety of public and private, domestic and international fora to make, interpret, enforce, and ultimately, internalize rules of transnational law.⁸⁰²

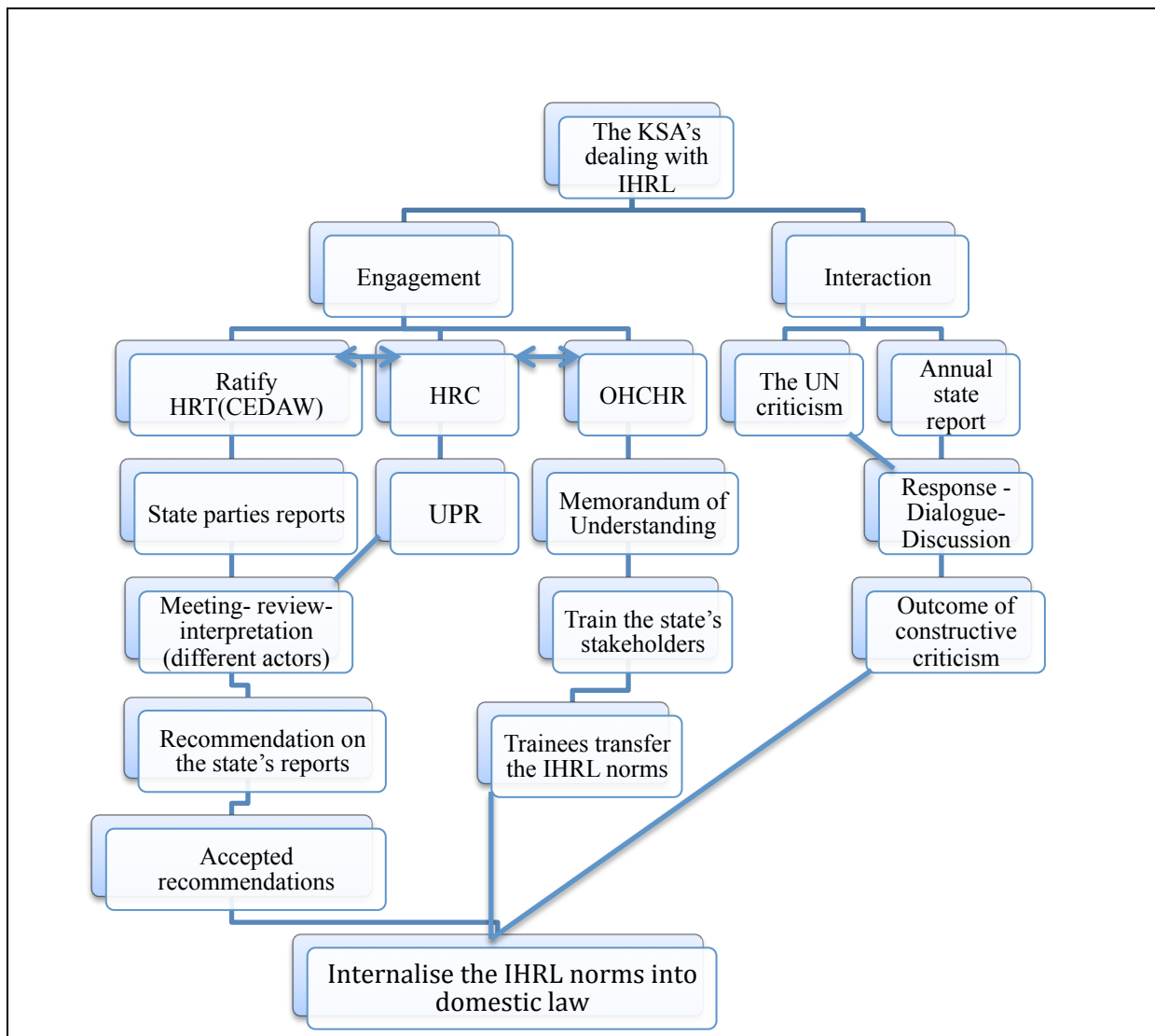


Figure 7.2: The Kingdom's Interaction and Engagement with the IHRL System

Source: Compiled by the Author

The evidence from this study strongly supports Koh's theory in terms of explaining the Kingdom's acceptance of the human rights standards set forth in the IHRL instruments. Figure 7.2 explains the process of how the international norms filter down into domestic law.

⁸⁰² Harold Hongju Koh, 'Transnational Legal Process' (1996) 75 Neb. L. Rev. 181.

It explains the three phases to which Koh referred in his theory: interaction; interpretation; and internalisation. In detail, for the first phase of interaction, the KSA engages with different bodies of the UN human rights system. This includes the Kingdom engagement with the UN Charter-Based Human Rights Mechanisms such as the OHCHR, the HRC, its respective mechanism (the UPR), and the treaty-based body (the CEDAW). In addition, this phase includes the KSA's responses to criticisms of human rights issues raised by the CEDAW Committee as well as the UPR Working Group. The engagement was led by different actors (state actors from different public sectors, private sector representatives, civil society members such as members from the National Society for Human Rights, lawyers and judges). Repeated interaction and engagement between IHRL and state, public and private actors lead to the second phase, which is the interpretation of the IHRL norms. In this context, the evidence from the study indicates that the process of norm interpretation occurred during the reviews of the KSA reports; whether submitted to the CEDAW committee or as part of the UPR. It is apparent that reviewing state reports provides an opportunity to interpret, discuss, and clarify the norms. It also shows that the Kingdom's cooperation with the OHCHR to train different actors contributes to the transfer of international norms to domestic law. This in turn leads to changes in the perspectives of stakeholders and state public officials in the Kingdom and further contributes to the transfer of the norms of IHRL into the KSA's domestic law. This is referred to as the third phase which Koh called internalisation of the international norms into state's domestic law. This reflects the third phase of Koh's model, and is called internalization of international norms into state's domestic law. This phase was found in the empirical data in this research in the form of the KSA's acceptance of certain recommendations leading to changes in women's rights implementing recommendations of the CEDAW Committee.

The data in this study is los consistent with Goodman and Jinks' (2013) state socialization 'Acculturation' model. For them, acculturation means "the general process by which actors adopt the beliefs and behavioural patterns of the surrounding culture".⁸⁰³ They place less focus on persuasion to explain state compliance with human rights norms but rather emphasis the regular interactions that lead to cognitive and social pressures and, thus, state actors eventually conforming to treaties norms.⁸⁰⁴ This study shows that the interaction between state and non-state actors and the IHRL mechanisms can influence the perspective of actors

⁸⁰³ Ryan Goodman and Derek Jinks, 'How to Influence States: Socialization and International Human Rights Law' (2004) 54 *Duke Law Journal* 621, 626.

⁸⁰⁴ *ibid.* 626.

regarding the IHRL. The actors in turn transfer or adopt the international norms into state domestic law. However, the model of state socialisation emphasises the role of social mechanisms in terms of influencing state compliance with treaty norms. As the social environment factors fall outside the scope of this study, a further study with greater focus on the acculturation model is suggested.

Furthermore, the empirical results partly reflect the Regime Theory's perspective. This theory perceives international law as a refinement of institutionalism, [in which] the conventions and treaties of international law generate binding commitments on states' parties on the treaty or convention that the states aspire to honor.⁸⁰⁵ Furthermore, Chayes and Chayes argue that states ratify treaties in the spirit of *pacta sunt servanda*, which means that agreements are to be honoured as "compliance is the normal organizational presumption".⁸⁰⁶ In this case, the study findings show that due to the desire of the Kingdom's public officials and policy makers, the KSA ratified human rights treaties and accepted to be bound by the norms of the treaties. As discussed in Section 7.3, the study concludes that the KSA's desire to cooperate with the IHRL is a significant factor in conveying the norms of IHRL into its domestic law. The interaction between the state and IHRL occurs in different ways. The first interaction is through the signing of human rights conventions, following which, the state implements the relevant norms into its domestic legislation. In addition, the state considers the norms of the conventions when it further develops national laws. Although Regime Theory provides certain insights into the process of the KSA's dealings with IHRL, further research should be undertaken to investigate the Regime Theory's perspective in the context of the KSA, particularly because according to this model international human rights treaties are "an extreme case of time lag between undertaking and performance".⁸⁰⁷ This study tended to focus its investigation on the process of the influence of the state interaction with the IHRL rather than the short/long goals of the human rights treaties.

However, the findings of the current study do not support the theories that primarily consider states as unitary actors including Realism, Neo-realism and the Institutionalist Perspective. In the case of Realism and Neo-realism, the findings of this study did not support the idea that

⁸⁰⁵ SD Krasner (ed.), *International Regimes* (Cornell University Press 1983) and for more details see Chapter 1.2.2.1.3.

⁸⁰⁶ Abram Chayes and Antonia Handler Chayes, 'On Compliance' (1993) 47 *International Organization* 175, 179.

⁸⁰⁷ *ibid.* 187.

IHRL exists because the powerful states sought to protect their geopolitical interests.⁸⁰⁸ Neither did it support the perception that “countries as unitary actors with given preferences maximizing their own utility without regard to the welfare of other actors”⁸⁰⁹. Instead, the findings emphasise the role of the interaction and engagement of various domestic actors with the IHRL that lead to the state complying with the international norms.

Furthermore, the result of this empirical analysis has been unable to support the assumptions of the institutionalist perspective. It did not show that the KSA complied with IHRL norms because it would achieve substantial mutual benefits from other nations.⁸¹⁰ However, further studies, which take the institutionalist perspective into account, should be undertaken to prove this conclusion.

Moreover, this study has been unable to demonstrate that the Liberal International Relations Perspective can be used in the case of the KSA. This is because, according to this model, the effectiveness of IHRL can be achieved when different domestic groups, such as NGOs, protest movements and political parties, employ human rights law to put pressure on their government to promote and enhance respect for human rights.⁸¹¹ However, the results of this study indicate that the Liberal International Relations Perspective is not applicable to the context of the KSA as the KSA has a political system which is monarchical and not a parliamentary democracy, furthermore, the KSA domestic law does not allow protest movements and political parties.⁸¹² Thus, this model cannot provide an explanation about how IHRL could influence the KSA’s human rights law.

In the light of the above-mentioned discussion, it is apparent that the Transnational Legal Process Theory permits a functional, nuanced analysis of the state and non-state actors that contribute to international norm transfer and enforcement, particularly in the human rights context. It is for this reason that the study found that this theory an appropriate conceptual framework for analysing and interpreting the changes in the KSA’s domestic law in relation

⁸⁰⁸ For a discussion of classical realism, see EH Carr, *The Twenty Year Crisis 1919-1939* (Macmillan and Company Limited 1939); George F Kennan, *American Diplomacy 1900-1950* (New American Library 1964); Hans J Morgenthau, *Politics among Nations: The Struggle for Power and Peace* (Alfred Kopf 1948); Hans J Morgenthau, ‘Positivism, Functionalism, and International Law’, 34 (1940) *Amer. J. Int’l L.* 260.

⁸⁰⁹ E Neumayer, ‘Do International Human Rights Treaties Improve Respect for Human Rights?’ (2005) 49 *Journal of Conflict Resolution* 925.

⁸¹⁰ For more details see Chapter 1.1.2.1.2.

⁸¹¹ Laurence R Helfer and Anne Marie Slaughter, ‘Toward a Theory of Effective Supranational Adjudication’ (1997) 107 *Yale Law Journal* 273.

⁸¹² ‘The Basic Law of Governance Art. 5, 6 and 12’, <https://www.saudiembassy.net/about/country-information/laws/The_Basic_Law_Of_Governance.aspx> accessed 24 June 2016.

to human rights between 1990 and 2016. Thus, the empirical findings in this study provide a new understanding of how the Kingdom engages and interacts with IHRL to absorb international norms into its domestic law.

7.2.4 The Usefulness of IHRL in Promoting Women Rights

The answer to the empirical question regarding the usefulness of the IHRL in promoting women's rights is linked to the discussion in the previous sections regarding the KSA's engagement with IHRL and the outcomes.⁸¹³ As the study shows, the KSA's ratification of the CEDAW is seen as having a positive influence in terms of improving the rights of Saudi women. There has been a remarkable advancement in Saudi women's rights since the Kingdom signed the CEDAW; for example, the issuing of laws or regulations, which conform to the standards of the CEDAW, to protect women against harm. The second piece of evidence provided by the study on the positive impact of the CEDAW on eliminating certain traditional practices such the reduction in the role of male guardianship practices over women. According to the KSA's UPR:

Saudi Arabia acknowledges that there are some human rights violations attributable to individual practices. Many of these violations fall within the context of domestic violence, to which confusion between the true Islamic concept of guardianship, for example, often loses its connotation of responsibility and care, which are transformed into domination and coercion.⁸¹⁴

In order to tackle this issue, a number of regulations have been issued to declare certain practices illegal, such as abolishing the requirement for women to provide male consent to access university education. This change was based on one of the CEDAW's recommendations.⁸¹⁵ In this case, it seems that the positive influence of the CEDAW in KSA is greater in cases that tackle traditional cultural and custom issues that do not have religious legitimacy such as the requirement of male consent to access to the university.

The qualitative data in this study is consistent with findings of other studies, in which the CEDAW is seen to positively influence the practices linked to social patterns and cultures. For example, Risse argue that ratification of international human rights treaties has a positive

⁸¹³ See Chapter 6.3.3.

⁸¹⁴ Human Rights Council eleventh session, agenda item 6, universal periodic review, report of the working on the universal periodic review, Saudi Arabia, 2009 A/HRC/11/23

<<http://www.ohchr.org/EN/HRBodies/UPR/Pages/SAindex.aspx>> accessed 1 June 2018.

⁸¹⁵ For more details see Chapter 4.1.3.3.

impact on enhancing states' respect for human rights.⁸¹⁶ In addition, Cho argues “this finding of the (conditional) positive effect of the CEDAW on women’s social rights is inspiring”.⁸¹⁷ Thus, he comments that “social patterns and cultures of discrimination against women”⁸¹⁸ deeply rooted in societies tend to be changed because of the positive interaction between the Convention and democratic institutions.⁸¹⁹ Furthermore, Gray, Kittilson and Sandholtz, conclude that the ratification the CEDAW “has played a role in increasing female levels of literacy, participation in the economy, and representation in parliament”.⁸²⁰ Their analysis confirm that “the effects of CEDAW are independent; ratification of CEDAW and positive changes for women on the dependent variables cannot be attributed to underlying domestic factors”.⁸²¹ Merry indicates the importance of the HRT in term of influencing elites’ cultural perception and worldview to adopt the international modernity vision.⁸²²

This study finds that the usefulness of the CEDAW can be seen through the CEDAW reporting process, in which stakeholders discuss various issues, and then the Committee makes recommendations to which the government responds. This finding agrees with Byrnes and Freeman’s findings that show that in the cases of Kyrgyzstan, Morocco and Fiji, ratification of the CEDAW played a role in changing the domestic legal system, thereby contributing to enhancing women rights.⁸²³ However, these findings differ from Hathaway’s findings on whether human treaty requirements appear to be effective in changing countries’ practices. She concludes that ratification, “by individual countries appears more likely to offset pressure for change in human rights practices than to augment it”.⁸²⁴ She also finds that “countries that ratify human rights treaties often appear less likely, rather than more likely, to conform to the requirements of the treaties than countries that do not ratify these treaties”.⁸²⁵

⁸¹⁶ Thomas Risse, ‘Von der Anerkennung der Menschenrechte zu ihrer Einhaltung’ (Menschheit und Menschenrechte 2002) cited in E Neumayer, ‘Do International Human Rights Treaties Improve Respect for Human Rights?’ (2005) 49 *Journal of Conflict Resolution* 925.

⁸¹⁷ Seo-Young Cho, ‘International Human Rights Treaty to Change Social Patterns: The Convention on the Elimination of All Forms of Discrimination against Women’, CEGE (Centre for European Governance and Economic Development Research) Discussion Paper No. 93, <<http://ssrn.com/abstract=1553083>> 21

⁸¹⁸ *ibid.* p.21.

⁸¹⁹ *ibid.*

⁸²⁰ Mark M Gray, Miki Caul Kittilson and Wayne Sandholtz, ‘Women and Globalization: A Study of 180 Countries, 1975–2000’ (2006) 60 *International Organization* 293, 326.

⁸²¹ *ibid.*

⁸²² Sally Engle Merry, *Human Rights and Gender Violence: Translating International Law into Local Justice* (University of Chicago 2006).

⁸²³ Andrew Byrnes and Marsha Freeman, ‘The Impact of the CEDAW Convention: Paths to Equality’ (2012) University of New South Wales Faculty of Law Research Series. Paper 7.

⁸²⁴ Oona A Hathaway, ‘Do Human Rights Treaties Make a Difference?’ (2002) 111 *The Yale Law Journal* 1935, 2025.

⁸²⁵ *ibid.* 2002.

However, the findings of this research show that the desire of the KSA leadership and policymakers to engage with the IHRL and ratify human rights treaties, such as the CEDAW, was not as a symbolic substitute for actual enhancements in its citizens' rights. In addition, the KSA did not use ratification as an action to offset pressure from the international community. Instead, the evidence shows that there were real improvements in the KSA's domestic law which resulted in the Kingdom fulfilling its obligations towards the CEDAW, which in turn reflected positively on enhancing women rights.

In conclusion, it can be argued universal norms of human rights guaranteed in the UN human rights conventions appear to have gained increased validity and legitimacy in the KSA, after the Kingdom accepted to be bound by the treaty norms and proved willing to implement its norms in its domestic law. In this respect, the study finds that although the KSA has made certain reservations to the CEDAW, the treaty has been effective in terms of promoting the rights of Saudi women. This is because ratified multilateral treaties create a binding legal obligation. Furthermore, in the case of the KSA, the international conventions that it ratified are legalised as the Basic Law of Government means that the Kingdom accepts international norms that are compliance with *Shari'ah*. Thus, international standards can be implemented as long they conform to local Islamic norms. This finding corroborates Weston's argument that: "widespread acceptance of human rights" does not denote "complete agreement about the nature and scope of such rights".⁸²⁶ Therefore, the findings from this research suggest that the effectiveness of IHRL is likely to increase when it is seen to respect KSA's domestic law and tradition that are seen to have an Islamic basis.

Moreover, the study finds that IHRL has an impact even when a state only partly complies with the norms of an international convention as long as the state accepts some of the international norms and gives them legal legitimacy and implements them to promote international norms domestically. The domestication of international norms provides evidence of the positive effects of the IHRL; however, states need sufficient time to absorb and implement the laws. In the case of the Kingdom, ratification of the CEDAW was in 2000 and, at the time of writing, this study shows that the effects of the ratification occurred gradually over the next 18 years. These results are consistent with other studies which argue that the influence and goals of treaties are usually long term; thus, states may not comply

⁸²⁶ RP Claude and BH Weston (eds.), *Human Rights in the World Community: Issues and Action* (University of Pennsylvania Press 1992).

immediately or in the near future.⁸²⁷ As Chayes and Chayes point out, international human rights treaties are “an extreme case of time lag between undertaking and performance”.⁸²⁸

7.3 Conclusion

In this respect, the following conclusion can be drawn from the present study. Despite the difference in references between the IHRL, which is based to a large degree on a secular Western culture, and the national law of the Kingdom, which is based on Islamic norms, it can be suggested that there is space for cooperation between the two laws. Thus, common ground can be created in order to promote human rights, as long as the cooperation does not lead to any violation of religious standards and domestic values.

⁸²⁷ E Neumayer, ‘Do International Human Rights Treaties Improve Respect for Human Rights?’ (2005) 49 *Journal of Conflict Resolution* 925.

⁸²⁸ Abram Chayes and Antonia Handler Chayes, ‘On Compliance’ (1993) 47 *International Organization* 175, 187.

Chapter Eight:

Conclusion

In this final Chapter, the findings from the empirical research are summarised in Section 8.1. In Section 8.2 the main contributions to the relevant literature are discussed. Section 8.3 presents limitations of the research. The chapter then closes with recommendations for further research work in Section 8.4.

8.1 Summary of the Main Findings

This study was undertaken to provide new and empirically-original insights into the processes by which IHRL shapes and influences domestic laws and to assess the adequacy of existing theoretical models that provide an explanation of the impact of a state's engagement with IHRL. It explains the recent changes in the KSA's human rights environment and the factors that appear to influence those changes. However, this research consistently shows that the changes in the Kingdom's human rights environment has been influenced by the KSA's engagement with IHRL and by the role of the state officials and policy-makers.

Chapter 4 investigates how participants identified the changes in the KSA's human rights environment, in particular those related to women, that occurred between 1990 and 2016. In this respect, the most significant changes were identified in three important areas. First, legislative changes included: the enactment of the Basic Law; introducing legislative programs against violations of women's rights; specific legal regulations in order to reduce the role of the male guardianship over women; and enabling women certain political and civil rights. The second significant change was the creation of institutions concerned about human rights, while the third was introducing human rights education in schools.

The study shows that the creation of the Basic Law in 1992 was an important step in terms of promoting and protecting the rights of individuals. This is because the Basic Law stipulates the rights and duties of individuals in the Kingdom, thereby helping make people aware of their rights. In addition, the Basic Law lays out the situation in relation to IHRL and Covenants to which the Kingdom become party. Thus, the passage of the Basic Law by the Kingdom contributes to establishing the legitimacy of human rights treaties. In this respect, the study shows that the international norms of human rights are better protected in a state when they are articulated within a state's normative legal framework.

In relation to the second core change (the establishment of human rights organisations) that the KSA's domestic law has witnessed, the research finds that between 1990 and 2016, the Kingdom created a number of organisations, such as the Human Rights Council of the *Majlis al Shura* in 1995, the National Society for Human Rights in 2004 and Human Rights Commission in 2005, and programmes that aim to protect the rights of individuals and women rights in particular. Importantly, the participants believe that the establishment of these human rights organisations and other programmes are the result of the KSA's engagement with IHRL. The Kingdom is shown to have accepted certain international norms and amended its national law to comply with the CEDAW, in part driven by the UN's review process.

Another important change that the study identifies is the improvements that occurred in women's civil and political rights. In terms of the improvement in women's civil rights, the most significant change is women being able to obtain their own identity card which enables women to enjoy greater financial and economic rights. In addition, this action has contributed to reducing the negative practices of male guardianship that did not have a religious legal basis. Moreover, it has identified two positive outcomes in the political rights of women; women have become members in the *Shura* Council and are also now able to participate in the municipal elections as voters and candidates. In this respect, the study shows that participants attributed the improvement in women's civil rights to the influence of the CEDAW, while they tended to attribute the changes that occurred in the political rights of women to the role of the state's leadership, in particular the role of the King. Nevertheless, there is a relationship between the Kingdom's engagement with the IHRL mechanisms and the role of the leadership. For example, a member of the CEDAW Committee referred to the role of the Committee in making changes in the context of women rights; however, she also acknowledged the role of the KSA's leadership in accepting and activating the change proposed by the Committee. Therefore, it is suggested that closer cooperation between the Kingdom's policy-makers and the UN human rights mechanisms would improve the human rights situation in the Kingdom.

The research also finds that 1990 is considered as the starting point for changes in the KSA's law pertaining to the improvement of the human rights situation. However, it is found that the reign of King Abdallah starting in 2005 was distinguished by actual changes in women's rights, although the changes were subject to the KSA's strategy of slow evolution. However, despite these positive moves, the results indicate that the interaction can be limited by certain

norms in the Kingdom, such as compliance with *Shari'ah*. Additionally, it is shown that in order for a law to be changed it requires the support of the King as the ultimate decision-maker.

Furthermore, the study finds that there are conflicting ways in which the participants identify the changes; while some identified changes as “dramatic and significant” other characterised them as “quiet and gradual”. The difference in perception is due to several reasons. The study shows that first reason is due to the difference in the background of the participants which had an impact on how the changes are perceived. For example, state actors and members of formal civil society institutions tend to portray the changes in human rights as significant and rapid, while human rights activists and members of the CEDAW Committee tend to describe the change as slow and unsatisfactory. The second reason is related to the type of rights being discussed. In terms of political rights, the changes were perceived as “quiet and gradual”, because the legislative process in the KSA has a number of stages. Thus, approval for a new regulation or legislation can be slow because of the need to modify the proposed system several times before it is implemented in domestic law. Thus, due to these bureaucratic procedures, participants view the procedure of domestic law changes in the KSA as “quiet and gradual”. Thus, the study concludes that the description of the change in the Kingdom as dramatic or as gradual is merely descriptive and does not carry a normative judgement.

The study finds that a number of factors contribute to the changes in the KSA’s domestic laws (Research Question 3). The factors identified are classified into two categories, internal and external factors. Internal factors are divided into two types; those related to the political environment and those related to the social environment. The political factors include the Kingdom’s legal system, *Shari'ah* and the Basic Law of the Kingdom as well as the government’s strategic decision-making process, which involves political will, Royal Decrees and the influence of policymakers and officials. In this respect, the result of the study has emphasised the role of the officials in the Kingdom in terms of bringing about change in the law of the Kingdom. The social environment includes the role of individuals and citizens, the education system, economic factors, modernisation, living and working overseas, and the social media. However, as these fall outside the remit of the study, the researcher recommends that future studies investigate the role of these factor in influences changes in the KSA’s human rights environment.

In terms of the external factors, the study finds that the Kingdom's engagement with IHRL and its mechanisms is one of the most significant factors influencing the KSA's recent human rights development. The study finds that there is a correlation between the willingness and desire on the part of the state to engage and deal with IHRL and the effectiveness of the IHRL system that monitors the state's human rights file. In the case of the Kingdom, this can be observed through the methods adopted by the KSA in its dealings with the IHRL bodies and mechanisms. The study identifies that there are two methods (interaction and engagement) by which the Kingdom deals with IHRL, both of which contribute to the KSA incorporating acceptable international human rights norms into its domestic law.

In the case of the first method, the KSA engages with the UN human rights bodies such as the OHCHR and the HRC. It is found that state cooperation with the OHCHR and frequent meetings between the state and the OHCHR result in the transfer of international norms into the state's domestic law. In addition, the study explains that the Kingdom's membership of the HRC brought pressure to fulfil its international human rights obligations. With regard to the second types of the KSA engagement with the IHRL, the study shows that the Kingdom has implemented recommendations emerging from the CEDAW review process. The study also finds that the KSA's involvement with the UPR mechanism that operates under the umbrella of the HRC provides an opportunity for constructive dialogue which reflects positively on the state enhancing the human rights situation. In this respect, the study finds a positive impact of the peer review from other states through the UPR, as the KSA has implemented a number of recommendations from the reports in its domestic law. Thus, there is a correlation between the role of human rights treaties such as the CEDAW and the HRC. The creation of the HRC and the mechanisms of the UPR have encouraged Saudi Arabia to implement the CEDAW norms and fulfil its international obligations.

In terms of criticisms raised by the human rights treaty bodies such as the CEDAW or by the human rights INGOs regarding human rights issues, the study finds that the Kingdom responds to 'constructive' criticism raised by the UN human rights committees and by the annual country reports on human rights practices issued by other states' foreign ministries. However, the Kingdom claims to ignore criticisms from INGOs on the basis that they appear to mainstream isolated individual human rights issues as the prevailing state of human rights. Thus, significantly, the Kingdom distinguishes between objective or constructive criticism by the UN human rights bodies, and the criticisms that raised by certain INGOs, which the KSA considers to be "fabricated lies". Thus, the study shows that the KSA tends to only respond

positively to what it perceives to be constructive criticisms.

The study finds that the influence of the KSA's engagement with the IHRL on its domestic law occurs through the following process: interaction and engagement with the UN bodies and mechanisms; interpretation of the norms of human rights; discussion, dialogue and review of the human rights situation; and, finally, the incorporation of accepted international law norms into the KSA's domestic laws and regulations. In this context, this finding is best explained by the theory of Transitional Legal Process.⁸²⁹

In terms of investigating Research Question 4, the study argues that although the Kingdom made reservations about the norms of the CEDAW that are incompatible with its Basic Law, the ratification of the CEDAW has been useful in terms of enhancing women's rights and enabling them to gain certain rights, in particular those rights that they were prevented from enjoying because of traditional cultural practises. This conclusion is supported by the fact that the government has issued laws, regulations, and programmes which comply with the CEDAW's recommendations and norms. The study finds that the most significant advance is reducing the role of male guardianship. However, the study proves that in the case of the KSA the effectiveness of the IHRL is constrained because of the religious legitimacy of *Shari'ah*. Thus, the usefulness of the IHRL in shaping the KSA's domestic law in relation to women's human rights is limited to areas which were affected by traditional and tribal habits.

In this investigation, the aim was to draw a clear picture of how the KSA interacts with the IHRL leading to the Kingdom complying with UN human rights norms despite the KSA applying a different legal system that stems from Islam. In this regard, the universal norms of human rights guaranteed in the UN human rights conventions appear to have gained validity and legitimacy after the Kingdom accepted to be bound by the treaty norms and proved willing to adhere to implement these norms in its domestic law. In this respect, the study finds that although the KSA has made certain reservations to the CEDAW, the treaty has been effective in terms of promoting the rights of Saudi women. This is because ratified multilateral treaties create a binding legal obligation. Furthermore, in the case of KSA, the international conventions signed are legalised by the Basic Law of Governance, which means that the Kingdom accepts international norms that comply with *Shari'ah*. Thus, nothing prevents the implementation of the international norms as long as these conform to local standards.

⁸²⁹ Harold Hongju Koh, 'Transnational Legal Process' (1996) 75 Neb. L. Rev. 181.

These findings have important implications for developing human rights and improving the status of women rights. For example, this study indicates that the state's policy-makers and officials have played a vital role in terms of bringing about domestic law changes and promoting and protecting human rights in the Kingdom, thus, it would be great to benefit more and make greater use of international expertise.

Furthermore, the findings of this study have a number of important implications for the future practice of the IHRL mechanisms. The study finds that the KSA is open to positive and constructive criticisms from the IHRL system. Therefore, human rights organisations and the HRC should promote human rights that respect local values and avoid conflict between IHRL and *Shari'ah*. Furthermore, it is important for IHRL and INGOs to understand the norms of a state in the context of the state itself.

Another implication which can be drawn from the present study is that INGOs should be more reflective in their approach of examination of a state's human rights situation. In this case, human rights NGOs, in order to enhance the human rights situation in a particular state, need to be more realistic in their criticism of human rights issue and avoid the generalisation of individual cases as a systematic system of the state.

In summary, this research empirically examines the role of the KSA's engagement with the IHRL on developing and promoting human rights. It evaluates the developments in Saudi women's rights from 1990 until 2016. In doing so, it has built the empirical framework for the states' engagement with IHRL and determined the model that provides an explanation of how the process of the interaction and the influence has occurred.

8.2 Main Contributions to the Relevant Literature

The findings from this research make several contributions to the current literature. It explains the role of the KSA's engagement with IHRL on developing human rights in the Kingdom's domestic law from 1990 until 2016 by an empirical analysis of the perspectives of the participant-interviewees.⁸³⁰ Thus, the empirical findings provide a new understanding on the role and the influence of a state's engagement with IHRL on shaping its domestic law by discussing the key arguments presented in similar studies and in doing so this thesis developed its own position and methodology.

⁸³⁰ For more details see Chapter 3.

For example, this study provides an empirical analysis of the role of the state's interaction and engagement with the IHRL mechanism in terms of how it shaped and influenced its domestic law. A number of studies have examined particular aspects of the KSA's dealing with the IHRL, including those of Al-Hargan, and Al-Rodiman.⁸³¹ However, this examination indicates the inadequacy of these studies in presenting the narration of the process of introducing international standards into the domestic law of the Kingdom as a result of its cooperation and engagement with the mechanisms of IHRL. These studies tend to have argued that one of the obstacles to the application of international human rights law in Saudi Arabia was a lack of implementation of international human rights treaties in practice, as well as the application of *Shari'ah* in the KSA's domestic law. In contrast, this investigation has demonstrated that the KSA's ratification of human rights treaties, such as the CEDAW, has presented significant positive effects in developing the rights of women without violation its domestic law. Furthermore, in practical terms, the current investigation has demonstrated that the KSA issued a large number of domestic changes which have met its commitments under CEDAW. Moreover, this study has demonstrated that IHRL has an impact even when a state does not fully comply with the standards of an international convention as long as the state accepts some of the international norms and gives them legal legitimacy. The current study reached this different conclusion because previous studies, generally speaking, adopted a documentary analysis methodology that mostly relied on official reports. As a consequence, the studies were unable to test different perspectives around the changes and development in the law, while the current study applied an empirical qualitative methodology by applying semi-structured interviews with various participants who are related to the subject of the study. The application of this approach contributes to understanding participants' cognition and perspectives regarding how the change in the local law of the Kingdom resulted from interaction and cooperation with IHRL. Thus, this study has provided a new understanding on the role of Muslim states engagement with IHRL (in this study, the KSA) and their approach of cooperation and interaction.

Furthermore, the current study provides a new insight that contradicts the empirical study of Çali *et al.* regarding the limitations of changes to human rights subsequent to the KSA's ratification of human rights treaties.⁸³² This empirical examination has demonstrated that one of the main factors in enhancing the rights of Saudi women was the Kingdom's engagement

⁸³¹ For more details see the Introduction Section 2.

⁸³² *ibid.*

with the IHRL mechanisms and its ratification of the CEDAW.

The thesis demonstrates that there have been positive outcomes for women's rights following the ratification of the CEDAW, as long as the international norms were not perceived to conflict with the norms of *Shari'ah*. This contrasts with some research which argues that ratifying international human rights treaties has no impact on developing human rights in the party state when reservations have been made to the convention.⁸³³ However, this study shows that although the Kingdom has made reservations on the CEDAW, positive changes have been made which enhance women's rights. This also contributes to the discussion in the literature.

One of the main aspects of this investigation is to identify which theories on the impact of the international law explain the improvement in the KSA's human rights law between 1990 until 2016. This research finds the Translational Legal Process Model provides the most coherent account of explaining the outcomes of the KSA's engagement with the mechanisms of IHRL.⁸³⁴ This is the first time that an empirical study has been used to explore which model of the international law influences the KSA's domestic law. In this term, the current investigation has demonstrated this complex issue by gaining the perspectives and inputs of the relevant stakeholders that is made a distinction from the theoretical study of Alhargan.⁸³⁵

Moreover, while there has been significant debate around the effectiveness of Muslim states (including the KSA) acceding to and ratifying international human rights treaties on their human rights' performances and practices, there is a lack of empirical information on the subject. This has been demonstrated through the investigation of the specific issue of Saudi women's rights; women's participation in political life, and changes in their civil rights such as male guardianship to challenge some of the main arguments made by Riddle and Cook,⁸³⁶

⁸³³ Rebecca J. Cook, Reservations to the Convention on the Elimination of All Forms of Discrimination against Women, (1990) 30 Va. J. Int'l L. 643; E Neumayer, 'Do International Human Rights Treaties Improve Respect for Human Rights?' (2005) 49 Journal of Conflict Resolution 925; Linda M Keller, 'The Impact of States Parties' Reservation to the Convention on the Elimination of All Forms of Discrimination against Women' (2014) Mich. St. L. Rev. 309; Rep. of the Comm. on the Elimination of Discrimination against Women, 18th Sess., 19th Sess., Jan. 19-Feb. 6, 1998, June 22-July 10, 1998, at 47, U.N. Doc. A/53/38/Rev.1; GAOR, 53d Sess., Supp. No. 38 (1998). At 49. For more details see Chapter 1.2.

⁸³⁴ For more details see Chapter 7.2.3.

⁸³⁵ For more details see the Introduction Section 2.

⁸³⁶ Jennifer Riddle, 'Making CEDAW Universal: A Critique of CEDAW's Reservation Regime under Article 28 and the Effectiveness of the Reporting Process' (2002) 34 Geo. Wash. Int'l L. Rev. 605; Rebecca J. Cook, Reservations to the Convention on the Elimination of All Forms of Discrimination against Women, (1990) 30 Va. J. Int'l L. 643.

Thus, this research extends our knowledge with regard to the effectiveness of the IHRL in enhancing human rights in Muslim societies.

Overall, this research will serve as a base for future studies. The main findings of this research fill a gap in the literature on the role of a state's engagement with IHRL using empirical analysis. By doing so, the study highlights that there is a difference between the nature of the KSA domestic law which relies on *Shari'ah* and the nature of IHRL. Thus, this research extends our knowledge with regard to how to create common ground between IHRL norms and Islamic norms in terms of promoting and protecting human rights.

8.3 Limitations of the Current Study

The present research explains the impact of the KSA's engagement with IHRL between 1990 and 2016 on influencing changes in the KSA domestic law by reflecting its theoretical and practical aspects in the literature. However, a number of important limitations need to be considered.

First, the research only covers the KSA's engagement with the IHRL from 1990 to 2016. Therefore, it did not attempt to analyse this relationship after 2016, which has seen further developments in the women's rights situation in Saudi Arabia. Second, this study is limited to the role of the KSA's dealing with IHRL in relation to political and certain civil women's rights that are frequently criticised by the IHRL mechanisms. Third, this research was limited to the influence of the KSA's interaction with IHRL in terms of the CEDAW on changing women's rights in the Kingdom. Other factors that the analysis identified were only touched on.⁸³⁷ Fourth, the sample of interviewees is limited to four categories of participants, states actors, civil society members, human right activists and the CEDAW Committee members; other categories such as INGOs could have been involved.

8.4 Recommendations for Further Research

In the light of the limitations, this research highlights that there are many questions in need of further investigation. For example, as explained in Chapter 7, since 2016 huge changes in the KSA domestic law have been witnessed whether related to women rights or the rights of individuals in general. Therefore, further studies on the factors that lead to the rapid changes in these two years including the role of the government's 2030 Vision could be carried out to

⁸³⁷ For more details see Chapter 5

expand our knowledge with respect to promoting and enhancing human rights in a state's domestic law.

It would be interesting to assess the effects of the KSA's engagement with the IHRL on the rights of women such as economic, social and cultural rights that fall outside the scope of this study. Additionally, in Chapter 6, the study identifies a number of social environment factors that appear to influence the domestic law changes in relation to the human rights of the KSA. However, due to the limitation of this study on examining the role of the IHRL factor, it is suggested that the association of these other factors is investigated in future studies.

Furthermore, the current study finds a significant correlation between states being members of the HRC in terms of improving human rights in that state. In this respect, in order to understand the real influences of the state membership of the HRC and the advancement in its human rights record, a further study investigating this correlation would be very revealing.

It would also be interesting to assess the adequacy of the Regime Theory Perspective in the context of the KSA's compliance with IHRL, especially the theory's view that international human rights treaties are "an extreme case of time lag between undertaking and performance". Thus, further research regarding the Regime Theory approach in the field of the Kingdom's compliance with the IHRL would be worthwhile.

Additionally, further research could investigate the model of state socialisation that focuses on the role of the social mechanisms in terms of influencing state compliance with treaty norms. This current study identifies different social factors that also could influence the process of the KSA compliance with the norm. However, the scope of this study excluded the social environment factors. Furthermore, any investigation of this model in the context of the Kingdom would need to include a different and larger sample of participants, along with a mixed methodology. Therefore, a further study with more focus on the acculturation model is suggested.

The generalisability of these results is subject to certain limitations. For instance, as mentioned previously, this study adopted a case study empirical methodology. In this respect, a further empirical study investigating the dealing and engagement of other Muslim states with the UN human rights law could be conducted.

Lastly, although the study has successfully demonstrated the issue under investigation that related to the role of the KSA dealing with the IHRL on shaping and improving its domestic

law, it has certain limitations in terms of the size and range of participants. Therefore, it would be interesting to expand the samples of participants to include other categories. In addition, research using a mixed methodology, combining qualitative and quantitative approach, would be useful.

APPENDICES

Appendix 1: Sample Call for Participants

Dear...

I am Dhoha from Saudi Arabia a Doctoral (PhD) researcher in international law at the University of Durham in the UK.

I am inviting you to take part in interview with myself to discuss your perspectives on the role of the Kingdom of Saudi Arabia's interaction and engagement with international human rights law on improving and developing its human rights law. Now I am in the process of collecting the research data and your participation in my studies will contribute to achieve the goals and objectives of the study.

I apologize for any unconvinced that this email may cause you and I look forward to your response.

Best regards,

Dhoha Alharbi
PhD Candidate
Durham University Law School
Palatine Centre
Durham
DH1 3LE

Appendix 2: Participants Information Sheet

Participant Information Sheet

Project title: The Role of the Kingdom of Saudi Arabia's Interaction and Engagement with International Human Rights Law on Improving and Developing Its Human Rights Law.

My name is Dhoha Alharbi. I am a PhD student in international law at Durham University in the UK. I would like to invite you to take part in my research study, which concerns the role of the KSA interaction and engagement with the IHRL. The research examines IHRL and other factors that may improve state human rights practices. The research also examines the engagement of Saudi Arabia with IHRL and its reflection in particular on the recent changes and development with regard to women's rights. I will be interviewing key civil society actors, policymakers, and members of the UN involving in this issue.

Sponsor: The Saudi Arabia Government sponsors this research. However, the sponsor just covers the cost of the study without any intervention in the processes of this research or its contents. Therefore, this sponsorship does not have impact on the impartiality of the findings of the research.

Procedures: If you agree to participate in my research, I will conduct an interview with you at a time and location of your choice. The interview will involve questions about your experiences as activist in human rights and IHRL. It should last about 60 minutes. With your permission, I will audiotape and take notes during the interview. The recording is to accurately record the information you provide, and will be used for transcription purposes only. If you choose not to be audiotaped, I will take notes instead. If you agree to being audiotaped but feel uncomfortable at any time during the interview, I can turn off the recorder at your request. Or if you don't wish to continue, you can stop the interview at any time. I expect to conduct only one interview; however, follow-ups may be needed for added clarification. If so, I will contact you by mail/phone to request this.

Benefits: There is no direct benefit to you from taking part in this study. It is hoped that the research will increase understanding of the usefulness of states' interaction with IHRL in promoting and protecting human rights.

Risks/Discomforts: it is recognised that studying the impact of IHRL on states' national law can be a controversial issue. This research is not evaluating the human rights record of the

state, rather its focus is on understanding the interaction and influence (if any) of IHLR and in particular participation in CEDAW, in shaping policy changes that have taken place at the domestic level. In the case the research questions make you uncomfortable or upset, you are free to decline to answer any questions you don't wish to, or to stop the interview at any time. As with all research, there is a chance that confidentiality could be compromised; however, we are taking precautions to minimise this risk.

Confidentiality: Your study data will be handled as confidentially as possible. If results of this study are published or presented, individual names and other personally identifiable information will not be used unless you give explicit permission for this. To minimise the risks to confidentiality, I will anonymise all transcripts, store transcripts in password-protected files. When the research is completed, the audio recording of the interviews will be deleted; however, I may save transcripts and notes for use in future research done by myself. I will retain these records for up to 2 years after the study is over.

Compensation: You will not be paid for taking part in this study.

Participation in research is completely voluntary. You are free to decline to take part in the project. You can decline to answer any questions and are free to stop taking part in the project at any time.

Questions: If you have any questions about this research, please feel free to contact me. I can be reached at 00966505288238 / ++4407455222697 or D.A.Alharbi@durham.ac.uk

Appendix 3: Interview Questions in English

Interviews questions:

Based on the history of the KSA's engagement with the international human rights law (IHRL), and the development and changes in the Kingdom's human rights situation in general and women's rights in particular:

- 1- How would you describe the Kingdom of Saudi Arabia's level of cooperation with international human rights law? And the phases of the KSA engagement with the IHRL?
- 2- Have there been any changes in KSA law and practice that reflect a greater engagement with IHRL?
- 3- What have been the main issues in relation to women's rights, that have been raised before international human rights organisations like the CEDAW Committee?
- 4- What have been the main changes in women's rights in Saudi Arabian law over the past 26 years?
- 5- To what extent, if at all, are the changes influenced by engagement with IHRL?
- 6- What are the other factors that have contributed to these changes and development?
- 7- What are the criteria that the Kingdom of Saudi Arabia has considered and adhered to in terms of development of women's rights?
- 8- How has the Kingdom of Saudi Arabia responded to examination by international human rights organisations whether intergovernmental organisations like the UN or NGOs like Amnesty or Human Rights Watch with regard to the human rights situation in the kingdom?
- 9- Some of the women's rights have always been enshrined within Islam, which is the basic law of the government. But how is it that women have not enjoyed these rights until now or they enjoy it in the last few years? What are your comments and/or explanations for that?

Appendix 4: Interview Questions in Arabic

بناء على تاريخ المملكة في تفاعلها وتعاونها مع القانون الدولي لحقوق الإنسان وإنضمامها إلى عدد من الاتفاقيات الدولية المتعلقة بحقوق الانسان وكذلك بناء على التطورات الحاصلة في حقوق الإنسان في المملكة بشكل عام وحقوق المرأة السعودية بشكل خاص؟

س ١: كيف تصف مستوى تعاون المملكة العربية السعودية مع القانون الدولي لحقوق الانسان؟ وكذلك كيف تصف مراحل إنضمام وتفاعل المملكة مع القانون الدولي لحقوق الانسان؟

س ٢: هل طرأت أي تغييرات على قانون وممارسات المملكة العربية السعودية تعكس أثر الإنخراط مع القانون الدولي لحقوق الانسان؟

س ٣: ماهي القضايا الرئيسية المتعلقة بحقوق المرأة السعودية، التي أثرت من قبل منظمات حقوق الانسان الدولية مثل لجنة القضاء على جميع أشكال التمييز ضد المرأة؟
س ٤: ماهي التغييرات الرئيسية في حقوق المرأة في القانون السعودي على مدى ال ٢٦ سنة الماضية؟

س ٥: الى اي مدى اذا كانت التغييرات التي طرأت في القانون السعودي تأثرت بإنخراط وتفاعل المملكة مع القانون الدولي لحقوق الانسان؟

س ٦: ماهي العوامل الأخرى التي ساهمت في هذه التغييرات والتطوير في حقوق المرأة السعودية؟

س: ماهي المعايير التي تأخذها المملكة بعين الاعتبار وتلتزم بها من حيث تطوير حقوق المرأة؟

س ٧: كيف تستجيب المملكة العربية السعودية لملاحظات وتعليقات وكذلك انتقادات المنظمات الدولية لحقوق الانسان سواء كانت منظمات حكومية دولية مثل الأمم المتحدة أو منظمات غير حكومية مثل منظمة العفو الدولية أو الهيومن رايتس وواتش وذلك فيما يتعلق بحالة حقوق الانسان في المملكة؟

س ٨: بعض حقوق المرأة السعودية كفلها الاسلام، وهو القانون الاساسي للمملكة العربية السعودية. لكن لم تتمتع المرأة السعودية بهذه الحقوق حتى الآن او حصلت عليها في السنوات الأخيرة؟ ماهو تعليقكم أو / تفسيركم لذلك؟

Appendix 5: Informed Consent Form

The Role of the Kingdom of Saudi Arabia's Interaction and Engagement with International Human Rights Law on Improving and Developing Its Human Rights Law.

Name, position and contact address of Researcher:

Dhoha Alharbi, PhD Candidate, Durham University Law School, Palatine Centre, Durham, DH1 3LE, UK

Email: D.A.Alharbi@durham.ac.uk

**PLEASE INITIAL
BOX**

- | | | |
|----|--|--------------------------|
| 1. | I confirm that I have read and understand the information sheet for the above study and have had the opportunity to ask questions. | <input type="checkbox"/> |
| 2. | I understand that my participation is voluntary and that I am free to withdraw at any time, without giving reason. | <input type="checkbox"/> |
| 3. | I agree to take part in the above study. | <input type="checkbox"/> |
| 4. | I agree to the interview being audio recorded | <input type="checkbox"/> |
| 6. | I agree to the use of anonymised quotes in publications | <input type="checkbox"/> |

Name of Participant

Date

Signature

Appendix 6: Royal Decree of the KSA ratifying CEDAW



الرقم : م / ٢٥
التاريخ : ١٤٢١/٥/٢٨ هـ

بِعون الله تعالى

نحن فهد بن عبدالعزيز آل سعود

ملك المملكة العربية السعودية

بناءً على المادة السبعين من النظام الأساسي للحكم الصادر بالأمر الملكي رقم (٩٠/أ) وتاريخ ١٤١٢/٨/٢٧ هـ.

وبناءً على المادة العشرين من نظام مجلس الوزراء الصادر بالأمر الملكي رقم (١٣/أ) وتاريخ ١٤١٤/٣/٣ هـ.

وبناءً على المادتين السابعة عشرة والثامنة عشرة من نظام مجلس الشورى الصادر بالأمر الملكي رقم (٩١/أ) وتاريخ ١٤١٢/٨/٢٧ هـ.

وبعد الاطلاع على قرار مجلس الشورى رقم (٧١/٧٧) وتاريخ ١٤٢١/٢/٣ هـ.

وبعد الاطلاع على قرار مجلس الوزراء رقم (١٢٢) وتاريخ ١٤٢١/٥/٢١ هـ.

رسمنا بما هو آت :

أولاً : الموافقة على انضمام المملكة الى اتفاقية القضاء على جميع أشكال التمييز ضد المرأة التي اعتمدها الجمعية العامة للأمم المتحدة بقرارها رقم (١٨٠/٣٤) وتاريخ ١٨ / ديسمبر عام ١٩٧٩م بالصيغة المرافقة ، على أنه في حالة تعارض أي حكم من أحكام هذه الاتفاقية مع أحكام الشريعة الإسلامية فإن المملكة لا تلتزم بما يتعارض معها.

ثانياً : أن المملكة لا تعد نفسها ملزمة بحكم الفقرة (٢) من المادة (٩) ، وحكم الفقرة (١) من المادة (٢٩) من هذه الاتفاقية.

ثالثاً : على سمو نائب رئيس مجلس الوزراء والوزراء كل فيما يخصه تنفيذ مرسومنا هذا ،،


فهد بن عبدالعزيز

Appendix 7: Initial Themes Map



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