

Between Shari'ah and International Standards:
Protecting the Rights of the Child under Saudi Arabia's
Human Rights Law

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'I, Lulwa AlThenayan, confirm that the work presented in this thesis is my own. Where information has been derived from other sources, I confirm that this has been indicated in the thesis.'

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Abstract

Between international standards and Islamic law, are children's rights in Saudi Arabia protected? My research revolves around this question. It looks at the rights and best interests of the child in Saudi Arabia. What rights does international law grant children and similarly, what rights does Islamic law – Shari'ah¹ grant them? Are international child laws currently being implemented as fully as it is possible under Islamic Law - Shari'ah law, as some claim? Or, as others allege, are Islam and Shari'ah law being used as excuses to deprive children of their rights and 'best interests' as intended by the United Nations Convention on the Rights of the Child (UNCRC)? Indeed, many practitioners in the region argue that it is not Shari'ah that imposes most of the alleged limitations on the exercise of children's rights (as conceived in the UNCRC) in Muslim states, but that it is the governments themselves that do so. According to this view, the states are not implementing Islamic law as it should be implemented, but rather are using the notion of Islamic law (or allowing it to be used) as an instrument to deflect criticism from international human rights advocates.

So, the question that imposes itself here is; whether convergence between international Children's Rights and Islamic Children's Rights can be reached in Saudi Arabia or not. More specifically, are the human rights of children and their best interests in Saudi Arabia, a country governed by Islamic Law, protected?

¹ Law derived from the Book of Allah (Quran) and the doings and sayings of the Prophet Muhammed (Sunnah)

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Glossary

Ahadith	Plural of hadith
Board of senior Ulema	Board of senior scholars
Darûrah	Necessity
Dinâr	The currency at the time of the Prophet Muhammed
Diyya	Financial compensation paid to families of victims of murder, bodily harm or property damage
Fatwas	Islamic legal pronouncement, issued by an expert in religious law (mufti)
Figh	The method of applying Islamic law
Hadith	Prophet's sayings
Hidanah	Custody
Hudud	Punishments that are fixed for certain crimes that are considered to be "claims of God." E.g. adultery (extramarital sex) or consumption of alcohol
Huqooq	Plural of haq; meaning right
Huqooq al Ibad	The rights of people

Huqooq Allah	The rights of Allah
Ifta	Giving Legal Opinions
Ijma	Juristic consensus
Ijtihad	Muslim intellectual tradition
Istihsân	Juristic preference
Kafalah	Adoption (the Islamic alternative)
Maslahah	Welfare
Mufti	Expert in Shari'ah
Nutfa	The foetus, first forty days in the mother's womb
Qiyas	Legal analogy
Sadaqah	Charity
Shari'ah	Shari'ah law or Islamic law
Shari'at al-ahwal al-shakhsiya	Muslim personal status law
Shi'as	A sector of Islam were the followers regard Ali, the fourth caliph, as Prophet Muhammed's only successor
Shura council	Council of Ministers

Shura	Consultation
Sunnah	Doings and sayings of Prophet Muhammed regarding various issues
Sunnis	A sector of Islam where the followers believe in the Prophet Muhammed's sunnah and all his four caliphs as successors
Taqfid	Legal conformism
The Kingdom	Describes the Kingdom of Saudi Arabia
'Urf	Custom
Wali	Guardian
Wilaya	Guardianship
Zakat	Charity tax

Chapter 1

Introduction

The primary objective of this chapter is to compare and contrast human rights in Islam with those granted under international law, with the primary focus of the analysis devoted to children's rights in Islamic tradition. Children's rights and the social and legal standing of a child in Islamic countries are determined by Islamic family law, which is derived from Shari'ah or the principles of Islamic law and other aspects of the culture. Therefore, before entering into arguments about the relationship between international human rights and children in Islamic culture, a basic understanding of Shari'ah and its sources is essential. In particular, it is important to understand how the concept of human rights in Islamic tradition is derived from the sources of Shari'ah and from its accompanying juristic practices, namely the Quran, Sunnah, Ijma, Qiyas and Ijtihad. An analysis of these sources of Shari'ah is essential to an understanding of such vital issues as the fossilization of Shari'ah and its resistance to the introduction of external concepts of human rights.

The structure of the thesis

The methodology adopted in my research includes a number of different approaches. My research is a product of a comparative legal analysis and a case study. It involves largely a text-based method, besides the English language references I used, I also surveyed an extensive list of Arabic

references from Saudi Arabian libraries as well as Arabic scholarship found in libraries here in the UK.

When researching into different cultures a process of translation becomes an essential part of the research. Whether translation is done in the stages of data collection or later stages of analysis, the translated texts influences what can be expressed. Important questions that have risen in the last stages of this research is whether it is important if the translation process is identified or not? And what difference does it make if the researcher and the translator are the same person? And finally how much translation has gone into this research? Information on the research process and the translation process and the original language of the sources makes it easier for the reader to engage with the text. When translating, it is always argued that there is no single correct translation of a text.

Translation can become crucial in a research such as this, since expressed language contributes greatly to social experiences which are unique to one's own language. Or as Chapman explains it, speaking different languages leads to different perceptions of the world.

A few challenges can emerge from translation. Since translation is also an interpretation, unlike reading the texts in its native form, some meaning might get lost through the process of translation. Differences in languages can lead to consequences, i.e. concepts in any particular language may be understood differently in another language.

According to Lakoff, metaphors vary from culture to culture, not only culturally-bound but also language-specific. For example in Arabic it is very common to

say احفظ الله يحفظك “ehfaz Allah yahfazak” to express Allah’s protection to someone who believes in him. It literally translates to preserve Allah, he will protect you. This expression does not communicate the exact meaning of the Arabic saying, nor does it give it justice. To translate the word “ehfaz” to preserve is in fact very limiting to its actual meaning. “Ehfaz” in Arabic would actually translate to more than one word in English; preserve, safeguard, defend and protect. Using more words in the translation than in the original text, nevertheless, changes the voice of the speaker. This is especially problematic if the “speaker” is an official document or law or sayings of the Prophet where translation of quotes is due in place.

A researcher translating by him/herself (like in this research) does not need to be only culture- and language-sensitive but also distance- sensitive. Translation from a language to another involves interpretation as well. Being the researcher and the translator, objectivity was my main concern while translating. According to Polkinghorne, translation can be considered valid only when the meaning as experienced by the researcher and the meanings as interpreted by the reader is as close as possible. In this research the researcher did the necessary translations (please check the list of Arabic bibliography). Whenever there is reference to a book in Arabic, it implies that the researcher has done the translating. Relying on non-native Arabic speakers to translate some texts found in Arabic books produced some hesitant, compromised translation efforts. Being a bilingual speaker of both languages (Arabic and English) and having the knowledge needed to produce the translated materials, I then relied on my capabilities of translation to try and translate the Arabic texts as culture-, language- and distance- sensitive

as I can. Challenges of isolating my point of view, producing a non-biased translation and omitting chances of misinterpretation were also faced. The message communicated in Arabic has to be interpreted by the translator (in this case the researcher) and transferred into English in such a way that the audience interprets the same message in the same way the translator did. All communicative actions may risk misinterpretation and misrepresentation, but it is more complicated when translation between different languages or different cultures is required for research. Those limitations and challenges might not only result in loss of meaning, it can also as a result contribute to loss of validity of the research.

In cases such as this, where the researcher is fluent in the language(s) researched in, the researcher can act as the translator. This may offer opportunities that other researchers not fluent in the language might miss. Research methods in cross language research might allow the researcher/translator to use the translating experience to stop and think about meaning that might in itself allow new horizons for research. "This researcher/translator role is bound to the socio-cultural positioning of the researcher, a positioning, whether intended or ascribed, that will also give a meaning to the dual translator/researcher role"¹. That meaning shifts with insider/outsider status. It is beyond the scope of this research to examine the challenges of translating any further. The influence, however, of researching in more than one language cannot be undermined. As much as possible, in

¹ Bogusia Temple and Alys Young. (2004), "Qualitative Research and Translation Dilemmas" 4 Qualitative Research, p. 168.

order to avoid potential limitations, random translation by non-native Arabic translators or electronic translators were avoided.

As the thesis deals with implementing the UNCRC and other legal measures into the domestic law, I will first analyse different legal instruments, this will be accomplished in a literature review. Besides the UNCRC, other Saudi laws will be looked at. In order to look at how these different legal instruments affect children's rights in Saudi Arabia, comparative law methods are adopted. However, this is not a comparison of two entities or implementation of those legal instruments in different countries, as this research is in fact measuring the extent to which different legal instruments were applied differently in Saudi Arabia.

In order to evaluate in-depth the rights of the child in Saudi Arabia, a basic understanding of Islamic Law, children's rights in Islamic Law and children's rights in International Law has to be first obtained. The introductory chapter serves this purpose. This chapter lays out the setting for my thesis. It starts with a preamble about Islamic Law – Shari'ah – it then goes further into explaining the emergence of human right values in both Islamic and International Law and then dives deeper into the emergence of notions of children's rights in both Islamic and International Law.

Chapter 2 starts with a section of literature review then moves into the international conventions of children's rights, then the regional conventions of children's rights and then the national conventions of children's rights. It then looks into how the enforcement courts in Saudi Arabia might implement those conventions in children's courts.

Chapter 3 explores children's rights in Saudi Arabia and its position towards international human rights conventions. This is achieved by specifically looking into the ratification of the UNCRC and its optional protocols. It also looks into how the main principles of the UNCRC are applied and implemented within the laws of Saudi Arabia.

Chapter 4 examines further the position of children's rights in Saudi Arabia. it offers an in-depth analytical study of children's rights in Saudi Arabia (including the conformity and disparity of articles of the UNCRC and Saudi law).

Finally, Chapter 5 critically analyses the situation of children's rights in Saudi Arabia and uses data provided in the reports of human rights organisations and UN committee on the rights of the child to find a way forward for children's rights in Saudi Arabia.

Why Saudi Arabia?

When going through the Saudi 'Basic Law of Governance', one is easily struck by the ample reference to Shari'ah. Article 1 of the governance law states that Allah's Book – Quran – and the Sunnah of His Prophet Muhammed form the country's constitution. So, Saudi Arabia is a country, like all other Muslim countries, governed by Shari'ah. But uniquely in the Muslim world, Saudi Arabia has adopted Shari'ah in an uncodified form. In Saudi Arabia, the Shari'ah has not been collected or restated to form a legal code but is used in a raw, pure form as it was hundreds of years ago. Although Saudi Arabia states that their constitution is the Quran and Sunnah, the law in Saudi Arabia has been supplemented by other regulations to cover modern issues such as corporate law and negligence law. Nevertheless, Shari'ah remains the primary source of law especially in areas such as family law and criminal law. The judicial and court systems in Saudi Arabia are almost the same since they were introduced in 1926. Courts perceive few formalities and decisions are sometimes reached without a jury, singlehandedly by one judge. The government has announced its intention to introduce a number of significant judicial reforms in 2007 and to codify Shari'ah by 2010, many Sharia'h laws have been codified since then (check The Judicial Principles and Legal Precedents book printed in eight volumes in 2018), but this have yet to be fully implemented. Another unique feature of Saudi Arabia is the state's preoccupation with enforcing 'righteousness' or the pure form of Islam. Despite the fact that 100% of Saudi citizens are registered Muslims, Saudi Arabia has a religious police, in addition to the regular police force, whose main purpose

is to enforce Islamic moral and social norms or as they formally call it the 'Committee of the Promotion of Virtue and the Prevention of Vice'.

Moreover, what differentiates Saudi Arabia from other Muslim states is its geographical location; other than being located in the centre of the Middle East connecting the Muslim countries of Africa and Asia, it has Makkah and Madinah, where Muslims from all over the world perform their annual pilgrimage and thus Saudi Arabia carries a great significance in the Muslim world. Saudi Arabia, or what was known at that time as the Arabian Peninsula, is also the birthplace, and place of death, of the Prophet Muhammed. It is where the Quran was initially revealed to the Prophet. Moreover, Saudi Arabia, from the time it was founded and until now remains a stable state. Despite the conflicts it enters with other states, it has never been a war zone neither was it affected by the winds of the Arab Spring that has hit the Middle East.

Studying human rights in Saudi Arabia, especially children's rights and women's rights, is burdened by many obstacles among which are gender obstacles and religious obstacles. Therefore, original, genuine research of Saudi Arabia and its human rights laws are not easy to find. However, having access to Saudi Arabia and more importantly libraries, human rights organizations and NGOs paves my way to an original and interesting piece of research.

For the reasons stated above, Saudi Arabia will be taken as an example case study. Although generalising the outcomes of this study to other Muslim states is hard, this research can nevertheless be used as an inspiration to evaluate the state of children's rights in other Muslim states.

Preamble – What is Islamic Shari'ah?

Islamic law, like all legal systems, is a product of methods and sources. In order to understand children's rights laws and how these laws are applied in judicial rulings, it is important to differentiate between Shari'ah, the source of Islamic law and Fiqh, the method of applying Islamic law. Muslims believe that Islam is the word of Allah passed on to the Prophet Muhammed (Peace Be Upon Him), and for that reason no adaptations, modifications or alterations can be made to it. Thus, Islam is timeless. A lot of misconceptions revolve around the Islamic religion, one of which is that Islam is a holy, wholly religion that is immutable since it is built upon the Shari'ah which has been derived from the text of the holy Quran and the Prophet Muhammed's Sunnah.¹ This misconception arises from a failure to distinguish between Shari'ah (source) and Fiqh (methods). While both Shari'ah and Fiqh can be referred to as Islamic law, they are not synonymous. Literally, the term Shari'ah means a flowing stream, a watering place, where all living creatures come to drink water.² Bearing this connotation, Shari'ah refers to the primary sources of the Law, i.e., the sacred Quran and Sunnah, and both are textually immutable. Fiqh, on the other hand, the methods of applying the law, refers to the understanding derived from the Shari'ah, and these may change according to circumstances and time. Philips explains this relationship by stating that Fiqh, as the

¹ Sunnah in this context means the authoritative (authentic) accounts of the sayings and doings of the Prophet Muhammed (PBUH).

² Abdullahi Na'im, *Toward an Islamic Reformation: Civil Liberties, Human Rights, and International Law: Contemporary Issues in the Middle East* (Syracuse, N.Y.: Syracuse University Press, 1990), p. 20.

understanding, interpretation and application of Shari'ah, is a human product that may change according to time and circumstances, while Shari'ah, as a source of Islamic law, is divine in nature and thus immutable.³ Since children's requirements and needs are constantly changing and evolving over time, their rights and the laws protecting these rights will change and evolve as well in order to adapt to new circumstances. This evolution of needs and rights is reflected in the increasing concern and interest that contemporary society has shown toward the rights of children, an interest that has culminated in treaties and conventions dedicated to protecting the rights of children.

From the holy Quran, a primary source of Shari'ah, springs the very concept of legality in Islam. A substantial number of the verses of Quran are built upon law.⁴

The Sunnah consists of the Prophet's hadith (sayings), traditions, and accounts of deeds and judgments regarding various issues. The Sunnah also includes the Prophet's elucidation and explanations of some Quranic verses. Therefore, the structure of Shari'ah was completed during the lifetime of the Prophet, through the two primary sources; Quran and the Sunnah. However, the expansion and explanation of Shari'ah, i.e., Fiqh, continued after the Prophet's death. This process is illustrated in a dialogue from the Hadith:

³ Abu Ameenah Philips, *The Evolution of Fiqh* (Riyadh: International Islamic Publishing House, 1988), pp. 1-4.

⁴ The Quran consists of 114 chapters and 6666 verses, 500 of which have some legal element; however, most of these deal with matters of ritual, leaving around 80 verses with pure legal content. See Noel Coulson, *History of Islamic law* (Edinburgh: Edinburgh University Press, 1964), p. 12.

During the lifetime of the Prophet Muhammed, he was reported to have asked one of his companions, a judge in Yemen, Muâdth ibn Jabal, what his sources of Law were.

Muâdth answered: "I will judge with what is in the book of God (Quran)."

The Prophet then asked him again: "And what if you do not find a clue in the book of God?"

Muâdth replied: "Then with the Sunnah of the Messenger of God."

The Prophet then asked: "And what if you do not find a clue in that?"

Muâdth said: "I will exercise my own legal reasoning."⁵

It was reported that the Prophet has been satisfied with these answers and has approved this approach to legal reasoning. Examples such as this shows that jurists and practitioners can, in accordance with Islam, practice their legal reasoning when facing issues that were not dealt with in the lifetime of the Prophet.

Expansion of Islam and changes in time since the Prophet's lifetime have given rise to many issues that were not covered by any of the verses in the Quran or by any of the Prophet's Sunnah. Most notably, therefore, the concept of legal reasoning or Ijtihâd (which is the tradition referred to by Muâdth in the above quote) was developed in Islamic law. Since the Prophet approved of

⁵ Abu Dawud, *Sunan Abu Dawud*, Trans. A. Hasan (1984), Vol. III, p. 1019, Hadith no. 3585.

this approach, it becomes a major source of legal principles in Islam, and from it emerges Qiyâs (legal analogy), Ijmâ (juristic consensus), Maslahah (welfare), Istihâsân (juristic preference), 'Urf (custom) and Darûrah (necessity). These have become secondary sources that extended the primary sources, which are the Quran and Sunnah, and they are applied to all new legal issues to 'facilitate...the adequate interpretation and application of these two sources [Quran and Sunnah] to suit the different and changing circumstances of human life.'⁶ All in all, Shari'ah was completed in the lifetime of the Prophet, and since then jurists, through the secondary methods of Islamic law, have been responsible for carrying Shari'ah into the future. Qadri said it best when he wrote 'though God has given us a revelation, He also gave us brains to understand it, and He did not intend it to be understood without careful and prolonged study.'⁷

Of the numerous sects of Islam, the two most notable are the Sunnis and Shi'as. From these sects, several schools of thought have originated. Among the Sunnis, four schools of thought are currently applied to legal issues: the schools of Abu Hanifah (d. 767), Malik (d. 795), Al-Shafi'i (d. 820), Ibn Hanbal (d. 855) and the founder of the main school of Shia jurisprudence, Ja'far Al-Sadiq (d. 765). All of these schools of Islamic Jurisprudence rely on the same sources, Quran and Sunnah, as their main sources of law. Their differences, however, lie in the perspectives of the jurists relating to particular matters. Due

⁶ Philips, *The Evolution of Fiqh*, pp.1-4.

⁷ Anwar Qadri. *Justice in Historical Islam* (Lahore: Sh. Muhammad Ashraf,1968).

to these different views across the different schools of thought, the laws regarding the rights of children are not the same in all Islamic countries.⁸ The different schools of jurisprudence continued to develop until the end of the tenth century, when it was thought that every possible issue in law had been considered. This eventually led to what is now known as 'closing the gate of legal reasoning' (Ijtihād) and replacing it by opening the gate of legal conformism (Taqlīd). Following that period, Islamic law became restricted to applying legal findings established by the schools of jurisprudence prior to the tenth century, and exercising legal reasoning was not allowed anymore on any circumstance. This milestone in the dynamism of Islamic Law 'reduced the law of Islam practically to a state of immobility'.⁹ To this day, the rulings of the early Islamic jurists, their Taqlīd (legal conformism), is followed in Islamic jurisprudence. The practice of Taqlīd is not in itself undesirable, mainly because it avoids misapplication of the Islamic law by unqualified jurists. This, however, should not restrict the development of new interpretations and theories, nor should it prevent the exercise of legal reasoning by qualified judges and jurists in cases involving children whenever necessary. Although contemporary scholars are now questioning the closing of the gate of Ijtihād (legal reasoning), the gate has yet to re-open.

⁸ In this study, the term 'Islamic countries' should be understood to indicate the 57 member states of the Organization of Islamic Conference (OIC). As a whole, however, Muslims today account for approximately 1 billion individuals who live not only in these but in many other nations around the globe.

⁹ Muhammad Iqbal, *The Reconstruction of Religious Thought in Islam* (Lahore: Sang-e-Meel Publications, 2016), p. 148.

The purpose or goal of Islamic law is summarized in this verse from the Quran:

*“...for he commands them what is just,
and forbids them what is evil;
he allows them as lawful what is good and prohibits them from
what is bad.
He releases them from their heavy burdens,
and from the Yokes that are upon them.”¹⁰*

The purpose of Islamic law is the prevention of harm and the promotion of human welfare. This concept is known as Maslahah, which means literally 'welfare' or 'benefit', and from this concept human rights in Islam emerged. Therefore, human rights in Islam are interpreted in the context of morality and religion rather than in a legal context that values liberty, individualism and tolerance.

¹⁰ Quran [7:157].

Human Rights Values in Islam

The concept of human rights continues to gain immense approbation worldwide. Nonetheless, the interpretation of human rights and the scope of these rights differ considerably from one state to another. Thus, this research seeks to construct a dialogue between the current internationally sanctioned interpretation of children's rights and the rights of children as they are interpreted in Islamic law. It begins by posing a primary, essential question: What is Islam's response to international ideals of human rights?

Among Muslim states, responses to the prevailing ideals of human rights have been strong but mixed. Some have regarded such ideals as fully compatible with Islam, whereas others regard them as products of western culture that represent values that are unacceptable to Islam. Between those extremes are compromise positions that accept many but not all aspects of international human rights, such that some Islamic countries have ratified international human rights treaties, but with certain qualifications or reservations.

a- Modern Islamic Thought

The Islamic religion and its relationship with international human rights has long been an area of scholarly interest.¹³ However, this interest gained

¹³ See the works of Khaled Abou El Fadl. "The Human Rights Commitment in Modern Islam." In *Human Rights and Responsibilities in the World Religions*, edited by Joseph Runzo, Nancy M. Martin, and Arvind Sharma. Oxford: Oneworld Publications, 2003. Discusses the major points of tension between Islamic tradition and universal standards of human rights and how reconciliation can be advanced. Abdullahi Ahmad Na'im, *Toward an Islamic Reformation: Civil Liberties, Human Rights, and*

increased relevance with the Islamic revival that began after the Arab-Israeli War of 1967. This Islamic revival also threatened the survival of imported western legal models through calls for the rejection of these 'alien' models and for the 'Islamization' of the legal framework.

The 1980s, in turn, were a time of resurgence for Muslim scholars, who produced a large body of literature attempting to define Islam's stance on human rights. The range of contributors was wide, including Sunni and Shia' authors, government-affiliated and non-government-affiliated, and from a variety of countries.¹⁴ The frequent references to the terms and principles of international human rights among almost all of these authors (like Khalid Abou El Fadl and Abdullahi An-Naim) shows not only that Muslims are aware of these terms or principles but that they serve as a sort of guideline or measuring stick even for those who reject some or all of them.

Today, Muslim states face numerous legal and political issues in the international arena that are directly or indirectly related to human rights. For

International Law. Syracuse, N.Y.: Syracuse University Press, 1990. An examination of international human rights law from a Muslim perspective. Ann Mayer. *Islam and Human Rights: Tradition and Politics*. 4th ed. Boulder: Westview Press, 2006. Critical comparison of selected Islamic versions of civil and political rights with their international counterparts.

¹⁴ Refer to the Muslim World Journal of Human Rights [Accessed 18 April 2018]. <http://www.degruyter.com/view/j/mwjhr>

this reason, the manner in which conceptions of human rights are applicable in such states continues to be a matter of considerable discussion and debate.

Many Islamic governments reject some or all international human rights norms on the basis of their alleged concern for Islamic principles¹⁵ – often even as these governments indicate in various ways their acceptance of international law. All of the so-called Islamic countries (see footnote no. 8) have joined the international community of nations under the United Nations, thus indicating their agreement to be bound by international law. Like all UN nations, Islamic countries contribute to the formulation of international law by working with other member states and with UN commissions to draft treaties and conventions, which member states are then expected to sign and to ratify in their respective legislatures. Given such participation, it is inappropriate to say that Muslim states stand outside of the present system of international law. Article 1 of the UN Charter affirms each member's commitment to promote and encourage respect for human rights, and several Muslim countries¹⁶ have formally agreed to the terms of the UN Charter as founding members of the UN. Having formally ratified international human rights conventions and treaties, the governments of certain Muslim states are, moreover, bound by these standards and are thus subject to judgement under them. In addition, some principles of international human rights have become a customary part

¹⁵ See 'Reservations' section of this chapter.

¹⁶ 56 Muslim states are classed by the UN as member states

of international law and are, therefore, binding on all states, regardless of their ratification of individual treaties or conventions.

The reservations that Muslim governments have expressed toward international human rights conventions have produced various reactions among their populations. Many Muslims are convinced that Islam presents no barriers to respect for international conceptions of human rights. Indeed, some Muslims believe that Islamic law is not designed to deal with the issues facing contemporary states, even Islamic ones. Judging by the literature,¹⁷ however, the majority view or approach is one that sees Islam as requiring a conscientious respect for human rights and therefore offers schemes for harmonizing Islamic law with international human rights wherever there are points of divergence. Authors who take this position often note that respect for human life, dignity and justice are central principles of Islam, and that even Muslims unfamiliar with the principles or specifics of international human rights commonly believe that systems that fail to honour such principles cannot be in conformity with Islam.

b- Islamic Restrictions on Human Rights

Islamic discussions of schemes to introduce international human rights share one consistent feature in their use of Islamic principles to restrict international human rights. These proclamations reflect the proposition that the rights offered by international law are too generous and only become acceptable when Islamic reservations are applied to these rights. However, these

¹⁷ *Supra* note. 12.

reservations in the application of human rights in an 'Islamic' context are generally not accompanied by any explanation establishing exactly what limits Islamic criteria impose on the range of civil and political rights afforded by international standards.

As member states within the UN, Islamic countries have ratified many of the human rights conventions and are therefore bound to the legal obligations established by these conventions. Despite this, Islamic countries have made evident their dissatisfaction with what they perceive as 'westernisation'¹⁸ and 'secularisation' in these international human rights conventions.¹⁹ Many Muslim states, especially the Asian and African states, do not accept the instruments of international human rights. They perceive these instruments as interventions in their cultures that pull them towards euro-centrism. This situation is further intensified when put in an Islamic context by scholars and Islamic activists. In addition to representing a cultural intervention, some aspects of international human rights are considered religiously alien and inappropriate to Islam. However, as aforementioned, not all Islamic scholars and human rights activists agree on this point. Many Muslim scholars disagree with this position on the basis that Islam is not a monolithic entity. Islamic legal tradition is derived by its four main sources (Qur'an, Sunnah, Ijma, and Qiyas) and on the basis of these sources, Islamic law lends itself to variable interpretations, thus producing far reaching implications for the concept of

¹⁸ No generalizations are intended in the use of the term 'western', which is used in this study to indicate the liberal democratic tradition of rights in North America and Western Europe.

¹⁹ Shaheen Sardar Ali, *Gender and Human Rights in Islam and International Law: Equal Before Allah, Unequal before Man?* (2000) Springer p.1.

international human rights. Moreover, contrary to the common perception of Islam as an immutable set of norms that cannot be challenged or denied, Islam embraces an internal dynamism that is sensitive and susceptible to change and time. In modern days, however, and with the termination of the Ijtihad (Muslim intellectual tradition) Islamic law has become a rigid entity, thus restricting Muslim people and their rights rather than adapting to changing times.

After the establishment of the United Nations, the universality of international human rights was commonly accepted. The assumption of the universality (thus suitability) of such international human rights was measured by the rate at which national and international organizations adopted such rights and constitutions and state laws incorporated such rights, and by the number of declarations made at the various human rights world conferences by nearly all international and national leaders. However, the rhetoric of human rights does not necessarily match the reality of their application.

In broad terms, the 'western' world and the Islamic world do not perceive human rights in the same way. Among many 'western' scholars, human rights are regarded as an entitlement. However, in the Islamic world human rights are regarded as an obligation.

Rights in the Islamic tradition may be divided into two categories: Huqooq Allah, the rights of Allah and Huqooq al Ibad, the rights of people. The rights of Allah can be of two kinds: spiritual, dealing with relations between individual

people and Allah, such as prayer; or mundane, dealing with relations between individuals such as payment of zakat (charity tax). The rights of people can be of three kinds: 'familial', dealing with matters such as marriage and divorce; 'contractual', dealing with business transactions, e.g. buying and selling property; or 'societal', dealing with civil and criminal law, and with public order.²⁰

Thus, the Islamic concept of human rights is tied to the obligations that individuals owe to one another. More importantly, however, is whether it is possible to translate these rights and duties into the modern language of international human rights in a way that can be acknowledged and accepted by both international and Islamic standards.

According to Donnelly, "[International] human rights are inherently individualistic, they are rights held by individuals in relation to, or even against the state and society".²¹ However, individualism is not a feature of Islam. In fact, individualism is often regarded as a foreign influence, with a strong momentum behind anti-individualism in many Islamic communities.

Although international human rights treaties and conventions are enunciated by the United Nations, the concept of human rights appears to reflect a 'western' discourse in its formulation. Nonetheless, non-western traditions, such as the tradition of Islamic law, still possess their own equivalent of a

²⁰ Muhammad Mumtaz Ali. (1992), *The Concepts of Islamic Ummah and Shari'ah*, pp. 62-65.

²¹ Jack Donnelly. (1984), "Cultural Relativism and Universal Human Rights" 6 HRQ, p. 411.

human rights system. Thus, the challenge in establishing a truly international concept of human rights lies in recognizing points of universal agreement across these diverse cultures.

According to An-naim, “The term Shari’ah refers to the general normative system of Islam as historically understood and developed by Muslim jurists, especially during the first three centuries of Islam – the eight to tenth centuries CE. In this commonly used sense, Shari’ah includes a much broader set of principles and norms than legal matter as such.”²² Islamic law represents the interpretation of Shari’ah as it is applied to legal aspects of the Islamic tradition. Islamic law can be applied by a state where Shari’ah principles are enforced as law by the state’s legislative organs or by its courts. Shari’ah also determines Islamic family law as it applies to matters such as custody, marriage, divorce etc. In modern day legal language it is known as Shari’at al-ahwal al-shakhsiya (Muslim personal status law).²³

The debate regarding the relationship between Islamic law and international human rights, however, remains controversial, with no clear resolution in sight. Overall, Muslim opinion remains too divided to make general pronouncements regarding where Islam stands on international human rights. Given the broad range of opinions among Muslims regarding the Islamic definition of human

²² Abdullahi Naim. (2003), *Islamic Family Law in a Changing World: A Global Resource Book* (London: Zed Books).

²³ *Ibid.*

rights and the relation of Islam to human rights, space for investigation, evaluation and presentation of critical comparative appraisals remains open.²⁴

In order to facilitate understanding of the problems that arise when adapting international conceptions of human rights within an Islamic framework, it is important to provide some background on the origin and development of international conceptions of human rights – just as the origins and development of Islamic law were sketched above.

International Human Rights Values

The principle of human rights in international law is of relatively recent origin. Although traces of human rights concepts can be found in ancient Greek thought,²⁵ the foundations of international human rights lie in the focus on humanistic themes in European thought and art in the Renaissance, and more specifically in the writings of social and political philosophers in the so-called Age of Enlightenment that Europe experienced in the eighteenth century.²⁶

However, in modern day, human rights values have only become factual after the Second World War. The trauma and shock of how ‘civilised’ people were

²⁴ [For the purpose of this chapter only a summary of this section is included here. Islamic restrictions and reservations will be thoroughly discussed and debated in a further chapter of this thesis].

²⁵ Andrew Heard, 1997. *Human Rights: Chimeras in Sheep’s Clothing?*. [Accessed 19 November 2017]. <http://www.sfu.ca/~aheard/intro.html>

²⁶ See Stanford Encyclopedia of Philosophy for Spinoza’s Political Philosophy. [Accessed 29 November 2017]. <http://plato.stanford.edu/entries/spinoza-political/>

capable of harming one another during times of conflict was the main reason for the birth of the Universal Declaration of Human Rights. In the last weeks of the WWII before Germany surrendered, representatives from fifty nations²⁷ met at San Francisco with the aim of setting a new international organization, the United Nations. Initially, the UN was designed as an international medium that deals with arguments among nations in order to prevent future wars and clashes. Delegates, advisors and staff from all over the world met in what is said to have been one of the largest and most significant international meetings ever to have taken place. They spent two months drafting what became the UN charter and the associated protocols.²⁸ On 26 June 1945, the UN Charter was eventually completed. The charter has paved the road for the Universal Declaration of Human Rights (1948). It was not a short road. The great powers at that time – the US, the UK and the Soviet Union – were not looking forward to the idea of an international human rights agreement.²⁹ Since after all, slavery and racial segregation was found in the US, the UK's colonized empire was still huge, though crumbling, and the Soviet Union still had numerous 'human rights' restrictions on the freedom of its citizens. However, pressure for universal human rights was mounting, and surprisingly from peoples of less developed nations. Continuous pressure from public figures such as Carlos Romulo of the Philippines, Charles Malik of Lebanon, and Herbert Evatt of Australia, along with several Latin American states, have

²⁷ Primarily the allied nations that had declared war against Germany and Japan.

²⁸ Jonathan Wolff. (2012). *The human right to health* (London : W.W. Norton & Co.) p.9.

²⁹ *Ibid.*

brought the concerns of less developed nations and their citizens into the spotlight. The Universal Declaration of Human Rights in 1948 thus became the first universal human rights document. “It is amazing that probably every country in the world was, initially at least, in breach of some of the principles it was prepared to endorse”.³⁰

Early academic writers and political philosophers who developed the basis of international human rights showed an indifference to Islamic law. In fact, along with Islam, any other religious law in establishing the ideals of human rights was dismissed. Surveying contemporary scholarship, wherein western legal heritage dominates discussions of international human rights laws, Islamic law is seldom referenced, and enjoys little prestige on international platforms. Islamic law is not brought forward in international writings except to be contrasted with international norms or to shed light on its problematic accommodation of international human rights. In essence, Islamic law is treated, if at all, as a marginal occurrence – disregarding the fact that Islam is one of the world’s major religions. Like mentioned before, many Muslim writers have offered critiques objecting to international human rights law on religious grounds. The assertion that human rights law is ‘international’ is not in any way jeopardized by claims that it fails to comply to Islamic principles. Rather,

³⁰ *Ibid.*

Islamic law is presumed to be only an outdated obstacle hindering the acceptance of innately superior international principles.

Literature on international human rights has made explicit fundamental differences between western and Islamic cultures. For example, individualism is a feature of western culture that has been influential in the development of human rights concepts. However, individualism is not a feature of Islamic culture. Nonetheless, the fact that Islamic culture may lack this value, or any other value present in western cultures, does not mean that the Islamic culture lacks other essential factors that were fundamental in the development of international concepts of human rights in western societies. Islamic law offers moral values, humanistic principles and many philosophical models that are well adapted for use in forming human rights principles.

Emergence of children's rights in Shari'ah

The principle of mercy in Islam, like many other great religions, makes the plight of the vulnerable such as the old, the disabled, the poor, and the child, a major concern of society. From this principle and in accordance with the customs of their lifetime, the Prophet Muhammed, his companions and the early Muslims established special arrangements and rules for the care of these particularly vulnerable groups in society. Regarding the rights of children, these arrangements and rules covered matters such as kinship, maintenance, care, custody and breastfeeding. As will be discussed later, some – though probably only a minority – of these rules and arrangements have become inconsistent with modern standards of children's human rights.

Islam insists on treating all humans, but especially the vulnerable, with compassion. Shari'ah recognizes children's rights from multiple perspectives, whether mental, physical, psychological or emotional. Owing to the innocence with which children are born, they should never be made part of the viciousness and adult conflicts that often characterize societies. The Quran describes children as the "*comfort of our eyes*,"³¹ and numerous traditions of the Prophet reminds parents and society in general about their responsibility toward children and their rights. These rights are recognized from the moment of foetal existence in the womb; thus, unless demanding, Islamic Law protects the foetus' right to life by prohibiting abortion.³² It also requires a husband to take good care of his wife in order to protect the foetus's physical and psychological health.³³ After birth, Islam guarantees a number of rights for children. The responsibility of protecting those rights falls first on the parents of the child, then its relatives, and finally the state.

The rights of children in relation to guardianship, custody, minimum age of marriage, inheritance etc. are part of Islamic family law that is susceptible to reformulation and revision in light of changes in social and legal relations. However, Islamic family law lacks an appreciation of human involvement in its

³¹ Quran [25:74].

³² Many Muslim scholars like Athar, S. have entered into debates of whether necessity allows abortion in Islam or not. The rules of the medical ethics derived from the Quran and Ahadith are as follows: 1. *Necessity overrides the prohibition. Meaning whatever is prohibited can become permissible in times of need.* 2. *Accept the lesser of two harms if both harms cannot be avoided.* 3. *Public interest overrides individual interest i.e. what is good for society is more important than what is good for an individual.* 4. *Harm has to be avoided at every case.* Many scholars argue that relying on these rules, abortion is allowed in some cases like rape, incest, fetal deformity etc. Athar, S. (Ethical Controversies in Abortion-an Islamic Perspective).

³³ Wassim al-Ahmad, *Himayat Huquq al-Tifl fi Daw' Ahkam al-Shari'ah al-Islamiyyah wa al-Itifaqiyat al-Duwaliyah*, (Beirut: AlHalabi Legal Publications, 2009), p. 23.

development. It is important to note that many schools of legal thought appeared in Islam's formative period. Many of these schools soon vanished, but a few schools have survived (as was mentioned earlier in this chapter). These schools have developed and spread throughout the Muslim world with variations determined by demographic, political and social factors. With time, and following the 'western' courts, many Muslim state courts have started to shift towards a secular perspective in which colonial codes took over civil and criminal matters, and thus Islamic law was limited to the family law only. Indeed, family law might be the only form of Islamic law that has resisted change throughout the colonization of many Muslim states and that has also survived secularization in modern Muslim courts. Family law is now considered the primary aspect of Shari'ah, and it has become the symbol of the Islamic identity: the durable core of what it means to be a Muslim today.³⁴

As Islamic family law is often regarded as the primary aspect of Shari'ah, it is difficult to reinterpret the religious texts underlying Shari'ah in a contemporary legal context. Furthermore, the legal application of Shari'ah has been problematic as Islamic legal traditions have lacked a coherent, holistic approach. Thus, it is often unclear which religious texts should serve as primary sources in establishing new laws and which parts should serve to reinforce or clarify these primary texts. Finally, political and social factors have led to a general neglect of human rights and particularly of the rights of children

³⁴ al-Ahmad, *Himayat Huquq al-Tifl fi Daw' Ahkam al-Shari'ah al-Islamiyyah wa al-Itifaqiyat al-Duwaliyah*, pp. 4-15.

in the Muslim world. These difficulties have made the adoption of the UNCRC a formidable task.

a- Basic Children's Rights

For Muslims, Islam is more than a religion; it is a way of life. Scholars have identified a list of rights from the context of the holy Quran and the Sunnah of the Prophet. As noted, Islam recognizes children's rights as beginning even before birth. Children's rights before birth include the parents' obligation to choose their spouses wisely, as they will eventually be the parents of their children.³⁵ Regarding the prohibition on abortion in the Quran *Allah* says:

*"Nor take life – which Allah has made sacred – except for just cause,"*³⁶

e.g. if carrying the child would harm the mother. The foetus in Islam is considered a human being in regards to the rights offered to it, for example in the case where the father dies before the mother delivers, the inheritance is not distributed until the foetus is born and has a right to inherit.³⁷ After the child is born, Islamic law guarantees a further list of rights. The "ten cardinal rights"³⁸ form the basis for children's rights as found in the Quran and Sunnah:

1- the right to genetic purity (being born within wedlock)

³⁵ al-Ahmad, *Himayat Huquq al-Tifl fi Daw' Ahkam al-Shari'ah al-Islamiyyah wa al-Itifaqiyat al-Duwaliyah*, p. 22.

³⁶ Quran [17:33].

³⁷ al-Ahmad, *Himayat Huquq al-Tifl fi Daw' Ahkam al-Shari'ah al-Islamiyyah wa al-Itifaqiyat al-Duwaliyah*, p. 23.

³⁸ Abdel Rahim Omran,(1992), *Family Planning in the Legacy of Islam*, London: Routledge, p. 32.

- 2- the right to life
- 3- the right to legitimacy and a good name
- 4- the right to breastfeeding, shelter, maintenance and support, including health care and nutrition
- 5- the right to separate sleeping arrangements for children
- 6- the right to future security
- 7- the right to religious training and good upbringing
- 8- the right to education, and training in sports and self defence
- 9- the right to equitable treatment regardless of gender or other factors
- 10- the right that all funds used in their support come only from legitimate sources.

In addition to these fundamental rights, Islamic Law also focused on further areas such as the right to protection from all sorts of cruelty, physical or mental punishment or abuse³⁹ and the right to protect children from veering from the righteous path, and the right to participate in matters concerning them. These cardinal rights were the ones recognized as relevant during the time of the Prophet, and thus it is solely those that He was able to comment on.

Islam recognizes the right to life as one of the main rights a child is entitled to. 1400 years ago (i.e. before Islam) the killing of children was a widespread practice among many societies and cultures, including pre-Islamic Arabia. Pre-Islamic Arabs used to bury their female babies alive as daughters were

³⁹ Zainah Almihtar, "Human Rights of Woman and Children under the Islamic Law of Personal Status and Its Application in Saudi Arabia" (2008), 5 *Muslim World Journal of Human Rights* 1.

considered a humiliation. Furthermore, in other cultures like the Inca and Aztec cultures, children were killed as a form of sacrifice in order to please, influence or propitiate the Gods.⁴⁰ The poor used to kill unwanted children in fear of poverty owing to their inability to provide for these children. Then came Islam to eradicate all these practices. Many verses in the Quran prohibited these practices; this verse of the Quran clearly shows Islam's position on the unfairness of killing female infants:

*“when the female [infant],
buried alive,
is questioned – for what crime she was killed.”⁴¹*

Sacrificing children was also forbidden according to this verse:

*“Lost are those who slay their children,
from folly, without knowledge.”⁴²*

Finally, killing children from fear of poverty was clearly prohibited according to this verse:

*“Kill not your children for fear of want:
we shall provide sustenance for them as well as for you.
Verily the killing of them is a great sin.”⁴³*

⁴⁰ Karen Armstrong, *The Great Transformation: The Beginning of Our Religious Traditions*. New York: Random House, 2007

⁴¹ Quran [81:8-9].

⁴² Quran [6:140].

⁴³ Quran [17: 31].

Islam has also focused on other aspects, such as the quality of life for children. To begin with, children have to be known, meaning children possess the right to be named and registered immediately after birth. Furthermore, children are afforded the right to be given good names.⁴⁴ When asked about the duties of parents toward their children, the Prophet is reported to have mentioned giving them good names⁴⁵ and teaching them good manners.⁴⁶ The Prophet was also reported to have changed the name of a daughter of one of his companions, Umar bin AlKhattab, who named his daughter As'syah, meaning disobedient, to Jamilah, meaning beautiful.⁴⁷

Another children's right, particularly given their vulnerable nature, is to be protected from any mistreatment, whether physical or mental.⁴⁸ *"On no soul doth Allah place a burden greater than it can bear"*,⁴⁹ and so a child's age and capabilities should always be born in mind before imposing a duty upon a child. It is reported that the Prophet said: "He is not of us who is not affectionate to the little ones, and does not respect the old."⁵⁰ Islam regards corporal

⁴⁴ Fazlul Karim, *Al-Hadis, An English Translation and commentary of Mishkat-ul-Masabih with Arabic Text* (1994) at Vol.2, p.620, Hadith No.379.

⁴⁵ This corresponds to some of the provisions of UNCRC articles 6-12, which will be looked at in more detail below.

⁴⁶ al-Ahmad, *Himayat Huquq al-Tifl fi Daw' Ahkam al-Shari'ah al-'Islamiyyah wa al-'Itifaqiyat al-Duwaliyah*, p.29.

⁴⁷ Ibid., p.25.

⁴⁸ Ibid., p.30.

⁴⁹ Quran [2:286].

⁵⁰ Shahid Athar, "Words of Wisdom from Prophet Mohammad", *Islamic Voice* [Accessed 29 April 2018].<http://www.islamfortoday.com/athar16.htm>

punishment as a means of guidance. However, it has made such punishment subject to the rule of leniency. In the Islamic law, corporal punishment is not intended to torture or humiliate the child for his/her mistakes but to direct and guide the child. Thus, corporal punishment must be conducive to the desired outcome, which is to avoid the recurrence of the error, and not as a means of violence causing psychological and physical oppression.

Islamic law also attends to the issue of sexual child abuse, as Islam stands against anything that would humiliate and bruise the dignity of any person, let alone a child.⁵¹ Islam also insists on a child's right to leisure and free time. A good example of this is found in the manner in which the Prophet used to play with his grandchildren: they would jump on his back while he was kneeling in prayer, and the Prophet would not stand up until they were safely off his back.⁵² Furthermore, Islam also supports freedom of speech and the right to state one's opinion. Allah has emphasized in the Quran the importance of "*fearing not the blame of any blamer*";⁵³ this applies to children as well, and their opinions should be taken into account whenever appropriate. The case of 'Zayd' the Prophet's adopted son who at a young age lost his family in war, emphasizes the child's right to participation and expression of opinion in matters that concern him/her. Zayd's family came looking for him when he became a teenager and the Prophet asked Zayd for his opinion and made him

⁵¹ al-Ahmad, *Himayat Huquq al-Tifl fi Daw' Ahkam al-Shari'ah al-Islamiyyah wa al-'Itifaqiyat al-Duwaliyah* p. 30.

⁵² Ibid., p. 31.

⁵³ Quran [5:54].

choose between staying with himself, his adoptive father or leaving with his biological one - Zayd chose to stay with the Prophet.⁵⁴

b- Children's Rights and the Responsibilities of the Parents

Islam recognizes basic rights such as the right to nourishment, whereby a great emphasis is put on breastfeeding. Islamic Law encourages mothers to breastfeed their children. The following verse of the Quran encourages them to do so for the first two years of a child's life:

*“the mothers shall give [breast milk] to their offspring for two whole years.”*⁵⁵

The right of the child (or duty of the mother – discussed further on in the “Right to Adequate Health Services”) to breastfeed is notable because many authorities consider breast milk to be the healthiest choice for newborn nourishment: it promotes good health and contains the minerals and vitamins required for immunity against diseases. Research by the U.S. Department of Health and Human Services has demonstrated more important benefits, such as infant–mother bonding, postnatal weight loss for the mother, hormonal release and other benefits for the family and for society in general.⁵⁶ Somehow, in a general way at least, these benefits appear to have been

⁵⁴ ibn-Hajr Alaskalani, “Alisaba fe tamyeez alsahaba,” (833AH) (Distinguishing Companions) [Accessed 3 May 2018] <http://waqfeya.com/book.php?bid=10575>

⁵⁵ Quran [2:233].

⁵⁶ “Breastfeeding”, Women’s Health, [Accessed 4 July 2012]. <http://www.womenshealth.gov/breastfeeding/benefits/>

intuited long before research of this kind, and the importance of breastfeeding is enshrined in the doctrines of Islam.

Although the child is widely acknowledged to be primarily dependent on the mother, Islamic Law has also placed duties on the father, who is responsible for all the expenses for the maintenance of a breastfeeding mother and child, even if the couple is divorced. Islamic Law holds the father accountable for all maintenance expenses – ranging from food and clothing to shelter and education – until the child reaches an age at which he can work and live out of his own pocket.⁵⁷ Only if the father were absent, impoverished, ill, or infirm with age is the mother placed in charge of providing for her child's expenses.⁵⁸ It was reported that the Prophet has said: “enough of a sin it is, for a man to neglect those he is responsible for.”⁵⁹ AbuHurayra, a companion of the Prophet, has also said that the Prophet commanded Muslims to give Sadaqah (charity):

a man said: Apostle of *Allah*, I have a dinâr [the currency at that time], he said: Spend it on yourself, he again said: I have another, he said: Spend it on your children, he again said: I have

⁵⁷ al-Ahmad, *Himayat Huquq al-Tifl fi Daw' Ahkam al-Shari'ah al-Islamiyyah wa al-Itifaqiyat al-Duwaliyah*, p. 27.

⁵⁸ al-Ahmad, *Himayat Huquq al-Tifl fi Daw' Ahkam al-Shari'ah al-Islamiyyah wa al-Itifaqiyat al-Duwaliyah*, p. 27.

⁵⁹ “Family Under the Patronage of Islam is more Stable and Harmonious,” Ministry of Awqaf and Islamic Affairs, [Accessed 12 July 2016].
http://www.islam.gov.kw/eng/meet_consult/details.php?data_id=168

another, he said: Spend it on your wife, he again said: I have another, he said: Spend it on your servant, he finally said: I have another, he replied: You know best (what to do with it).⁶⁰

This Hadith of the Prophet confirms the importance of the father's responsibility for expenses and demonstrates the importance of spending one's excess money on himself (e.g. buying the family a house, building a farm for the family to benefit from etc.) then on one's children and wife.

Islamic Law also anticipates circumstances in which both parents are unable to provide and there are no relatives to help pay for the child's expenses. In these circumstances it becomes the duty of the state to provide for the child,⁶¹ as supported by the Prophet's Hadith that in order to reap a benefit from the child in the future, the state needs first to bear the costs.⁶²

In Islamic Law, it is significant to note the difference between guardianship (Wilaya) and custody (Hidanah). Hidanah or custody involves the actual upbringing of a child; that is day to day care including nursing and nurturing the child, while Wilaya or guardianship relates to the power of decision-making

⁶⁰ Muhammad M. Khan, "Translation of Sahih Al Bukhari" [Accessed 14 September 2016]. http://islam.about.com/gi/dynamic/offsite.htm?zi=1/XJ/Ya&sdn=islam&cdn=religion&tm=53&gps=9164_1003_366&f=00&tt=14&bt=0&bts=0&st=31&zu=http%3A//www.usc.edu/dept/MSA/fundamentals/hadithsunnah/bukhari/

⁶¹ al-Ahmad, *Himayat Huquq al-Tifl fi Daw' Ahkam al-Shari'ah al-Islamiyyah wa al-Itifaqiyat al-Duwaliyah*, p. 28.

⁶² A. Sarhan, *Al-Wasit fi Huquq al-Insan fi al-Qanun al-Duwali: Dirasah Muqaranah bi al-Shari'ah al-Islamiyyah wa al-Dasatir al-Arabiyyah*, (Cairo: Dar al-Nahda al-Arabiya, 1983), p.110.

concerning issues that affect the child, such as education, medical care, marriage and conclusion of contracts on behalf of the child.⁶³ Denoting the responsibilities and duties of Wilaya and Hidanah is a complicated matter, with different schools of Islamic thought expressing a range of views. In general, however, while the parents are still together, they both share custody, yet only the father bears the responsibility of the decision-making when it comes to tackling issues that fall under the mandate of guardianship.⁶⁴ A father is the guardian of his sons until they reach puberty, and of his daughters until they marry.⁶⁵ In the case of divorce, these arrangements change. For the sake of simplification, Islamic Law has divided childhood into three stages. The first is the stage of *weaning*, from birth until age two (the latter being the terminus for breastfeeding specified in the Quran). The second stage is *custody*, from age two until age of discretion, that is a time when the child has reached a sufficient age to judge and form opinions – usually reckoned at seven or eight years old. The last stage is the period of *sponsorship*, which continues until the age at which the child reaches sexual maturity.

If the parents' divorce while the child is still in the weaning stage, the child stays with the mother but the responsibility of financially supporting the family lies with the father. As the child passes on to the second stage, i.e., custody, most matters remain the same as long as the mother does not remarry and still fulfils the conditions required for a custodian: legal capacity,

⁶³ Almihdar, "Human Rights of Woman and Children under the Islamic Law of Personal Status and Its Application in Saudi Arabia"

⁶⁴ *Ibid.*, p. 7.

⁶⁵ *Ibid.*

trustworthiness (being of good moral and religious character), ability to bring up a child (as opposed to someone who has a physical or a mental disability), safety of residence and proximity to the other parent's residence and being a Muslim.⁶⁶ The Muslim scholar Muhammad Al-Munajjid explains as follows:

“Women have more right to custody than men; in principle custody belongs to them, because they are more compassionate and more kind and they know better how to raise small children, and they are more patient in dealing with the difficulties involved. The mother has more right to custody of her child, whether it is a boy or a girl, so long as she does not re-marry and so long she meets the conditions of custody”.⁶⁷

When the child then reaches the third and final stage, i.e., the sponsorship period, there is, however, a difference of opinion among Islamic scholars regarding the distribution of rights and responsibilities. According to a Hadith, a woman once complained to the Prophet about her husband, who after divorcing her wanted to take her child. The Prophet said that she has more right over this child as long as she does not remarry. However, in another recorded incident, a couple was fighting over their seven-year-old boy, and when they took their problem to the Prophet, he made the boy choose between

⁶⁶ al-Ahmad, *Himayat Huquq al-Tifl fi Daw' Ahkam al-Shari'ah al-Islamiyyah wa al-Itifaqiyat al-Duwaliyah*, p.7.

⁶⁷ Muhammad Saed Abdul-Rahman, *Islam: Questions and Answers: Jurisprudence and Islamic Rulings: Transactions Part 5* (2007) Vol. 26 p.204.

them. From these accounts of the sayings of the Prophet and from the legal reasoning of various Islamic scholars, it is apparent that each Islamic school has formed an opinion of its own. The Malikis think that the mother has the right to custody as long as she does not remarry and she meets the conditions noted above, even after the child passes the age of discretion.⁶⁸ The Hanbalis think that boys should be given a choice between their parents, but that fathers have more rights over girls since they need more protection – a position conceived to be in the best interests of female children, since fathers are deemed more capable of protecting their daughters.⁶⁹ The Hanafis think that a father has more rights over his son while a mother has more rights over her daughter.⁷⁰ According to Al-Munajjid, “perhaps the correct view is that the child [over seven years old] should be given a choice if the parents are disputing and they both fulfil the conditions.”⁷¹ From the examples given on how the prophet dealt with the different situations in different ways (e.g. case of prophet’s adopted son ‘Zayd’ when he chose to stay with the prophet instead of returning to his parents), it could be concluded that a child’s opinion is essential in all cases concerning him/her and also each case is a different case that has to be dug in and discussed in court before any decisions are made.

⁶⁸ Mahdi Zahra and Normi Malek, “The Concept of Custody in Islamic Law,” 13 *Arab Law Quarterly* 2 (1998), pp. 155-177.

⁶⁹ *Ibid.*

⁷⁰ *Ibid.*

⁷¹ Hafiz Anwar, *Wilayat al-Mar’ah fi al-Fiqh al-Islami*, (Riyadh: Dar Balansiyah lil-Nashr wa-al Tawzi, 2000), 692.

c- Child's Best Interests

Islamic Law recognizes the concept of a child's best interests, in addition to recognising as a child grows older, his capabilities of forming and articulating opinions develop as well;⁷² for this reason, as Al-Munajjid puts it, "the child's free choice is given greater weight [as the child's age increases]".⁷³ In any case, Islamic Law also asserts that regardless of whether the child stays with either parent, the other parent has a right to form a relationship and visit the child, and the child possesses the rights to visit the parent who does not have legal custody.⁷⁴ This was clearly clarified by the Prophet, who stated that whoever separates a mother from her children, will be separated from their loved ones at the day of judgment by Allah.⁷⁵ This marks the idea that as a concept, the child's best interests was long present in Islam. For example, in cases of dispute over guardianship and custody, the Sunnah of the Prophet has shown that he always puts the interests of the child over his/her parents or guardians. However, due to their simplicity, the topics illustrating the concept of best interests of the child are inevitably narrow and do not delve into more complicated 'modern' day issues such as poverty and the role of socio-economic rights.

⁷² Khan, "Translation of Sahih Al Bukhari"

⁷³ Abdul-Rahman, *Islam: Questions and Answers: Jurisprudence and Islamic Rulings: Transactions Part 5*, p.205.

⁷⁴ Almihdar, "Human Rights of Woman and Children under the Islamic Law of Personal Status and Its Application in Saudi Arabia", p. 7.

⁷⁵ Mwaffaq bin-Qidama, *Alfiqh Almuqaran*, [Accessed on 8 September 2017]. http://www.islamweb.net/newlibrary/display_book.php?idfrom=6586&idto=6586&bk_no=15&ID=6470

d- Right to Education

Another basic right which was commented on by the Prophet is education. In fact, it is more than a right, it was described by the Prophet as a *duty* for every Muslim, male and female alike.⁷⁶ Among the first duties that the Prophet assigned to parents was educating their children. Furthermore, the Prophet has also said the following: “Whoever seeks a way for pursuing knowledge, Allah will facilitate his admission to the Garden [heaven]”; “Seek knowledge from the cradle to the grave”; and “The angels spread their wings for a student.”⁷⁷ The Quran contains many verses that demonstrate the place of and praise for educators and the educated. For example,

*“There is no God but He:
that is the witness of Allah,
His angels, and those endued with knowledge,
standing firm on justice.”*⁷⁸

Furthermore, in the Quran, Allah shows that society (or state) is responsible for providing knowledge and education for every person without discrimination, and that the ones imbued with knowledge have a duty to pass this knowledge on. This is clearly explained in the following verse of the Quran:

⁷⁶ al-Ahmad, *Himayat Huquq al-Tifl fi Daw' Ahkam al-Shari'ah al-Islamiyyah wa al-Itifaqiyat al-Duwaliyah* p. 29.

⁷⁷ "The value of Knowledge and Education" [Accessed 10 September 2016].
http://www.mendaki.org.sg/category.jsp?cont_cat_id=6

⁷⁸ Quran [3:18].

*“And remember Allah took a covenant from the people of the book,
to make it known and clear to mankind,
and not to hide it,
but they threw it away behind their backs,
and purchased with it some miserable gain..
And vile was the bargain they made..”*⁷⁹

Only when this knowledge is provided, is the child capable of choosing whatever suits his interests and abilities both in the moment and in relation to the future; as the Prophet said that every person follows a [different] path he has been created for.⁸⁰ The prophet was always willing to engage with children and hear from them, perhaps if adapted to modern life, children will similarly participate in issues of how their schools are governed and how their curriculum conducted.

Besides schooling, Islam also focuses on physical and moral education. Islamic Law places the responsibility on parents to teach their children how to live according to Islamic teachings. Islam has constructed a living style for Muslims to follow, and each is to follow this with variations and individualism. Parents have the responsibility to start their children off on the righteous path and to help prevent them from veering away from it. The Prophet has said:

⁷⁹ Quran [3:187].

⁸⁰ "Alsulook Al Tandheemi bayn al Nadhariyya w Al Tatbeeq" [Accessed on 13 September 2017]. <http://kenanaonline.com/users/ahmedkordy/posts/199634>

teach your children and families the right deeds and discipline them.⁸¹ The Quran also includes several verses like the following, advising parents to prepare their children for life:

“against them make ready your strength to the utmost of your power.”⁸²

And in a well-known story, the prophet illustrates how Islam also focuses in psychological well-being. A child sat on the prophet’s lap and accidentally urinated over him. Embarrassed, the father scolded his child, but the prophet restrained him saying: “This is not a big issue. My clothes can be washed. But be careful with how you treat the child. What can restore his self-esteem after you have dealt with him in public like this”?⁸³

Physical education carries great weight in Islamic Law. Islamic Law was evolved during an era of many wars and conflicts. Thus, it is no surprise that the Prophet’s second Caliph, Umar bin AlKhattab, is narrated to have said: “Teach your children swimming, archery and horse-riding.”⁸⁴ Although times have changed, preparing a child physically and teaching him self-defence are still considered important responsibilities for the parents and important rights of the child, as such preparation enables the child to act on his own behalf and

⁸¹ Muhammad AlShareef . "Ahamiyyat Al Tarbiya" 6 March 2009, [Accessed 14 September 2016]. <http://www.benaalajyal.com/pro/play-79.html>

⁸² Quran [8:60].

⁸³ Tahera Kassamali, *Raising children: Ten Lessons on the Islamic Way of Raising Children*. Tayyiba Publisher & Distr. [Accessed 8 April 2018]. http://www.al-islam.org/raising_children/

⁸⁴ "Sports, Games, and Recreation in Medieval Muslim Societies," [Accessed 8 November 2017]. <https://quatr.us/islam/medieval-islamic-games.htm>

to seek protection if needed. Thus, martial arts and other physical activities still have to be taught to today's children, as they enable them to defend themselves and to fend for themselves, as well as increasing self-esteem and confidence.

e- Child Care as a Social Responsibility

Islamic tradition places a strong emphasis on child care as a social responsibility and not solely the responsibility of the child's parents and immediate family. However, the laws in many Muslim states originated during colonial times, and thus these laws reflect the values of the colonizers. Under the colonial governments, legal jurisprudence drew a distinction between the private and public domains. What people did in their private lives at home was entirely up to them with no interference from the state or the public in general. As a result, this separation of public and private domains placed women and children under the protective power of adult male authority within the family, categorizing them as groups without any independent legal and social status. This arrangement led to the male domination of the family and eventually allowed for a broader social discrimination against women and children. Thus, this arrangement combined with a minimal commitment to human development and welfare eventually contributed to reducing the concept of children's rights into meaningless rhetoric.

In Muslim societies, rights are extended to all persons within a state. However, there are factors common to many Muslim cultures that render these rights meaningless. These factors include high rates of illiteracy, lack of access to

judicial forums to seek redress and weak implementation of the mechanisms that make it possible to translate these rights into reality. Furthermore, in many societies the rights of individual members of the society pose a threat to the existing power structure. Knowledge and awareness of rights threaten a culture of subservience. People's rights in those societies are not recognised as natural, fundamental rights for all people equally. Rather, they are treated by persons in positions of power as favours to be granted or withheld at will. Similarly, in such societies, the rights of an individual child depend on that child's place within the societal hierarchy, and they are not treated as undeniable basic rights. If the rights of individual children were to be placed along a continuum, the poor, orphan child would be the most disadvantaged while the child of affluent parents would enjoy the full list of rights.⁸⁵ Moreover, the patriarchal structure of these societies advocates the 'ownership' of children by their families, requiring the child's complete obedience to the head or heads of the household. This unequal and precarious condition raises the question of how it can be that, despite the 'child-friendly' religious tradition, children's rights are still not regarded as an important socio-legal issue?⁸⁶

The notion that child care is a social responsibility is still a novel idea for many writers concerned with international human rights. For example, according to the UNCRC (e.g. article 6, 24, 28), the state contributes to child rearing by providing facilities and benefits to parents for their children. However, in

⁸⁵ Democratic Commission for Human Development, *Report on Human Rights Situation in Rural Communities in Pakistan*, 1996. [Accessed 22 April 2018]. <http://www.dchd.org.pk/index.php/2015-01-12-07-21-10/our-publications>

⁸⁶ Shaheen Sardar Ali and Baela Jamil. *A Comparative Study of the UNCRC, Islamic law and Pakistan Legislation*, Save the Children, Sweden: Save the Children, 1994.

Islamic traditions the social responsibility of child care has deep roots and many Quran verses and Ahadith (plural of hadith) clearly support child care as a joint responsibility between both parents and the society or state. For example, encouraging breastfeeding and its duration is detailed in religious texts. However, its modalities are to be mutually decided by both parents. In cases where the mother is unable or unwilling to breastfeed her child, her husband is duty-bound to make any alternate arrangements such as hiring a wet nurse. In the case of divorce, when the mother has custody over her weaning child, the father is obliged to pay the mother and to provide for her as he would pay a wet nurse for performing this job.⁸⁷

The state, society, the family and the child are interlocked in a complex relationship, in which the rights and obligations of each is indivisible. The complexity of this relationship is central to any debate on children's rights, and jurists must ask who is responsible for the recognition of the rights of the child? Is it the state, society or the family? In addition, theorists must determine

⁸⁷ Quranic Verse [2:233]:

*“And mothers shall breast-feed their children for two full years - for those who wish to complete the term of milk feeding;
and the father of the child must provide for food and clothing of the mother in accordance with custom;
no one will be burdened except with what he can bear;
a mother should not be harmed because of her child,
nor he to whom the child is born be harmed because of his child (or a mother should not harm the child nor he to whom the child is born should harm the child);
and the same is incumbent on the guardian in place of the father;
then if the parents desire to wean the child by mutual consent and consultation,
it is no sin for them;
and if you wish to give your children out to a (wet) nurse,
it is no sin for you,
provided you pay to them what is agreed, with kindness;
and keep fearing Allah, and know well that Allah is seeing what you do”.*

whose rights take precedence – the parents’ rights over those of their child, or the child’s right over those of their parents, society and the state? In attempting to answer these questions, one must acknowledge the inherent vulnerability of the child, and therefore, ‘special consideration’ must be given to the child’s welfare, always keeping his/her ‘best interests’ in consideration.

Though Islamic law respects the right to privacy and family life, child care is regarded as a social function, thus requiring the state to regulate the protection of children’s rights. While this may seem to be a violation of the right to private family life (which is a concept of Islamic law), the spirit of social responsibility is the bedrock of Islamic society. This gives the parents the freedom to mould their children’s lives but only to a prescribed limit beyond which society (and the state) are expected to intervene. Although in a pure Islamic society, children are expected to obey their wali, or guardian, this obedience is balanced by strict restrictions in the Quran regarding what is expected of the child’s parents.⁸⁸ This debate emphasises the importance of the religious text in developing children’s rights and proposes possible strategies for using the

⁸⁸ Quranic Verse [4:36]:

*“Serve Allah,
and do not join any partners with Him;
and do good— To parents,
and (relatives) kinfolk,
and orphans,
and those in need,
and neighbors who are near to you in kin,
and neighbors who are strangers,
and the companion by your side,
and the way-farer (you meet),
and what your right hand possess:
For Allah does not love the arrogant, the boasters—”*

Quran and hadith to incorporate the UNCRC into domestic law in Muslim states.

As times evolved and Islam became the religion and way of life for one of the world's leading civilizations, new modified and adapted rights for the child began to be considered necessary. Today, for example, a child's life is very different from what it would have been 1400 years ago, when Islam first came to light. The Organization of the Islamic Conference (OIC) defines a Muslim society as a society built upon values and principles, and through this stability, security, progress and development for the society within the family environment is achieved.⁸⁹ Building upon this framework, childhood issues became important in attaining an ideal Muslim society. Although Muslim States generally hold that "the provisions set forth in the Convention are in conformity with the teachings of Islamic Law concerning the need to fully respect the human rights of the child",⁹⁰ many reservations were entered on grounds of Islamic Law. Furthermore, numerous Islamic scholars and researchers have expressed the view that that the UNCRC embodies an exclusively Western perspective that ignores the views of all other societies, religions and civilizations around the world.⁹¹ This has led into the construction of several

⁸⁹ For more see here; OIC: [Accessed 12 March 2018]. <http://www.oic-oci.org/english/convention/Rights%20of%20the%20Child%20In%20Islam%20E.pdf>

⁹⁰ The initial report of the Kingdom of Saudi Arabia on the CRC, UN Doc CRC/C/Add.2, (29/3/2000) para. 27. See also the General Statement of the United Arab Emirates during the drafting of the CRC that: "The provisions of the draft Convention contradict neither with the principles of Islamic law nor the... Provisional Constitution of the United Arab Emirates"; quoted from Sharon Detrick, (ed.), *The United Nations Convention on the Rights of the Child: A Guide to the 'Travaux Preparatoires'*, Springer Netherlands, (1992), p. 50.

⁹¹ al-Ahmad, *Himayat Huquq al-Tifl fi Daw' Ahkam al-Shari'ah al-Islamiyyah wa al-Itifaqiyat al-Duwaliyah*, p. 33.

children-related conventions and papers, including the Islamic Charter on Children, which was produced by the International Islamic Committee for Women and Children (IICWC), the Islamic Covenant on the Rights of the Child and the Cairo Declaration of Human Rights in Islam. The most far-reaching and important of these—agreed on by the Organization of the Islamic Conference (OIC)—is the Islamic Covenant of Children’s Rights, which was published in July 2005 and builds upon the UNCRC but in a manner intended to maximize its applicability and effectiveness for the Muslim world.

The UNCRC, since it has come into force more than twenty years ago, is accepted to be the most universally accepted human rights treaty.⁹² It is considered "the first legally binding international instrument to incorporate the full range of human rights – civil, cultural, economic, political and social rights".⁹³ Moreover, it is worth to note that the UNCRC is the only international convention that explicitly refers to "Islamic Law".⁹⁴ Despite this, the UNCRC has received the most religion-based reservations of Muslim States on specific articles and on the treaty as a whole.⁹⁵ These reservations do not necessarily reflect Islamic law as states claim since Islamic law has been subject to different modifications, interpretations and practices by states. In order to understand fully the reasons behind the reservations one has to look into the convergence between Islamic and international laws and question the

⁹² Kamran Hashemi, "Religious Legal Traditions, Muslim States and the Convention on the Rights of the Child: An Essay on the Relevant UN Documentation" (2007) *29 Human Rights Quarterly* 1 p.195.

⁹³ UNICEF website available at <http://www.unicef.org/crc/index.html>

⁹⁴ Hashemi, "Religious Legal Traditions, Muslim States and the Convention on the Rights of the Child: An Essay on the Relevant UN Documentation", p.194.

⁹⁵ *Ibid.*, p.196.

compatibility of the international children's rights laws in Islamic countries. And in order to do this, this thesis will begin by exploring international children's rights. The following section will introduce children's rights in the international sphere.

International Children's Rights

Children having rights may be an alien concept to many, or can even be described as a "strange" concept as Harry Brighthouse⁹⁶ puts it. To others, children's rights is limited to having autonomous parents.⁹⁷ There are those who can see no point or value in talking about children's rights. They cannot see that it can achieve anything positive for children. A good place to start when discussing children's rights is how children and their rights are perceived in the international society.

The way society perceives children reflects the status of children and their rights. However, it is not easy to construct a perception of children and how society thinks about them without referring to what the media conveys about children and what recent researchers have written about them. So, how does society perceive children? As Michael Freeman puts it, there are three

⁹⁶ Michael Freeman, "The Human Rights of Children," 63 *Current Legal Problems* 1 (2010), pp. 1-44. See 'What Rights (If Any) Do Children Have?' in David Archard and Colin M. Macloed (eds), *The Moral and Political Status of Children* (oxford, 2002), 31-52, 31.

⁹⁷ *Ibid* see Michael Freeman, 'The Best Interests of the Child? Is *The Best Interests of the Child* in the Best Interest of Children?' In *International Journal of Law, Policy and the Family*, (1997):360-388, 363-366.

possible explanations; first, the ownership of children, second, the public/private division to children and third, the human beings/human becomings contrast.⁹⁸

a- Ownership of children

Martin Guggenheim, an American family lawyer, offers children but one right to be raised by parents who are minimally fit and who are unlikely to make significant mistakes in judgment in the rearing of their children. This view has been adopted and kept undeveloped since the 19th century, when children were seen as property of their fathers.⁹⁹ The family unit was a sacred unit that did not tolerate intervention. No matter how bad a child was neglected or abused it was not seen as abuse as they were mere property. It was considered a right of parents to raise their children as they deemed fit without state interference.

b- Private world of children

Because rights are a public matter, having rights in the private sphere is not seen as important. However, when it comes to children, their rights in public and private and differentiating between them is a complicated issue. “The curtain of privacy hides all manner of evils: sexual abuse, forced marriages, female genital mutilation, religious indoctrination, even slavery.”¹⁰⁰

⁹⁸ *Ibid.*

⁹⁹ *Ibid.* p.20 from Martin Guggenheim, *What’s Wrong with Children’s Rights* (Cambridge, Mass, 2005), 43.

¹⁰⁰ *Ibid.*

Associating children with the private sphere makes them considered 'out of place' whenever they participate in public, limiting their opportunities of communicating their opinions to decision-makers in matters that concern them.

c- Human beings/human "becomings"

Until as recently as 1988, it was written about children that they are future adults rather than young human beings. In Onora O'Neill's words, a child's 'main remedy is to grow up'.¹⁰¹ Thus it is clear why children didn't have rights as they were not yet truly human beings.

However, this idea gradually withdrew as a new sociology of childhood emerged in the 1970s and 1980s. This new framework saw children as human beings rather than human becomings.¹⁰² Since then, a lot of research has been done on children and their surroundings, showing that it is important to recognize the child as a human being instead of a human becoming. However, it is important to note as well that their "beings" shall not preclude them being "becomings". It is always easier to categorize a child as a "being" or "becoming", but in fact it is always more accurate to define a child as both "being" and "becoming".

So why is it important for beings who have not yet 'become' fully grown and autonomous humans to have rights? Furthermore, why does the topic of such

¹⁰¹ *Ibid.* p.9 see O O'Neil, 'Children's Rights and Children's Lives' (1988) 98 *Ethics* 445-463.

¹⁰² *Ibid.* p.13.

rights surround more friction than other human rights? This section explores the importance of children's rights and different issues theorists have with it. Human rights, in general, are universally available to all residents of the world. They are inclusive and have not excluded any member of society ever since the exclusion of women (they were considered non-persons) and blacks (slavery) was eradicated.¹⁰³ Rights are not limited to a certain gender or race, and similarly, it should not be limited to a certain age. It is in the powerful's advantage to keep others out of the decision-making and participation sphere. This is exactly how the situation with children's rights can be described. Though not essential or inevitable, adults wish to keep children in an imposed and prolonged dependency.¹⁰⁴ Adults, however, seem willing to give children some rights but deny them others. However, rights are interdependent. Denying certain rights undermines other rights. For example; denying the child the right 'to freedom of association and to freedom of peaceful assembly'¹⁰⁵ limits the child's right to 'freedom of expression'.¹⁰⁶

Rights are important because they owe their bearers the respect they are entitled to. "To accord rights is to respect dignity: to deny rights is to cast doubt on humanity and on integrity."¹⁰⁷ As aforementioned, it is always for the convenience of the powerful if the less powerful lacked rights. In this case children are the less powerful and adults are, of course, the powerful ones.

¹⁰³ *Ibid.* p.16 see B Mayall, *Towards a Sociology of Childhood* (London, 2002), 120.

¹⁰⁴ *Ibid.* p.16.

¹⁰⁵ UNCRC Article 15.

¹⁰⁶ UNCRC Article 13.

¹⁰⁷ *Supra* note 95.

Denying children their rights would make it easier to rule and control them. Decision making would be swifter, cheaper, more efficient and more certain.¹⁰⁸ However, it is obvious that rights are more essential for the weak members of society over the powerful members. Rights allow their bearers to exercise agency.¹⁰⁹ Exercising agency makes rights bearers decision makers, negotiators, and participators. They have an input on matters that concerns them and can alter decisions that do not suit them; they can pave their own lives rather than have their lives paved for them. And so far there has been no evidence to suggest that children cannot exercise agency.¹¹⁰

Being even more important than the right to live, the right to possess rights is given by the UNCRC to children.¹¹¹ It sets a global standard of rights for children. For the first time, children have a seat in the international sphere of rights, though without a microphone.¹¹² The convention recognizes children as 'becomings' and 'beings'. It does not focus only on their future best interests,¹¹³ their health,¹¹⁴ education¹¹⁵ and protection from all forms of abuse, violence,

¹⁰⁸ *Ibid*, p.17.

¹⁰⁹ *Ibid*. p.17 see 'Agency' in J Qvortrup, WA Corsaro, and M S Honig, *The Palgrave Handbook of Childhood Studies* (Basingstoke, 2009), 34-45, 37.

¹¹⁰ *Ibid* p.17 see P Alderson, K Sutcliffe, and K Curtis, 'Children As Partners with Adults in their Medical Care' (2006) 91 *Archives of Diseases in Childhood* 300-303.

¹¹¹ *Ibid*. p.18.

¹¹² *Ibid*. p.20.

¹¹³ UNCRC Article 3.

¹¹⁴ UNCRC Article 24.

¹¹⁵ UNCRC Articles 28-29.

injury and neglect.¹¹⁶ But it also gives them a voice to express views freely in all matters affecting them,¹¹⁷ it gives them the right to participate,¹¹⁸ the right of freedom of expression,¹¹⁹ of thought, consciousness and religion¹²⁰ and to be heard in judicial and administrative proceedings affecting them.¹²¹

The UNCRC has shown that the international community now has a duty to accept children as right bearers. Rights will no doubt work more efficiently if children are perceived as right bearers whose dignity is upheld and are always given the opportunity to participate in decisions concerning them. Their rights can be their tools of advocacy and campaigning to voice their concerns and push for change.

However, not everyone agrees to the importance children's rights carries. Children will make mistakes. Some theorists refuse to acknowledge children having autonomy on the grounds that children tend to make mistakes or as Carol Brennan puts it, "often children do not choose well or wisely."¹²² However, adults can also fail to make the right decisions. But as Dworkin wrote

¹¹⁶ UNCRC Article 19.

¹¹⁷ UNCRC Article 12.

¹¹⁸ UNCRC Article 31.

¹¹⁹ UNCRC Article 13.

¹²⁰ UNCRC Article 14.

¹²¹ UNCRC Article 12.

¹²² Supra note.95 see 'Children's Choices or Children's Interests: Which Do Their Rights Protect?' in D Archard and C Macleod (eds), *The Moral and Political Status of Children* (Oxford, 2002), 53-69.

there is a right to do what is considered the wrong thing to do and to let others do what we ourselves would choose not to do.¹²³ This of course has limits and was discussed from as early as 1983.¹²⁴ Other critics like Barbara Arneil refuse children's rights on grounds of responsibility over rights. In Arneil's view, "rights theorists do not see children as children".¹²⁵

By now, the setting of my thesis is laid. Children's rights in Islamic law were explored and so were children's rights in international standards. Getting to the main argument of the research; is there any convergence between international standards and Islamic standards when it comes to children's rights? Are the international standards compatible with Islamic law? Why is this worth investigating and what will further studies reveal? This next section will hopefully answer these questions starting with a basic exploration of universalism; Islam in International law.

Compatibility of International Children's Rights in Islamic Law

When speaking about universalism, using terms such as 'exclusion' might imply that one senses a conspiracy among western countries. But more realistically, exclusion could be a mere result of what is now known as 'false universalism'; "depicting the particular and partial as if it was synonymous with

¹²³ *Ibid.* p.25 see *Taking Rights seriously* (London 1977).

¹²⁴ *Ibid.* p.25 see Michael Freeman, *The Rights and Wrongs of Children* (London, 1983) 56-57.

¹²⁵ *Ibid.* see 'Becoming versus Being: A Critical Analysis of the Child in Liberal Theory' in D Archard and C M Macleod (eds), *The Moral and Political Status of Children* (Oxford, 2002) 70-94.

the general”.¹²⁶ Unlike false universalism that assumes sameness, a true universalism would acknowledge difference as well when constituting international law. It will ensure equitable participation by all civilizations of the world or as Archibugi, Held and others describe it under ‘cosmopolitan governance’ or ‘cosmopolitan democracy’¹²⁷, inter-civilizational equality as a principle of international law. Accepting the enormous range of inter-civilizational differences and democratically negotiating is a process of human rights. Neglecting the civilization participation of any civilization can lead to a series of deformed practices and perceptions. For the purpose of this research, excluding Islam and the consequences of that will be discussed further ahead.

Representing an Islamic perspective, Davutoglu wrote: “...the Muslim masses are feeling insecure in relation to the functioning of the international system because of the double standards in international affairs.”¹²⁸ Davutoglu goes further to arguing that globalization which he associates with the “West” leads to destroying other ‘authentic cultures and civilizations’ that altogether represent international law. The deeper argument here moves beyond criticism and into a claim that the dominant force in international law is western civilization, which is in the process of blurring and marginalizing Islam. However, if the western civilization is seen to have a destructive impact on Islam and other civilizations, does that imply that Islam, properly understood,

¹²⁶ Richard Falk, “False Universalism and the Geopolitics of Exclusion: The Case of Islam,” 18 *Third World Quarterly* 1 (1997), pp. 7-23, 8.

¹²⁷ *Ibid.* see David Held, *Democracy and the Global Order: From the Modern State to Cosmopolitan Governance*, Cambridge: Polity, 1995, esp. pp. 219-286.

¹²⁸ *Ibid.* see Davutoglu, *Civilizational Transformation and the Muslim World*.

presents the reality of a constructive alternative? In order to understand the argument, diving deeper into the reasons behind the friction between Islam and International law could be beneficial.

Much of the recent discussions of Islam and International law, whether in the form of journalistic portrayals or academic writings, are afflicted by the portrayal of the other view in such stereotypical terms that verify hostile policy responses. This debate is tilted by the globalization hegemony of the West. For example, in media dominance, where there is a strong disposition to associate Islam with violence, extremism and hostility towards the West. These perceptual assumptions are the reason behind the extent to which the literature on Islam and International law is engrossed either by whether Islam poses a threat to the western civilization or not or the literature that seeks mainly to reassure the West that Islam is not as hostile as often perceived.

So how is Islam part of international law? To date, none of the secretary generals of the UN has been a Muslim, reinforcing the impression of exclusion. Moreover, very few of the important specialized agencies has been headed by a Muslim. This can be explained by the contention that officials are selected based on merit and political support rather than religious or ethnic identity. However, combined with other factors it is reasonable to believe that Islamic participation and acknowledgment of civilizational identity would make a contribution to the role of the UN.

“In the wake of the September 11 attacks, new attention is being paid to both sides of the debate over the competing ideas of a ‘clash of civilizations’ and

that of a 'dialogue of civilizations'.(p. 20)" In the 'clash of civilizations' Muslims are seen as the main opponents to the West. This Islam-west opposition is not new at all as it originates from older ideas where Islam was seen as a predatory civilization threatening the West.¹²⁹ As a response to the 'clash of civilizations' idea, the Iranian President Muhammed Khatami, supported by the UN Secretary General Kofi Annan, introduced the idea of the 'dialogue of civilizations'. This idea too is not entirely innovative as many world figures such as Pope John Paul II, Nelson Mandela of South Africa, King Abdullah of Saudi Arabia, Bishop Desmond Tutu of South Africa and many others have been involved in different ways in this kind of dialogue for many years.

Despite the many efforts of the dialogue of civilizations, the idea of Islam as the opposition was gaining ground in the West despite world leaders insisting that was not true. The effect of years of negative press, news of honour killings, hijacking, and terrorism acts were starting to materialize. The public started to view the Islamic civilization and Muslims as fundamentalist terrorists. When in reality, terrorism acts have nothing to do with the Islamic theology. Killing a single innocent individual is like killing all of humanity warns the Quran.¹³⁰ Terrorism and other acts put on Islam may have nothing to do with Islamic theology but the consequences of these actions will decide how Islam is perceived in the years to follow. Scholars like Richard Falk have argued that

¹²⁹ Akbar Ahmed, "Ibn Khaldun's Understanding of Civilizations and the Dilemmas of Islam and the West Today," 56 *Middle East Journal* 1 (2002), pp. 20-45. See John L. Esposito, *The Islamic Threat: Myth or a Reality?* (New York: Oxford University Press 1992).

¹³⁰ Quran [5:32]

"...if any one slew a person - unless it be for murder or for spreading mischief in the land - it would be as if he slew the whole people: and if any one saved a life, it would be as if he saved the life of the whole people."

excluding Islam from the community of world civilizations is deliberate in order to make it a pariah.

So what is to be done about it?

Can there be a genuine dialogue of civilizations across religions and nations that negates the idea of the clash of civilizations? If so, how can this be applied practically in a way that affects people's thinking and behaviour? The dialogue of civilizations has to be a precondition to covenants of international law. However, dialogue on itself has never been a solution. There needs to be a dialogue that will lead eventually to the understanding of civilizations and acceptance of difference and tolerance of change.

Yet, if one looks further into international law and how the UN conventions come to light, he/she will find that a lot of the previous ideas of exclusion of Islam are not completely true. It is often supposed that international human rights laws were negotiated without active participation by Muslim states. Waltz, though, disagrees.¹³¹ While the role of Muslim states as participants and promoters should not be exaggerated, it cannot be discounted. Much has been said and written about the compatibility of Islamic standards with international human rights. In these discussions a common misconception between Arab culture and Islamic culture is often prevalent, and as a result the true meaning of Islam is often confused.¹³² Similarly, the concept of

¹³¹ Susan Waltz, "Universal Human Rights: The Contribution of Muslim States," *26 Human Rights Quarterly* (2004), pp.799-844.

¹³² See Abdullahi An-naim. *Towards an Islamic Reformation: Civil Liberties, Human Rights, and International Law* (1990); Mayer, A. E., *Islam and Human Rights: Tradition and Politics* (3d ed. 1999); Falk, R., *Human Rights Horizons: The Pursuit of Justice in a Globalizing World* (2000).

international human rights could be easily misunderstood and equated with western philosophy. When it comes to international human rights, deep-seated concerns such as exclusion, cultural dominance and false universalism always surface. These underlying concerns are what create the tensions and fuel the debates about the legitimacy and relevance of international human right standards as universal norms.

Taking as an example the “International Bill of Rights” that consists of the three documents that are considered the bedrock of international human rights law.¹³³ By the mid 1960s the countries that were participating in constructing the standards had more than doubled. Among the countries were Afghanistan, Algeria, Egypt, Indonesia, Iran, Iraq, Jordan, Kuwait, Lebanon, Libya, Malaysia, Mauritania, Morocco, Pakistan, Saudi Arabia, Somalia, Sudan, Syria, Tunisia, Turkey and Yemen. Completion of the three documents comprising the Bill of Rights required constant work of twenty years. The UN records point to the active engagement of delegations from the Muslim world in these twenty years of negotiation of international human rights standards. Over the course of this lengthy process, many voices were added to the debate as the membership grew over the years. Some of the names that appear repeatedly in accounts that cover ten years or more include Charles Malik and Karim Azkoul (Lebanon) and Jamil Baroody (Saudi Arabia). As should now be apparent, delegates from Islamic countries made some very real contributions to the resultant text of some international human rights law.

¹³³ UDHR 1948, ICCPR and ICESCR

Though their contributions always revolved around the basic issues of distinction like religious freedom and the right to change religion, gender equality in marriage, and the indivisibility of rights, their contribution should not be understated.

However, one can argue that it is difficult to sustain such a position since all Muslim states are allowed to do is contribute and propose which is a secondary form of participation whereas the final decisions are still developed by western leaders and imposed on the rest of the world. To assess the participation (or exclusion) of Islam in International human rights law, and the aura of false universalism that potentially hangs over it, one has to address all the deep-seated concerns around it. Though official records acknowledge the presence and participation of Islamic states it does not address the more serious charge of geopolitical exclusion that according to Richard Falk created the clash of civilization and false universalism or in his exact words it is “a mask worn to obscure western civilizational hegemony.”¹³⁴

The importance of pluralist justification has increased during the past few decades as the international community is getting more convinced that the idea of international human rights is the product of the West. In this context, applying these moral and political standards in non-western civilizations is defined as a form of domination.¹³⁵ A Muslim scholar wrote: “Islam...has laid

¹³⁴ *Supra*, note 25, pp.148-154.

¹³⁵ Eun-Jung Kim, “Justifying Human Rights: Does Consensus Matter?,” *13 Human Rights Review* (2012), pp. 261-278, 262.

down some universal fundamental rights for humanity as a whole. Human rights in Islam mean rights granted by Allah.”¹³⁶

So is there a convergence between international standards and Islamic law? Convergence in this context should be distinguished from agreement. A convergence is an overlap across different worldviews on a particular right, whereas an agreement is the commitment of different states to respect the right.¹³⁷ Rights can be divided into two broad categories:¹³⁸ (1) rights on which different worldviews converge (e.g. the right against the genocide) and (2) rights on which the worldviews do not converge (e.g. the right to marriage with consent).¹³⁹ Given the differences in the values and beliefs that make up Islam, one might find the emergence of convergence difficult. However, convergence is sensitive to the universality of the right. Convergence can be of two kinds; a global convergence on local norms (e.g. fasting; it is a widespread practice¹⁴⁰ but it applies to a certain religious group. Although its justifications are universal, people outside a certain religious group are not expected to fast) and a global convergence on a global norm (e.g. ethics or reciprocity –or the

¹³⁶ *Ibid.* p.263.

¹³⁷ *Ibid.*

¹³⁸ *Ibid.*

¹³⁹ 142 states in the year 2012 have ratified the Convention on the Prevention and Punishment of the Crime of Genocide, whereas only 55 states in the year 2012 ratified the Convention on Consent to Marriage, Minimum Age of Marriage and Registration of Marriages.

¹⁴⁰ “She or he who does good of her or his own accord shall be rewarded, but to fast is better for you, if you but knew it” (Prophet Muhammed); “When you fast, anoint your head and wash your face so that you do not appear to others to be fasting, but to your Father, who is in the secret place; and your Father, who sees in secret, will reward you openly” (Jesus Christ, Matthew 6:16–18); “When you fast, the Light will illuminate you and spread on earth” (Mahatma Gandhi).

Golden Rule¹⁴¹- that applies to all people regardless of their membership to a certain religion or particular community). The following section will explore convergence between International law and Islamic law in the specific sphere of children's rights.

Van Bueren states that "the very concept that children possess rights has a far older tradition in Islamic law than in international law, where the notion did not emerge until the twentieth century."¹⁴² Moving from that point forward and benefiting from the religious principles and the traditional heritage of their nations, Muslim states generally ratified the UNCRC.

While Muslim states do participate in international treaties, they still enter declarations and reservations on grounds of the Shari'ah.¹⁴³ This leads us to an important question: to what extent can the international children's rights be interpreted in the light of Islamic law?

¹⁴¹ Islam: "No one of you is a believer until he desires for his brother that which he desires for himself." (Sunnah); Christianity: "All things whatsoever ye would that men should do to you, do ye so to them; for this is the law and the prophets." (Matthew 7:1); Judaism: "What is hateful to you, do not do to your fellowman. This is the entire Law; all the rest is commentary." (Talmud, Shabbat 31d); Hinduism: "This is the sum of duty; do naught onto others what you would not have them do unto you." (Mahabhar- ata 5,1517); Buddhism: "Hurt not others in ways that you yourself would find hurtful." (Udana-Varga 5,1); Confucianism: "Do not do to others what you would not like yourself. Then there will be no resentment against you, either in the family or in the state." (Analects 12:2); Taoism: "Regard your neighbour's gain as your gain, and your neighbour's loss as your own loss." (Tai Shang Kan Yin P'ien).

¹⁴² Geraldine Van Bueren, *The Best interests of the Child: International Co-Operation on Child Abduction Program on the International Rights of the Child*, 1993. P. 51

¹⁴³ United Nations, *Multilateral Treaties Deposited with the Secretary General*, Status as at 31/12/1999, Vol.1, part 1, Chapters I to XI.

a- Reservations

According to today's standards, it seems that most of the Islamic Law is contributable and consistent with international children's rights. However, this might not be accurate as twenty-two of the Muslim states that ratified the UNCRC entered six general reservations to the whole UNCRC based on their religious traditions. Two of these reservations were to Article 2 on non-discrimination, two reservations to Article 14 on freedom of religion, and two reservations to Article 20 or/and Article 21 on adoption.¹⁴⁴ According to these Muslim states, the reservations they have entered are in accordance with the Islamic law. It is noticeable that most Islamic countries are pulled by two extreme factors; 'outside' factors that are pushing for application of international human rights standards, and 'inside' factors that fight westernization and consider application of international standards straying away from Islamic principles. The only way to please these two forces would be ratifying the UNCRC then entering reservations to the effect where Islamic principles always precede. Hashemi argues that "in practice the provisions in which reservations are made are not necessarily the indicators of the areas of inconsistency between Muslim legal traditions and children's rights".¹⁴⁵ In this case the real reason behind these reservations becomes blurred. Bielefeldt in his article explains that:

“Many Muslims still might feel insecure about the relationship between traditional religious norms on the one hand and modern legal standards on the other. That is why many

¹⁴⁴ *Supra*, note 91, at p.225.

¹⁴⁵ *Supra*, note 91, at p.225.

Muslims assert the validity of the traditional Islamic Shari'ah in principle and, at the same time, seem prepared to accommodate pragmatically some political and legal reforms."¹⁴⁶

Reservations entered by Muslim states ranged from reserving the whole convention if it is not consistent with Islamic law or entering specific reservations on specific articles of the convention. Out of all the fifty-seven Muslim states that ratified the convention, twenty-two have entered reservations or declarations. Algeria, Djibouti and Kuwait have declarations on the convention, whereas Bangladesh, Bosnia and Herzegovina, Brunei Darussalam, Egypt, Indonesia, Iran, Iraq, Jordan, Maldives, Mali, Morocco, Oman, Qatar, Saudi Arabia, Syria, Turkey and the United Arab Emirates have entered reservations to the convention. Finally, Malaysia and Tunisia have entered both reservations and declarations.¹⁴⁷

Article 51 of the convention states that "a reservation incompatible with the object and purpose of the present Convention shall not be permitted".¹⁴⁸ Since reservations are a drawback to any convention, the UNCRC committee has a policy to encourage reserving member states to withdraw from their reservations. Therefore, Muslim states are continually encouraged by the

¹⁴⁶ Heiner Bielefeldt, "Muslim Voices in the Human Rights Debate" (1995) 17 *Human Rights Quarterly* 4.

¹⁴⁷ *Supra*, note 91, at p.198.

¹⁴⁸ See Article 51 of the UNCRC.

UNCRC committee to review and gradually withdraw their reservations, especially with the committee's concern that the broad nature of the reservations would certainly affect the implementation of the rights and would raise questions about the compatibility of the provisions of the convention.¹⁴⁹

b- Enforcement

Like noted before, the UNCRC is one of the most successful international conventions, as every country in the world¹⁵⁰ quickly ratified it, excepting Somalia, the United States¹⁵¹ and South Sudan. However, the convention was just that: a convention. Ratifying the convention does not necessarily mean that the convention is applied into domestic law. It is not a binding convention that states are committed to. By ratifying the convention, states are merely directed to take on 'all appropriate legislative, administrative and other measures' to apply the rights in the convention.¹⁵² It has no method of formal enforcement available for right holders. The UNCRC committee, however, examines the progress made by states through the periodic reports produced by each state. States are required to write initial reports to the Committee two years after ratification detailing all the progress they have made so far towards fulfilling its obligations to the convention. Additional information about the progress of a state is also submitted by its UN organizations and other non-

¹⁴⁹ *Committee on the Rights of the Child: Consideration of Reports*, Initial periodic report of states parties due in 1993 (Jordan) 26 November 1993, CRC/C/8/Add.4 available at [Accessed 14 Sept 2015]. [http://www.unhcr.ch/tbs/doc.nsf/\(Symbol\)/CRC.C.8.Add.4.En?OpenDocument](http://www.unhcr.ch/tbs/doc.nsf/(Symbol)/CRC.C.8.Add.4.En?OpenDocument)

¹⁵⁰ Philip Alston and John Tobin (2005): 195 countries have ratified the UNCRC, a number unmatched by any other international convention.

¹⁵¹ Jane Fortin, *Children's Rights and the Developing Law*, 3rd ed., London: LexisNexis (2009): 45.

¹⁵² See Article 4 of the UNCRC.

governmental organizations. After this initial report, states then will be responsible to submit a report at five-year intervals.¹⁵³ In the absence of formal methods of enforcement, this reporting mechanism is extremely important since it is the only method of accountability by the states. None of the Muslim countries, like many other countries, has incorporated the convention into their domestic Law. The convention, therefore, becomes of a persuasive nature only. The need to produce reports every five years and the knowledge that any infringements will be subjected to consideration by the Committee, is what encourages states to implement the rights in the convention effectively.¹⁵⁴

c- Areas of Distinction

During the drafting of the convention, Muslim states' delegates discussed many areas of concern. In the following section some of these will be discussed; children born out of wedlock, the role of the family and religious choice, differences between the mother and the father in their duties and different ages of marriage for boys and girls.

d- Children Born out of Wedlock

In Islamic law, a child is considered "illegitimate" if a child was born and no paternity can be established, meaning that the child does not inherit from his/her unmarried father. "In traditional societies bearing a child out of

¹⁵³ *Supra*, note 150, p.45.

¹⁵⁴ *Supra*, note 150, p.45.

marriage is considered a great sin against the moral values of the community and results in the isolation of the mother and her child."¹⁵⁵ Recent reports submitted by Muslim states to the UNCRC committee, however, shows improvements in legislations that deal with children born out of wedlock where they have started providing supporting measures and arrangements for these children.¹⁵⁶

e- The Role of the Family and Religious Choice

The convention, whilst supporting the traditional role of the family in society and the authority parents should have over their children, emphasizes the need to promote children's capacity for eventual autonomy. Not unexpectedly, delegates from Muslim states, and in fact many other states, were deeply opposed to giving children freedom away from parental directions and religious teachings.¹⁵⁷ On the other hand, other states' delegates feared that providing families with protection from state interference would provide parents with arbitrary control over their children, therefore hindering children from being able to develop their own views.¹⁵⁸ These differing approaches caused many disagreements during the drafting sessions of the convention and as a result caused many compromises in an attempt to balance these conflicting views. Besides, the family's role that was reflected in the convention, delegates from Muslim countries were also strongly opposed to

¹⁵⁵ *Supra*, note 91, pg.211.

¹⁵⁶ *Supra*, note 91, pg.211.

¹⁵⁷ Lawrence LeBlanc, *The Convention of the Rights of the Child: United Nations Law-making on Human Rights* Lincoln: University of Nebraska Press, (1995): 112-117.

¹⁵⁸ *Supra*, note 150, p.44.

any suggestion that a child should have freedom of religious choice. To reach a compromising front, some writers conveyed that the UNCRC's article 14 merely *respects* a child's 'freedom of thought, conscience and religion' and does not give the child the right to adopt or change thought, religion and conscience. This implies that the convention gives the child the right to freely *practice* a religion rather than the freedom to *choose* one, thus maintaining the parent's right to choose a religion for their child.¹⁵⁹ However, Islam is not a religion to be forced on any human, adult or child. Many verses of the Quran have explained this thoroughly:

*“And had your Lord willed,
those on earth would have believed
- all of them entirely.
Then, [O Muhammad], would you compel the people in order that they
become believers?”*¹⁶⁰

And

*“The truth is from your Lord,
so whoever wills - let him believe;
and whoever wills - let him disbelieve.”*¹⁶¹

¹⁵⁹ *Supra*, note 150, p.44.

¹⁶⁰ Quran [10:99].

¹⁶¹ Quran [18:29].

And

“And we have shown the two ways.” ¹⁶²

(i.e. the way to believe and the way to disbelieve)

And

“There shall be no compulsion in [acceptance of] the religion.

The right course has become clear from the wrong.” ¹⁶³

f- Difference in Duties between the Mother and the Father of the Child

As discussed earlier in the chapter, in Islamic law, parents do not share the same duties. Taking as an example the issue of childcare, both parents share the custody of the child but only the father has guardianship over the child. Having guardianship over his children gives the father, but not the mother, the opportunity to interfere in all aspects of a child's life, especially unmarried daughters. In other cases, such as divorce, Muslim states' rulings differ according to the rulings of the Islamic schools discussed earlier. This variety in rulings shows that the duties of parents in Islamic law, unlike many other laws, differ according to the nature of each and to the situation they are encountering.

¹⁶² Quran [90:10].

¹⁶³ Quran [2:256].

g- Different Ages of Marriage for Girls and Boys

According to Islamic law, girls reach maturity before boys, and therefore Muslim states consider the legitimate age of marriage to be younger for girls than for boys. For example, in Indonesia, Pakistan and Syria the legitimate age of marriage for girls ranges from sixteen to seventeen, whereas for boys it is eighteen or older.¹⁶⁴ To reach gender equality, one of the solutions proposed was applying a consistent age of marriage for both girls and boys. Although this seems a perfect policy for further equality, it could expose discrimination against girls. Since girls normally mature physically earlier than boys, in Islamic law it is seen that they become ready for sexual relations earlier as well. Therefore, imposing the same age for boys and girls to marry, which in Islam is the only legal possibility for sexual relations, is discrimination against girls who should have earlier access to this right to represent equality. This might be seen as a violation of the provisions of Article 2 of the UNCRC dealing with discrimination, it is however consistent with Article 3 which prioritizes the individual interests of the child.

h- Effectiveness in Non-Western Countries

Despite the massive efforts put by the UN and its specialized institutions to relieve people's sufferings, it happened to overlook one of its major roles, by not giving accountability to cultural diversity. Although in theory the UNCRC explicitly refers to Islamic Law, practically little consideration has been given.

¹⁶⁴ Committee on the Rights of the Child: Consideration of Reports, Initial Reports of States parties due in 1995 (Syrian Arab Republic), U.N.Doc. CRC/C/28/Add.2 [Accessed 14 Sept 2015]. [http://www.unhcr.ch/tbs/doc.nsf/\(Symbol\)/CRC.C.28.Add.2.En?OpenDocument](http://www.unhcr.ch/tbs/doc.nsf/(Symbol)/CRC.C.28.Add.2.En?OpenDocument)

The international UN Conventions assume that the same general solutions can be applied to all countries in order to solve their problems. The UN therefore fails to acknowledge the differences in the cultures between these countries. Acknowledging differences among countries means recognizing the different issues these countries face. Consequently, the solutions given to these problems certainly have to differ. This means that the convention itself is flawed. Thus, countries should not be blamed for not abiding by its provisions. In other words, Vanessa Pupavac, described the UNCRC as a 'compromised document',¹⁶⁵ since its provisions do not match the structure and culture of all its states unless they enter reservations, a drawback for any convention.

Each human being's life and development depends on the life and development of people in their society that are directly, or not directly, related to them. It is true that there are some universally recognized values like dignity, equality, freedom, solidarity, beauty and truth, but still some rights and values receive greater emphasis than others in different societies or cultures.¹⁶⁶ A point to stress here is that the right to be different is now a recognized universal human right, and respect for the rights of religious, ethnic and linguistic minorities is acquiring an ever greater importance.¹⁶⁷ Thus, applying the convention with no modifications in the Muslim world, or in any non-western

¹⁶⁵ Vanessa Pupavac, "The Infantilisation of the South and the UN Convention on the Rights of the Child" (1998) 2 *Human Rights Law Review*, 3 pp.1-6.

¹⁶⁶ Adam Lopatka, "The Rights of the Child are Universal: The Perspective of the UN Convention on the Rights of the Child" in Freeman, M. and Veerman, P. (eds.) (1992) *The Ideologies of Children's Rights* Netherlands: Kluwer Academic Publishers p.47.

¹⁶⁷ *Ibid.* at p.48 from G. Braibant, *Les Droits de l'Homme: universalité et renouveau 1789-1989. Travaux publiés sous la direction de G. Braibant et G. Marc*, Edition l'Harmattan, Paris (1990), p.412.

cultures, will, on the international scale, make the UN convention less effective since it will not be applied as intended for it. Some Muslim countries have problems a great deal larger than the solutions offered in the UN convention. To make this point clearer, let us take as an example the poor children of Rajasthan, a poor region in India, who are barely surviving and having to deal with hunger and poverty on a daily basis; it is hardly likely for them to have an opportunity for play and recreational activities assigned to them by Article 31 of the convention or, indeed, to find the right to education set out in Articles 28 and 29 of the Convention of much import. In fact, minimizing or limiting their job opportunities (Article 32) might work as a factor against them as this could be their only means of survival. Countries with no effective human rights laws structures consider ratification of the Convention a political safeguard against being attacked by human rights organizations and advocates for failing to observe human rights standards. Not surprisingly however, these countries are not ready to apply to the UN Convention yet. They do not have the capacity, the structure, the interest or the resources to apply the Convention in their States. Ratification without the effective government structures will not lead to the goals set in the UNCRC, it will not come close to implementing the children's rights set up in the Convention.¹⁶⁸

The previous commentary on the universality of the UNCRC leads to an important question in the discussion: is the UN convention suitable for the

¹⁶⁸ Rachel Hodgkin. "Effective Government Structures for Children" (1997) 11 *Children & Society* 1 pp.60-62 [Accessed on 10 September 2017]
http://www.eric.ed.gov/ERICWebPortal/custom/portlets/recordDetails/detailmini.jsp?_nfpb=true&&ERICExtSearch_SearchValue_0=EJ544972&ERICExtSearch_SearchType_0=no&accno=EJ544972

Muslim world or is it bound to fail in it? This question will preoccupy us throughout the thesis. But the main difficulty is this: Is Saudi Arabia capable of respecting children's rights and their 'best interests', if children's rights was a foreign 'western' concept that has no grounds in Islamic culture?¹⁶⁹ This dilemma is the subject of the thesis. These important questions will be taken up in the following chapters.

¹⁶⁹ Some ideas in this chapter have been drawn from the theme of my master's thesis. Lulwa Althenayan, *Shari'ah and the UNCRC: Children's Rights in Islam*. Unpublished Master's dissertation, King's College London, London, UK. (2009).

Chapter 2

International and National Conventions of Children's Rights

In this chapter, I discuss Saudi Arabia's vision for children's rights. In order to fully understand this vision, first we will discuss theories of children's rights and different historical approaches to defining the concept. Secondly we will explore the international conventions related to children's rights, followed by the regional conventions. This will finally lead us to the study of the national laws concerning children's rights, their effect and mark on the Saudi society.

Literature review

In the past few decades, human rights have been increasingly applied to children, mainly in light of the international agreements and national laws. One such commonly applied agreement is the UNCRC. The argument regarding facilitation and promotion of the rights of children has brought about a change in terms of the way in which children are treated and perceived by other members of the society.¹⁷⁰ An example of this can be found in the development of child-friendly justice systems. At the same time, despite the considerable gains in the field of children's rights and promotion of their interests, numerous children continue to be marginalised globally as a by-product of issues such as absolute poverty,¹⁷¹ insufficient access to basic necessities of life such as

¹⁷⁰ John Wall, Human Rights in Light of Childhood. *The International Journal of Children's Rights*, 16(4), (2008): 523-543.

healthcare, education and shelter,¹⁷² child soldiering, gender discrimination among other indicators of social development and well-being of children.¹⁷³

In this regard, some authors have argued the differential between the ideal of children's rights and the reality of their practice is arguably not related to the availability of actual resources to the relevant stakeholders.¹⁷⁴ Similarly, this gap is not attributed to the use of language encoding children's rights either, which could be considered inadequate when it comes to addressing human rights.¹⁷⁵ Instead, an underlying issue that has contributed to a lack of progress in the children's rights is the way in which human rights are understood. Even though those under the age of eighteen amount to 33% of the global population (percentage of children in the Saudi population is 26%),¹⁷⁶ human rights of children are analysed from an entirely adult standpoint. This has led Wall, quoting Therborn,¹⁷⁷ to conclude that children's rights will continue to be

¹⁷¹ Sheridan Bartlett et al., *Cities for Children: children's rights, poverty and urban management*. Routledge. 2016.

¹⁷² Gareth A. Jones, Children and development: rights, globalization and poverty. *Progress in development studies*, 5(4), (2005): 336-342.

¹⁷³ *Supra*, note 169.

¹⁷⁴ Lorelei B. Mitchell, et al.,. Child welfare reform in the United States: Findings from a local agency survey. *Child Welfare*, 84(1), (2005): 5.

¹⁷⁵ Jeremy Roche, Children: Rights, participation and citizenship. *Childhood*, 6(4), (1999): 475-493.

¹⁷⁶ World Bank (2016), Population ages, [Accessed 22 April 2018].
<http://data.worldbank.org/indicator/SP.POP.0014.TO.ZS>

¹⁷⁷ Goran Therborn, The politics of childhood: The rights of children in modern times. *Families of nations: Patterns of public policy in Western democracies*, (1993): 241-291.

neglected and “children will remain second class citizens”¹⁷⁸ until the notion of human rights has been rethought from a child perspective.

This development in children’s rights theory has been linked to a shift in approach in feminist theory, specifically in relation to women seeking similar rights enjoyed by their male counterparts, which in part demands a re-articulation of the human rights discourse in effort to achieve gender equality. This transformation is likely to be different for children and needs to take into consideration the complete diversity associated with human age. This is consistent with Tobin’s argument¹⁷⁹ that children rights should be considered from the perspective of responsibility that adults have towards children instead of being analysed from the perspective of entitlement, liberty and autonomy.

There is a comprehensive history when it comes to considering children’s rights from the perspective of a child and reshaping them through an influence from philosophical and religious perspective. Children’s rights in the West have been shaped by an ethical consideration as well as the consideration of human rights. Wall differentiates between three significant types of child-focused ethical approaches that have continued to persist over the course of time, and continue to influence assumptions held by people in the contemporary environment when it comes to assessment of children’s rights.¹⁸⁰

¹⁷⁸ *Supra*, note 169, P.523.

¹⁷⁹ John Tobin, Judging the judges: Are they adopting the rights approach in matters involving children? *Melbourne University Law Review* 33, no. 2 (2009): 579-625.

¹⁸⁰ *Supra*, note 169.

The first approach to child-focused ethics is a top-down approach. This is where Wall argues that human life at the very beginning is marked with a disorder similar to that in the animal kingdom. Consequently, an underlying, essential role of society is to impose on the human nature and particularly on younger individuals a superior moral order. This perspective is consistent with the arguments put forward by Plato, who focused on the importance of social ethics in development of society.¹⁸¹ The objectives of philosophy and politics can be seen to contribute towards greater rationality in dealing with societal challenges, with a view to promoting justice and civility within children's rights.

Sociologists and anthropologists have increasingly been interested in exploring the rights of children, leading to the emergence of scholarship known as children's studies, which coincided largely with the development of the movement in children's rights.¹⁸² Freeman noted that despite the heightened interest into children's rights shown by sociologists and the fact that their interests are largely aligned with the objectives of lawyers, educationalists and philosophers interested in safeguarding and promoting children's rights, there has been a relative lack of coordination and dialogue between the two perspectives.¹⁸³ Coordination and dialogue between those two perspectives however, will be key as it is evident that they are both addressing the same

¹⁸¹ Thomas Donaldson, and Thomas Dunfee, Toward a unified conception of business ethics: Integrative social contracts theory. *Academy of management review*, 19(2), (1994): 252-284.

¹⁸² Michael Freeman. The sociology of childhood and children's rights. *The International Journal of Children's Rights*, 6(4), (1998): 433-444.
And Allison James, and Alan Prout (Eds.) *Constructing and reconstructing childhood: Contemporary issues in the sociological study of childhood*. Routledge. (2015)

¹⁸³ *Ibid.*

problems, drawing similar conclusions, albeit from their own different perspectives.

A similar iteration of top-down thinking conveyed by Plato is noted in the statements contained in religious texts within Christianity, Judaism and Islam. For instance, the Ten Commandments of Moses contain an emphasis on obedience - for children to honour their parents in a similar manner to mankind honouring God. Similarly, the Holy Quran refers to children as trials at times, and reminds parents that they should suit themselves to God.¹⁸⁴

However, besides the top-down approach, there is also evidence of a bottom-up approach in the theory of children's rights, focused on learning about moral life from children. Allen et al. argue that the bottom-up approach is premised upon the argument that children highlight the original goodness associated with mankind, including moral wisdom and purity.¹⁸⁵ Thus, it implies that the natural talents possessed by mankind and available to children should be safeguarded, encouraged and promoted through the provision of suitable rights to children. A similar argument is put forward by Melton, who states that contemporary society requires freedom, simplicity and the level of innocence exhibited by children, to help to alleviate the existing greed, violence and extremism evident in the contemporary world.¹⁸⁶

¹⁸⁴ Murtaza Muṭahharī, *Noble Character of the Holy Prophet of Islam: Sira-i-nabawi*. Alhoda UK. 2003.

¹⁸⁵ Colin Allen, Iva Smit, and Wendell Wallach, Artificial morality: Top-down, bottom-up, and hybrid approaches. *Ethics and information technology*, 7(3), (2005): 149-155.

¹⁸⁶ Gary B. Melton. Children, politics, and morality: The ethics of child advocacy. *Journal of Clinical Child Psychology*, 16(4), (1987): 357-367.

The second approach to child-focused ethics lacks precision from a moral perspective. Children are given considerable respect, treated as the source of innocence and good in the society, which in turn contributes to the argument that adults should make an effort to embody said traits personified by children rather than influence children to become like themselves.¹⁸⁷ However, Morrow and Richards criticise such a perspective by arguing that this contributes to children being susceptible to excessive emotions.¹⁸⁸ As experienced in the case of ethnic minorities and women, subjecting a particular subset of humanity (e.g. children) to such a behaviour contributes to the dehumanisation and exclusion of such a grouping. As argued by Wall,¹⁸⁹ if children are the source of positive impact and behaviour in the society, then society itself has little to offer in terms of the responsibility owed to the children.

Thirdly, there is the theory of developmental ethics, as seen from children's perspective. This states that revelations and learning from children is neither purity on their part nor unruliness.¹⁹⁰ Instead, it is neutral with significant potential to improve and grow in moral reasoning with the passage of time. In other words, childhood is a source of reminder that individuals and the entire

¹⁸⁷ Helen Keane, Critiques of harm reduction, morality and the promise of human rights. *International Journal of Drug Policy*, 14(3), (2003): 227-232.

¹⁸⁸ Virginia Morrow, and Martin Richards , The ethics of social research with children: an overview. *Children & society*, 10(2), (1996): 90-105.

¹⁸⁹ *Supra*, note 169.

¹⁹⁰ *Ibid.*

society can make progress with a view to making significant strides from a moral and ethical perspectives.¹⁹¹

This could be further explained from the perspective of Aristotle who perceived children as pre-rational rather than lacking rationality altogether. Aristotle argued that children are as much political animals as adults, as they are also significant participants in and dependent upon life as others. However, a key difference between children and adults is that in contrast to adults, the participation undertaken by children in the societal aspects of life is relatively less organised and less rational. This implies that children do not necessarily possess practical wisdom or ability to feel genuinely content and satisfied. Within Islam, similar arguments are put forward by Al-Ghazali,¹⁹² who took into consideration the arguments of Aristotle and combined them with Islamic teachings and principles that children are not, by nature, evil. Instead, it is the society that influences the development of children through education from ethical and moral perspectives. This education involves three different stages; namely assisting others in need and want, treating other individuals with respect and equality and placing others' needs above one's own.¹⁹³ This clearly highlights that both within Christianity and Islam, there has been an emphasis on the role of society, which contributes to the positive or negative development of children, discerned through the level of attention paid to their rights and the type of moral and ethical education provided.

¹⁹¹ John Tobin, Justifying children's rights. *The International Journal of Children's Rights*, 21(3), (2013): 395-441.

¹⁹² Al-Ghazali, *Revival of Religious Learnings*, trans. Fazlul Karim (Karachi, Pakistan: Darul-Ishaat, 1993).

¹⁹³ *Ibid.*

It is important to respect and uphold the rights of the children. This is because of the importance of children as members of society and the fact that children begin their life from early on, within the fold of a social environment. It is not only the case that children are influenced by their environment, but as children grow up, they have an important impact on the environment and society too.¹⁹⁴ This means that arguably children also have certain responsibilities, especially as they start to grow older.

Children can also be viewed as the bearers of human rights.¹⁹⁵ Human rights could be explained through the international systems of commitments and treaties (e.g. UNCRC) and secondly through the development of a framework that influences policymakers to take action. The international treaties such as the Convention on the Rights of the Child serves as a foundation, using international law as its mechanism to provide sufficient protection and care to children, especially those in need. A human rights approach involves providing guidance as to what should be done and indicating the specific way in which it should be achieved.

The provision of protection and care to children is not to be seen as an act of kindness; instead, it is considered a basic right of all children to be provided

¹⁹⁴ Mitchell Prinstein, and Kenneth Dodge,(Eds.). *Understanding peer influence in children and adolescents*. Guilford Press. (2008).

¹⁹⁵ Sharon Bessell, S and Tali Gal, Forming partnerships: The human rights of children in need of care and protection. *The international Journal of Children's rights*, 17(2), (2009): 283-298.

for, in a non-discriminatory manner, with utmost consideration for their well-being.¹⁹⁶ This highlights that human rights serve as a useful means to fulfil children's rights in the contemporary environment.

Although the study of children's rights is attractive for many, there are numerous practical and theoretical complexities experienced, which make it difficult for practitioners to adequately fulfil these rights. This is because children are unable to make their own specific decisions, as they are incapable of making rational and informed choices. This means that children have been denied the freedom provided to people across all democratic societies, which has placed even greater importance on adults making these decisions on behalf of children.¹⁹⁷ As argued by Bessell and Gal, children receive protection instead of rights, which means they do not have sufficient independence and autonomy with regards to decision-making and are largely dependent upon adults and on the competence of these adults for their welfare.¹⁹⁸

The implementation by the UNCRC has served as an important moment with regards to improving children's rights. The Convention offers a comprehensive approach recommended for implementation.¹⁹⁹ It is focused on promoting the well-being of children and improving their prospects to maximise their potential. To that end, the convention grants different rights to children

¹⁹⁶ Margaret Arnott. Public policy, governance and participation in the UK: A space for children? *The International Journal of Children's Rights*, 16(3), (2008):355-367.

¹⁹⁷ *Ibid.*

¹⁹⁸ *Supra*, note 194.

¹⁹⁹ Geraldine Van Bueren, Child rights in Europe. *Strasbourg: Council of Europe Publishing.* (2007).

including cultural, social, economic, political and civil rights. Four articles of the UNCRC serve as key principles, which are best interests, non-discrimination, survival and development, and participation.

Article 6 of UNCRC entitles children to engage in full development and provides provisions relating to their survival. This leads to greater understanding regarding participation rights of adults as part of the development related needs of children, so that adults can arrive at informed and suitable decisions. Reynaert et al. state that article 6 of the UNCRC is useful in enabling children to engage in decision-making with a view to developing their independence and judgment skills.²⁰⁰ This is consistent with Article 5 of UNCRC premised upon the principle of changing and evolving capacities, which highlights the argument that as children develop over time, they are likely to experience an improvement in their ability to make decisions and therefore have the ability to develop themselves personally and professionally.²⁰¹ Thus, it is evident that UNCRC appreciates childhood as a process whereby children engage in gradual learning, and progressively develop their ability to make decisions and exercise their rights. It is the responsibility of the state and relevant stakeholders based on UNCRC to adequately implement the rules and provisions stated in UNCRC to facilitate the participation of children whilst keeping in consideration the age and stage of development of the children.

²⁰⁰ Didier Reynaert, Maria Bouverne-De Bie, and Stijn Vandeveld, Between 'believers' and 'opponents': Critical discussions on children's rights. *The International Journal of Children's Rights*, 20(1), (2012): 155-168.

²⁰¹ Rachel Hinton, Children's participation and good governance: Limitations of the theoretical literature. *The International Journal of Children's Rights*, 16(3), (2008): 285-300.

Article 12 of the UNCRC is focused on requiring the involved stakeholder parties to pay respect to the child's choices and views in the decision-making. This is consistent with the earlier arguments put forward by Ashton.²⁰² Article 12 (2) highlights the participation principle in detail with regards to administrative and judicial proceedings whereby child's preferences and views should be considered, either in person or through a representative of the child. It should be noted that UNCRC fails to highlight any particular provision that considers treating children as adults and does not mention that relatively older children could be provided additional freedoms and independence when it comes to decision-making. The emphasis remains on the right of children to participate in the decision-making instead of making decisions entirely on their own when it comes to factors that influence their own lives and future. As children are not entitled to make their own decisions according to the UNCRC, this clearly highlights that adults continue to have a significant role in assisting children.

Article 3 of UNCRC discusses the principle of "best interests". This imposes a duty on adults with regards to serving the best interests of each specific child individually rather than relying on generalised assumptions about children. Arce argued that Article 3 of UNCRC is important, as it emphasises the unique situation of each individual child and consequently places greater onus on

²⁰² Sarah Ashton,. The rights of children and young people in state care. *Educational Philosophy and Theory*, 46(9), (2014): 1082-1088.

each adult to use judgment in order to arrive at an individual examination of the specific interests of a particular child, instead of making assumptions from having observed children in similar situations.²⁰³ Hodgkin and Newell argued that in the case scenario where provisions of Article 3 of UNCRC are implemented by relevant parties (adults) without taking into consideration the perspective and specific situation of the given child, the decision made could be against the wishes of the child concerned and could amount to adult authoritarianism and excessive paternalism.²⁰⁴ Thus, there is a heightened responsibility of each adult to give considerable importance to the specific situation faced by the child, their views and feelings, when making a decision.

However, Wall and Dar criticise the UN General Assembly of the UNCRC by stating that there is a lack of clarity in the Convention with regards to the specific meaning of the provisions on how children should participate.²⁰⁵ This is in addition to formalised and bureaucratic structures of the organisations involved in dealing with children's welfare and rights, which makes it increasingly difficult to enable children to participate in decision-making.²⁰⁶ Therefore, children have rarely been able to genuinely participate and engage

²⁰³ Cordero Arce, Towards an emancipatory discourse of children's rights. *The International Journal of Children's Rights*, 20(3), (2012): 365-421.

²⁰⁴ Rachel Hodgkin and Peter Newell, *Implementation Handbook for the Convention on the Rights of the Child*. (1998).

²⁰⁵ John Wall and A. Dar, Children's political representation: The right to make a difference. *The International Journal of Children's Rights*, 19(4), (2011): 595-612.

²⁰⁶ *Supra*, note 194, pp.283-298.

in decision-making, which means that children's rights have not necessarily been fully observed or fulfilled by those tasked with the responsibility to do so.

Moving on, it is important to differentiate between the *needs* and the *rights* of children. Needs refer to those requirements that are common to all the individuals and can be conveniently and objectively identified by professional experts in their respective fields.²⁰⁷ On the other hand, rights involve the claims that are made naturally by an individual from the perspective of the person that would benefit from these claims.²⁰⁸ Even though needs and rights are often treated as different concepts, Bessell and Gal argue this is not the case when it comes to the rights and needs of children, which could be considered as reinforcing each other.²⁰⁹

Indeed, since children possess a combination of welfare and developmental rights, in addition to the right to self-determination, it could be argued that the rights of any child are considerably interconnected with their specific set of needs.²¹⁰ Basic needs have served as a source of identification of various rights of children. This is evident from Waldron's argument that rights serve as an important framework for individuals to discuss their human needs, whilst addressing the idea of dignity and self-respect.²¹¹ It is once their needs have

²⁰⁷ Jeremy Waldron, What is cosmopolitan? *Journal of Political Philosophy*, 8(2), (2000): 227-243.

²⁰⁸ *Ibid.*

²⁰⁹ *Supra*, note 194.

²¹⁰ John Eekelaar, The importance of thinking that children have rights. *International Journal of Law, Policy and the Family*, 6(1), (1992):221-235.

been identified that individuals focus on their right to contribute towards the creation of a relevant claim, amounting to creation of the right itself.

Researchers have focused on explaining children's basic needs and the relationship between the needs and the rights of a child, from the perspective of psychological jurisprudence.²¹² The psychological jurisprudence approach places emphasis on heightened integration between psychological and legal knowledge in order to gain a greater understanding and subsequently better define the needs and fundamental rights of an individual. In the context of children's rights, Ochaita and Espinosa conducted research on the needs of adolescents and children as a basis for the justification of their rights.²¹³ Their conclusions stressed the need to understand the basic requirements and needs of children, including autonomy, independence, well-being and physical health, in order to promote active participation of children in society and decision-making in determining their rights. The ability of children to engage in active participation contributes to the development of self-determination and basic needs of children.

Patron conducted research on the transition towards prevention of harm to children, while improving the mechanism of protection within children's

²¹¹ *Supra*, note 206.

²¹² Gary Melton, and Brian Wilcox, Changes in family law and family life: Challenges for psychology. *American Psychologist*, 44(9), (1989): 1213.
And Melton, G. B. (1992). It's time for neighborhood research and action. *Child abuse & neglect*, 16(6), 909-913.

²¹³ Esperanza Ochaita, and Maria Angeles Espinosa. Needs of children and adolescents as a basis for the justification of their rights. *Int'l J. Child. Rts.*, 9, (2001): 313.

services in England.²¹⁴ Parton also concluded that younger people and children prefer to have greater opportunities to explain their subjective and individual understanding of the key events that have occurred, their own feelings as a result of these events and the specific action they wish to take in the aftermath of these events. For children to become more confident in terms of speaking to adults about the issues they face, confidentiality is crucial. Patron thus concluded that children prefer to call the anonymous helplines in the UK to discuss the issues they face, because it is the anonymous format that increases their confidence and allows them greater control over the information they disclose about themselves, and in considering what action they should take.

The relationship between children (from the perspective of children's rights) and their carers / social workers within the protection and care system could be better understood through the assessment of attachment theories. If the communication and interaction between an adult and a child could be considered as companionable/ supportive or submissive/ dominant,²¹⁵ one is able to gain greater understanding of the relationship that exists between carers and the children they care for, within the protection and social care system. Bessell and Gal state that submissive and dominant behaviour of carers towards children might remind them of the abuse experienced in the past, and reinforce the sense that they lack authority, independence and

²¹⁴ Nigel Parton, 'Every Child Matters': The shift to prevention whilst strengthening protection in children's services in England. *Children and youth services review*, 28(8), (2006): 976-992.

²¹⁵ Margaret Bell, Promoting children's rights through the use of relationship. *Child & Family Social Work*, 7(1), (2002): 1-11.

power to achieve their rights.²¹⁶ Bell in his study of children with protected interventions found that it is essential that a child develops a trustworthy relationship with the carer/ social worker.²¹⁷ Thanks to such a relationship, children are in a position to reframe their understanding of the events that have occurred in the past. Bell also concluded by stating the importance of professional practice and behaviour exhibited by the social worker in developing such caring and trustworthy relationship with the adolescent.

Cook et al. presented the case for children to be considered as partners instead of simply encouraged to engage in participation to maximise their development.²¹⁸ However, this approach should be followed without the corresponding abandonment of the right to participation, which needs to actually serve as a foundation for children to be considered as partners. Cook et al. state that when stakeholders such as adults consider adolescents and young children as partners, this contributes to the creation of a more egalitarian relationship, whereby both adults and children have a heightened respect for each other.²¹⁹ This encourages children to engage with their carers with greater confidence and trust, and ultimately exercise their own rights whilst becoming more empowered.

²¹⁶ *Supra*, note 194.

²¹⁷ Margaret Bell, Promoting children's rights through the use of relationship. *Child & Family Social Work*, 7(1), (2002): 1-11.

²¹⁸ Philip Cook, Natasha Blanchet-Cohen, and Stuart Hart, *Children as partners: Child participation promoting social change*. International Institute for Child Rights and Development, Centre for Global Studies, University of Victoria. (2004).

²¹⁹ *Ibid.*

Moreover, Bessell and Gal note that when it comes to considering children as partners, instead of merely encouraging them to participate, there is a need to design processes through engagement with the children instead of devising the processes for the children.²²⁰ Treating children as partners therefore means that children's opinions have to weigh on the decisions made. Merely enquiring about their opinions is not sufficient.

Ben-Arieh argued that the age of adolescents and younger children should not serve as a barrier for them to fully exercise their rights and responsibilities.²²¹ Irrespective of their age, each child possesses a unique insight and perspective to collaborate with the adult carer to fulfil their needs and rights. This implies that merely providing an opportunity for children to engage in discussion or voice their concerns is insufficient and could contribute to their opinions being lost in the process.

The partnership with children as part of recognition of children's rights entails that professionals tasked with engaging with children should be trained to value the contributions made by children, as well as possess a specific understanding of the needs of children, irrespective of their age. Thus, children's rights can be better exercised in such a manner, with a view to maximising their personal development and growth in the future. An example of the way in which adults can facilitate children's learning and development in addition to improving children's rights is The Finnish Story crafting method.

²²⁰ *Supra*, note 194, pp.283-298.

²²¹ Asher Ben-Arieh, Where are the children? Children's role in measuring and monitoring their well-being. *Social indicators research*, 74(3), (2005): 573-596.

Specific stories told by children between the ages of two and six were noted word by word by the adults and subsequently distributed throughout the Nordic countries (i.e. Sweden, Finland, Denmark and Norway). This highlights the way in which adult carers can exercise their responsibility whilst recognising the specific needs and rights of children of a very young age, without needing to impose adult methods of communication on these individuals.

In the context of recognition of children's rights, it is important to recognise that treatment of children as respected and equal partners does not entail that children should be treated as adults and expected to participate in a similar manner to adults. Instead, in order to truly understand and promote children's rights whilst taking a genuine interest in their development and wellbeing, there is a need to take into consideration their particular skillsets. The finding that children are less confident and experienced than adults in social interaction will thus need to be taken into account.

Children are less confident and therefore less likely to speak fluently, especially in front of a larger audience, prone to withholding their opinions and views from their audience. To encourage children to speak and engage with adults, adults should also manage children's own perceptions of carers. Frequently, children will regard professional adults as authoritative persons and the perceived presence of a hierarchy could inhibit honest, open and transparent conversation with children.²²² Such barriers to communication are particularly significant in case of younger children, which means that

²²² Tom Cockburn, Partners in power: A radically pluralistic form of participative democracy for children and young people. *Children & Society*, 21(6), (2007):446-457.

professional carers ought to find ways to instil confidence in children and empower them to engage with the adults. In turn, when adults are able to gain a comprehensive insight into the needs and rights of children, they can ultimately work to fulfil these needs as equal stakeholders and partners, in a similar way as vis-à-vis other adults.²²³

It is evident that children's rights and the increasing importance of those rights have become a widely researched topic. Numerous conventions, declarations, forums and frameworks have been announced.

In the following section some of those conventions and Saudi Arabia's reaction to them will be discussed. I will start with the international conventions, then will move on to the regional and finally conclude with a review of the Saudi conventions.

International Conventions of Children's Rights

The end of World War I is often considered to be the starting point for many international organisations fighting for human rights. Some of those organisations touched on children's rights, however, children's rights were not addressed separately as they were seen as part of the human rights in general. Those human rights organisations were inspired to address children's rights as an independent subject as a result of the work done by Eglantyne

²²³ Carolyn Willow. *Participation in Practice: Children and young people as partners in change*. Children's Society, (2002).

Jebb, who established the Save the Children Fund in 1919. She was the first to introduce a document endorsed by the international community, stating that children *do* have rights.²²⁴

Jebb's "Declaration of the Rights of the Child", later known as the Geneva Declaration of the Rights of the Child, was then adopted by the League of Nations in 1924.²²⁵ The Geneva Declaration of the Rights of the Child states that: "men and women of all nations, recognizing that mankind owes to the Child the best that it has to give, declare and accept it as their duty that, beyond and above all considerations of race, nationality or creed." The Declarations also stated five main articles giving children rights of normal development, materially and spiritually, rights of assistance when hungry, sick, backward, delinquent or orphaned, right of priority in receiving relief in times of distress, right for protection against exploitation and finally the right of consciousness that the child's talents must be devoted to the service of fellow men. This declaration was taken into account until the fall of the League of Nations in 1939, when World War II began.

This Declaration embraced rights that no international convention had embraced before, thus, as a first step towards children rights it was a success.

²²⁴ In 1923, Jebb wrote: "The moment appears to me to have come when we can no longer expect to conduct large relief actions. If we wish nevertheless to go on working for the children... the only way to do it seems to be to evoke a cooperative effort to the nations to safeguard their own children on constructive rather than on charitable lines. I believe we should claim certain rights for the children and labor for their universal recognition, so that everybody... may be in a position to help forward the movement." *The State of the World's Children 2000: a Vision for the 21st Century*, UNICEF, New York, 1999, P.14.

²²⁵ Text of the Geneva Declaration of the Rights of the Child [Accessed 18 April 2018].
<https://www.unicef.org/vietnam/01 - Declaration of Geneva 1924.PDF>

However, its lack of enforcement or reporting mechanism made it more of an invitation for society and governments to protect those rights.²²⁶

After World War II, when the UN was established (1945), three views regarding children's rights were taken in consideration. The first option entailed re-adopting the Geneva Declaration as it was, with its five main articles. The second option was to use the Geneva Declaration and add to it more principles and rights that proved necessary for the child. The third option was to create a new document under the administration of the UN, which would contain a new set of rights applicable to children, especially in light of children's experiences during World War II. This third option manifested itself into what is known to us as the Declaration of the Rights of the Child (1959).

In 1950, the UN started working on this new declaration and by 1959 it was produced for the countries to ratify. 70 countries have ratified the declaration and two have not voted (Cambodia and South Africa). This declaration was the mature version of the Geneva Declaration of the Rights of the Child 1924. More rights stemmed from the five main rights that the older declaration stated, with the new declaration eventually containing ten principles.²²⁷

This declaration, albeit much more detailed and specific than the first declaration, still has some obvious shortcomings. First of all, the declaration neither defines childhood with a specific age range, nor does it specify when a child is thought to reach the age of majority, shrouding the question of whom

²²⁶ Legislative History of the Convention on the Rights of the Child, Volume I, op. cit., p.3.

²²⁷ UN General Assembly, *Declaration of the Rights of the Child*, 20 November 1959, A/RES/1386(XIV), [Accessed 6 April 2018]. <https://www.unicef.org/malaysia/1959-Declaration-of-the-Rights-of-the-Child.pdf>

rights are bestowed to in ambiguity. Secondly, certain rights were not taken into consideration, such as the right to life, right to protection from abuse, right to freely expressing opinion and religion, despite being taken into account in the Universal Declaration of Human Rights 1948. Finally, this Declaration, like the Geneva declaration, did not have any reporting or enforcement mechanism.

On 30 September 1990, leaders of 71 nations met at the world's first conference of children's rights. This conference produced the World Declaration on the Survival, Protection and Development of Children (1990).²²⁸ More than a decade later, the United Nations of the General Assembly held an outstanding meeting regarding childhood – which led to the production of a report titled “A World Fit for Children 2002”. It invites all members of the society to uphold their commitment to the following principles:

- 1- Put children first
- 2- Eradicate poverty – invest in children
- 3- Leave no child behind
- 4- Care for every child
- 5- Educate every child
- 6- Protect children from harm and exploitation
- 7- Protect children from war
- 8- Combat HIV/AIDS

²²⁸ Ceremony for the Presentation of the Declaration and Plan of Action Adopted by World Leaders at the World Summit for Children, “World declaration on the Survival, Protection and Development of Children”, and “Plan of Action for implementing the World declaration on the Survival, Protection and Development of Children in the 1990s”, A/45/625.

9- Listen to children and ensure their participation

10-Protect the earth for children

Regional Conventions of Children's Rights

The Arab world's interest in children's rights first emerged after the appearance of the United Nations Declaration of Human Rights. This interest has produced a few conventions in the Arab world that will be discussed in the following section.

In Tunisia, in 1980 the first conference for the Arab child was held. The main aims of this conference was to explore the main rights that the Arab child will need and to study the possibility of producing a charter of the rights of the Arab child. This exactly was accomplished 3 years later in 1983, when the Charter of the Rights of the Arab Child²²⁹ was passed. The charter's main advantage is that the rights are specified and customised for the Arab child, thus the dilemma of "westernisation" or Western-centric bias is addressed as an issue. However, like any convention, looking beyond the surface, one will find some shortcomings. The first is that the definition of the child imposes an age limit of fifteen years of age, which is below the widely agreed upon age of eighteen. Another shortcoming is found in article 50 of the convention which does not set specific dates for when reports should be submitted; nor does it arrange for a committee to look into those reports, thus weakening the enforcement of the charter. The charter finally omits some very important rights of the child, such as protection of the child's identity, protection of the child from

²²⁹ League of Arab States, *Charter of the Rights of the Arab Child*, 1983. [Accessed 7 April 2018]. <http://haqqi.info/en/haqqi/legislation/arab-charter-rights-child>

exploitation, kidnapping and abuse, protection of the child in armed conflicts, and protection afforded to juvenile delinquents and so-called “street children”. All in all, the nature of the language used in this charter is more of a guideline on which rights of the child should be protected and how.²³⁰ Thus, the charter needs to be reviewed especially after the UNCRC was produced in 1989.

Another regional convention is the African Charter of the Rights and Welfare of the Child. This Charter was drafted in 1990 in Addis Ababa. It was ready for ratification in 1999, at which point fifteen member states of the African Union ratified it. Although this Charter is a geographically specific charter, it does not address one of the main issues that specifically face African countries, namely the rights of minorities and natives.²³¹ Another right that the charter does not address is the right of the child to maintain his/her identity, especially in cases of kidnapping and trafficking.

In its 7th conference in 1994, the Organisation of the Islamic Conference produced the Declaration on the Rights and Care of the Child in Islam. Unlike any other convention before, this declaration was organised so that rights were divided into a timeline, in accordance with the rights and needs a child might need at different stages and situations of her/his life. For example the declaration encoded pre-birth rights, another set of rights for when the child had been born, a different set of rights for children in specific cases, for

²³⁰ Wafaa Marzoug, “Himayat Huquq al-Tifl fi Dhil al-’Itifaqiyat al-Duwaliyah”, *Manshurat al-Halabi al-Huquqiyyah* 1 (2010): 53.

²³¹ Danwood Mzikenge Chirwa, “The Merits and Demerits of the African Charter on the Rights and Welfare of the Child”, *The International Journal of Children’s Rights*, vol. 10, 2002, p.159.

example in case of divorce of parents, war etc.²³² This declaration, however, despite protecting the rights of the child even before birth, does not specify the endpoint of childhood – the age at which the child becomes an adult, legally speaking.

The Council of the League of Arab States meeting at summit level considered the Arab Framework on the Rights of the Child²³³ on 2001 in Jordan. This framework provided many goals, amongst which the protection of, the right of survival, the right of development, the right of participation, the right of protection and other social and political rights.

The last regional convention developed was the Covenant on the Rights of the Child in Islam,²³⁴ adopted by the 32nd Islamic Conference of Foreign Ministers in Sana'a, Republic of Yemen, in June 2005. This Covenant builds on the Declaration on the Rights and Care of the Child in Islam of 1994. It adds more rights and needs that were not deemed necessary before. However, in this Covenant, the definition who is a child remains a very general one, with no definition of childhood with a specific age range.²³⁵

²³² Fatimah Zaidan, *Markaz al-Tifl fi al-Qanun al-Duwali al-'Amm*, (Alexandria, Egypt: al-Jami'ah al-Jadidah, 2007), 46-47.

²³³ Letter dated 14 May 2001 from the Permanent Representative of Jordan to the United Nations addressed to the Secretary-General, United Nations General Assembly Security Council, 2001. <http://www.un.org/documents/ga/docs/55/a55942.pdf>

²³⁴ Covenant on the Rights of the Child in Islam, Organization of the Islamic Conference, 2005. <http://www.refworld.org/docid/44eaf0e4a.html>

²³⁵ The child in this covenant is defined as follows: "For the purpose of the present Covenant, a child means every human being who, according to the law applicable to him/her, has not attained maturity".

National Laws Concerning the Rights of Children

In the juridical regime in Saudi Arabia, at least theoretically, there is a lot of attention surrounding the child population, and specifically the legal rights and societal standing they are afforded. There is a general principle that each person living within the Kingdom of Saudi Arabia is subject to equal rights. Article 8 of the Basic Law of Governance states that: "Governance in the Kingdom of Saudi Arabia shall be based on justice, shura (consultation), and equality in accordance with the Islamic Shari'ah". In terms of the legal protection of children, Article 39 (2) explicitly entitles a mother to full control over which court they file their case in marital disputes.²³⁶ In terms of the mother-child relationship, the mother's role in the child's life has expanded, from the legal systems point of view. Women are now able to protect their children without the legal consent of the father. For instance, since September 2014, a child living under the sole care of a divorced mother has been allowed to enter the educational system and receive medical care upon the consent of the mother, without the need for the father's approval. Previously, a child living under his/her divorced mother's care was not able to access social rights without the father's consent, since legal documents such as passports and national IDs were only issued to the father of the child. Thus, up until September 2014, if the father refused or was unable to secure these documents, the children were unable to exercise many rudimentary rights, including receiving medical treatment and attending school.²³⁷

²³⁶ The Law of Procedure before *Shari'ah* Courts, issued by Royal Decree No. M/1 dated 22/01/1435 AH (25 November 2013).

²³⁷ see Chapter 4.

Recently, three laws have been implemented to further protect the rights of the mother and child. First the 2009 Anti-Trafficking in Persons Law was passed. This law protects the child from various sorts of abuse and exploitation that can be caused by trafficking.²³⁸ Article 1 of this law defines trafficking as the use, recruitment, transportation, harbouring or receipt of a person for the purpose of exploitation. It also defines the child as anyone below the age of eighteen. Article 2 of the law states that it is “prohibited to commit any act of trafficking in persons, including coercion, threat, fraud, deceit or abduction of a person.” Article 2 also prohibits the abuse of one’s position of power, sanctioning any authority seen to be taking advantage of another person’s vulnerability. In children’s rights terms, a parent or legal guardian abusing their authority in their treatment of children falls under this article. The punishment for doing so can be found in the next article of the same law. Article 3 subjects those who do not abide by the law of anti-trafficking to “imprisonment for a period not exceeding fifteen years or a fine not exceeding one million riyals, or both”. This includes times when victims of trafficking are subjected to the abuse by someone who is a legal guardian of the child.²³⁹ As will be discussed later in chapter 4, harsher penalties are prescribed if the offender is the guardian themselves.²⁴⁰

²³⁸ Anti-Trafficking in Persons Law, issued by Royal Decree No. M/40 dated 21/07/1430 AH (14 July 2009).

²³⁹ *Ibid.*, Article 3.

²⁴⁰ *Ibid.*, Article 4(4).

Another law that has been implemented in recent years to improve the quality of protection of rights of the mother and child, is the Law of Protection from Abuse.²⁴¹ This law was generated after Saudi Arabia's first ever anti-domestic violence campaign attracted the interest of the Shura council and brought the topic to the attention of the Cabinet.

This anti-domestic violence campaign was launched in 2013 by the King Khalid Foundation. It was known as the "No More Abuse" campaign. This campaign describes domestic violence on its website as a phenomenon that is much greater than is apparent at face value, it is a phenomenon still shrouded in ambiguity.²⁴² The interest that met the campaign and the awareness resulting from it has led the King Khalid Foundation to conduct an experiment within the legal framework by commissioning a comprehensive study. The aims of the campaign and study were to encourage children and women to speak up and report domestic violence, thus allowing for legal protection to be extended to them. This led to mounting concern among children's and women's rights organizations. As a result of the foundation's efforts, there was a greater deal of attention and awareness around the abuse that children and women face. Eventually, the Law of Protection from Abuse was passed by the Cabinet in September 2013.

²⁴¹ Law of Protection from Abuse, issued by Royal Decree No. M/52, dated 15/11/1434 AH (21 September 2013).

²⁴² Consideration of Reports Submitted by States Parties Under Article 44 of the Convention, Initial report of Saudi Arabia due in 1998, 2000. [Accessed 18 April 2018]. http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRC%2FC%2F61%2FAdd.2&Lang=en

This law, for the first time in the framework of Saudi laws and regulations, establishes abuse as a crime punishable by law. According to Article 3 of this law, punishment for violations can result in imprisonment of no more than a year, and/or a fine of no more than 50,000 Saudi Riyals, with stricter penalties for repeated offenses. For the purpose of this law, Article 1 defines abuse as:

“any form of exploitation; physical, psychological or sexual, or the threat thereof committed by an individual against another, exceeding the limits of powers and responsibilities derived from guardianship, dependency, sponsorship, trusteeship or livelihood relationship. The term “abuse” shall include the omission or negligence of an individual in the performance of his duties or responsibilities in providing basic needs for a family member or an individual for whom he is legally responsible”.²⁴³

Since the Law of Protection from Abuse was passed, child protection has gained more attention in Saudi Arabia. There has been more pressure to respond in new ways to child protection. As a result, in extension to the aforementioned efforts in the protection of children, the Child Protection Law was passed in 2014.²⁴⁴ This law assures that the child is not to be subject to any form of abuse or neglect. Article 3 of this law lists fourteen types of abuse a child might face, ranging from refusing to issue a child an ID to anything that

²⁴³ Law of Protection from Abuse, Article 1 (2013).

²⁴⁴ The Child Protection Law, issued by Royal Decree No.14 dated 03/02/1436 AH (25 November 2014).

threatens a child's safety.²⁴⁵ This law, like all other recent laws, defines the child as anyone below eighteen years of age.²⁴⁶ However, the ongoing debate of the definition of the child again resurfaces, since the Islamic legal opinion of the definition of a child is not represented. As discussed earlier, a child in Islamic law is anyone who has not reached the age of majority, which in some cases might take place before eighteen years of age. The age of majority in Islamic law refers to when a child reaches puberty, or when the physical signs of puberty appear. The Saudi government has incorporated the definition of the child as it is stated in Article 1 of the UNCRC into its recent domestic laws.²⁴⁷ This happened after requests were made by many members of the Consultative Council to amend the definition of the child when adopting a new law. In a step long awaited by many Saudis, the Social, Family and Youth Affairs Committee within the Consultative Council adopted the CRC's definition of the child.²⁴⁸

Perhaps one of the greatest outcomes of the above law is the protection of young girls who were previously forced into marriage at a very young age. Under the same law, Article 3 does not specify marriage of persons below eighteen years of age as one of the 14 types of abuses. However, Section 14

²⁴⁵ The Child Protection Law, Article 3 (2014).

²⁴⁶ The Child Protection Law, Article 1 (2014).

²⁴⁷ Article 1 of the CRC reads: "For the purposes of the present Convention, a child means every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier".

²⁴⁸ Talal Bakri, "Iqrar Nizam Himayat al-Tifl min al-'Idha' wa al-Taahid wa al-'Ihmal", *Al-Shura Magazine*, no. 122, year 13, (1432 AH/ 2011): 14.

of Article 3 refers to all abuses that threatens the child's safety, physical and psychological health – a category into which child marriages and forced marriages at a young age fit perfectly as instruments of rights violation.

In light of the three above mentioned recent laws, the willingness on the government's part to protect children and women's rights is apparent and formidable. However, it is only possible to enforce these laws with the help of the court and the judicial system. The Ministry of Justice ought to, therefore, provide essential training for judges and lawyers in order to safeguard the application of these laws.

Enforcement Law in Saudi Arabia

Prior to the Enforcement Courts and the Law of Enforcement²⁴⁹ that are now applied in Saudi Arabia, there was a lack of coordination in the system which enabled the losing party to slow down the court proceedings in order to buy them more time. Now the system has undergone a new ruling that sets hearing dates within a much smaller time frame, allowing each party a given allocated time to propose a case in court. This new law has affected areas of the juridical system such as commercial, family and financial judgements. The Enforcement Law also sets out punishments if rulings are not followed. Article 92 of the Law of Enforcement, dealing with the refusal of the implementation of custody or visitation rights, has been affected by the changes in the

²⁴⁹ The Law of Enforcement, issued by Royal Decree No. M/53 dated 13/08/1433 AH (03 July 2012).

Enforcement Law. In the case that a parent does not comply with the visitation rights given over the child, they may face imprisonment for a short period of time, a maximum of 3 months. This law came to light when a couple, in 2014, were unable to comply with a visitation schedule granted to the mother and father. The father was unwilling to allow custody to the mother for the days she had been granted. Following a custody battle in court, the court issued the father with a five-day warning to comply, upon which he would be imprisoned. Due to the father's failure to comply, he was imprisoned and banned from leaving the country.²⁵⁰

Further changes in the enforcement of laws have been initiated by the Ministry of Justice, who have issued a right for governmental agencies to collaborate with Enforcement Courts. For instance, the Saudi Arabian Monetary Agency is allowed to collaborate with the Enforcements Courts in order to seize private assets and freeze bank accounts, should the court provide evidence that offenders have not made court ordered payments.

²⁵⁰ Osama al-Jam'an. "Wizarat al-'Adl Sjn 'Ab Rafadh Tanfiz Hukm Ziyarat Umm li 'Atfaliha". *Alriyadh Newspaper*, 27 April 2014. [Accessed 13 November 2014]. <http://www.alriyadh.com/930752>

Chapter 3

Children's Rights in Saudi Arabia

After surveying all conventions related to children's rights, as well as relevant laws and where Saudi Arabia stands in relation to them, we will, in this chapter, focus on the UNCRC and its optional protocols. We will examine their status in Saudi Arabia and the extent of their influence. This chapter will conclude with a general comment on the implication and application of the UNCRC in Saudi Arabia.²⁵¹

Ratification of the UNCRC and its Optional Protocols

a- The Status of the Convention in Regards to Saudi law

i-Assessment of reservations on the provisions of the Convention

Article 51 of the UNCRC allows the joining member states to express their reservations on any of the articles before ratifying the Convention, as long as the reservations do not contravene with the objectives and purpose of the Convention itself.²⁵² Saudi Arabia has expressed a general reservation²⁵³ on

²⁵¹ The UNCRC will be picked up and examined in-depth in Chapter 4.

²⁵² Article 51 states that: "1. The Secretary-General of the United Nations shall receive and circulate to all States the text of reservations made by States at the time of ratification or accession. 2. A reservation incompatible with the object and purpose of the present Convention shall not be permitted".

²⁵³ Article 2 of the Vienna Convention on the Laws of Treaties (1969) states that: "Reservation" means 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

all provisions of the UNCRC that are incompatible with Islamic law principles, underlining precedence of Islamic law in case of contradiction or conflict between any term of the Convention and principles of Islamic law. The Kingdom, however, does not specify the articles of the Convention that it deems incompatible with the principles of Islamic law, thus highlighting the flaws of the reservations mechanism.²⁵⁴

General reservations such as those iterated by Saudi Arabia are usually perceived as shadowy and indistinct. The act of making such reservations also lacks specificity and blurs the line that distinguishes between the Islamic position and the fiqh opinion – namely, where it becomes possible that a single fiqh opinion taken by one scholar rather than a group is introduced and treated as an Islamic position.²⁵⁵ The Convention does not ban entering reservations, neither does it specify the type of reservations seen as acceptable. This however does not mean that all reservations should be accepted. Article (19) of the Vienna Convention on the Laws of Treaties (1969) guides the expression of reservations on the entire framework of the Convention. Article 19 states that: “A State may, when signing, ratifying, accepting, approving or acceding to a treaty, formulate a reservation unless: a-The reservation is prohibited by the treaty; b-The treaty provides that only specified reservations, which do not include the reservation in question, may be made; or c- In cases

²⁵⁴ see: Reservations, Declarations, and Objections Relating to the Convention on the Rights of the Child. Committee on the rights of the child (CRC). United Nations. 1999. CRC/C/2/Rev.8.

²⁵⁵ A. al-Derbi, *Al-'Illizamat al-Nashi'ah 'an al-Mawathiq al-'Alamiyyah fi Huquq al-Insan: Drasat Muqarana*, vol. 1 (Cairo, Egypt, al-Markaz al-Qawmi lil-'Isdarat al-Qanuniyyah, 2011), 419.

not falling under sub-paragraphs (a) and (b) the reservation is incompatible with the object and purpose of the treaty”.²⁵⁶

The Committee on the Rights of the Child has shown concern regarding the nature of the reservations put forward by Saudi Arabia, fearing a blanket rejection of a number of principles set out in the UNCRC. This raises the question of whether or not such a general reservation is encroaching on the very objective and purpose of the convention.²⁵⁷

Consequently, Saudi Arabia would do better by analysing the articles of the Convention individually and measuring the compatibility of each article with the principles of Islamic law on a case by case basis. Thus the general reservation would be replaced by specific and more sensible reservations on particular articles that contradict Islamic principles. Such a task can be entrusted onto a specialized group such as the “Board of Senior Ulema” (board of senior scholars), which, although not a regulatory authority like the Council of Ministers or the Shura Council, is nonetheless an influential official body when it comes to organisational work. It acts as a reference for Islamic

²⁵⁶ Saudi has ratified the Vienna Convention on the Laws of Treaties (1969) on 3 September 2001 under Royal Decree number (M/21). Ratifying such a treaty shows Saudi’s willingness to adhere to the principles of the Convention and not entering any reservations that might conflict with the objective and purpose of the treaty.

²⁵⁷ In their concluding observations on the reports submitted by Saudi Arabia the Committee on the Rights of Children stated that: “The Committee notes the information that the reservation which consists of a general reference to religious law and national law without specifying its contents, is mainly a precautionary measure and does not hamper the State party’s implementation of the convention. But the committee reiterates its concern that the general nature of the reservations allows courts, governmental and other officials to negate many of the convention’s provisions and this raises serious concerns as to its compatibility with the object and purpose of the convention”. Check: Consideration of Reports Submitted by States Parties under Article (44) of the Convention. Concluding observations: Saudi Arabia, Committee on the Rights of the Child (CRC). United Nations. 17 March 2006. Para. 7. P. 2. UN. Doc. (CRC/C/SAU/CO/2).

principles in all national and international organisational work and is also the qualified authority to issue Islamic fatwas.²⁵⁸

The Board of Senior Ulema is the specified body when it comes to researching and reaching an opinion from Islamic principles for a particular issue set forth by the Saudi authorities. It should therefore be given the responsibility of analysing the articles of the UNCRC and researching any issues of uncertainty or articles where the compatibility with Islamic jurisprudence is unclear. In turn, the UNCRC would be perceived as a more powerful convention within the Saudi law, having been islamically proven, i.e. approved by the Board of Senior Ulema. The UNCRC therefore will be endeared, accepted and used as an Islamic approach to children's rights. This approach is better than entering a general reservation on the convention as a whole thus opening the door for challenges against the convention, whenever enforcement is attempted. If the UNCRC gets approved by the Board of Senior Ulema it can then be reproduced as a Royal Decree and will then be a part of the Saudi law. Throughout this research, by looking into depth into some of the conflicts the UNCRC might have with the Saudi Islamic Law, we are also bridging the gaps in research and in the possibility of re-considering the general reservations Saudi has applied on the UNCRC. In order to reach for the reservations to be re-considered or for the convention to be islamically proven Alderbi suggests

²⁵⁸ A fatwā is an Islamic legal pronouncement, issued by an expert in religious law (mufti), pertaining to a specific issue, usually at the request of an individual or judge to resolve an issue where Islamic jurisprudence (fiqh), is unclear. Typically, such uncertainty arises as Muslim society works to address new international conventions and modern issues – issues that develop as technology and society advance. Article (45) of the Saudi Basic Law of Governance states that: “The source for fatwa (religious legal opinion) in the Kingdom of Saudi Arabia shall be the Book of God and the Sunnah of his Messenger (PBUH). The Law shall set forth the hierarchy and jurisdiction of the Board of Senior Ulema and the Department of Religious Research and Fatwa”.

two methods that can verify the compatibility of the articles of the Convention with Islamic principles:

- 1- Presenting all articles of the Convention, or only those that might present a conflict with Islamic principles, to the Board of Senior Ulema in Saudi Arabia to check their status and position with the Islamic principles.
- 2- Isolating all articles that might be in contradiction with Islamic principles, and compiling specific and direct questions that will then be presented to the Board of Senior Ulema for research and evaluation. This might be a simpler and more practical option to avoid the complications that may arise from evaluating the articles in their crude form.²⁵⁹

Furthermore, there are some children's rights enshrined in the UNCRC that are not governed by clear regulations derived from Saudi law, but are rather addressed through basic Islamic Shari'ah law. These rights include adoption, child custody and fostering, issues of child punishment or punishment of an abuser if the perpetrator is a family member (e.g. his/her father). The Islamic position on these rights call for examining the position of the Saudi law in relation to provisions of the UNCRC, to test for compatibility with Islamic principles.²⁶⁰

Accepting reservations is a strategy that the UNCRC permits to encourage the biggest number of states possible to ratify the convention. Moreover, expressing reservations on some articles of the UNCRC can be seen as a

²⁵⁹ *Supra*, note. 255, p. 420.

²⁶⁰ *Ibid.*

natural, and expected, procedure dictated by the different cultural, social and ideological characteristics of member states. That said, reservations ought to be very specific, illustrated in adequate way to show the exact limit of the reservation and elucidate the origin of contradiction between Islamic principles and the UNCRC Article, whether in part or in whole.

ii- UNCRC in the Saudi court of law

According to the general regulations on this matter, the UNCRC assumes precedence over any member state's law, allowing the judge, or more specifically compelling him or her, to assume the higher legal value of the UNCRC in comparison with the laws and regulations in Saudi law. However, Article (70) of the Saudi Basic Law of Governance states that: "laws, international treaties and agreements, and concessions shall be issued and amended by Royal Decrees". Thus, in order for the UNCRC to be effective in Saudi courts, it needs to be reproduced in the form of a royal decree.

However, to judge the laws and regulations of a state as having higher legal value over an international convention, even if it is a more recent document, is arbitrary. Moreover, as long as a member state does not officially withdraw from the Convention, it cannot abandon its legal duty by producing a new conflicting law, as noted in the Convention.

According to Article (27) of the Vienna Convention on the Laws of Treaties (1969), in cases where a conflict occurs between the UNCRC and a state's

legislation, the UNCRC precedes.²⁶¹ Also Article (26) of the same convention states that: “Every treaty in force is binding upon the parties to it and must be performed by them in good faith”.

The mechanism used to produce the UNCRC is completely different to those used to develop national laws and regulations, meaning that they cannot be equal in legal value in cases where they conflict one another. Thus the only conclusion one can extract from Article (70) of the Saudi Basic Law of Governance is that the UNCRC will have no effect on any national matter unless it is reproduced as a royal decree. This procedure is taken by many other states, even some who clearly appraise the value of the UNCRC to be above national laws and regulations.

Article 81 of the Saudi Basic Law of Governance backs up this point when it states that: “The enforcement of this Law shall not prejudice whatever treaties and agreements with states and international organizations and agencies to which the Kingdom of Saudi Arabia is committed”. Thus if the Saudi Basic Law of Governance, which is considered one of the most influential early constitutional systems, clearly states this Article, then, a fortiori the UNCRC shall generally precede over any other laws and regulations lower in legal value than that of the Saudi Basic Law of Governance.

As a result of this, a judge in court can dismiss any law that conflicts with the UNCRC. However, his or her authority does not go beyond this as he or she cannot apply the provisions of the UNCRC in the manner the state is able to, without a royal decree. The articles of the UNCRC target member states and

²⁶¹ Article (27) of the Vienna Convention of the Laws of Treaties (1969) states that: “A party may not invoke the provisions of its internal law as justification for its failure to perform a treaty”.

compel them to take the necessary steps to put the provisions of the UNCRC into effect.²⁶² The judge therefore can only dismiss the laws that conflict with the provisions of the UNCRC and look for an appropriate substitute.

All in all, it can be concluded that since Saudi Arabia has ratified the UNCRC under royal decree number (M/7) on 11/9/1995, the provisions of its articles are now effective in Saudi courts. But, can a judge, therefore, cite and base his or her opinion according to the articles of the UNCRC, if a breach on the provisions of the articles occurs?

iii- Measures taken to apply the provisions of the UNCRC in Saudi Arabia

There is considerable national interest in the Convention on the Rights of the Child. In order for the Convention to capture the attention and interest it requires, it has to be widely known, well-publicised and available in different formats, easily accessible by different segments of society. This has been accomplished by taking special measures and procedures to make the principles of the Convention and the provisions of its articles widely known in

²⁶² Article 4 of the UNCRC states that: "States Parties shall undertake all appropriate legislative, administrative, and other measures for the implementation of the rights recognized in the present Convention. With regard to economic, social and cultural rights, States Parties shall undertake such measures to the maximum extent of their available resources and, where needed, within the framework of international co-operation". So, the articles of the convention are clearly addressed to the state members, and not the court judges, who should take any measure to make the rights of the UNCRC applicable.

accordance with Article (42) of the Convention.²⁶³ Some of the most prominent measures taken are as follows:²⁶⁴

- 1- The Kingdom's accession to the Convention on the Rights of the Child was announced across all major media channels.
- 2- The body of the text of the Convention was circulated among all government bodies and private organizations concerned with children's rights in order to boost their child-welfare programmes, monitor indicators of their achievements, and restructure programmes to take account of the Convention, thus making it easier to evaluate their success in achieving targets in the educational, cultural, health, social and security domains. Each organization has distributed the text of the Convention among all the persons and organizations with which it has ties. The text of the Convention was distributed to the relevant departments of the Ministry of the Interior pursuant to circular No. 35/90407, issued by His Royal Highness the Minister for Internal Affairs on 27/11 A.H. 1416 (1996).
- 3- A workshop was held in collaboration with the UNICEF to discuss the articles of the Convention and their provisions, in addition to the procedure of writing up a periodic report to submit to the CRC.

²⁶³ Article (42) of the UNCRC states that: "States Parties undertake to make the principles and provisions of the Convention widely known, by appropriate and active means, to adults and children alike".

²⁶⁴ See:

- UN Committee on the Rights of the Child: State Party Report: Saudi Arabia, pg.20 onwards.
- UN Committee on the Rights of the Child: Second Periodic Reports of States Parties due in 2003: Saudi Arabia, pg.10-11.

- 4- Saudi Arabia contributed (\$50,000) to the budget of the plan of action to strengthen the implementation of the UNCRC, as supervised by the UN. It also hosted one of the training courses, organised by the UN.
- 5- Children's events were held throughout the Kingdom and consisted of students enjoying sports, cultural and theatrical activities and scouting activities in schools. These events were used to disseminate knowledge about the Convention. Moreover, a number of literary and cultural clubs have been set up to discuss, promote awareness of, and encourage children to write about the Convention with a view to creating a cultural climate which encourages all social groups to cooperate in the implementation of the Convention.
- 6- Local newspapers publish special children's pages which deal with children's rights and accept contributions from children, mothers, intellectuals and child-welfare professionals.
- 7- A television programme in the form of a debate between guest experts and specialists in children's affairs has been created to encourage discussion around the Convention.
- 8- A programme has been set up to raise awareness of the adverse effects of child abuse and is now being introduced in governmental and private further education colleges with a view to expanding across all academic stages.
- 9- The Saudi National Commission for Child Welfare, which is part of the Ministry of Education, is responsible for following up on the implementation of, and raising awareness about the Convention on the

Rights of the Child. The Commission has designed programmes and activities to help make the Convention widely known, in particular:

- a. It has organized a variety of cultural events, such as the Children's Cultural Fair, which was launched in 1421 AH (2000) and repeated every two years. This event was used to disseminate knowledge about the Convention. Information and leaflets were handed out to visitors at the Fair and the programme was designed to give children complete freedom to choose the activities that they wanted to do;
- b. The text of the Convention on the Rights of the Child has been reproduced on large posters which have been distributed to all schools in the Kingdom, as well as to primary health-care centres and all child welfare organizations;
- c. Seminars on the topics covered by the Convention on the Rights of the Child have been run for groups which work with children. A number of working papers and studies have been produced on children's issues, including the subject of child abuse.
 - i. A seminar on child abuse was held at the Armed Forces Hospital in Riyadh on 14/7/1422 AH (2001).
 - ii. A seminar on the diagnosis and management of child abuse in the Kingdom was held at the King Faisal Hospital for Specialized Medicine and the Riyadh Research Centre from 22 to 23/11 1422 AH (2002).
 - iii. A seminar entitled "Child abuse and how to prevent it" was held on 3/1424 AH (2003), in order to develop a

mechanism for the eradication of this phenomenon. The session was attended by a number of Saudi experts from governmental and private organizations (educational, medical, psychological and social), together with representatives from the UNICEF Bureau in Riyadh and the Arab Gulf Programme for United Nations Development Organizations.

Broadly speaking, these measures have undoubtedly led to knowledge creation, understanding and respect for children's rights across the Saudi society. This process is changing the image and perception of children's rights and is giving children a higher value in society with a new vision of them as "rights holders".

b- The Optional Protocols and Saudi Arabia's Position

i-The optional protocol on the sale of children, child prostitution and child pornography

Saudi Arabia adopted this optional protocol on 18 August 2010 under royal decree number (M/38).²⁶⁵ The Protocol focuses on protecting the child from the widespread phenomenon of sexual and economic exploitation children may suffer, to the extent of slavery. This Protocol also deals with the right of

²⁶⁵ See:

Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography. [Accessed 18 April 2018].

http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-11-c&chapter=4&lang=en

protection from any action that might be of danger to the child, or that might be an obstacle to their education, physical, social, spiritual or mental health. Saudi Arabia in no way tolerates the sexual exploitation and abuse of children, and punishes those criminals according to Islamic principles. Saudi Arabia also protects children by making them aware of these issues and guiding them through school programs, media, extra-curricular activities.²⁶⁶ Moreover, Saudi Arabia also plans on producing a project that aims to protect children from any form of sexual and psychological harm that a child may be the subject of in his or her direct environment. This project will provide all of the required mechanisms needed to fulfil the aim of protecting the child in the Saudi society, reflecting the concern around and importance of child protection in Saudi law and its compatibility with international standards.

ii-The optional protocol on the involvement of children in armed conflicts

Saudi Arabia signed onto this optional protocol on 10 June 2011 under royal decree number (M/39).²⁶⁷ This protocol aims to exclude children and youth from any armed conflict in order to protect their futures. This protocol also urges member states to take all necessary measures to ensure that no one

²⁶⁶ UN Committee on the Rights of the Child: Second Periodic Reports of States Parties due in 2003: Saudi Arabia. P.68.

²⁶⁷ See:

Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in armed Conflict. [Accessed 18 April 2018].
http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-11-c&chapter=4&lang=en

under the age of eighteen joins the military or is exposed directly to any conflict front.

In Saudi law it is not acceptable for anyone under the age of eighteen to join the military. Moreover, military service in Saudi Arabia is not compulsory.²⁶⁸

Raising the minimum age of army recruitment to eighteen years of age is a step that shows the humanitarian orientation and intention of the Kingdom to protect children from conflict participation and its unintended consequences.

Adopting those two optional protocols shows how much Saudi Arabia values children's rights and the manner in which it gives the topic much needed devotion and attention. Saudi Arabia also appreciates the wisdom and flexible interpretation of the wording of the protocols, to ensure the buy-in from the majority of the states, especially since it guarantees the minimum standard of children's rights.²⁶⁹

iii-The optional protocol on the communications procedure

This protocol acts as an important element in providing justice for children in the national and international spheres. It also strengthens the mechanisms that help to ensure that the UNCRC provisions and its optional protocols are

²⁶⁸ UN Committee on the Rights of the Child: Second Periodic Reports of States Parties due in 2003: Saudi Arabia. Pg.66.

²⁶⁹ A point worth mentioning is that Saudi did not put forward any reservations on the articles or even on the document of the two optional protocols as a whole. Saudi however put a declaration on the time of ratification on the "Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in armed Conflict" stating that:

- 1- The laws and regulations of the Saudi law does not contain any statement that allows in any way compulsory military service.
- 2- Joining the military service is limited to formal employment (voluntary). The laws and regulations states that this person's age needs to be above 17.

followed. Optional protocols include; the optional protocol on the sale of children, child prostitution and child pornography, and the optional protocol on the involvement of children in armed conflicts.

For the rights to be fulfilled, all children must always have access to a justice system that is able to protect their rights and address the violations that might face them on the national level. Where the national system fails to protect a child or his/her right, it is also important for the child to have access to international justice systems.

Thus, it is critical for Saudi Arabia to set an example and take the lead in ratifying this protocol, proving its continuous commitment to respect, protection of and adherence to the UNCRC. Furthermore, ratifying this protocol will also build on the mechanisms taken to fulfil the provisions of the UNCRC and also reiterate the commitment taken by Saudi Arabia when it decided to become a member state of both the UNCRC and its two optional protocols.

Since this protocol is deemed necessary on the international level, it is advised that Saudi Arabia puts its efforts into creating an applicable national procedure that will give children access to a national justice system in cases where rights are not properly protected or have been violated. This has to be done with accordance to the “Paris principles”,²⁷⁰ where the mechanism governing communication standards has to be independent and have the ability to strengthen and protect children’s rights. It has to be able to receive complaints about children’s rights violations, inspect these violations and take the necessary action.

²⁷⁰ Adopted by General Assembly resolution 48/134 of 20 December 1993. “Principles relating to the Status of National Institutions” known as The Paris Principles. See UN document: A/RES/48/134.

Among the duties that these national institutions should aim to cover, in line with the “Paris Principles”, is to ensure compatibility between their national laws and regulations and the international documents on children’s rights that the state is a member of. National institutions must have an effective role in protecting those rights and work on applying them effectively. They must also have the authority to receive complaints and deal with violations presented to them whether by children themselves or their representatives or any third parties, such as NGOs or any other representative organizations.²⁷¹

Saudi’s ratification of the third protocol on communication procedures and its willingness to found national children rights organizations to set and appraise communication standards, in line with the Paris Principles, acts as a bond between the UNCRC provisions and their enforcement at a national level. Ratification of this optional protocol will bridge the gap between “theory and practice”, between international standards and national laws, between the international society and national needs, between the government and the civil society. These organizations will be part of the structure involved in children’s rights, beyond being an independent justice authority and an effective administration for children’s rights protection from any violations.

All in all, one can say that providing a child with access to international justice systems as an outcome of the third optional protocol, can in fact encourage further development of national measures and procedures that will in part register and assess application of the UNCRC on a national level.

²⁷¹ See: “Principles relating to the Status of National Institutions” known as The Paris Principles. Check UN document: A/RES/48/134.

Traces of the Main Principles of the UNCRC in Saudi Law

a- Non-Discrimination Principle in Saudi Law

This principle forms the foundation of Saudi Law. When presenting the Saudi Basic Law of Governance, the late King Fahd, stated that: “There is no difference between the ruler and the ruled. Everyone is equal before God’s law and everyone has an equal love for the nation and concern for its safety, unity, prestige and advancement. The ruler has rights and obligations and the relationship between the ruler and the ruled is governed first and last by God’s law.”²⁷² The Basic Law clarifies this principle in detail across a number of articles. Article 8 of the Basic Law of Governance states that: “The system of Government in the Kingdom of Saudi Arabia is based on justice, shura (consultation) and equality in accordance with Islamic law.” Article 47 of the same law recognizes that: “Citizens and foreign residents in the Kingdom of Saudi Arabia have an equal right to seek judicial remedies.”

Adhering to this principle, and in accordance with the provision of Article 2 of the UNCRC that obliges member states to take appropriate measures to eliminate discrimination between children for any reason, Saudi Arabia takes special care to provide for and sponsor all children without discrimination. Saudi Arabia puts an even greater effort to take care of children with difficult circumstances, which may need alternative care, foster homes or parental guidance; this may include children of poor families, children born out of wedlock, children born to unknown parents, children from war zone states, children who are deprived of a family environment because of their parents’

²⁷² UN Committee on the Rights of the Child: Second Periodic Reports of States Parties due in 2003: Saudi Arabia. Pg.18.

divorce, their parents' death or the death of any other member of the family, the illness of their parents or caring family member, or any other accepted reason. Care and support is provided to these groups of children until they are adults and deemed to take care of themselves. Care and support is provided in a manner of ways, but most predominantly on behalf of fostering families, alternative families and nursing divisions of organizations, supported by the government.

Moreover, Saudi Arabia assigns an annual budget to support programs that care for orphans and those in similar circumstances, in addition to rehabilitation programs that prepare children with needs to adjust socially, professionally, physically and to their family environments. Additionally, the state has a duty of care for and to provide for children in a way that suits their health and social well-being, in spite of their gender and their race. This is provided for by the Ministry of Labour and Social Affairs and its extended organizations across Saudi Arabia to ensure for children the necessary social, health, psychological, and professional care, and facilitate the necessary family life by providing alternative care and a monthly income for those children and their families. This grants them leisure time and opportunities to develop hobbies and professions for them to become effective members of society.²⁷³ As proof of Saudi Arabia's commitment to this work stream, the Kingdom has ratified two additional conventions that deal with issues of discrimination:

²⁷³ A.Al-Wazzan. *Mawsu'at Huquq al-Insan fi al-Islam wa Simataha fi al-Mamlakah al 'Arabiyyah al-Sa'udiyyah*, 1st edition, (Beirut, Lebanon: Muassasat al-Risalah lil-Tiba'a wal-Nashr, 2005) pp.104-105.

- 1- International Convention on the Elimination of All Forms of Racial Discrimination, adopted and opened for signature and ratification by General Assembly resolution 2106 (XX) of 21 December 1965 entry into force 4 January 1969, in accordance with Article 19.²⁷⁴
- 2- Convention on the Elimination of All Forms of Discrimination against Women, adopted and opened for signature, ratification and accession by General Assembly resolution 34/180 of 18 December 1979 entry into force 3 September 1981, in accordance with Article 27(1).²⁷⁵

In the same context, moving towards a framework of laws and regulations that is non-discriminatory in relation to children, in March 2013, Article (67) of the Law of Civil Affairs²⁷⁶ was modified to state that “all Saudi citizens over fifteen years of age must enquire with one of the Civil Affairs Offices to obtain their personal national ID, and making the obtaining of a national ID for individuals between the ages of ten and fifteen optional, granted their guardian approves. Issuing the ID is according to Civil Record registration.”

This modification challenges the previous gender bias in Article (67) of the Civil Affairs System, which used to state that: “Saudi *Males* above fifteen years of age must enquire at one of the Civil Affairs Offices to obtain their personal

²⁷⁴ This was produced under royal decree number (M/12) on 19 August 1997 and it was approved by the Ministry of Interior Affairs and circulated on 30 September 1997.

²⁷⁵ This was produced under royal decree number (M/25) on 28 August 2000 and it was ratified on 7 September 2000. Check UN Committee on the Rights of the Child: Second Periodic Reports of States Parties due in 2003: Saudi Arabia. p.19.

²⁷⁶ Law of Civil Affairs, issued by Royal Decree No. M/7, dated 20/04/1407 AH (December 1986).

ID, and obtaining a personal ID for females and individuals between the ages of ten and fifteen is optional if the Guardian approves. Issuing the ID is according to Civil Record registration.”²⁷⁷ Following this modification, the child (whether male or female) is obligated to apply for a national ID card once they reach the legal age, and females no longer require their guardians’ approval.²⁷⁸

This example reiterates that Saudi Arabia works continuously on protecting human rights and with the interests of the society in a way that suits the development of the Saudi society and its increasing needs and wants.²⁷⁹

To apply the principle of non-discrimination properly, any law, regulation, system, or covenant that gives the boy child more rights than the girl child ought to be disregarded, unless otherwise guided by Islamic Shari’ah.²⁸⁰

²⁷⁷ A point worth mentioning is that the previous provision of article (68) of the Law of Civil Affairs, not only conflicts with the UNCRC’s main principle of non-discrimination, it also conflicts with the UNCRC’s article 8-1: “States Parties undertake to respect the right of the child to preserve his or her identity, including nationality, name and family relations as recognized by law without unlawful interference” that does not differentiate between the boy child and the girl child.

²⁷⁸ With this modification, Saudi fixed the observation that was stated by the Committee on Elimination of all Forms of Discrimination on Saudi’s report on March 2003 about the discrimination against the girl child. Check: Concluding Observations of the Committee on the Elimination of Racial Discrimination (CERD): Saudi Arabia, United Nations, March 2003. CERD/C/62/CO/8.

²⁷⁹ When the Law of Civil Affairs was issued 30 years ago the need for female national ID cards was not significant. The status of women has changed a lot since then. 30 years ago women were defined and introduced by a male relative with a national ID of his own. Whereas now, the situation is different and women have far more issues that marriage and inheritance. Modern issues include travel, scholarships, residence, employment, and many others. Thus, what was considered in the past practical, i.e. being introduced by a male relative, is seen now as a burden. Thus making it compulsory for women to produce a national ID card protects her rights and facilitate her tasks. When the need for national ID cards for women has increased it became necessary for the text of article (67) to be modified.

²⁸⁰ One cannot say that Islam applies discrimination against the girl child in general. There is issues and differences – not discrimination and bias – between boys and girls. Some issues that Islam differentiate in between a boy child and a girl child is inheritance; a boy’s share in an inheritance is bigger than the girl’s in some cases. “Allah instructs you concerning your children: for the male, what is equal to the share of two females.” (Quran 4:11) This can be traced back to other Islamic regulations that puts more financial duties over men than women. So Islam regulations and laws in general put a

Besides the laws and regulations, measures need to be taken across all levels, including the administrative level to ensure that discrimination does not occur systematically. Measures to ensure this reach to all organizations that deal with the child and his or her rights ought to be put in place.²⁸¹

b. The Child's Best Interest in Saudi Law

Surveying Saudi laws and regulations, the best interest of the child is given the deserved attention and consideration. This can be seen in many areas of Saudi law, for example:

- Pre-birth care: The child's best interest is taken into consideration even before birth, by making it the parents' responsibility to choose a suitable spouse. Moreover, a duty is placed on parents for weaning, nursing and providing for the baby. Additionally, health regulations apply to all Saudi nationals before marriage under royal decree number 5 on 18 March 2002.²⁸² These regulations will decrease the probability of genetic diseases and protect the child from genetic illnesses. It is noticeable that pre-birth

bigger burden on men when it comes to finances like for example it is compulsory for a man to provide for his wife (or divorcee) for two years if she is breastfeeding their children. This does not lessen the value of women in Islamic law or discriminates against her in any way, as she is still entitled to her share of the inheritance without any responsibility or burden to provide to anyone.

²⁸¹ The articles of the UNCRC oblige member states to take the necessary measures to apply the provisions of the articles. It however, does not state and detail the nature of the measures that need to be taken leaving it on the member states to decide on the most suitable measures for their situations. Article 4 states that: "States Parties shall undertake all appropriate legislative, administrative, and other measures for the implementation of the rights recognized in the present Convention. With regard to economic, social and cultural rights, States Parties shall undertake such measures to the maximum extent of their available resources and, where needed, within the framework of international co-operation."

²⁸² UN Committee on the Rights of the Child: Second Periodic Reports of States Parties due in 2003: Saudi Arabia. Pg.20.

rights were not given much attention in the UNCRC - legal rights before birth in the introduction and pre-natal care in Article 24 are mentioned only briefly.

- Social Status system:²⁸³ Article (1) of this system defines in detail the persons who are entitled to allowances according to the regulations. A category of those deserving of an allowance are orphans (including children born to unknown parents). This Article also sets the age limit of “orphans” at eighteen years of age, “Orphan: Any child under the age of eighteen of a deceased father and with no financially-capable supporter or sufficient means for living, including minors of unknown fathers or of absent father whose whereabouts is unknown for more than six months”.²⁸⁴ Thus it can be concluded that the child has a direct right to social security regardless of their parents’ status, since the law was addressed to the child in the first place. In broad terms, a range of financial and care benefits directly target the child, until he or she reaches an age where they can be independent.

- Juvenile laws: The juvenile laws in force in the Kingdom of Saudi Arabia take into account the best interests of the child. They consider the child’s social situation, and protect children from exploitation and danger. They contain provisions for the establishment of juvenile courts presided over by

²⁸³ The new Social Security Law was produced under royal decree number (M/45) on 1 August 2006.

²⁸⁴ See Article (1) – section 5 of the Saudi Social Security Law.

special judges to hear cases, administer justice and fully safeguard children's rights in accordance with the Juvenile Justice Act of A.H. 1395 (1975). The Act provides that judicial proceedings against children must be conducted in an atmosphere that takes account of the child's feelings and is far removed from the atmosphere prevailing in adult courts of law. Children's trials must be concluded expeditiously after their social situation has been thoroughly investigated and all other possible reform measures have been exhausted. Such proceedings must be held in camera and may not be made public.²⁸⁵

- Labour laws: Article 164 of the Labour Law (2005) states that: "Minors may not be made to perform actual work for more than six hours a day for all months except for the month of Ramadhan when the actual working hours shall not exceed four hours". Article 161 of the same law prevents minors from working "in hazardous jobs or harmful industries or in occupations or jobs that may endanger their health, safety or morals due to the nature or conditions..."²⁸⁶

However, it is noted that the Civil Status Law of Saudi Arabia contradicts with Article 3 of the UNCRC that deals with the best interests of the child. Though the Civil Status Law includes a whole chapter on marriage and divorce

²⁸⁵ The Act promulgated in A.H. 1389 (1969) encourages the juvenile courts to settle cases without placing children in supervised facilities and to limit penalties to admonishment, guidance, counselling or a reprimand, coupled with delivery into the custody of the child's guardian for on-going supervision and correction.

²⁸⁶ See Articles (161) and (164) of the Labour Law A.H. 1426 (2005).

(chapter 6) it does not address the issue of child marriages and the acceptable ages to enter the marriage union. This issue is entirely left to judges' discretion, thus denying the child protection in cases where the court ruling allows their marriage before the age of eighteen. This is an explicit discrepancy in relation to Article 3 of the best interests of the child.

The National Society of Human Rights observed some cases where girls under the age of eighteen were married due to the decisions made by their fathers or legal guardians, rather than personal choice, making it even more crucial for a legal age for marriage to be introduced and applied in the court room setting.²⁸⁷ Furthermore, such marriages have enormous negative effects on underage brides, in physical, emotional, psychological and intellectual terms. Getting married at such an early age deprives a girl of her right to choose who to marry and when to marry. Pregnancy at an early age exposes young girls to serious physical threats. According to UNICEF, early pregnancy related deaths is the international leading cause of deaths in girls aged fifteen to nineteen, an estimated 70,000 deaths per year.²⁸⁸ Moreover, according to UN statistics, early marriages negatively affect the education of young girls, limiting their social interaction and movement, control over their resources and their power in their new homes, putting them at a greater risk of domestic violence.²⁸⁹

²⁸⁷ Second Report on The Status of Human Rights in the Kingdom of Saudi Arabia (2010G/1431H) p. 54.

²⁸⁸ The State of the World's Children 2009. UNICEF. p.14.

²⁸⁹ see: United Nations Marks First International Day of the Girl Child with a Call to End Child Marriage. UNICEF. [Accessed 18 April 2018]. http://www.unicef.org/protection/57929_66167.html

Beyond being contrary to Article (3) of the UNCRC, child marriage also violates the provisions of Article (16) of the Convention on the Elimination of All Forms of Discrimination Against Women (1979), ratified by Saudi Arabia. Article (16) states that: “States Parties shall take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations and in particular shall ensure, on a basis of equality of men and women:... (b) The same right freely to choose a spouse and to enter into marriage only with their free and full consent.”²⁹⁰ Section (2) of the same Article states that: “The betrothal and the marriage of a child shall have no legal effect, and all necessary action, including legislation, shall be taken to specify a minimum age for marriage and to make the registration of marriages in an official registry compulsory”.²⁹¹

Despite this, there is still no determined minimum age of marriage in Saudi Arabia. Some governmental administrations such as the Ministry of Justice and the national Society of Human Rights have voiced their disapproval and taken measures such as mentioning the age of women in marriage contracts

²⁹⁰ It is important to point out that Islamic Shari’ah has given both men and women the right to choose when and to whom one will get married. It also calls to removing any obstacles that might stand in front of one’s choice of marriage. In women cases, Shari’ah has forbidden fathers or legal guardians to marry a woman off without her consent, moreover, if a young girl under 18 was married off without her consent she can get a divorce once she is of legal age on the basis of a “forced marriage”. The Prophet (PBUH) said: “The previously-married woman has more entitlement to herself than her guardian, and the virgin should be asked for permission (concerning her marriage).” If the father or a guardian married a girl or woman off without her permission to someone she later didn’t like, then she may ask for annulment by the court. Al-Bukhari narrated that Khansa’ bint Khidhaam complained to the Prophet that when she got divorced her father married her off to another man right away without her consent. The Prophet then annulled the marriage.

²⁹¹ See: The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) (1979).

as a form of deterrence. This, however, is not a sufficient deterrent to end this practice. Thus, the National Society of Human Rights recommends assigning a minimum age for marriage and barring all marriage officials from approving a marriage contract if either the man or woman are below eighteen years of age.²⁹²

After this discussion, the optimal solution for the early marriage issue in Saudi Arabia lies in issuing a royal decree or a law that forbids marriage between two people, at least one of whom is below eighteen years of age. This royal decree or law has to clearly set the punishment for whoever defies this law and allows or indeed forces a marriage of such nature to occur.²⁹³ The objective of such a law is not to close the gates of early marriage entirely nor leave them wide open, but to put an end to associated practices such as the selling of young brides. This new law or royal decree ought to clearly define that the age of the bride at the time of signing of the marriage contract has to at least be eighteen, unless there is an urgent necessity for the marriage to

²⁹² Second Report on the Status of Human Rights in the Kingdom of Saudi Arabia (1429) states that: "The Society has observed some cases where very young girls have been given in marriage by their parents or guardians, which calls for setting up a minimum age for marriage that commits the marriage official not to draft any marriage contract as long as the two partners have not reached a certain age. In other cases, the consent of a judge should be sought, linking guardianship with legal competence in other cases through the determination of the legal age for both sexes in a text of law that would settle this problem. Owing to lack of civic codification of transactions, an alternative would be a text in the Code of Judicial Procedures that determines the legal age at eighteen for males and females to be able to enter into transactions." p.52.

²⁹³ The Ministry of Justice in Saudi Arabia has announced that it is under the process of issuing a law that will set a minimum age of marriage for Saudi citizens in the near future. This is still under review and is being held under further study and discussion with governmental personnel to discuss the pros and cons on little girl's health, mentality and society. It is also important to discuss how a new law such as this will be accepted in Saudi courts and Saudi society. The details of this law are still kept undisclosed until it has been formally produced by the ministry. The ministry reassured that this law is completely compatible with Islamic teachings. See Newspaper article, Almadinah newspaper 18 April 2012 no.17892, Majed Assiri and the monthly journal produced by NSHR April 2013, Riyadh, year 7, 86, p.7.

take place before that age. In the latter case, a judge will have to grant their permission, having previously assessed the case and made sure that getting married before the age of eighteen in a particular case will indeed be in the child's best interests.

In order for the provisions of Article 3 of the child's best interests to be carried out, some guarantees are required to ensure the best interests are taken into account. Those include law-making and law application that will affect the child.

c- The Rights of Life, Survival and Development in Saudi Laws

Saudi Arabia guarantees for *all* children within its borders - Muslim, non-Muslim, citizen or not - the right of life, survival and development in accordance with Article 6 of the UNCRC. This can be clearly seen in practice of certain laws such as:

Abortion: Saudi Arabia has made abortion illegal not only from an Islamic point of view, but also from a humane perspective. A verse in the Quran reads:

*“Those will have lost who killed their children in foolishness without knowledge and prohibited what Allah had provided for them, inventing untruth about Allah. They have gone astray and were not [rightly] guided”.*²⁹⁴

²⁹⁴ Quran [6:140].

The Prophet (PBUH) denounced abortion and considered it a major sin. It has been reported that Abdullah bin Massoud, a companion of the Prophet (PBUH) narrated: "The seed of one of you remains in the womb of the mother for forty days in the form of a Nutfa. Then it remains like a clot for another forty days, and then for a same number of days like a lump of flesh" (when the formation of the limbs and the growth of the bones begin).²⁹⁵ The ruling states that abortion after the entry of the soul into the foetus which (as aforementioned) is 120 days, is totally impermissible and equivalent to murder according to Islamic Law.

Adhering to these Islamic principles, Saudi Arabia has the practice of a "diyya" (financial compensation paid to families of victims of murder, bodily harm or property damage) in cases where a foetus was killed as a result of harm to the mother – the payment of which endorses the value of a foetus' life. In addition to this, Saudi Arabia has also developed laws and regulations regarding the prevention of abortion, which is equivalent to murder unless it is done to preserve the life of the mother, whether "lawfully, mentally, or physically" as discussed in the Law of Practicing Healthcare Professions.²⁹⁶ Article 22 of this Law states that: "A physician may not perform an abortion on a pregnant woman unless necessary for saving her life. However, abortion may be performed if pregnancy has not completed four months and conclusively established that the continuation of such pregnancy will have serious

²⁹⁵ Hadith: Creation in the Womb. [Accessed 29 April 2018].
<https://honeyfortheheart.wordpress.com/40-hadith/hadith-04-creation-in-the-womb/>

²⁹⁶ Royal Decree number M/59 produced on 6 December 2005.

consequences on the mother’s health, based on a decision by a medical committee formed in accordance with terms and conditions specified in the Implementing Regulations of this Law”. Whoever opposes this will be punished in accordance with Article 28 of this law.²⁹⁷ This case demonstrates that Saudi regulations place great value on children’s lives even before they are born; whereas pre-birth rights are not afforded the same consideration in the provisions of the UNCRC articles.²⁹⁸

Education: Saudi Arabia has put a lot of emphasis on education and making it accessible for all children. This is reflected in the percentage of the amount of the budget allocated to the sphere of education, which reached 8.7% of Saudi Arabia’s GDP in 2009. This has resulted in a major increase in the number of children enrolled into primary education; 96.6% in 2010 in comparison to 76.8% of children in 1990.²⁹⁹

Enrolment in Primary Education from 1990 to 2010

Year	1990	2005	2006	2007	2008	2009	2010

²⁹⁷ Article 28 states that: “Without prejudice to any severer punishment provided for in other laws, a person committing any of the following shall be subject to imprisonment for period not exceeding six months and a fine not exceeding one hundred thousand riyals, or either punishment: 1-6,7- Violating provisions of Articles 7(b), 9(a) and (f), 11, 14, 19, 20, 22, 23, 24, 27(3) of this law. 8-...).

²⁹⁸ Pre-birth rights were not simply overlooked during the drafting of the UNCRC. It was thoroughly discussed but was eventually left out. It might be because otherwise, including pre-birth rights would affect the abortion laws of a state, making it harder for states to ratify the convention. Thus, leaving it ambiguous as to when exactly children’s rights start makes the states’ abortion laws intact and makes the states decide on when are rights assigned to a child, whether before birth or from the moment a child is born.

²⁹⁹ Millennium Development Goals 2011, Kingdom of Saudi Arabia, Ministry of Development and Planning for the United Nations Development Program, 2011 p.43-44.

Net enrolment ratio in primary education (%)	76.8%	93.9%	94%	94.2%	94.4%	95.3%	96.6%
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Table 1

Health: Saudi Arabia provides free of charge health services to all of its citizens. Article 31 of the Basic Law of Government states that: “The State shall look after public health and provide health care for every citizen”. Health programs targeting mothers and children have contributed to improving health services and health awareness in mothers, resulting in the decrease of mortality rates of children under the age of five.³⁰⁰

Child Mortality Rate

Years	1990	2005	2006	2007	2008	2009	2010
Under-five mortality rate (per thousand live births)	44.0%	22.3%	21.7%	21.1%	20.6%	20.0%	19.5%

³⁰⁰ *Ibid.* p.66.

Table 2

A conclusion drawn from the previous section indicates that Saudi Arabia realizes the importance of children's right to life, survival and development and has therefore committed itself directly and unconditionally to finding and providing all possible opportunities that can improve the quality of a child's life. This includes making its laws and regulations compatible with the provisions of Article 6 of the UNCRC.

d- Respecting the Children's Right to Express Views in Saudi Law

In areas where a child's life is affected directly, the child's views are taken into consideration and respected in accordance to his/her age and level of development. Saudi law allows a child to express themselves freely through participation in TV programs, radio and social media channels, and publication in newspapers, as long as these acts do not result in inhumane treatment or disrespect towards others.³⁰¹ Furthermore, Saudi Arabia has guaranteed for children to be heard in political environments across both private and public platforms. For example in a UN conference in 1990, attended by many world leaders and presidents, a Saudi child presented a speech through a Saudi local television channel that is aired internationally, titled: "The Children's Message to the World."³⁰²

³⁰¹ Second Report on the Status of Human Rights in the Kingdom of Saudi Arabia submitted to the UNCRC Committee in accordance with its Article no. 44. 2010. pp.51-52.

³⁰² *Supra*, note 272, p.109.

Besides, children have the right and ought to be encouraged to participate in scientific research that might affect children's' lives. Saudi authorities have facilitated a plenitude of cultural activity, theatrical plays, poetry, speech giving and storytelling events, during which children can express their views. Local newspapers and magazines also provide special pages for children to express their views and introduce or discuss topics that might be of interest to other children (and adults).³⁰³

The second report submitted by Saudi Arabia to the UNCRC committee has shown how children are given the choice to stay or leave an alternative family they have been placed with. In different social settings, children are given a voice and are expected to participate in demanding their rights and planning their own personalised arrangements.³⁰⁴

On the other hand, when it comes to children in judicial proceedings, we find that in court proceedings and representation, a child is not necessarily included or consulted even if the issues are directly related to him/her;³⁰⁵ namely in the case of a parents' divorce, child care arrangements, and domestic, physical or psychological violence cases. These cases are left completely up to the judges' evaluation and assessment.³⁰⁶ Not having a

³⁰³ First Report on the Status of Human Rights in the Kingdom of Saudi Arabia submitted to the UNCRC Committee in accordance with its Article no.44. 2010. p.66.

³⁰⁴ Second Report on the Status of Human Rights in the Kingdom of Saudi Arabia submitted to the UNCRC Committee in accordance with its Article no. 44. 2010. p.52.

³⁰⁵ see Royal Decree number M/21 on 19 August 2000 and Royal Decree number M/39 on 16 October 2001.

³⁰⁶ Upon analysis, this matter is justified by the lack of a definite definition for "a child" in Saudi law. Furthermore, almost all laws regarding children are based on Shari'ah. However, Saudi, unlike any

statement regarding this issue is on its own a violation of the provisions of Article 12 (2) of the UNCRC. To make the law in Saudi Arabia more compatible with international standards, it may be beneficial to state directly in the Saudi law the right of the child to be heard and consulted in judicial proceedings that are explicitly related to his/her rights. This can be done by directly consulting a child or, in order to consider the child's well-being, a child can also be heard through counsellors, lawyers or other authorities judged competent to represent the child in court.³⁰⁷

Consequently, analysis of a case must not be focused solely upon the judge's evaluation of evidence. The child has a right to express his/her views in cases that affect their lives, as they have a right to be heard and for their views to be taken into consideration. Only then are the child's best interests met.

This was a general examination of the main principles of the UNCRC; non-discrimination, best interests of the child, right to life and survival, and the participation of children. A more detailed study of further articles and where they stand in relation to the Saudi law follows.

other Islamic country, adopts Shari'ah in an uncodified form. In Saudi, the Shari'ah has not been collected or restated to form a legal code but has been used in a raw, pure form as it was hundreds of years ago. As a result, judges have complete authority on evaluating cases and assessing children based on physical appearance to decide on a child's capability. This contracts international standards in defining who is a child. It also puts children in constant risk of their rights being violated in courts contracting thus Article 12 (2) of the UNCRC. This will be discussed in more details later in this research.

³⁰⁷ Second Report on the Status of Human Rights in the Kingdom of Saudi Arabia submitted to the UNCRC Committee in accordance with its Article no. 44. 2010. p.53.

Chapter 4

An In-depth Analytical Study of Children's Rights in Saudi Arabia

This chapter is an in-depth analytic study of children's rights in Saudi Arabia. It looks into the different articles of the UNCRC and examines the conformity and disparity of those articles of the UNCRC with the Saudi law. This chapter categorises the articles of the UNCRC into three sections depending on the provisions each article provides; namely addressing protection rights, participation rights and provision rights.

Protection Rights:

a- The Right to a Name, Immediate Registration after Birth and Maintaining an Identity

Article 7 (a) of the UNCRC states that "The child shall be registered immediately after birth and shall have the right from birth to a name..." and article 32 and 34 of the Saudi civil status law impose a duty of registering a child within 15 days of the day of birth. Article 32 states that "All births in the Kingdom and all Saudi births abroad shall be registered within the period specified in the law." Article 34 specifies the periods stating that "registering any birth shall be made to any civil status office on the form prepared for this purpose within fifteen days of the date of birth. This period shall be thirty days if the birth takes place at a place more than fifty kilometres away from any civil status department or office". Although this might appear as an infringement to Article 7 of the UNCRC that emphasizes the *immediate* registration after birth, it could be argued that giving a 15 and 30 days' period is for the geography

and distance to the closest office of civil status which in some rural areas of Saudi Arabia seems just reasonable. Moreover, in rare cases where the father and all male relatives are not around to register the birth, the mother, who until June 2018 was not permitted to drive according to Saudi laws, might need some time to arrange transportation.³⁰⁸ Thus it is not about laid back laws that do not conform to international children rights or that lessen the value of Article 7 of the UNCRC.³⁰⁹ This can be seen from Article 80 of the civil status law that states that a fine of not more than ten thousand Saudi Riyals shall be imposed on anyone who violates the provisions of Article 32.

Article 33 lists the people responsible for registering the birth of the newborn in the following order starting with 1) The father of the child if he was present in the country on the day of birth or if he appears during the registering period. If the father is not present the responsibility falls on 2) The next of kin to the child among male relatives who are at least seventeen years of age living with the mother of the child in the same household, then 3) The next of kin to the child among male relatives who are at least seventeen years of age not living with the mother of the child in the same household, then 4) The mayor of the neighbourhood of the chief of the clan, then 5) The administrative governor of

³⁰⁸ The laws on women driving has changed since October 2017. The ban on women driving will be lifted on mid-June 2018.

³⁰⁹ Article 44 of the Civil Status Law states that Directors of hospitals, dispensaries, health quarantines, prisons, owners of agencies where births may take place and every agency licensed to practice delivery like physicians and midwives shall keep regular books to register birth cases that may take place at their agencies or under their supervision to include the following data:

- a) Day, date, hour and place of birth,
- b) Sex of the child (male or female),
- c) Full names of parents, their nationality, religion, place of residence and professions.

At the end of each month, they should inform the pertinent civil status department with all births that took place at their institutions or under their supervision. This notification does not release the persons stated in Article 33 from the responsibility of notification and is not sufficient to enter the birth case in the relevant register.

the village or centre, and then 6) Any person or persons who are responsible under the executive regulations.

The responsibility for registering births follows the order stated above. The responsibility of a group no longer exists if the condition preceding in order is met.

When it comes to the right from birth to a name, the ministerial decision number 386 issued on 17 April 1988 explains the regulations of choosing an appropriate name. Article 6 of the ministerial decision states that names have to be registered in the civil records in the form of ibn (son of) or bint (daughter of) between the first name and the name of the father and between the name of the father and the grandfather etc; with a minimum of four names for a child including the first name, father's name, grandfather's name and the surname. Article 11 of the same decision prevents names that do not conform with the Islamic Shari'ah or go against the principle of human dignity, as well as names that are deemed not suitable.³¹⁰ Also it obliges secrecy and privacy on all information in the civil records.³¹¹

³¹⁰ Names that are considered not suitable are names that suggest disobedience, ruggedness of the heart, pessimism or human degrading. For example; the Prophet (PBUH) was witnessed as having changed the name of a daughter of one of his companions, Umar bin AlKhattab, who named his daughter As'syah, meaning "disobedient," to Jamilah, meaning beautiful. Also, when asked about the duties of parents toward their children, the Prophet (PBUH) is reported to have mentioned giving them good names and teaching them good manners. Another category of names that are not suitable and should be avoided are names that are not considered Islamic i.e. that suggest divinity to other than Allah. For example, abdul-kaaba or abd-amro, meaning the servant of the kaaba or the servant of Amro.

³¹¹ Second Report on the Status of Human Rights in the Kingdom of Saudi Arabia submitted to the UNCRC Committee in accordance with its Article no. 44. 2010.

In accordance with Article 8 (1) of the UNCRC that entitles a child to preserve his or her identity, including nationality, name and family relations as recognized by law, Article 67 of the Civil Status Law states that citizens who reach fifteen years of age should contact a Civil Status Department to obtain a personal identity card. Moreover, Article 13 of the Saudi Arabian citizenship system preserves the nationality of all citizens, with the possibility of it being withdrawn by a royal decree in case of the following: a- If the Saudi Citizen has obtained another citizenship and violated Article (11) of this system.³¹² b- If the Saudi Citizen has worked at the Armed Forces of any foreigner Government without obtaining the permission of the Saudi Government. c- If the Saudi Citizen has worked for the benefit of a foreign Government whilst it was at war with Saudi Arabia. d- If the Saudi Citizen has accepted work for a foreign Government or international Organisation, and remains employed by them despite the Saudi Government's orders for him to quit.

Worth mentioning, Article 19 (b) of the same law states that "if an individual loses his Saudi Citizenship according to the Article 11, his wife and children will not lose their Saudi Citizenship as a result".

In conclusion, the above analyses how Saudi Arabia has fulfilled the rights of the child related to immediate registration after birth, the right to a name and the right to maintain an identity i.e. compliance with Articles 7 and 8 of the UNCRC.

³¹² Saudis are not permitted to acquire any foreign citizenship without the permission of the Prime Minister. If a Saudi Citizen acquired a foreign Citizenship without this permission, he will be considered Saudi unless the Saudi Government dropped his Saudi Citizenship according to the term of Article (13).

b- The Right to a Nationality

The Saudi Arabian Citizenship System details all laws and regulations regarding the right to a nationality.³¹³ Article 7 of this document has listed the conditions that entitles a child to a Saudi nationality as such; “individuals born inside or outside the Kingdom to a Saudi father, or Saudi mother and unknown father, or born inside the Kingdom to unknown parents (orphaned) are considered Saudis. The orphans residing inside the Kingdom are considered to be born in it unless the opposite is proven”. This statement conforms to Article 7 of the UNCRC on the one hand and is in disparity with it on the other hand.

Conformity:

The first section of Article 7 of the Saudi citizenship system states that “individuals born inside or outside the Kingdom from a Saudi father” are considered Saudis. For this statement to be applied, two conditions need to be met. The first is that the father carries the Saudi nationality at the time of the birth of the child. The second condition is that his paternity in relation to this newborn is proven.³¹⁴

For a mother to pass her Saudi nationality to her newborn, the father has to be unknown or stateless. If the mother was not able to pass on her nationality

³¹³ This document was issued by the Ministry of Interior – the Ministerial Agency of Civil Affairs on 25/01/1374 AH (23/09/1954).

³¹⁴ T. Dwedar, *Al-Qanun al-Duwali al-Khass al-Sa’udi: al-Jinsiyyah, al-Muwatin, Markaz al-Ajanib, Tanazu’ al-Ikhtisas, Tanazu’ al-Qawanin*, (Alexandria, Egypt: Munsha’at al-Ma’arif, 1997), 126-127.

to her child, the child becomes stateless, considering that they are fatherless or born to a stateless father. From this perspective Article 7 of the Saudi citizenship system is in complete conformity to the ideals of Article 7 of the UNCRC.

The status of the child born to unknown parents is also justified in Article 7 of the Saudi citizenship system so that it conforms Article 7 of the UNCRC. Though the Saudi citizenship system does not clearly entitle a newborn to unknown parents to the Saudi nationality, the context of the Article and its application guarantees the right of the nationality to such children.³¹⁵

Disparity:

The first area of disparity when it comes to the implications of Article 7 of the Saudi citizenship system is in the condition that the father is in fact not stateless and has a definite nationality but for a reason or another cannot pass his nationality to his child. In this case, according to the implications of Article 7 of the Saudi citizenship system, the mother will not be able to pass on her Saudi nationality to her newborn. In this case the child will not carry his father's non-Saudi nationality or his mother's Saudi nationality, thus becoming stateless.

³¹⁵ When the Saudi citizenship system was first issued on 25/01/1374 AH (23/09/1954) it did not include any statements about the status of children born inside Saudi Arabia from unknown parents. In response to international pressure, royal decree number 20 was soon issued on 12/11/1379 AH (08/05/1960) to include: "...born inside the Kingdom from unknown parents (orphaned) are considered Saudis. The orphans residing inside the Kingdom is considered born in it unless the opposite is proven" to Article 7.

In order to protect the child's right to a nationality the cases in which a mother passes her nationality to her newborn should not be limited to a newborn with a Saudi mother and a father who is unknown or stateless. Article 7 of the Saudi citizenship system should be extended to protect the rights of the children who were born to a Saudi mother and a non-Saudi father who has a definite nationality that he could not, for any reason, pass to his newborn.

The reason Saudi Arabia has made a point of restricting the cases in which a mother could pass on her nationality to her newborn is to avoid dual nationalities of the newborn. It is agreed upon internationally that dual nationalities are a source to many problems and difficulties and thus is listed among the most common problems that should be avoided when it comes to nationalities. The Saudi legal system, as per say, calls for single nationalities and the importance of eradicating, or restricting, the complications of cases of dual nationalities and the cases of no nationalities.

Detailing this, if the Saudi citizenship system allowed Saudi mothers to pass on their nationality without restrictions keeping in mind that a child born to a Saudi mother automatically carries his father's nationality as well, the case will be as such; when a child is born to a Saudi mother, if the father happens to be a Saudi national as well then there will be no complications. However, if the father of the newborn was of any other nationality that allows him to pass the nationality to his children, then the newborn will carry the mother's nationality in addition to the father's nationality which is what Saudi Arabia wanted to avoid in the first place.

At an artificial glance, one would consider the provisions of Article 7 of the Saudi citizenship system patriarchal, and this is backed up by the wordings of the Article and the restricted cases in which a mother can pass on her nationality to her newborn (an unknown father or a stateless father). However, an in depth look into this article would reveal that the child's best interest is taken into consideration as to avoid a dual nationality. Thus, it is safe to say that the provision of Article 7 of the Saudi citizenship system is not reflected clearly by its wording, where in the case of a Saudi mother and a father with another nationality that he could not for a reason or another pass it on to his child, a child will not have either nationalities, i.e. his best interests are wasted.

It is in the child's best interest, if born in Saudi lands, to have a Saudi nationality as to not be treated as a foreign. However, as mentioned before, this is not the case for a child born in Saudi lands to a Saudi mother and a non-Saudi father with a definite nationality. What makes a child's nationality inevitable to the father's nationality? There are no legitimate grounds that make the child bond to his father's nationality stronger and superior to his/her bond to the mother and her nationality.

In the Saudi citizenship system, a child is entitled to his/her mother's Saudi nationality at the age of majority, if he/she has been a resident of Saudi Arabia all their life and, in addition to that, meets the conditions stated on Article 8 of the Saudi citizenship system. This however does not change the situation of the child before the age of majority. Furthermore, it does not entitle the child automatically to the Saudi nationality, since Article 8 states that: "individuals born inside the Kingdom from Non-Saudi father and Saudi mother may be

granted Saudi Citizenship by the decision of The Minister of Interior in case of the following conditions:

- a- Having a permanent Resident Permit (Iqama) when he reaches the legal age.
- b- Having good behaviour, and never sentenced to criminal judgment or imprisonment for more than six months.
- c- Being fluent in Arabic.
- d- Applying for the citizenship after one year of reaching the legal age”.

However, the above article applies only to sons of a Saudi mother. Daughters, on the other hand, are given special national ID cards until they get married, and once they get married they can then obtain the nationality of their husbands if Saudi. This does not only violate the current citizenship system, it is also racist against women and also violates the provisions of Article 2 of the UNCRC.³¹⁶

In accordance with what has been discussed above and in order to eliminate the violations presented in Article 7 of the Saudi citizenship system, and to conform to the provisions of the UNCRC, Article 7 needs to be amended as following - a child is considered Saudi if:

- 1- the newborn was born inside or outside Saudi Arabia to a Saudi father and/or a Saudi mother.

³¹⁶ Second Report on the Status of Human Rights in the Kingdom of Saudi Arabia submitted to the UNCRC Committee in accordance with its Article no. 44. 2010.

2- the newborn was born inside Saudi to a Saudi mother and an unknown father or to unknown parents (orphaned). The orphans residing inside Saudi Arabia is considered born in it unless the opposite is proven.

Another area of disparity is a child born out of wedlock or born before the marriage is legitimate. Article 7 of the Saudi citizenship system entitle the Saudi nationality to children born to Saudi fathers only if the newborn was born within a legitimate marriage that the government of Saudi Arabia approved. A newborn born out of wedlock or born into a marriage that was not approved by the government of Saudi Arabia is not given the Saudi nationality, even if the father recognizes the child as his thus letting the child stateless without a nationality.

The cases in which a child becomes stateless are not restricted to consequences of Article 7 of the Saudi citizenship system. Article 23 of the same document states that if “the Saudi Citizenship was withdrawn from the naturalised individual; it will also be withdrawn from Individuals under his sponsorship, unless their good behaviour is proven”. According to Article 14 of the same document if: “the foreigner obtained a Saudi Arabian Citizenship; his wife will obtain it as a result unless she decided within the first year to keep her original Citizenship. Underage children residing in Saudi Arabia are considered Saudis if their father obtained the Saudi citizenship, and they have the right to recover their father’s original citizenship within one year from reaching the legal age. However, if they were residents outside Saudi Arabia; they are considered foreigners and they have the right to acquire their father’s

Saudi Citizenship within one year from reaching the legal age”. Thus, in accordance to provisions of Article 23, the Saudi nationality will be withdrawn from those children if it was primarily withdrawn from their father. The nationality of the father may be withdrawn for either of the cases mentioned in Article 21 of the Saudi citizenship system: “The Saudi Citizenship may be withdrawn from the naturalised individual (within the first 5 years of naturalisation) by a Decree according to the Request of the Minister of Interior in case of the following:

- a- If the naturalised individual is sentenced to a criminal judgment or imprisonment for more than one year.
- b- If the naturalised individual performed or contributed in any operation that disturbs the public security inside the Kingdom”.

Applying the previous; a child of a father whom Saudi nationality was withdrawn is at risk of being stateless if the Saudi nationality is withdrawn from the child as well. This is not only contrary to a basic Quranic principal; “*no one bears the burdens of another*”³¹⁷, but it is also contrary to the provisions of Article 38 of the Saudi basic law of governance that states that “No-one shall be punished for another's crimes. No conviction or penalty shall be inflicted without reference to the Shari’ah or the provisions of the Law. Punishment shall not be imposed ex post facto”. In addition to those contradictions, one might also wonder if this also conflicts with human rights norms especially since the best interests of the child are not taken into consideration at all in such cases, thus violating the provisions of Articles 3, 7 and 12 of the UNCRC.

³¹⁷ Quran [35:18].

In order to achieve the principles of the child's best interest, Article 23 of the Saudi citizenship system has to be relooked at in depth. Withdrawing a nationality from a parent (due to article 21) should not be extended to their children even if the nationality was originally obtained under their father's sponsorship. Article 23 should in fact go along the lines of Article 19 of the same document that states that: "if an individual lost his Saudi Citizenship, the following terms apply to his wife and children:

a- Wife of the individual who have lost his Saudi Citizenship according to the Article 13 have the right whether to follow her husband's new nationality or to keep her Saudi Nationality, and she has the right to recover her Saudi Citizenship in case of divorce. However, children residing outside Saudi Arabia have the right to acquire the Saudi Citizenship when they reached the legal age.

b- If an individual lost his Saudi Citizenship according to the Article 11, his wife and children will not lose their Saudi Citizenship as a result".

A duty for addressing the violations mentioned previously is set by the provisions of Article 34 of the Executive Regulation of Saudi Citizenship System that states that: "While implementing the system's terms, the international agreements between the Kingdom and other countries must be considered".³¹⁸

³¹⁸ An example of this could be seen when looking at the Convention on the Elimination of all Forms of Discrimination Against Women that Saudi has ratified on 7/9/2000. Article 9-2 of this convention states that: "States Parties shall grant women equal rights with men with respect to the nationality of their children". This section of article 9 clearly contradicts the provisions of article 7 of the Saudi citizenship system mentioned earlier. Keeping in mind that Saudi had reservations on article 9 when ratifying the convention on the elimination of all forms of discrimination against women. In the concluding comments of the committee on the elimination of discrimination against women in Saudi

c- The Right to Protect a Child from Abduction, Sale and Trafficking

Saudi Arabia believes in providing inclusive care and support to the youth as they are seen as the foundation of the country and the future it seeks. Saudi Arabia is also aware of the magnitude of the effect that leads to abusing children in activities that include selling and buying children, an international phenomenon that violates the most basic principles of international human rights. These violations are evolving and adapting to modern days where children are sexually exploited and smuggled across borders for financial gains through different means like prostitution, pornography and other unethical practices that generate large amounts of money to those institutions.³¹⁹ In order to limit the impact of this phenomena, Saudi Arabia produced an “Anti-Trafficking in Persons Law” under royal decree number M/40 dated 14/07/2009. The significance of this law stems from its legitimate and deterrent power that puts children’s rights and protection among the priorities of Saudi Arabia’s laws.

The Anti-Trafficking Law includes 17 articles, the most significant of which are:

Article 1/1 defines anti-trafficking in persons as: “use, recruiting, transportation, harbouring or receipt of a person for the purpose of

Arabia, the committee raised its concerns about this issue of contrary stating that: “The Committee notes with concern that certain provisions of the Saudi Arabian Nationality Code contradict article 9 of the Convention and continue to discriminate against Saudi Arabian women married to non-Saudi nationals. It is also concerned that children of such marriages do not have an equal right to nationality as children of Saudi men married to non-Saudi women”. The committee has also requested amending certain sections of the Saudi citizenship system so as to bring it to conformity with article 9 of the Convention and encouraged the withdrawal of Saudi’s reservation concerning article 9-2. See Concluding Comments of the committee on the Elimination of Discrimination against Women: Saudi Arabia, United nations, April 2008, Para. 27-28. (CEDAW/C/SAU/CO/2).

³¹⁹ ‘Abdullah al-Sa’adan and M. al-Shammari, “Juhud al-Mamlakah al-‘Arabiyyah al-Sa’udiyyah fi Majal Mukafahat al-‘Itjar bil Bashari” (paper presented at the Nahwa ‘Istratijiyyah ‘Arabiyyah li Mukafahat al-‘Itjar bil Bashari Conference, Cairo, Egypt, 2010). p.13.

exploitation”. Article 2 then details the means and methods through which this crime is committed, where it strictly prohibits trafficking of persons, including children in any form whether by: “coercion, threat, fraud, deceit or abduction of a person, abuse of position, power or any authority thereon, taking advantage of the person’s vulnerability, giving or receiving payments or benefits to achieve the consent of a person having control over another person for the purpose of sexual assault, forced labour or services, mendicancy, slavery or slavery-like practices, servitude or the removal of organs or for conducting medical experiments thereon”.³²⁰ Not only does this Article prohibit trafficking of children, it also prohibits any action that exploits children in any illicit activities that might threaten a child’s development or limits any of his/her rights.

According to these two articles, children trafficking is said to have happen only if all three elements combined from these two articles co-exist.³²¹ If any of the

³²⁰ It is noticeable that the definition of trafficking of humans and the details in the Anti-Trafficking of persons Saudi Law is hugely inspired by article 3(a) of the “Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime”. Article 3(a) states that: “Trafficking in persons” shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs.”

³²¹ The first two articles of the Saudi Anti-Trafficking of Persons law summarizes the three main elements of trafficking: 1- trafficking of humans always revolves around the recruitment, transportation, transfer, harbouring or receipt of a person whether within a country or across borders. 2- trafficking has to be by means of threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person. 3- trafficking has to be for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs.

elements is not found in a particular case, then it is not called a human trafficking crime. It could be however, a crime subject to the provisions contained in other systems or conventions. Differentiating between human trafficking crimes and crimes of similar elements is of great importance, since the consequences applied differ depending on whether the crime is defined as child trafficking or not.

For that reason, the anti-trafficking law was certain to define who a child is in Article 1-4 as: “any person under eighteen years of age.” In order to protect children’s vulnerable nature and give them the protection and care they are due, defining a child in such a matter that follows the definition of a child in the UNCRC is of great importance and reflects the modernised status of children in society.

Although the Saudi Anti-Trafficking in Persons Law sources back to the standards and instruments of international human rights, a lot of the terms and expressions used were not defined accordingly. Terms used in Article 2 like; mendicancy, slavery, child sexual exploitation and many more that are left blurry and undefined are seen as new original terms in the Saudi law that should therefore be defined clearly. Besides being now used in Saudi law, those terms have always been part of the Saudi law since many of the international conventions that Saudi Arabia ratified includes those terms in their articles, therefore it would have been very beneficial if this document included clear “international standard” definitions of those terms and any other “grey” term that is foreign to the Saudi law. Furthermore, because these terms are also not defined in the main UNCRC articles; sexual exploitation and sexual abuse (Article 34), child trafficking (Article 35), and all other forms of

exploitation prejudicial to any aspects of the child's welfare (Article 36), the definitions will have to be compensated using the definitions from the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography that Saudi Arabia has joined on 2010.

On a different note, Article 5 of the Saudi Anti-Trafficking in Persons Law states that “the consent of victims shall be deemed irrelevant in any of the crimes provided for in this law.” This point is of great importance, especially for child related cases, as the consent of victims cannot be used to defend the criminal.³²² Furthermore, the consent of the victim cannot be used to punish him/her for any illegal activities he/she undertook while being held under trafficking. Article 15 of this law frames the protection methods and procedures that victims of this crime are entitled to. While the law does not emphasize on not criminalizing the victim, it demands describing them as victims. The rights, set in Article 15, that the child victim of this crime is entitled to during the investigation and trial are as following:

- 1- Inform the victim of his legal rights, using a language he can understand.
- 2- Avail the victim of the opportunity to set forth his status as a victim of trafficking in persons, as well as his legal, physical, psychological and social status.

³²² Article 5 of this law is compatible with Article 3 of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention Against Transnational Organized Crime. Article 3(b) states that “The consent of a victim of trafficking in persons to the intended exploitation set forth in subparagraph (a) of this Article shall be irrelevant where any of the means set forth in subparagraph (a) have been used.”

- 3- Refer the victim to a specialist physician if he appears to be in need for medical or psychological care or if he requests such care.
- 4- Admit the victim to a medical, psychological or social rehabilitation centre if so necessitated by his medical or psychological condition or age.
- 5- Admit the victim to a specialized centre if he needs shelter.
- 6- Provide police protection for the victim if necessary.
- 7- If the victim is a non-Saudi and there is a need for him to stay or work in Saudi Arabia during investigation or prosecution, the public prosecution or competent court shall have the discretion to decide upon such a matter.

When it comes to sentencing and judging criminals of this sort of crimes, it is noticeable that Articles 34, 35 and 36 of the UNCRC do not appoint any punishments. Not only are these articles missing the punishments for criminals of child abductors and child pornography and prostitution, they also do not state any procedures to help eliminate these crimes for good. Assigning the punishments of these sort of crimes falls upon member states. Accordingly, the Saudi Anti-Trafficking in Persons Law criminalized any activities that may lead to child trafficking and assigned punishments, sentences and fines to anyone who contributes to such activities. A closer look into the articles of this law will show the deterrent and prevention means used to discourage any one who might benefit from contributing to these crimes. Those were specified as following:

- 1- The law has imposed strict punishment stating that: “Any person who commits an act of trafficking in persons shall be punished by imprisonment for a period not exceeding fifteen years or a fine not exceeding one million riyals, or by both.”³²³ Moreover, it is important to notice the cases listed on Article 4³²⁴ of this law where punishments “shall be made harsher”. Third on this list is “if the crime is committed against a child, even if the perpetrator is not aware of the fact that the victim is a child.”
- 2- The law did not stop at punishing the perpetrator, it has also stated in Article 8 that: “Any person who participates in trafficking in persons or takes part in any of the crimes provided for in Articles 2, 4 and 6 of this law shall receive the same penalty as the perpetrator.”³²⁵ Moreover, Article 10 states that: “Attempts to commit any of the crimes provided

³²³ In the case where the crime was committed by a corporate person then the punishment will be as stated in article 13 of the law: “Without prejudice to the liability of natural persons, if a crime of trafficking in persons is knowingly committed through, to the benefit of or on behalf of a corporate person, said person shall be punished by a fine not exceeding ten million riyals, and the competent court may order temporary or permanent dissolution or closure of the same or any branch thereof.”

³²⁴ Article 4: “Penalties provided for in this Law shall be made harsher in the following cases: 1- If the crime is committed by an organized crime group. 2- If the crime is committed against women or people with special needs. 3- If the crime is committed against a child, even if the perpetrator is not aware of the fact that the victim is a child. 4- If the perpetrator uses or threatens to use a weapon. 5- If the perpetrator is the spouse, ascendant, descendant or guardian of, or has authority over the victim. 6- If the perpetrator is a law enforcement officer. 7- If the crime is committed by more than one person. 8- If the crime is transnational. 9- If the crime inflicts severe harm on or results in permanent disability of the victim.

³²⁵ Article 6 of this law states that: “Any person who commits the following acts shall be punished by imprisonment for a period not exceeding five years or a fine not exceeding two hundred thousand riyals, or by both: 1- Any person who uses physical force, threat, terror, deprivation of due benefits; or promises, offers or grants an undeserved benefit to instigate false testimony or interfere therewith or present false evidence relating to committing any of the crimes provided for in this law. 2- Any person who uses physical force, threat or terror to interfere with the performance of official duties by a judicial or law enforcement officer in relation to any of the crimes provided for in this law.

for in Article 2, 4 and 6 of this law shall receive the penalties prescribed for completed crimes.”

- 3- The law has also imposed a punishment for any person who becomes aware of committing any of the crimes provided for in this law or attempts to commit the same and does not immediately notify the competent authorities. The provisions of this Article may, however, exclude parents, children, spouse and siblings.³²⁶ Correspondingly, “the competent court may relieve a defendant from the penalty imposed on harbouring fugitives if the fugitive in question is a spouse, ascendant or descendent thereof.”³²⁷
- 4- The Law also focuses on exposing a crime prior to its commencement where a perpetrator shall be (exceptionally) exempted from the prescribed penalties if he/she “notifies the competent authorities of information regarding a crime prior to its commencement, leading to detection of said crime prior to its commission, apprehension of the perpetrators or preventing completion thereof.” “If notification of the competent authorities takes place after the crime has been committed, said perpetrator may be exempted from the penalty if such notifications leads to the arrest of the remaining perpetrators by the competent authorities. If the notification takes place during the investigation, the penalty may be reduced.”³²⁸ The purpose of such provisions may be

³²⁶ See Article 7 of the Saudi Anti-Trafficking in Persons Law.

³²⁷ See Article 9 of the Saudi Anti-Trafficking in Persons Law.

³²⁸ See Article 12 of the Saudi Anti-Trafficking in Persons Law.

favouring the well-being of the victim over the public right, by giving the perpetrator a chance to abandon the crime prior to its commission.

From the previous, one can assume that the strictness and harshness of the penalties and punishments assigned for these crimes implies the seriousness in which those types of crimes are taken in the Saudi law. It can also imply the level of protection of children from all forms of exploitation states in Articles 34, 35 and 36 of the UNCRC.

This Anti-Trafficking in Persons Law is an essential document adding to the laws that protect human rights in general – and children’s rights in specific – in Saudi Arabia. It is essential to have a law such as this that directly prevents trafficking in humans in Saudi law, especially that it is compatible in many of its provisions and conditions to the international standards of anti-trafficking laws.

Issuing the Saudi Anti-Trafficking Law is just a first step towards abolishing trafficking in children. To add more effectiveness to this law, Saudi Arabia has worked on setting up a permanent committee within the Saudi Human Rights Commission to fight trafficking. This committee includes representatives from the ministry of exterior affairs, ministry of justice, ministry of social affairs, ministry of labour, ministry of culture and media and personnel from the human rights commission. This committee was founded by the decision of the

ministers council number 244 on 13 July 2009.³²⁹ This committee is responsible for the following:³³⁰

- 1- Following up the conditions of victims of human trafficking.
- 2- Recommending that victims are allowed to stay in Saudi Arabia and guaranteeing their equal rights.
- 3- Arranging with the competent authorities to return the victims to their home countries if they wish to.
- 4- Training on methods of victim recognition.
- 5- Arranging with the related authorities to collect data and statistics.
- 6- Preparing research and advertising campaigns to stop the trafficking of humans.

Moreover, the Ministry of Social Affairs has founded a centre in the capital city of Riyadh to receive complaints and notifications 24/7 about crimes of human trafficking on the unified number 1919. This centre receives the complaints and notifications, records them and transfers them directly to the protection committee of the area where the notification came from. These notifications are dealt with in complete secrecy and confidentiality. Because most victims will need protection and accommodation after the harm they have been through, four accommodation houses has been approved by the Ministry of Social Affairs in each of the cities of Riyadh, Dammam, Taif, and Abha.³³¹

³²⁹ Fatimah al-Ghamdi, "Al-Mamlakah Wazz'at al-Anzimah wa al-Qararat wa al-'Ijra'at al-Kafilah bi Muharabat al-'Itjar bil Bashari," *Riyadh Magazine*, January 23, 2011.

³³⁰ *Supra*, note 318, p.18.

³³¹ *Supra*, note 318, p.26.

At the same time, Saudi Arabia does not neglect its role and duty as an active member of the international community. It has joined and ratified international conventions related to human trafficking, thus showing its high interest in protecting children against these crimes. Related conventions that Saudi Arabia has joined include:

- Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing The United Nations Convention Against Transnational Organized Crime (2000). Signed under royal decree (M/65) on 2007.³³²
- Protocol Amending the Slavery Convention (1926). Signed under royal decree (M/6) on 1973.³³³
- Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography (2010). Signed under royal decree (M/38) on 2010.

All in all, Saudi Arabia has made a significant effort towards criminalizing activities that contradict the Islamic values and traditions along with international human rights. It has thus criminalized and worked towards abolishing any action that might interfere with human dignity, or that can in any

³³² The protocol was adopted by the United Nations General Assembly in 2000 and entered into force on 25 December 2003. It is considered the all-inclusive document when it comes to crimes of human trafficking. It covers all aspects of this crime and presents the internationally agreed on definition of trafficking.

³³³ This Protocol amends the Slavery Convention signed at Geneva on 25 September 1926. It was approved by General Assembly resolution 794 (VIII) of 23 October 1953 and entered into force on 7 December 1953, in accordance with Article III. It is administered by the Office of the High Commissioner for Human Rights.

way manipulate humans or harm them, especially children, whether nationals or residents of Saudi Arabia. The provisions and procedures that are stated in the Saudi Anti-Trafficking Laws will therefore significantly lead to abolishing these crimes against children and provides them with the necessary protection against perpetrators in a method that was not occurred in Articles 34, 35 and 36 of the UNCRC.

d- The Right to Protection from all Forms of Physical or Mental Violence, Injury or Abuse, Neglect or Negligent Treatment, Maltreatment or Exploitation

Saudi Arabia adopts the holy Quran as its sole constitution and Shari'ah as its sole method of life, and from those the Basic Law of Government is deprived. The Basic Law of Government expresses that "the family is the Saudi community nucleus."³³⁴ Whereas Saudi Arabia is keen to keep the family relations, maintain the Islamic and Arabic values, look after all individuals, provide suitable conditions to develop their abilities,³³⁵ the kingdom recognizes the family and parents main role in looking after the child in a manner that maintains the child's dignity and rights.

According to Article 9 from the UNCRC, the Kingdom's laws and regulations decide to keep the child among his family members, unless the family loses one of its main members, making it impossible for the child to be brought up in this family. Accordingly, it is essential to separate the child from this family so that the child's optimum needs are met. Separation of the child from his

³³⁴ Review Article (9) from the Basic Law of Governance.

³³⁵ Review Article (10) from the Basic Law of Governance.

biological family and taking away the parents guardianship may also be a result of serious diseases and illnesses, death or prison for long periods, or when parents or guardians prove their inability to bring up their children or in case the guardian exploits the child.³³⁶

It is known that the Kingdom of Saudi Arabia derives the child rights from Shari'ah which urges parents and guardians to bear responsibilities to guarantee the child's rights, some of which is the child's right to alimony, relation, breast-feeding, nursery, upbringing, heritage and guardianship. It urges the parent to maintain the child's life,³³⁷ care and upbringing. In accordance with the CRC, we notice that it did not discuss all of these rights strictly, although it stressed the child right in his parent care under Article 18, it was only briefly discussed and of a general nature, lacking precision and specificity, thus allowing member states to freely stray from the main provisions of Article 18.

Hence, Saudi Arabia formerly provides the child with all rights according to the Shari'ah. This matter raises the question as to why Saudi Arabia has not adopted a family law draft, and to date, Saudi Arabia has had no clear judiciary or known system in the family judgment. It is known that the personal status is treated as a system for family life and marriage relations and the relation

³³⁶ In such case, the state looks after the children over seven and under 18 year through the social or charitable house, where the state puts a group of system for the said social houses, establishment and centres under the resolution No. (611) promulgated dated 13/5/1395H corresponding to 25/5/1975, but for under-the age of seven children, the state provided nursery houses under the resolution No. (156) promulgated dated 8/2/1395 corresponding to 20/2/1975, in addition to the houses related to the charitable societies. Review what is mentioned in the first periodical report presented by the Saudi Arabia to the child human right as per Article (44) from the child right agreement, p.53.

³³⁷ Prophet Muhammed says "all of you are responsible: Imam, husband, wife, servant (Ahmad, Al-Bukhari, Muslim, Abu Dawd and Al-Termezi).

between children and parent. We think that the organization and arrangement of laws is a mean to apply the Shari'ah in a manner that reflects justice and equality. The personal status record is no longer an option that we consult about its application or providing a substitute for, it has become today an organizational request to apply the justice and protecting the child and family against dissociation and forfeiture, this in addition to getting rid of the occurrence of vast difference in judgment issued by the judiciary system for the child and the family in general.

In terms of ratification of the UNCRC by Saudi Arabia in 1996, the Kingdom also looks forward to a personal status record that will be issued in a manner agreeing with the Shari'ah and the origins and bases of the principles prevailing in Saudi Arabia. This should be performed urgently, as this system will represent the first reference in protecting and supporting the children and no doubt will contribute in the work performance, in addition to filling the gaps resulted from the absence of laws that organize the family relation and the relevant rights. As the ministry of justice seeks to establish personal status courts in all the Kingdom areas, this can enhance the need to establish the same in the same time, as this system represents the hope, through which the kingdom can keep pace and advance in the field of the high quality right presented to our children.

With respect to the legal frameworks that are necessary to guarantee the child protection in the Saudi community including any type of abuse and negligence, efforts are currently exerted in Saudi Arabia to promulgate a special system to protect children against abuse and neglect. This system will combine between

what is already existent in some of the laws in force, together with developing existent and new frameworks that are more suitable to child rights.

The child protection system scheme is established as a recommendation to prepare a national mechanism to get rid of the child abuse after preparing several studies and symposia that discuss the child protection against all types of abuse that are of a high risk on the child's life, then those recommendations were submitted to the High Council for Childhood in 1424 (2003), which urged the General Secretariat for Childhood National Committee to take the procedures that are necessary to approve this mechanism. Accordingly, it was agreed to form a committee from the representative of the governmental bodies that are concerned with the childhood issues together with charging the national committee of childhood to put the "child protection system against abuse and the relevant machismo of enforcement".³³⁸

After numerous negotiations and discussions and after considering and reviewing a number of systems and conventions such as the system of the public administration of social protection, child protection agreement, international agreement to get rid of all types of segregation and the right of child in Islam,³³⁹ the said system scheme was submitted to the cabinet for

³³⁸ *Supra*, note 328.

³³⁹ Saudi Arabia joined the child rights in Islam, issued by the Islamic conference organization in the 32th meeting held by the cabinet in Sana'a from (21 – 32) Jumada1 1426/2005 under the royal decree No. M/54 dated 27/8/1427 (2006). The treaty include (26) article and the child is introduced as "any human did not reach the age of majority as per the applicable law" the treaty also include basic principle for the child right such as the equality, life right, identity, family adherence , special freedom, gathering freedom, upbringing, education and culture , time for rest and activities, social living level, child health, child protection, children with disapilities and special needs, child work, equality, parent responsibility and protection against the harmful practices, refugee child, for more details, review the child rights custody in Islam in the document OIC/9-IGGE/HRI/2004/RE[/].final.

approval and published in newspapers.³⁴⁰ The said scheme will be a quantum leap in the kingdom childhood issues, and the main goal is to have this scheme approved and adopted. This system includes 26 articles and hereunder are the most important points.³⁴¹

The first Article assures that the purpose of this system is to protect the child from all forms of abuse and negligence that the child might face in his/her surrounding environment, whether within the family, school, neighbourhood, public places, fostering homes and alternative families, or governmental and non-governmental establishments. Another purpose the first Article serves is to protect the rights of the child who has been a victim to abuse or negligence, by providing the essential care and support physically, emotionally, psychologically and more. Finally, this Article also proposes raising awareness regarding children rights, especially those related to protecting the child from abuse and negligence.

Although this system focuses solely on protecting the child from abuse and neglect, it also has in mind the importance of the child's upbringing in the family environment, keeping in mind the child's best interest in cases where the family environment the child comes from is corrupted.

In the same context, the system stipulates that the child's parents should bear the responsibility of the child's upbringing to guarantee the rights of the child

³⁴⁰ Al-balawi, Abdulsalam (Al-Shura approve the child protection system... and does not approve the marriage of underage girls", Riyadh newspaper, Riyadh, 14 safar 1432 (18/1/2011) issue 15548.

³⁴¹ To review all the text in the system scheme "protection of children against abuse and the mechanism of execution" you can review:

- Al-Madinah announces in details "the child protection system", Al-Madinah newspaper, Madinah 15/2/1432 (19/1/ 2011) issue 17437.
- Majda Abdulaziz "the most important point of the Kingdom child protection system scheme" Al-Watan newspaper, Riyadh 16 Rabea 2 22/4/2008, 8th year, issue 2762.

in addition to protect him/her against abuse and neglect, this right can only be extracted from the parents under judicial procedure. To reach those outcomes, the concerned authorities are obliged to take the necessary procedure to keep the child enjoying these rights. The system also emphasizes a child's right in communicating and visiting his parents in case of divorce unless otherwise stated.³⁴² The Kingdom looks after the child in the family environment as this environment directly affects the child's physical and psychological formation, and in turn affects the child's future trends and decisions, in addition to applying all the rights mentioned in Articles 9 and 18 from the UNCRC.

The system, in its second article, introduces the child as every person that is under eighteen years of age. This article is mentioned to fill the legal gaps flowing from the absence of a definition of the legal age of the child, in a way compliant with the provisions of Article 1 of the CRC. The article also discussed the child's right against abuse and negligence whether the abuse is characterised as:

- Physical abuse: it exposes the child to intentional body harm
- Psychological abuse: it exposes the child to mistreatment that leads to psychological or mind harm
- Sexual abuse: it exposes the child to sexual abuse
- Negligence: neglecting or inattention to the child's main need that includes (the body and health, emotional, psychological, educational, learning, intellectual, social, cultural, security and need for stability)

³⁴² Review the Article 16 from the Child Protection System.

The third article has been one of the most essential articles as it details the cases that are considered as abuse i.e. cases in which there is a threat to the child's safety or his physical or psychological health. This article provides protection measures above those mentioned in Article 19 of the CRC. It draws inspiration from the CRC in respect of the child's protection but then added sections relating to identifying the cases and types of abuse the child may encounter. These additions will fill the gaps. Cases mentioned under the article are as follows: remaining without any family support, absence of legal identification documents, absence of health vaccinations, leaving school or equivalent forms of education, staying in an unsafe environment, mistreatment, sexual abuse, economical exploitation, emotional abuse, being exposed to unethical material or participate in crime, segregation for any reason, no proper upbringing or care, let him drive a car before reaching the legal age.

Article 4 represents the cases in which the child is exposed to risks of straying away as a result of his/her environment, i.e risks which expose the child's ethical, psychological, physical or educational safety to deviation. Article 4 obliges the concerned authorities in such instances to take necessary action and provide the suitable reform care procedure. Cases mentioned under article 4 are as follows: if it is proven that the child is forced to beg, or he practices illegal action to gain means of living, out of his parent's or legal caregiver's authority, escape from home, educational establishments or foster homes, sleep in places not meant to be slept in, if he enters places that are considered morally and socially unacceptable or unsuitable for the child's age,

if he displays any behaviour related to prostitution, gambling, drugs or works for those working in those fields.

In addition, the system requires the concerned authorities to take the suitable procedures to get rid of the problems a child with difficult conditions might encounter such as street children, disputed children, refugees, disaster and war victims, sexually exploited children, economically exploited children used as a product to begging, using them in the place of producing physically and psychologically harmful material. In addition, the concerned authorities decided to put health, educational, psychological, and social programs made available to children who are victims of abuse and neglect.³⁴³

As for the reporting of abuse and neglect cases, the system emphasizes the importance of reporting any abuse case and instructs the concerned bodies to simplify³⁴⁴ the procedures in order to report for any abuse or negligence.³⁴⁵

For the infringement of any text, the system charges the competent court to look into the infringement of “the system of protecting children against abuse and the mechanism of execution” in addition to applying the suitable penalty to the persons committing those infringements. The ministry of social affairs is in charge to prepare the executive bill.³⁴⁶

³⁴³ Review the Articles (10, 11, 20, 22) from the Child Protection System.

³⁴⁴ Article (23) contains: notification should be done by educators, physicians, nurses, specialists and any concerned authorities, in addition to facilitate the child procedures to report any case of abuse that my encounters and identify the executive bill.

³⁴⁵ Review Article (24) from the Child Protection System.

³⁴⁶ The 25th Article specifies that the minister of social affairs shall issue the executive bill for this system after coordination with the concerned authorities.

According to the above-mentioned, we find that the provisions of the child protection system scheme against abuse are consistent with the UNCRC in articles 9, 18, 19, 39, where the child's right to a family environment is asserted and the importance of relation in the child's best interests is underlined. It also deprived all types of exploitation, negligence and abuse the child may encounter in his environment, in addition to confirming the procedures necessary to keep him reacting with his community.³⁴⁷ In this regard it is recommended to change the title "child protection system" to "child system of rights and protection" in a manner that allows the addition of any other material related to the child rights, in order for it to be consistent with this trend. The kingdom approval to the child right system does not mean it is the end of the need to child legislations, as any legislation requires further decisions, procedures and mechanisms that should be taken to realize the main objective: child care, right and future.

To complete this effort, the Saudi community paid high attention to protect children against abuse which is noticeable in the hospitals through discussing the subject officially. Moreover, the media began discussing some cases that

³⁴⁷ It is noticeable to mention that the issuance of Child Protection System in Saudi Arabia is not simple, because Saudi Arabia has traditions related to Islam, and accordingly the parent rights represent doctrine concepts that may hinder the system issuance which may hinder many system or add, which requires studies and committees to avoid any problems, therefore the scheme resolution requires sometime. Although this system is still not applicable in Saudi Arabia, there are many other systems to protect the child and provide his needs, where Saudi Arabia issues a group of law and legislation such as fighting the person trafficking crime (1430), social insurance system (1427), labour system (1426), mother milk exchange system (1425), health system (1423), handicapped care system (1421), prison and arrest system (1398). This group of legislations gave many judgments related to child and cured many matters that are considered by the state and community, taking in consideration the Saudi community values. In light of this matter, we expect that the cabinet can approve this scheme as a real system to have its correct place among other systems. No objection to put a system that fill the legal gap, gather the child judgments in one legislation unit that is prone to modernization either through amendment or addition, in relation with which constitute some social or legal events.

were exposed to abuse or neglect by a parent or a relative. Some of the most important programs and initiatives “Family National Safety Program” established by the royal decree (No.11471/mb) issued on 16/9/1426 (2005) as a national program aiming at confronting the family violence and provide the child protection against abuse.³⁴⁸ The program will be distinguished in the family violence affairs through presenting the program for protection, support and awareness, building vocational partnership with specialists, governmental, national establishments and international organizations to provide safe family environments in the Kingdom. The program work field includes:³⁴⁹

1. Enhancing the Kingdom role in the humanitarian fields and contributing in preparing the systems, plans, and national policies to fight domestic violence and abuse in Saudi Arabia.
2. Raise the community’s (organizations and individuals) awareness on family violence issues and harms and child abuse and the impact on individuals and community as a whole.
3. Presenting services, guidance and consultation to victims of abuse and neglect and help resolve their issues with the concerned authorities.
4. Contributing to the preparation and execution of treatment and protective programs through specialized experience and teamwork to treat the issue in terms of health, psychological, social and security.

³⁴⁸ Majid Al Eissa. Maha Al Muneef, Child Abuse and Neglect in Saudi Arabia: Journey of Recognition to Implementation of National Prevention Strategies In Special Issue on the 20th Anniversary of the UN Convention on the Rights of the Child (UNCRC) 19892009 – (part 2), Child Abuse & Neglect Journal. vol. 34 No. 1 (2010): 29.

³⁴⁹ Annual Report of the National Family Safety Program 1431/2010 p. 9.

5. Provide employees with the necessary qualification and training in order to sufficiently treat the cases of domestic violence and child abuse.
6. Supporting scientific studies and research about the extent to which abuse and neglect are spread in addition to revealing their individual and social consequences through making national studies, establishing databases, supporting researchers, research and academic establishments.

The “child support line” scheme³⁵⁰ is one of the national pioneering projects for the “Family National Safety Program” to serve childhood in the Kingdom, where it seeks enhancing the child right culture for the community and individuals. The toll number (111-116)³⁵¹ will be a channel through which children, adolescents including parents, specialists can discuss their problems and interests and in turn, all problems would be solved in a professional manner under the supervision of a committee formed from 15 governmental bodies. Although the local experiment is new, but the said line found high attention proving the community’s attention in relation with the services submitted.³⁵²

³⁵⁰ On the child international day 20 November 2010, the family security program present the child support line scheme (111-116) to conform to the international day of the child rights, where the launching of the line experimental stage that lasts for one year as a preliminary stage in order to complete the technical and human resources and verify their readiness technically and technologically to receive all communications from different areas, check: annual report of the family national safety program 1431/2010 p. 27.

³⁵¹ This number is chosen in line with the modern trends of the child support line to approve this number as a unified number to facilitate the child communication from anywhere. This number is approved by the European union. At the beginning, there is a concern about the number size (6 digits) but the size of incoming dial in the experimental stage proves its success, the matter ensures that our children are not of less intelligence in comparison to their peer worldwide. Check: security magazine “child support line” issue (1) January 2012, p 7.

³⁵² *Supra*, note 348, p. 5-9.

During the experimental stage through the year 1432 (2011), the child support line presents free communication services for children and youth under eighteen years of age between 9 am and 4 pm, where they present the consultation services and referral through trained psychiatrists and social workers. Those employees are qualified for those communications taken place through the centre which abide by the quality criteria in the communication centres approved by the international organization for the child helpline international (CHI).

After the experimental stage success - the first one in the middle east - aiming at measuring the quality of the line performance and mechanism from the technical and technological sides, the line working hours will extend to 12 hours daily.³⁵³

In 2008, the “Family National Safety Program” provided another national scheme to establish centres for children protection in the major hospitals all over the country, and the scheme has been approved and supported by the national council of health. From then, about (39) centres for the child protection were established in all provinces (13), putting into consideration the population and geographical expansion of these provinces in order to provide the best available services.

Such centres operate under the health national council, and at the same time, the “Family National Safety Program” supervises and provides free training programs.³⁵⁴ It also provides support to all the members working in the centre.

³⁵³ *Supra*, note 348, P.10.

³⁵⁴ Hereunder some program and training presented by the “Family National Safety Program” during 2011:

Each teamwork is composed of multi-specializations team members (such as the paediatrics, social specialists, and psychiatrics) in addition to specialized members such as (surgeons, legal services providers, nurses etc...)

Centres and Workers in the 13 Provinces of Saudi Arabia

Provinces	Number of Centres for child abuse and neglect	Number of Workers in those centres
Riyadh	7	43
Makkah	9	63
Eastern Region	8	40
Almadinah	2	10
Asseer	3	17
Alqassim	1	5
Hail	1	4
Aljof	2	11
Northern Region	1	5
Tabuk	2	9

-
- The fourth training course for physicians and health cadres who are dealing with the child abuse case, in cooperation with the general directorate of the psychological and social health at the ministry of health , 26-28 Dul Qaeda/23-25 October 2011.
 - The seventh training multi-specialized course for professional treating with the child abuse case, in cooperation with the psychological and social health at the ministry of health, and the international society to get rid of child abuse (ISPCAN) and the Arab professional net to get rid of child violence, Najran 21-24 Rabea2 1432/26-9 March 2011.
 - The second training course about the penalty procedure in the child abuse issues, in cooperation with Naif University for security sciences, Riyadh 1-3 safar 143 /26-28 December 2011.
 - The first and second course about the main skills of social specialists to treat with the family violence issues and problems.
 1. The first was held in Riyadh on 3-5 April 2011.
 2. The second was held in Dammam on 5-7 December 2011.
- Review what is presented in the yearly report of the family national safety program 1432/011, P.25 and thereafter.

Albaha	1	4
Jizan	1	4
Najran	1	5
Total	39	220

Table 3

While applying this scheme in 1431 (2010), the child protection team at King Abdul-Aziz medical city”, received (80) referral cases for children who were thought to be exposed to abuse with an increase of 10% over the year 1430 (2009), however, the ratio of deaths resulted from abuse or negligence declined to (5.7%) in 2010 in comparison to (8.3%) in 2009. And the ratio of referrals to the security bodies from (29%) in 2009 to (14.3%) in 2010. The average age of the children exposed to violence is 5 years without any signification difference between male and female.³⁵⁵ and hereunder the statistical data of the cases of the child abuse cases received by the child protection team at King Abdul-Aziz medical city.³⁵⁶

Number of Abuse and Neglect Cases from 2006 to 2010

³⁵⁵ *Supra*, note 348, p.34.

³⁵⁶ *Ibid.* pp. 35 – 36.

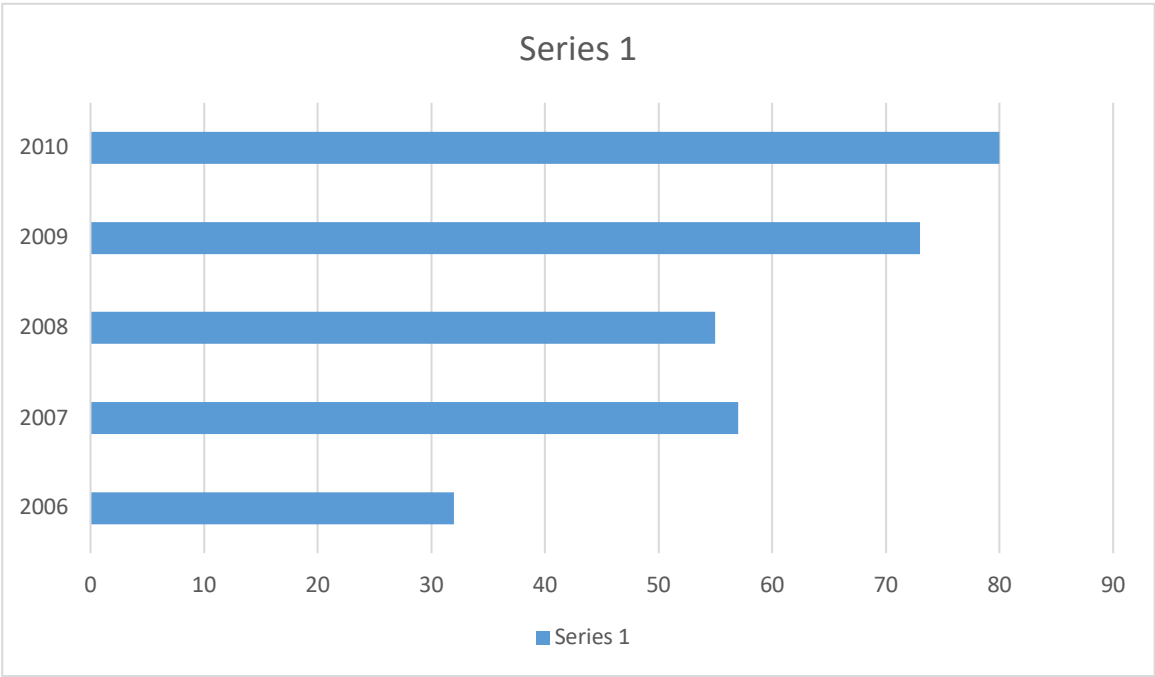


Figure 1

Percentages of Children Abused or Neglected According to Age Groups

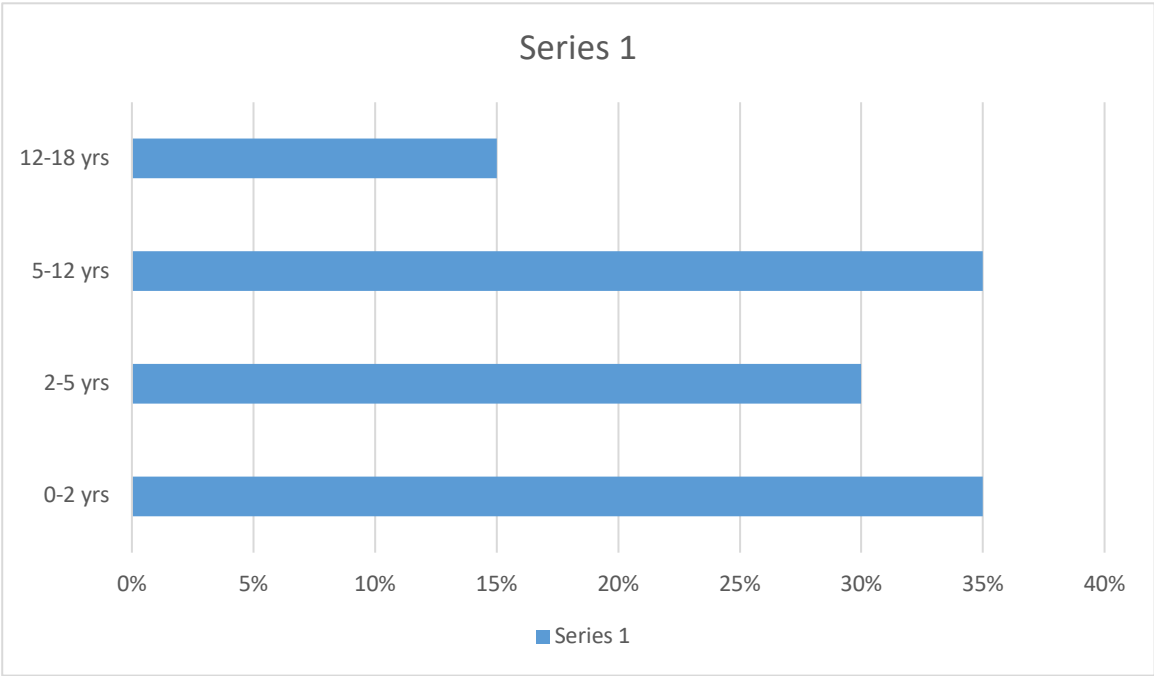


Figure 2

Types of Abuses

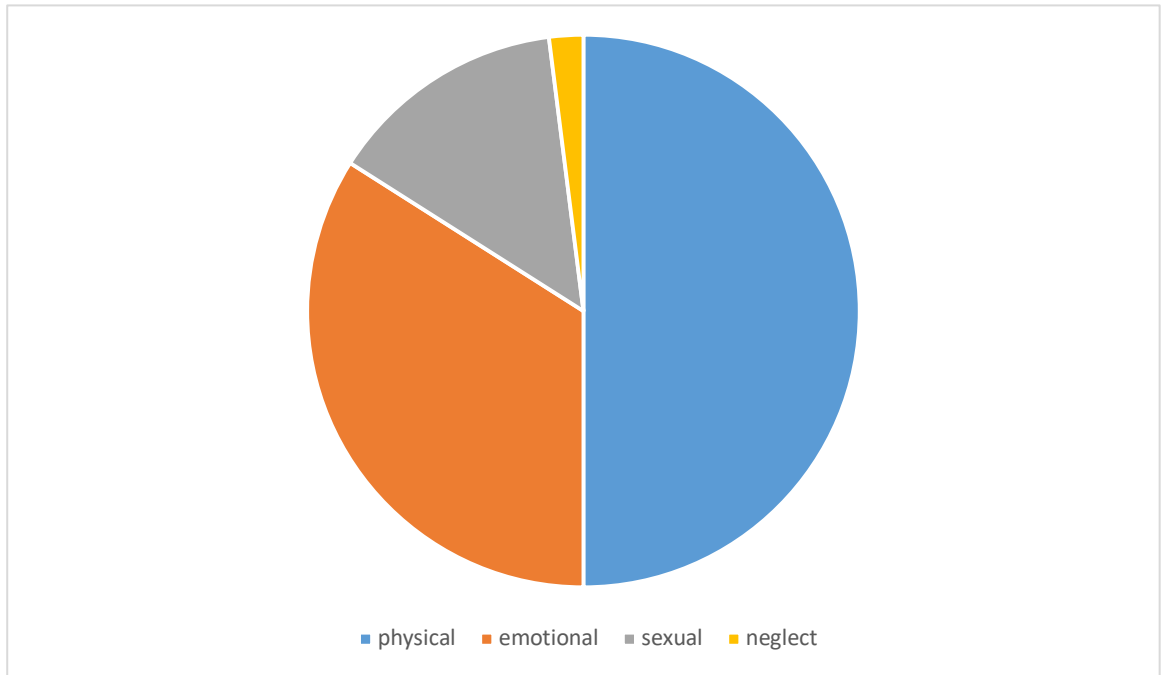


Figure 3

Who Abuses

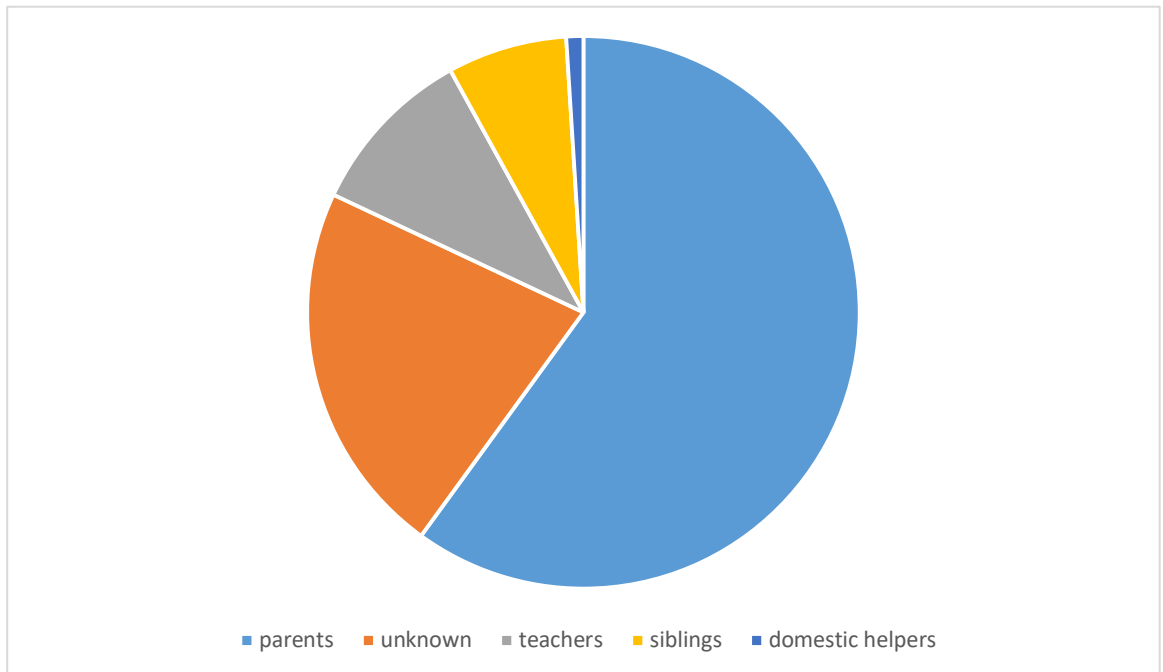


Figure 4

All in all, according to the above-mentioned, we notice that such procedures and legislations represent an approval by the Kingdom's government to maintain the Saudi children's rights and their dignity as humans per the Islamic teachings and instruction that deprive injustice, harm, abuse, to all humans especially children, elderly and "the weak". That also abides by the agreements, laws and international treaties that pay special attention to children, especially in terms of protection from violence and abuse in the manner mentioned in the UNCRC.

e- Right to a Family Environment or Alternative Care

The protection and care for the vulnerable children or the children at risk of being neglected by their families or abused presents a considerable policy dilemma for contemporary researchers. This is also considered an increasingly important issue, as greater number of children are presently in care out of home.³⁵⁷ It is important to care for the children replaced in alternative care because there is considerable evidence pointing to the poor performance and future prospects of children in alternative care compared to the rest of the child / adolescent population. This is in addition to the fact that the shift towards independent living is complicated for younger people, given the relative lack of experience and the increased vulnerability of children to various harmful activities.³⁵⁸

³⁵⁷ *Supra*, note 194, pp. 283-298.

³⁵⁸ Clare Tilbury and Jennifer Osmond, Permanency planning in foster care: A research review and guidelines for practitioners. *Australian social work*, 59(3), (2006): 265-280.

There are fewer ready-made solutions when it comes to tackling the issue of children's rights. Indeed, Besell and Gal argue that a key barrier when it comes to development of a suitable policy response within the protection and care system and consequently providing suitable support to the children (especially the vulnerable children and those with disability) is the specific way in which these children are perceived and viewed by adults.³⁵⁹ This means there is a need for a reconceptualization of the underlying relationship between the children and adults in order for adults to better understand the needs of the children in care and protection and consequently better serve those needs.

There are numerous issues experienced by children within the care and protection system.³⁶⁰ For instance, lack of availability of sufficient resources, instability, insecurity and greater uncertainty are some of the issues experienced by children in such circumstances.³⁶¹ When children are faced with living out of home care, this means they have to experience heightened complexity in terms of developing new relationships outside their normal social circle comprising their biological parents and siblings. The relationship and social circle of such children and adolescents is further complicated by the issues experienced, including increased likelihood of drug abuse and the need

³⁵⁹ *Supra*, note 194.

³⁶⁰ Bronwen Elliott, Patricia Kiely and Sue Tolley. So much to gain: New approaches to child protection meetings. *Children Australia*, 26(03), (2001): 23-26; and Clare Tilbury, The regulation of out-of-home care. *British Journal of Social Work*, 37(2), (2007): 209-224.

³⁶¹ June Clausen et al., Mental health problems of children in foster care. *Journal of child and family studies*, 7(3), (1998): 283-296.
And Brigid Daniel, Sally Wassell and Robbie Gilligan, *Child development for child care and protection workers*. Jessica Kingsley Publishers. (2011).

to establish relationship with others e.g. counsellor, legal professional and carer.

The children's rights have also been neglected in case of children with special needs, care and protection needs, as Bessell argue that these children face greater issues as a result of procedural and systematic failures.³⁶² These include a lack of sufficient planning for care, increased bureaucracy and complex organisational structures that slow down the progress to assist children and a general lack of involvement of children when making decisions concerning their welfare and future.³⁶³ Arce reinforces this argument by criticising the existing approaches to tackling problems faced by children and stating that the existing approaches to children's rights are premised upon ticking boxes and bureaucratic processes that do little to truly understand what the children are going through, combined with the lack of availability of resources to successfully tackle the issues experienced.³⁶⁴ Thus, as Ferguson concludes, there are very few cases and examples within the literature that highlight genuine care in terms of dealing with the issues experienced by children.³⁶⁵ This is particularly true when it comes to assessment of children's

³⁶² Sharon Bessell, Participation in decision-making in out-of-home care in Australia: What do young people say? *Children and Youth Services Review*, 33(4), ,(2011): 496-501.

³⁶³ Evelyn Khoo, Viktoria Skoog, and Rolf Dalin, In and out of care. A profile and analysis of children in the out-of-home care system in Sweden. *Children and Youth Services Review*, 34(5), (2012): 900-907.

³⁶⁴ *Supra*, note 202, pp. 365-421.

³⁶⁵ Lucinda Ferguson, Not merely rights for children but children's rights: The theory gap and the assumption of the importance of children's rights. *The International Journal of Children's Rights*, 21(2), (2013): 177-208.

rights and the extent to which they are looked after, from the children's perspective, as Besell and Gal conclude on the lack of existence of sufficient relevant academic literature on the subject.³⁶⁶

In the recent past, Freeman observed a shift in social policy for children whereby children are increasingly being defined as holders of human rights instead of being considered as receiving protection and welfare.³⁶⁷ It is as part of this transition that researchers have increasingly focused on the rights and responsibilities of children in order to express their viewpoint. This is evident in case of some of the OCED countries, such as the United Kingdom and Australia whereby different jurisdictions have adopted the Charters of Rights for Children and Young People in Care, which also takes into consideration the right for younger people in care and protection to have a say.

However, Ashton criticizes the initiatives taken by the Charters of Rights for Children and Young People in Care, arguing that in practice there remains a considerable difference when it comes to the theoretical arguments contained in the Charters of Rights for Children and Young People in Care and the actual experiences of children.³⁶⁸ For instance, the processes involved in safeguarding the interests of children and their rights, especially in the circumstances where children are faced with the abuse or violation of their

³⁶⁶ *Supra*, note 194, pp. 283-298.

³⁶⁷ Michael Freeman, M.). Physical Punishment in Childhood—The Rights of the Child. *The International Journal of Children's Rights*, 19(4), (2011): 708-713.

³⁶⁸ *Supra*, note 201.

rights lack any concrete steps that take into consideration the perspective of children and places the vulnerable child at the centre of the activity in order to support their development and growth in the future. This clearly highlights that despite their comprehensive outlook and the details included, the guidelines accompanying texts such as the Charters of Rights for Children and Young People in Care are arguably insufficient when it comes to their ability to deal with and successfully support the children under protection and care.

Similarly, Ferguson analyses the extent of involvement of children once they are under social security, care and protection and concludes that there is a lack of participation required from children when they enter the protection.³⁶⁹ Biehal and Wade argue that this explains why a large proportion of younger children in care and social security are frequently dissatisfied and even take the step of running away from care houses.³⁷⁰ This further reinforces the perception that children continue to be in need of support, encouragement and protection from the relevant policymakers and authorities, which is particularly true in case of the children experiencing issues and requiring care, social security and attention.

It is assumed that the innate nature of humans and the most natural environment for a child to thrive in is for the child to be brought up under the care of both parents. The natural family is of effective impact on the formation

³⁶⁹ *Supra*, note 364.

³⁷⁰ Nina Biehal, and Jim Wade, Going missing from residential and foster care: Linking biographies and contexts. *British journal of social work*, 30(2), (2000): 211-225.

and development of all growth aspects of the child, where the essential needs are met for the child by his parents, whether these were social, psychological, emotional needs, or the similar needs required for proper balanced growth.³⁷¹

Several studies confirm the importance of family life and the existence of parents in a child's life. Those studies also confirm the negative impact of losing the parents or one of them on the child whether the loss is due to death or divorce between parents.³⁷²

The family unit is the core of a society. According to Shari'ah, it has its rights and responsibilities towards children. However, the family unit has to sometimes be compromised when the child has to be cared for by persons other than the parents because of legitimate reasons, or medical and social preventives.³⁷³

Emphasizing the importance of family life, the Kingdom has sought to adopt the "Alternative Family Act". This Act places an "in-need" child with a family within his/her community to bring up the child and care for the child.³⁷⁴ This is a form of foster care which is urged by Islam.

³⁷¹ The terminology (Need) is defined as:

- a physical and psychological status that makes an individual feel the loss of a certain thing deemed necessary or useful for his/her physical or psychological stability. See: Abdel- Salam Bashir Al-Dweibi, the entrance to childcare, Mass House publishing, distribution and declaration, Libya, 1988, p. 42.

- It is also known as the physical, psychological, social and economic demands which an individual need to sustain a healthy life, live happily and feel satisfaction and gratification. See : Abdel -Majeed Tash Mohammed Niazi, English terminologies and concepts in the social service, Obeikan Library, Riyadh, 2000, p. 182.

³⁷² A. Al-Sadhan, The Virtue of Being Guardian of an Orphan: An Invitation to Accompany the Messenger of Allah (peace be upon him) Paradise, 1423 AH / 2002 AD, publication No.3, p. 22.

³⁷³ *Supra*, note 272, p. 104.

³⁷⁴ Alternative Families in the Draft Law of Children in Need for Care Dated 1395 AH/ 1975 AD.

The idea of this form of foster care is that a family will host a child that is deprived of a family environment, to live in the family as one of the family's children and be embraced in a natural family environment promoting balanced growth and achieving social and psychological adaptation. This right differs from the Adoption Law. The child cannot hold the family name in this Act and the lawfulness shall continue until it is interrupted by breastfeeding from the wife or from one of spouses' relatives. This system is said to be less deceitful since it is based on honesty and does not change the child's name thus differing from adoption which is based on otherwise from the first day.³⁷⁵ Despite all the procedures and safeguards provided for in the context of Article 21 of the UNCRC related to the system of adoption, practicality of adoption has shown some disadvantages thus giving the Islamic view that does not allow adoption in the sense mentioned in the CRC some credit. Some of the disadvantages of adoption are as follows:

1. Exploiting adoption as a means to revive slavery and servitude in a modern way.
2. Exploiting adoption as a means to provide human organs such as kidneys, eyes etc.
3. Exploiting poor children through adoption in prostitution and sexual exploitation in a prohibited way.
4. Exploiting adoption as a means to fraud against the immigration laws in some developed countries.

³⁷⁵ A. Al-Sadhan, *Social Care for the Children Deprived of Parental Care (Orphans and the Like) (Principles - Patterns)*, King Saud University, Riyadh, 2003, p. 81.

5. Exploiting adoption as a means to provide children to wealthy families to do service works at homes, breaking international laws that prohibits child labour.³⁷⁶

Thus, this adoption law, unlike internationally approved adoption laws, provides the alternative care for the child but emphasises on maintaining the relationship and kinship between the adopted child and his birth family if they were known.

It is necessary to note here that Article 20(3) of the UNCRC recognizes explicitly that the foster care in Islamic law is an alternative to adoption, it states that: "Such care could include, inter alia, foster placement, kafalah of Islamic law, adoption or if necessary placement in suitable institutions for the care of children. When considering solutions, due regard shall be paid to the desirability of continuity in a child's upbringing and to the child's ethnic, religious, cultural and linguistic background." The text clearly puts the word 'or' within choices of alternative care thus putting adoption as just a choice for countries that laws' approve or adopt adoption and also including the Islamic view of adoption, and other means of adoption, as options as well. Therefore, we believe that there is no justification for Saudi Arabia to have a reservation on this Article of the Convention. Moreover, Article (21) that follows directly, addresses explicitly the countries that "recognize and/or permit" Adoption Law which is not applicable in any case in Saudi Arabia since it does not permit Adoption Law in compliance with the provisions of Islamic Shari'ah.³⁷⁷ As long

³⁷⁶ M. Hammouda, *Himayat Huquq al-Tifl fi al-Qanun al-Duwali al-'Amm wa al-Islami*, (Egypt, Alexandria: Dar al-Jami'ah al-Jadidah, 2007).

³⁷⁷ Article 21 of the CRC states that: "States Parties that recognize and/or permit the system of adoption shall ensure that the best interests of the child shall be the paramount consideration..."

as the Articles contained in the Convention include the adoption or kafalah (the Islamic alternative) as a means of the alternative care, it means that it includes an open option, so how can we say that those articles are incompatible with the principles of Islamic law?

Because adoption is prevented and because of the heritage, culture and the affiliation of Saudi Arabia with the Islamic religion, Saudi Arabia has sought to lay the principles and controls through alternative families' law to provide an alternative care for a child to be brought up in a natural family compensating him of the sense of belonging he/she lacked after losing the parents or being given up by their parents. Those children will require extra health, psychological, social and professional care. The alternative families' law includes children such as:³⁷⁸

1. The children of unknown parents
2. Children exposed to delinquency as a result of parent(s) in jail, drugs addiction or illness for a long time

³⁷⁸ In this respect, we refer to the legal opinion No. (20711) dated 24.12.1419 AH, issued by the General Presidency of Scholarly Research and Ifta (Giving Legal Opinions), this legal opinion stipulates: "A foundling child is considered an orphan as they lost their parents. They need even more care and concern than those of known parentage as they do not know any of their relatives and so have no one to resort to when necessary. Therefore, the reward of sponsoring a foundling is the same as sponsoring an orphan. This is based on the general meaning of the Hadith of the Prophet (peace be upon him): I and the one who sponsors an orphan will be like these two in Paradise. He (peace be upon him) pointed with his index and middle fingers and he separated between them. (Agreed upon by Al-Bukhari and Muslim). However, sponsored children should not be named after the persons who will raise them and they should not be added to their family identity cards. This is because the act will cause mixing descents, loss of rights, and committing what Allah (Exalted be He) has prohibited. A guardian should know that once orphans reach the legal age, they are Ajanib (lawful for them to marry) and therefore, it is not permissible for a guardian to be in privacy with them and it is not permissible for a woman to look at a man or vice versa unless the sponsored child was breastfed by the woman. Therefore, they become Mahram (unmarriageable relative) for her, as well as her daughters, and her sisters. May Allah grant us success. May peace and blessings be upon our Prophet Muhammad, his family, and Companions." It is referred to in: Abdullah bin Nasser bin Abdullah Al-Sadhan, the virtue of a guardian of an orphan, note 371, p. 8.

3. Children of broken families
4. Orphans
5. Children with no families as a result of wars and disasters
6. Lost children who did not find their families

Complementing the aspects of alternative care for children with special circumstances, the Kingdom has enacted "a Draft Law of Children in Need of Care" dated 1395 AH (1975).³⁷⁹ This draft law organizes the care of these children deprived from a family environment through sheltering institutions or foster families. This draft law consists of nineteen Articles and the most prominent topics are the following:

First: Who are the children in need of care?

Article 2 of this draft law mentions clearly and in detail the children in need of care:

"This draft law stipulates the treatment of children in need for care. It includes: children of unknown parentage,³⁸⁰ children who have been deprived of the care of parents, one of them or relatives due to death, separation between the spouses, prison, intractable mental or somatic illness, an infectious disease or any other similar reason at the discretion of the minister. It also means the children of paralysis or any

³⁷⁹ The Draft Law of Children in Need for Care was issued by a Cabinet's decision No. (162) dated 13.05.1395 AH.

³⁸⁰ Article 1 of this draft law had identified "the child of unknown parents" as a child born in Saudi Arabia to unknown parents.

other intractable disease making their families unable to care of and treat them."

Second: Duration of Foster Care and the possibility of persistence:

This draft law determines the age of the child in need of care, which is from the time of birth until the age of six. The duration of care starts from the time when the family or care organization receives the child.

This may be:³⁸¹

- a- After birth immediately or shortly in the case of a child of unknown parents.
- b- The duration of care may also start at a later age of birth by months or years in the case of alternative care. This is for children who have been deprived of parental care, the care of one of spouses or relatives' care because of death or any other reasons included in Article II of this draft law.

The duration of care would end at the date of adolescence of eighteen years³⁸² except in the two cases of seeking for education or a child with a disability who was not qualified possibly and could not be provided with a proper care.

If the child is a seeker of education, the duration of care can last until the end of educational stages. For a child with a disability, the duration of his care may

³⁸¹ See paragraph (A) of Article (12) of the Draft Law of Children in Need for Care.

³⁸² The Draft Law of Children in Need of Care in the Kingdom has specified special laws for care for children deprived of a family environment in order to sponsor all the social, educational, and psychological and health rights since the age of birth until the age of 6 years in social nurseries. When the child reaches this, he shall be transferred to the institutions of social education and the institutions of typical until the age of eighteen.

last until he recovers from his body defect or he is qualified in accordance with the programs of vocational rehabilitation for the disabled.³⁸³

Third: The caring family, its commitments and supervision:

This draft law focuses in choosing the family that the ministry entrusts to child welfare. Article 4 of this draft law stipulates that: "The family being entrusted to care for the above-mentioned children, should be from Saudi families, the nursery sections must be Saudi and it is allowed to place the children in foreign families or nurseries."

Article 8 of this draft law stipulates that the ministry shall hold the responsibility of conducting the social research needed to choose the caring family under supervision by the ministry. This Article also obliges the ministry to lay down the appropriate conditions to be provided in the family which holds the child care.³⁸⁴ In this regard, we refer to Article No. (13) of Cabinet's decision No. (15041 \ 3) dated 22.5.1395 AH (1975) with respect to the conditions to be met by alternative families:³⁸⁵

- a- The family shall be a Saudi national.
- b- The family shall consist of spouses provided the wife does not exceed the age of fifty and, if necessary, the child may be cared only by a woman.

³⁸³ See paragraph (B) of Article (12) of the Draft Law of Children in Need for Care.

³⁸⁴ *Ibid.*

³⁸⁵ Hamdan al-Otaibi, "Tajrubat al-'Usar al-Badilah li Ri'ayat al-Ahdas min al-'Inhiraf: Dirasa Tashkissiyah min Wijhat Nazar al-'Akhisa'iyyin al-'Ijtim'iyyin" (Master Dissertation, Naif University for Security Sciences, 2010), 27-28.

- c- The medical examination proves that the family members have no chronic and infectious diseases.
- d- The number of family children who are under six years old shall not be more than three children.
- e- The difference between the skin colour and race of child and the fostering family are taken into consideration.
- f- Ensure that the family is of good conduct and reputation.
- g- The social research proves the validity of the family to care for the child socially, psychologically and economically, and ensure that the motivation of fostering is not to take advantage of the money paid to the child.

Article 10 also provides that: "A declaration and undertaking is signed by the caring party to commit to the conditions and instructions laid down by the ministry under the preservation of the child and his care healthily, scientifically and religiously at all stages in which she/he are under the care."³⁸⁶

As the child is in the early stages of his life needing for health care more than anything else, the Article 14 of this draft law stipulates that: "the caring party is committed to provide a medical report periodically about the child's general health once every six months unless the ministry sees that this report should be submitted monthly in the cases requiring it".

To be sure that the caring family commits to the conditions and instructions laid down by the ministry, Article 15 of this draft law is about inspection stipulating that: "The ministry has the right to assign one of its specialist

³⁸⁶ See Article (10) of the Draft Law of Children in Need for Care.

employees or female employees to visit the child in the place where he lives, to report about him, this caring shall facilitate the employee's mission."

If the Ministry finds at any time, even before the child reaches the age of six, that the caring party do not validate any of the conditions to continue caring for the child fully, it shall look for other suitable organizations like transferring the child to a social nursery.³⁸⁷

Fourth: Monthly subsidy:

As the Kingdom encourages this law and to achieve a great possible result of this law, the kingdom decided a number of financial benefits for the child, whose care is assigned to foster families, whereas Article 17 of this draft law stipulates that:

"The ministry shall grant a monthly subsidy to the caring party with effect from the date of receiving the Child, if this party wanted this subsidy". The monthly subsidy is granted for those who need it because some people do not want it as they want to stand alone to spend and care for the child. Article 18 determines the amount and details of this subsidy.

It is noted from the foregoing that the Kingdom has ensured the child's right in the foster care provided for in Article 20 even before ratifying the Convention. The Kingdom was very keen to provide comprehensive care for children who are in need by creating the climate to encourage sheltering those children and embracing them in a proper familial atmosphere.

³⁸⁷ See paragraph (C) of Article (12) of the Draft Law of Children in Need for Care.

The following breakdown shall profile some other systems of alternative care provided by the Kingdom to the children deprived of a family environment temporarily or permanently, as follows:

Role of social nursery:

These nurseries provide health, social and psychological care for children of both sexes from birth until the age of six³⁸⁸ who are surrounded by special circumstances preventing them from natural family care. Special circumstances include:³⁸⁹

1. The impossibility to identify the child's parents or family.
2. Illegal relation between the child's parents.
3. The mother's existence in an institution such as the hospital or prison.
4. Death of the child primary care giver such as parents or others, their inability to perform or if the primary care giver is suffering from mental, nervous, physical, remediless or infectious disease.
5. Children who are displaced as a result of the spouse's separation whether legally or not. This is the case if the competent authority in the ministry considers the parents or one of them not able to fully care for the child.

Currently, these nurseries are in four areas, located in: (Riyadh, Alrass, Al-Dammam, Jeddah).

³⁸⁸ See Article (4) of the Basic Draft Law of Social Nurseries issued by a Cabinet's decision No.(5546/3/C) dated 16.02.1395 AH.

³⁸⁹ See Article (3) of the Basic Draft Law of Social Nurseries.

Numbers of Children Benefiting from those Nurseries

Gender	2006	2007
Male	248	321
Female	329	378
Total	687	699

Table 4

Reasons for Admittance into those Nurseries

Orphan		Mother imprisonment		Unknown parents		Broken family		Pulled out of a family			Other	Total		
M	F	M	F	M	F	M	F	M	F	M	F	M	F	Total
0	4	7	5	204	315	16	23	3	5	55	26	321	378	699

Table 5

The homes and institution of the social welfare:

These nurseries and institutions are concerned with the child's welfare. Male and female children aged between the age of six and eighteen, of special circumstances whose parents or one of them have died or failed for their care because of the loss of capacity or the inability to provide for them a proper natural environment. Social research carried out on these families need to confirms the child's need to be accepted in these nurseries that provide all the

social, health, educational, sports and entertainment needs under social proper supervision.³⁹⁰

The number of those institutions in 1427 AH (2007) is (14) nurseries, including (10) nurseries of boys, located in the following cities: (Makkah, Buraydah, Shaqra, Medinah, Al-Jouf, Abha, Riyadh, Hail, Dammam). Four nurseries for girls are located in the following cities: (Jeddah, Ahsa, Medinah), whereas two social education institutions are located in: (Riyadh, Jeddah).³⁹¹

Numbers of Children Benefiting from those Institutions

Gender	2006			2007		
	Males	Females	Total	Males	Females	Total
Number of institutions	10	4	14	10	4	14
Number of children	840	347	1187	842	348	1190

Table 6

Reasons for Admittance into those Institutions

No father		No mother		Neither parent		Exceptional cases		total		
Mal	Femal	Mal	femal	Mal	femal	Mal	femal	M	F	total
15	22	12	10	71	3	744	313	84	34	1190

³⁹⁰ *Supra*, note 384, p. 26.

³⁹¹ *Ibid.* p. 27.

Table 7

Alternative Care Program:

The alternative care is concerned with the care of children with special circumstances such as those who have no breadwinner in the family, those who have been deprived from parental care or for any similar reason. Those children are cared through one of the following two methods:³⁹²

-Place them in appropriate social care institution.

- Hand them over to one of the families desiring to take care of them within the family and these families are divided into:

1. Foster families: they are concerned with the children of no breadwinner and the child shall stay in these families without a specific term.

2. Alternative families: these families take care of children from the age of 2 years to the age of 21 years and it may continue beyond that.³⁹³

These families are granted subsidies by (SR 5000) per month for children under the age of six,³⁹⁴ (SR 1200) per month for children over the age of six.

An amount of (SR 2400) is granted for children above the age of six who join schools each academic year, at the end of the children's residence with foster families, an amount of (SR 5000) is granted as a symbolic gift in exchange for

³⁹² *Ibid.* p. 50.

³⁹³ *Ibid.* p. 27.

³⁹⁴ These rewards have changed several times as these rewards ranged from (SR 1000) to (SR 3000) until these rewards reached (SR 5000) during the year 1432 AH\ 2011 AD. In this respect, see : Naif Al Zahim, "Issuing the Supreme Decree increasing the subsidy of alternative families to SR five thousand for each orphan," *El Riyadh newspaper, Riyadh* dated 22 Raby' Al- thanni, 1432 AH corresponding 27. 3. 2011 AD, Publication No. (15616).

providing a good child care. The exchange will continue until the child is adolescent, has a job in one of the public or private sectors and become able to rely on him/herself.³⁹⁵

Number of Families and Amounts Paid Out

Year	Number of families	Amounts paid
2006	5431	79,949,815 SR (17,003,876 GBP)
2007	5756	81,889,856 SR (17,416,487 GBP)

Table 8

There is no doubt that the alternative family care for the child is superior to the institutional in several stages as the child lives in a family environment between a father and a mother giving him tenderness and heartedness which are missed in any institutional sheltering or in any nurseries of social education. It is not shocking to consider the keenness of the Kingdom - represented by the Ministry social Affairs – to give this aspect a great care as

³⁹⁵ *Supra*, note 371, p. 22.

the Kingdom laid down many financial benefits and administrative facilities in order to direct the greatest number of these children into foster families in the community.³⁹⁶

Considering the aforementioned, it is clear that the Kingdom had laid down the provisions of the Islamic Shari'ah - the base organizing foster care and alternative families - in order to ensure the best interests of the child, it also ensured that right for all children in accordance with their health and social status regardless of their sex, colour or race. It is considered a positive manifestation of the Kingdom to be in compliance with Article (20) of the UNCRC.

f- The Right to Appropriate Employment Systems

The Kingdom of Saudi Arabia has taken a number of procedures to prevent children from working at early ages, including the contents of the Labour Law 2005,³⁹⁷ where the Law has specified the Articles 161 - 167 of Section (5) to regulate employment of minors to protect them against dangerous or harmful acts. 'Minors' in this law have been defined in Article 2 as: "Any person of fifteen and below eighteen years of age". Thus, this labour law regulates employment of minors who are not under the age of fifteen years and not older than eighteen years of age.³⁹⁸

³⁹⁶ *Supra*, note 384, p.27-28.

³⁹⁷ The Saudi Labour Law, issued by Royal Decree No. M / 51, dated 23/08/1426 AH (September 2005). English version can be found at: [Accessed 22 April 2018]. <http://beoe.gov.pk/files/legal-framework/labor-laws/Saudi-Labour-Law.pdf>

³⁹⁸ It is worth mentioning that Labour Law of 1398 AH which was cancelled, was organizing the work for the juveniles whose ages are under the age of thirteen years and not more than fifteen years, but

Article 161 of this law has revealed the jobs where it is prohibited to make minors work, as the provisions state that “Minors may not be employed in hazardous jobs or harmful industries or in occupations or jobs that may endanger their health, safety or morals due to the nature or conditions of the same. A Minister’s decision shall specify such jobs, industries and occupations”. The provisions had been clear and explicit to prevent employment of minors in such acts since there is a very significant danger for the children's physical and moral composition.

Paragraph (1) of Article 162 was stipulated to ensure the same principle as it stipulated that: “Any person under the age of fifteen years may not be employed or allowed to enter places of work. The Minister may, pursuant to a decision by him, raise this age limit in certain industries or areas or for certain categories of minors.” By an exception from the provisions of the previous Article, the minister is entitled to allow employment of any person whose age ranges between 13 - 15 years in light work, taking into account the following:

- 1- “Such jobs shall not be potentially harmful to their health or growth.

it has been modified along with issuance of the "new Saudi Labour Law" called “Labour Law of 1426 AH” (in 2005). This Law included important additions going beyond the provisions previously established in the old law; it indicates that the Saudi legislator was keen to develop the law depending on the evolution of life and work environment and to be more compatible with the international conventions. See: Hadi Sif Fenice Al Shahrani, «Criminal Responsibility for Employment of Children in the Saudi Law: a principal comparative study of the international covenants», unpublished Master Thesis, Naif Arab University for Security Sciences, Riyadh, 1431 AH / 2010 AD, P. 72.

2- Such jobs shall not hinder their school attendance, participation in orientation or vocational training programs, or impair their ability to benefit from their schooling”.³⁹⁹

In one part and with regard to labour time and duration, Article 163 prohibits employment of minors at night. It states that: “Minors may not work during a period of night the duration of which is not less than twelve consecutive hours, except in cases determined pursuant to a decision by the Minister”.

On the other hand, Article 164 determines the appropriate period of work for the minors, as it stipulates that the number of working hours shall not exceed six hours per day in all months of the year, with the exception of the month of Ramadan, the working hours in Ramadan shall not exceed four working hours. Also, this Article stipulates the periods of rest, prayers and food not to be less than half an hour during the working hours; it confirms not to employ minors for more than four consecutive hours without rest periods and that the total working hours shall not exceed seven hours per day.

It also emphasizes not to employ minors on weekends, ‘eid’ days, public holidays or annual leave. In addition, this Article has excluded the juveniles from the total exceptions contained in Article 106 of the same law which relates to workers' employment for overtime.⁴⁰⁰

³⁹⁹ See Article (162), paragraph (2) of the Saudi Labour Law.

⁴⁰⁰ Article 106 of the Labour Law allows the employer to employ his employees for overtime in cases of necessity provided for by law. Also, see the provisions of Article (164) of the Labour Law.

To ensure controlling the minors' actions and organizing their employment under Article 161 and Article 162 of the Labour Law, the employer⁴⁰¹ shall obtain the following documents and keep them in his own profile before employment:

- 1- The national identity card or an official certificate of the minor's birth.
- 2- A certificate of health fitness for the required job to be issued by a competent physician and certified by a health authority.
- 3- The consent of the juvenile's legal guardians.⁴⁰²

The purpose of these actions is to protect the minor worker against the employer's abuse and exploitation and to preserve the minor's health and safety. Article 166 of the same law also requires that the employer "shall notify the competent labour office of the employment of each minor within the first week of such employment, and shall keep at the workplace a register for employed minors, showing the name of the minor, his age, full name of his guardian, his place of residence and date of his employment".

As the labour law has specified Section (13) from that law to be concerned about "work inspection" in Articles 194-209, the aim of the notification requirement is to enable the competent labour inspector to follow the juveniles throughout their employment to ensure the safety for the procedures of their employment in a manner ensuring their protection.

⁴⁰¹ According to Article (2) of the Labour Law, "employer" means: Any natural or corporate person employing one or more workers for a wage.

⁴⁰² See Article (165) of the Labour Law.

However, Article 167 of the labour law suggest an exception to all the provisions set forth in Section (10) of this law, which relates to “Employment of Minors” and this is as follows:

“The provisions provided for in this Chapter shall not apply to work undertaken by children and minors in schools for general, vocational or technical education, and in other training institutions, nor shall they apply to work undertaken in firms by persons who are at least fourteen years of age if such work is performed in accordance with the conditions set forth by the Minister and the work constitute an essential part of the following”:

1. An educational or training course the primary responsibility for which lies with a school or a training institution.
2. A training program all or the major part of which is implemented in a firm if approved by the competent authority.
3. An orientation program aimed at facilitating the selection of the career or type of training.

As for the reason behind this exclusion, it is considered that the work in these institutions or bodies is always light work, useful in terms of the educational and behavioural aspect and also does not pose any danger to the minors. As for the punishment for violating the employment of minors in the Saudi Law, it can be divided as follows:⁴⁰³

⁴⁰³ Articles (229-242) of the Labour Law.

First: The violation is related to the occurrence of the damage resulting from it. This means that the violator of employment law commits breaches to the terms of employment, leading to a sensory damage for the child, such as employing the child in hazardous professions, leading to partial or total damage to the child; if this violation resulted in lawfully punishable sensory harm to the child, the employer will be subject to legitimate penalty before the competent court considering claims of damage. This is because the damage to others is punished by the judiciary, there is the special right to the victim and it is a general right to the society that cannot be withdrawn. In other words, this kind of violations to the provisions of the Labour Law is subject to the public and judicial laws to determine whether the criminal responsibility is intentional or unintentional, and then to cause the judicial penalty at the discretion of the judge considering the case after a fair trial.

Second: when the violation takes place while there is no sensory damage: it means that the violator breaching the employment items commits a violation but this violation did not result in obvious sensory harm, for example: when the violator employs a child for more than the working hours set by the law while this violation does not lead to sensory perceptible harm, the violator shall be subject to the penalty provided for in Article 239 of the Saudi Labour Law, which states that: "A violator of any of the provisions of this Law and the regulations and decisions issued hereunder shall be subject to a fine of not less than two thousand riyals and not more than five thousand riyals, for punishments not provided for herein". Article 240 of the same law states that:

“If the violation is repeated within ninety days or the violator fails to correct it within the specified period, the fine shall be doubled”.⁴⁰⁴

Based on the foregoing, it is concluded that as the Saudi Labour Law had specified the important controls of employing minors, and then to apply the criminal responsibility on those violating the requirements of this law, the Kingdom has sought to protect the minors' rights and maintain their rights to let them enjoy security and confidence, creating a work environment suitable to their age, ensuring that the work would not affect their behaviour, health, education or any other aspect of their lives. It can also be concluded that the Saudi Labour Law is consistent with all the items provided for in Article 32 of the UNCRC.

Furthermore, and in order to enable the Kingdom of Saudi Arabia to participate in any international assembly, signing the conventions that serve global and regional humanistic issues, showing its support for that issue, the Kingdom has hastened to sign a group of international conventions relating to organizing minors' employment.

⁴⁰⁴ We note here that upon the Prime Minister's approval No. (K / 964 / M) dated 1st of Thul Qa' dah 1422 AH (14/01/2002), regarding the safety rules for camel and horse racing camel, the Kingdom has had banned the juveniles under 18 years from camel riding in race competitions and stipulated to punish anyone who violates that by penalties, including, exclusion for any under eighteen years -rider from participation in the races, as well as depriving the camels owner from getting the award if after the race, it was proven the rider's age is under 18 years. See the second periodic report provided by the Kingdom of Saudi Arabia to the Committee on the Rights of the Child under Article (44) of the CRC, previous reference, p. 12.

These international conventions are issued by the International Labour Organization,⁴⁰⁵ including:⁴⁰⁶

- 1- Convention No. (1) on the working hours (industry) in 1919.
- 2- Convention No. (29) on the compulsory Labour in 1930.
- 3- Convention No. (90) on the juveniles' work at night (Industry) in 1948.
- 4- Convention No. (105) on cancelling the compulsory Labour in 1957.
- 5- Convention No. (123) on the minimum age (work under the earth's surface) in 1965.
- 6- Convention No. (182) on the Worst Forms of Children's work in 1999.

Reviewing the aforementioned, we conclude that the Kingdom had sought to stand on a clear position on child labour, it validated child's work which is allowable in accordance with Article 32 of the UNCRC, its position was also consistent with the contents of other conventions joined by the Kingdom in this

⁴⁰⁵ International Labour Organization (ILO) is the oldest specialized agency in the United Nations on children's rights since it is established in 1919; the issue of children's and juveniles' protection was at the foremost part of the organization's interests and duties, there was an explicit reference to this duty in the preamble of the organization's constitution, ILO has played a major role in the field of child protection against being economically exploited and against all bad forms of child employment in the world, that the Kingdom has adopted various national laws and legislation of many of the rules, procedures and guarantees of child's protection established by the International Labour Organization. For more information on this organization, its conventions and recommendations on the protection of children in the workplace and for more information on the ILO's efforts on child's protection this area, please see its website: [http:// www.ilo.org](http://www.ilo.org)

⁴⁰⁶ The Kingdom has joined all these conventions on (15/06/1978), except for the Convention No. (182) on the Worst Forms of Child Labour in 1999. The Kingdom joined it on (08/10/2001). For more information on so, please see the International Labour Organization, ratifications related to the Kingdom of Saudi Arabia [Accessed 22 April 2018].
http://www.ilo.org/dyn/normlex/en/f?p=1000112003864523544416167P:11200_INSTRUMENT_SORT4

regard, taking into account the rights of the child and preserving the child's dignity.

g- The Right of Protection to Juvenile Delinquents

The child, as a result of his incomplete mental and physical composition, requires a special treatment that aims at the child's rehabilitation and reform; also, the juvenile stage includes, in terms of responsibility, several stages and the proper procedure must be applied to each stage. The Kingdom of Saudi Arabia acted to do so, it relied on dividing the judicial responsibility of the child, in the state, in three stages:

The first stage: it is from the date of the child's birth until the age of seven, it is known as the stage of lack of understanding, meaning "lack of responsibility" because of the child's lack of discrimination at this stage; therefore, if the child has committed a crime, he will not be disciplinary or criminally punished and penalties shall not be applied or supported due to the futility of disciplinary proceedings against him because of the lack of intent, especially since the child's mental ability at this stage has not yet reached the degree in which he understands the legal provisions and cannot distinguish between the beneficial and harmful matters.

The second stage: it is from the age of seven until the age of fifteen. In this stage, the child is considered distinctive and shall start his education and training on worship, dealing with others and assuming certain duties and responsibilities without any consequent punishment. At this stage, the child

shall not be criminally punished if he killed or injured but he will be disciplined for this crime, it means that he will be disciplinary responsible within the limits of reinforcement as it is considered a disciplinary for being decided for the children to evaluate them, but while applying these procedures, we must take into account the child's interest of evaluation and reform, so that no damage shall affect the child's psychology or future because the otherwise shall get us out of the circle to the disciplinary to the circle of punishment. Also, exempting the child from the criminal responsibility does not exempt him from the civil responsibility; the juvenile shall remain civilly responsible for every crime which he committed, he shall be requested, in his own money (if any), to remedy any compensation or damage which he caused for others' money or selves, otherwise compensation or damage shall be remedied by his guardian such as his father or the like.

The third stage: it is after reaching the age of fifteen to eighteen, he shall be criminally and civilly responsible. He shall be requested about his commitments adequately in the proper place to protect him, to observe his favour and to take care of his education. The penalties and other judicial sentences shall be applied and if there is a need, the child will be located in social guidance home as an alternative environment to ensure improving his behaviour and his goodness for an appropriate period.⁴⁰⁷

⁴⁰⁷ *Supra*, note 272.

It is interesting to consider that along with some special regulations of protecting the juveniles in the Kingdom, there are general laws addressing a topic that includes some provisions for the children and mothers, including the Imprisonment and Detention Law⁴⁰⁸ which devoted its Articles (13-14-15) to declare how to treat the female imprisoned or suspended pregnant woman and her baby,⁴⁰⁹ especially since the Kingdom is one of the countries that apply the protection of their national laws and legislation on the pre-natal stage, i.e. during the pregnancy period. It does not wait for the child's birth to care about him, but it cares about him while he is a foetus. While considering the provisions of the previous articles of prisons and arrests laws, it is clear that the Kingdom took into account the best interests of the child, regardless of his mother who may be sentenced or arrested procedures for committing a crime. Accordingly, the Kingdom can be said to be superior to the standards set by the Convention in this regard.

As for the protection of delinquent children and considering the preventive capacity that characterize this care and protection, the Kingdom has issued

⁴⁰⁸ The Imprisonment and Detention Law issued by Royal Decree No. M/31 dated 28 May 1978.

⁴⁰⁹ Article 13 deals with treating the pregnant women in jails where they receive special treatment and provided with food and nourishment according to their cases, they are given this special treatment until 40 days after giving birth. Article 14 deals with the actual birth, where a woman needs to be transported to a hospital as soon as she feels the labour pain, she then stays in the hospital until she gives birth and does not leave until her doctor sees that she is fit enough to do so. Article 15 then goes further to explaining the arrangement of the mother and the baby, where the baby can be arranged for to stay with the mom until he/she is two years old (the age of weaning according to Islamic law). However, in cases where the mother does not prefer for her baby to stay with her in prison or when the child completes 2 years, then the baby is given to his/her father or if the father was not there then the child's legal guardian. Or in cases of no father or no legal guardian then an arrangement can be made for the child to stay in an alternative care centre.

the regulation of social observation homes⁴¹⁰ and the girls' and young women's welfare homes,⁴¹¹ in order to address the delinquent juveniles of equality, taking into account bringing into harmony between the justice and the public deterrence for the procedures taken against juveniles, in which special procedures were decided to be independent than the ordinary judiciary procedures, starting from the arrest and investigation to sentencing and execution passing through the trial proceedings.

The Kingdom has established the social observation home "to look after the juveniles who are under the age of twelve years and do not exceed the age of eighteen years".⁴¹² They are: "(A) the juveniles who are imprisoned under investigation or trial by the security authorities or the competent judicial bodies, (B) the juveniles whom the judge rule to keep in the social observation

⁴¹⁰ Ministerial Decree 1354 of 1395 on Regulations for Social Observation Homes.

⁴¹¹ Ministerial Decree 2083 of 1396 on Implementing Regulations for Girls' and Young Women's Welfare Homes.

⁴¹² Refer to Letter No. 1 / 5 / 32766 of HRH Deputy Minister of Interior on 17/03/1430 to Chairman of Investigation and Public Prosecution, which states the following:

- 1- Juveniles under 10 years old cannot be arrested since the process of arrest might spoil them. Their psychological reaction would be so violent, thus unless the magistrate orders so they cannot be arrested.
- 2- Juveniles aged 10 to 15 may not be arrested unless a force majeure occurs and an order is issued by a magistrate.
- 3- Juveniles aged 15 to 18 may be arrested in serious cases such as murders, burglaries, and ethical crimes; and must be subject to the magistrate.
- 4- Juveniles may not be arrested unless having an order from the juvenile magistrate. If the magistrate turns down arresting the juvenile, then the juvenile may be handed over to his/her parents or legal guardians after signing an agreement to undertake the necessary for healthy development of the juvenile and handing him/her in upon request.

home."⁴¹³ The juveniles are sent to the social observation home with a representative of the police wearing civilian clothes or sent with a person of moral, righteous and good reputation. The instructions prohibit treating the juveniles in a manner that affects their feelings, such as putting the handcuffs around their hands, only if they are of abnormal status and there is fear of their escape; it shall be under the responsibility of the investigator and in writing. It is prohibited to take any action, behaviour or reprimand that would affect the juvenile's feelings or dignity and not to intimidate him. These circulars and provisions comply with the provisions of Article (40\1) of the UNCRC, which stipulate that "States Parties recognize the right of every child alleged as, accused of, or recognized as having infringed the penal law to be treated in a manner consistent with the promotion of the child's sense of dignity and worth, which reinforces the child's respect for the human rights and fundamental freedoms of others and which takes into account the child's age and the desirability of promoting the child's reintegration and the child's assuming a constructive role in society."

On this basis, it was stated in paragraph 8 of Ministerial Decree No. (25) dated 26\1\1421 AH (2000) that: "In all cases, the juvenile shall not be arrested at the police stations or prisons, whatever the reasons as the juvenile, in all cases after arrest, shall be delivered immediately to the competent authorities in the social observation home."⁴¹⁴

⁴¹³ See Article 1 of the Ministerial Decree 1354 of 1395 on Regulations for Social Observation Homes, that was updated in 2004 where the age of criminal responsibility was changed from 7 years old to 12 years old.

⁴¹⁴ See Article 10/a of the Ministerial Decree 1354 of 1395 on Regulations for Social Observation Homes.

Moreover, the juvenile shall only be investigated with in a social observation home, under the decision of Article (10 \ A) of the basic regulation for the social observation home that: "the juvenile, in all cases after arrest, shall be delivered immediately to the competent authorities in the social observation home and the competent authority shall investigate with him inside the social observation home, in the presence of specialists in it.⁴¹⁵ One of the controls in the investigation stage is that the investigation shall be conducted in an atmosphere of reassurance and comfort; as Article 4 of the executive rule of the social observation home stipulates that: "the investigation shall be conducted in an atmosphere in which the juvenile shall feel the psychological reassurance and comfort."

As for the trial of the juveniles, the Kingdom has considered the juveniles' cases of urgent cases which the judges shall consider and rule quickly in the chambers of summary procedure. It obliged all the judges to consider the juveniles' cases, alternating between judges of the court, that a judge shall consider the case for a time then, another judge shall complete. This is applied to all the judges of the court; thus, the juveniles' cases will not be delayed for

⁴¹⁵ As for girls, investigation is made inside the girls' care centres according to Article 3 of the Regulations for Girls' and Young Women's Welfare Home.

It states the following (translated by the author): The girl is handed over to the institution directly after arresting her. An arrest report is prepared and investigation must be made in the institution. Also, Article 5 of the same statute states the following: Arrested girls are to be seized under investigation or trial in a location separate from those convicted girls for whom rulings were given.

their importance.⁴¹⁶ The trial of the juveniles shall be conducted in the social observation home or in the girls' care institution.⁴¹⁷

It shall be taken into account, in the trial of the juvenile, that the judge shall be provided with a detailed social report on the juvenile's status declaring the social, economic and environmental conditions and the factors that are likely to be the cause of the juvenile's deviation, in addition to the treatment plan and the procedures proposed for his evaluation, to be taken into consideration while considering the case and announce his judgment.⁴¹⁸ Important recommendations were issued by the presidency of the judiciary for the judges while the trial of the juvenile, these recommendations stipulate the following: "when the young man makes a lapse, deviation or is accused to have committed one of them they need at their trial educational methods to help guide them and evaluate their behaviour.⁴¹⁹" Therefore, the following matters shall be followed:

⁴¹⁶ Refer to the Decision No. 218 / 43 on 20/04/1417 of Higher Judicial Council. According to the Decision No. 239/95 on 29.06.1428 of the Higher Judicial Council in its 65th session, it states "The Council resolves the following: 1-Magistrate of the Sub-district Court considers the cases of juveniles and Social Observation for four months and for a whole week – conditional on that assignment be for all magistrates except for those mandated to the Court and the like" This decision was circulated over state courts under the Ministry of Justice Circular No. 13 / T / 3211 on 29.08.1428. Also, Circular No. 12/197/T issued by Ministry of Justice on 18/11/1404 referred to transactions of inmates that must be prioritized in processing – including those of juveniles who spend long periods in social observation houses without having rulings, affecting their academic future."

⁴¹⁷ See Article 10/b of the Ministerial Decree 1354 of 1395 on Regulations for Social Observation Homes.

⁴¹⁸ See Article 6 of the Ministerial Decree 2083 of 1396 on Implementing Regulations for Girls' and Young Women's Welfare Homes.

⁴¹⁹ See Article 10/a of the Ministerial Decree no.611 on 13/5/1395 AH.

- Hearing the case shall be in a private session that shall be attended only by the guardians of the juvenile. Along with the filing clerk and witnesses (according to the judge's point of view).
- Care to decide on the case as soon as possible.
- Be humane with juveniles while interrogatory, act to reassure them and make them feel that the purpose of the trial is to properly evaluate and guide her/him.
- The judge shall investigate the case papers before attending the juvenile to be informed with the contained information.
- When the juvenile is sentenced to a term of imprisonment, it shall be noted that the juvenile should be placed in a prison that is consistent with his age and not to mingle with those who may badly affect him.
- If the juvenile is sentenced to be hit for reinforcement, it is noted that hitting shall not occur in the presence of people, unless if it is decided by the judge in the ruling.⁴²⁰

In recognition of the provision of Article (37 \ C) of the Convention which states that: "Every child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person, and in a manner which takes into account the needs of persons of his or her age. In particular, every child deprived of liberty shall be separated from adults unless it is considered in the child's best interest not to do so and shall have the right to maintain contact with his or her family through correspondence and visits, save in exceptional

⁴²⁰ General statement of the Deputy of the Minister of Interior Affairs (16s/3007) om 18/7/1412 AH.

circumstances.” The provision of the Saudi Law stipulates that as for the case in which the juvenile is sentenced to a term of imprisonment, it shall be noted that the juvenile should be placed in a prison that is consistent with his age;⁴²¹ it is carried out by placing him / her in the social observation house or in the girls' care institution.⁴²² In order to achieve the purpose for which the social observation house was established, which is to enclose the juvenile with a natural atmosphere taking him away from the atmosphere of crime and in consistent with the provision of Article (40 \ 1) of the Convention which emphasizes that the states shall take into account "the child's age and the desirability of promoting the child's reintegration and the child's assuming a constructive role in society", Article 3 of the same executive rule stipulates that: "training programs shall be prepared for the juveniles during that period, in order to achieve the aspects of care, the Minister of Labour and Social Affairs shall determine the level and quality of these programs."⁴²³ Also, the social and psychological programs care provided by the social observation home, aim to prepare the juveniles for the proper socialization, through affiliation to the community, engaging him in the programs and activities and

⁴²¹ This process is organized under Circular of Chief Magistrate in 1389 H. Paragraph 5 states that when a ruling of imprisonment for a junior is made, the prison must be appropriate to his age. He should not to be associated with those who may harm him.

⁴²² Article 7 of the Regulations for Social Observation Homes states that the house may manage execution of rulings and decisions made on juveniles. Physical penalties are made under supervision of a panel composed of representatives from the Juvenile Court, the House's investigator, and representatives from the House Police to execute the penalty..." Article 7 of the Regulations for Girls' and Young Women's Welfare Homes state that "Penalties issued on girls referred to under Article 2 in the House."

⁴²³ Article 4 of the Regulations for Social Observation Homes states that (a) Social Care Programs, religious orientation, healthcare, educational. counselling and case studies are performed by qualified specialists per competency. Instructions determine the obligations of every specialist. (b) Social Observation Homes are to study the causes of juvenile problems and find out proper solutions for these problems.

discovering his/her preferences, trends, and patterns of behaviour, in order to prepare the necessary therapeutic plan by the specialists and engaging him with his/her family and the community.⁴²⁴

As for recording the arrest and prosecutions against the juveniles, the resolution of the Interior Minister No. (3130) dated 3 \ 9 \ 1408 AH (1988) has contained in its fifth Article that the judgments sentenced against the juveniles shall comply with following: As for the juveniles who are over fifteen years and did not reach the age of eighteen, the judgments sentenced against them shall be written down in a special record without registration in their record of arrest and prosecution; also, the provision of Article 6 contained the following: "Every judgment, that has been previously written down in the record of arrest and prosecution to the contrary of the proceeded rules, shall be immediately removed without the need to issue a decision to do so."

We shall conclude from the foregoing that the delinquent juvenile shall be completely taken away from the atmosphere of crime in order to feel that the procedures of his arrest and trial is to reform him and not to punish him. The

⁴²⁴ As for juvenile's continuation of education, the preparatory committee of the Higher Committee on Education Policy has issued and covered the following:

- If the student who was previously dismissed and enrolled in the schools of Social Observation Homes was able to have higher grade of education before dismissal through admission in Social Observation Homes during arrest, that grade of education is counted and the student may be accepted in the next higher grade of education.

- If accommodation of the student in the Social Observation Homes expires after reliability of its status according to the texts handling accommodation of the juvenile under the Regulations for Social Observation Homes and executive by law, the student may continue his/her education in the Ministry of Education Schools out of the schools of the Observation Houses.

modern trends of treating this kind of juveniles, is established on the basis that "the state shall play the role of the wise father for them and it is not of interest to treat these delinquent young men and women as adult criminals. The social observation home followed the same approach. The person meditating the laws relating the juveniles' judgments in the Kingdom, shall observe that these instructions are only an introduction leading to the process of deviant juvenile's care and an initial step in the process of his reform and returning him to the right path. There is still much to be achieved and developed in this area, the following illustrates this:

Evaluation of juveniles' judgments in the Kingdom of Saudi Arabia

The rule of the social observation homes, the basic rule of the young women's welfare homes issued in 1395 AH (1975), and the complementary circulars issued by the Ministry of Interior and the decree of the Council of Ministers No. (25) dated 26\1\1421AH (2000), as amended, did not include sufficient procedures in connection with the investigation with the juvenile and his right to receive the legal assistance; also, it did not include detailed procedures of the juveniles' trial, the court formation, the mechanism of holding the session or the statement of the sanctions that could be applied to the juvenile. Therefore, it is necessary to issue an integrated law of the juveniles. Application and activation of the juveniles' rights require an adequate and complete regulations of the juveniles. This integrated law cannot be an alternative to the controls that organize placing the juveniles in the social

observation home under the resolution of the Council of Ministers No. (169) dated 19\6\1429 AH (2008).⁴²⁵

Total items of Articles 37, 39, 40 of the Convention necessitate an integrated penal act of the juveniles, both in terms of the penalties or procedures. It is affirmed in Article 13 of the Law of Criminal Procedure that: "investigation with the juveniles and girls and their trial shall be conducted in accordance with the regulations and rules organizing them." However, the penalty law of the juveniles' crimes has not been along the line with the law found in most countries of the world, where the status quo is left to the judge to determine the age of the criminal responsibility; this matter results in explicit breaches for this Article of the Convention.

With regard to the age of legal eligibility, or in more precise words, the age of criminal responsibility, which relates to the offenses and penalties made by the juveniles, the issue is not specified and the courts tend to consider the age of 15 years.⁴²⁶ The kingdom reported that, according to Islamic law, the death penalty sentence cannot be applied to the persons who have not attained the age of majority yet,⁴²⁷ but the judges gave discretionary powers in judging the persons' majority before reaching the age of eighteen and then, the death

⁴²⁵ Second Report on the Status of Human Rights in the Kingdom of Saudi Arabia produced by the National Society for Human Rights, 2010. P.55. [Accessed 22 April 2018]. <http://nshr.org.sa/wp-content/uploads/2013/10/91-التقرير-الثاني-عن-أحوال-حقوق-الإنسان-في-المملكة-العربية-السعودية-1429هـ-2008م-باللغة-الانجليزية.pdf>

⁴²⁶ *Ibid.* p.50.

⁴²⁷ *Supra*, note 272.

penalty sentence can be issued against children under the age of eighteen, but with the suspension of executing the provisions until reaching the legal age. This will disable executing the Convention on the Rights of the Child and has a serious violation of the fundamental rights in accordance with Article (37) of the Convention.⁴²⁸

Article 37 of the Convention explicitly prohibits imposing the death penalty, life imprisonment, or any other cruel, corporal or inhuman punishment (whiplash) on those whose ages are under the age of eighteen. In spite of that, the judges in the Kingdom are of free discretion in many cases while hearing the criminal cases involving children, where they decide that the child has reached the age of majority while he is at an age that is less than eighteen; therefore, the death penalty or any corporal punishment can be applied on those who committed crimes while they were under the age of eighteen at the time of their commitment.⁴²⁹ The hypothesis of this Article of the Convention is to prevent that and this is another aspect of violation that requires either amending the prison and arrest law, or issuing the juveniles' law to accelerate removing breach of this article of the Convention.⁴³⁰

⁴²⁸ See: Consideration of Reports Submitted by States Parties under Article 44 of the Convention, Concluding Observations: Saudi Arabia, op. cit., Para. 25-32, pp. 3-4.

⁴²⁹ See: Consideration of Reports Submitted by States Parties under Article 44 of the Convention, Concluding Observations: Saudi Arabia, op. cit., Para. 42-43-73, pp. 5-11.

⁴³⁰ See: Conclusions and Recommendations of the Committee against Torture: Saudi Arabia, Committee against Torture, United Nations, June 2002, Para. 4-8. (CAT/C/CR/28/5)
Also see: Report of the Working on the Universal Periodic Review: Saudi Arabia, Human Rights Council, United Nations, March 2009. Para. 87, A/HRC/11/23.

As a result, and in order to activate and achieve the purposes of Articles 37, 39, 40 of the Convention, we recommend the following procedures:

First: Define a common age for criminal cases, to be eighteen years of age, and this is sufficient for the Kingdom to fulfil its obligations under the Convention on the Rights of the Child and under Islamic law.⁴³¹ This also requires enacting and activation of legislation that prohibits the death penalty, the corporal punishment and life imprisonment against the persons who were under the age of eighteen at the time they committed the crimes, this matter advocates to apply procedures that are alternative to deprivation of liberty, such as being placed under control, social services or suspension of the sentence; also, we suggest amendment of the prison and arrest law, with respect to preventing the whiplash and other forms of the corporal punishment against the persons under the age of eighteen.

It should be noted that refusing to set 18 years as an age for criminal responsibility in grounds that it is contrary to Islamic law is rejected. In actuality, what can be ascertained from studying the Islamic law is that adulthood is defined by the age of the legal commissioning for worship provisions, i.e. determining the appropriate time to assign the individual to perform prayers and fasting. The original standard in the penal judgments is the age of "mental adulthood" and not the age of "mental adolescence", since to determine the age of adolescence is to make the individual know when the prayers, fasting and religious duties are imposed on him, so as not to deprive

⁴³¹ The First Report on the Condition of Human Rights in the Kingdom of Saudi Arabia, The National Society for Human Rights, Riyadh, Saudi Arabia. 2006. p.55. [Accessed 22 April 2018].
<http://nshr.org.sa/wp-content/uploads/2013/10/88-التقرير-الأول-عن-أحوال-حقوق-الإنسان-في-المملكة-العربية-السعودية-1427هـ-2006م-باللغة-الانجليزية.pdf>

him of virtue. However, the standard age when penalties and sanctions are issued is the age of adulthood and not the age of "physical adolescence."

Scientifically, there is a difference between "the adolescence" and "the adult" and the Qur'an refers to this difference to say that adulthood sets a condition for the validity of the financial transactions, in addition to being a condition of adulthood. The verse of the Quran states:

"Make trial of orphans until they reach the age of marriage; if then ye find sound judgment in them, release their property to them." ⁴³²

This verse illustrates the necessity of individually examining children to see if they have reached 'sound judgement' or not. Only after reaching the age of puberty and marriage ,or 'sound judgement' can their property, money or whatever was passed down to them be released to them.

"And when he [Yusuf (Joseph)] attained his full manhood, We gave him wisdom and knowledge (the Prophethood), thus We reward the Muhsinun (doers of good)," ⁴³³

and the verse stipulates

⁴³² Quran [4:6].

⁴³³ Quran [12:22].

“And come not near to the orphan's property, except to improve it, until he (or she) attains the age of full strength;”⁴³⁴

if the Qur'an emphasizes manhood in male children as a condition before enabling interaction with government, science, power and money, it is worth setting the age of manhood as a standard for bearing criminal liability and punishment. In other words, the puberty in matters of worship such as prayer and fasting is a "sufficient condition"; while in civil matters such as the financial procedures and marriage, the puberty is "a necessary condition" but not "a sufficient condition", as the civil matters require the availability of mental maturity in addition to puberty.

For this purpose, the jurists and legislators in the Kingdom develop the Islamic laws and the provisions of law under its extended framework for the benefit of the accused persons and state the age of eighteen as the standard age of when manhood is reached, to shelter the children from the toughened sanctions, especially those that lead to the death penalty; this is also closer to the logic of the forgiving Shari'ah. In summary, the age of criminal responsibility and punishment must be based on the age of (mental manhood) and not to the age of "physical puberty".

It is controversial, in this regard, that many jurisdictions in the Kingdom have recognized that the age of eighteen is legally the standard of civil and social

⁴³⁴ Quran [6:152].

responsibility; for example, the traffic law⁴³⁵ has identified, in its Article (36), several conditions to obtain a driver's license, including reaching the age of eighteen to be able to obtain the license.⁴³⁶ The person under the age is given only a temporary driving permit if approval of the guardian is established, on the basis that he is too young. For those under 21 years of age who wish to own a passport, it is required for their guardians to give their consent. The same condition is applied to those who want to travel abroad, the guardian's consent is necessary to let them travel. This means that the young person is unable to move freely, unless allowed by their guardian. In other words, there are restrictions on the natural personality of the individual and there is a clear indication that they are still a ward of the state.

Moreover, the first Article of the Executive Rule on the Saudi Nationality identifies a young man as the one who has not reached the age of manhood, and identifies the age of manhood as reaching eighteen years of age. The labour law has identified a juvenile as the person who has reached fifteen years of age and not eighteen; to enable him to work, it is required to obtain the guardian's approval. In the same manner, the juvenile is not allowed to join the military service in the Kingdom, which is permitted only after reaching eighteen years of age. Here is a question, do all these laws violate the Islamic law? Is it logical for individuals of fifteen years old to bear criminal responsibility and shall we apply the prescribed penalties and retribution upon him as they are applied to adults, while the age of responsibility, in other civil matters, has

⁴³⁵ The Traffic Regulations issued by Royal Decree (M/85) on 26/10/1428 AH.

⁴³⁶ Article 1/36 of the Traffic Regulations states that driving licenses can be issued to a person once he reaches 18 years of age.

been regularly codified to be eighteen years old? Is it not a contradiction when the law imposes restrictions on the child's behaviour in terms of travel, work and driving before reaching eighteen years of age, in this case, to protect the child against the consequences of the criminal responsibility, since it prevents the child from being treated as an adult.

Second: Ensure the full implementation for the standards of the juveniles' justice, especially the relevant international standards in this field, such as:

- United Nations standard minimum rules for the Administration of juvenile Justice (The Beijing Rules).⁴³⁷
- United Nations Guidelines for the Prevention of Juveniles' Delinquency (The Riyadh Guidelines).⁴³⁸
- United Nations Rules for the Protection of Juveniles Deprived of their Liberty.⁴³⁹

For the complete activation of all of the above measures, it is imperative, in my opinion, to issue an integrated law of juveniles, to include an objective aspect relating to the crimes and penalties, along with a procedural aspect for investigation and its guarantees for the juvenile, pursuant to Article 13 of the

⁴³⁷ Available on: <http://www.ohchr.org/Documents/ProfessionalInterest/beijingrules.pdf> [Accessed 22 April 2018].

⁴³⁸ Available on: <https://www.crin.org/en/docs/resources/publications/hrbap/IHCRC/UnitedNationsGuidelinesforthePreventionofJuvenileDelinquency.pdf> [Accessed 22 April 2018].

⁴³⁹ Available on: <http://www.ohchr.org/EN/ProfessionalInterest/Pages/JuvenilesDeprivedOfLiberty.aspx> [Accessed 22 April 2018].

criminal procedure law. A specialized court for the juveniles' cases, shall be constituted and attached to the law, in addition to appropriate measures to rehabilitate the juvenile pursuant to Articles 39-40 of the Convention on the Rights of the Child.

Participation Rights:

a- The Right to Freely Express Views

Saudi Arabia has always been keen about educating children and giving them the necessary skills to enable them to effectively get involved and participate in the development of Saudi Arabia and the society as a whole. Besides following the teachings of Shari'ah,⁴⁴⁰ Saudi Arabia has been making an effort to meet the provisions of Article 12 and Article 13 of the UNCRC that encourages children who are capable of forming their own views to express those views freely in all matters affecting them and assures the children the right of freedom of expression. In order to meet the teachings of Shari'ah and

⁴⁴⁰ Islamic history and Islamic teachings have assured this right for children, where their views and opinions are taken into consideration in accordance with the maturity of the child. A child in Islamic teachings should have a right to express his/her views over anything that revolves around them; their education, job, hobbies and so on. Ideally, an Islamic society is a consultative society. Thus it encourages raising children with independent views that they should be able to express freely. At the times of the prophet, a drink was brought to Messenger of Allah (PBUH) and he drank (some) from it. On his right was a boy and on his left were some elderly people. He (PBUH) said to the boy, "Would you permit me to give rest of this drink to these on my left?" The boy said: "O Messenger of Allah, I would certainly not give preference to anyone in anything that might come to me from you." So he (PBUH) handed over the rest of the drink to him. This shows how important it was to consult the child in matters that affects him/her, no matter how small. In another incident, Umar Ibn ElKhattab passed by children playing, they all ran quickly for there was something awe-inspiring in Umar, except Abdullahbin Zubair who remained in his place. Umar asked him why he didn't flee like the rest of the boys Abdullah replied: "oh, commander of the faithful, I haven't committed any sin and the road is not narrow that I should make room for you". Umar was reported to be very impressed with the boy's reply. This again shows how Islamic traditions encourage taking children's views and encourages self-reliance and independency in children.

the provisions of the UNCRC, the National Commission of Childhood has started a new program called “The National Saudi Children’s Forum” that is part of their initiative of “Building Capacities”.

The National Commission of Childhood has always put children’s rights in general, and especially their right of participation, as its ultimate focus. Out of this belief, they have been evolving the measures for children to play an active role in the society and solve the problems that might face them. This is obtained by gaining society’s trust in children’s capabilities thus giving them space for expressing their opinions and concerns. This starts by changing the society’s view of children as mere right holders to right holders who can execute their rights and protect them fully.

The vision of the National Commission of Childhood (NCC) does not only emphasize the importance of children’s participation, it in fact eases it by providing the channel for children to do so. By establishing the National Saudi Children’s Forum, the NCC provides for children a suitable environment for them to fight the cultural and societal obstacles that comes between them and their rights, one of which is their right to express their views freely. The children’s forum acts also as a safe environment for children to sound their concerns and express their views about programs concerning them and have their voices reach significant and representative officials in their communities.

From these points the main goals of the National Saudi Children’s Forum emerge to make sure that children have a say regarding all the programs that

might affect them now and in the future. Moreover, the forum also seeks to achieve the following goals:

- 1- Constructing and forming children forums in the regions and provinces of Saudi Arabia where children get to choose their representatives to participate in highlighting the decisions and strategies of the National Saudi Children's Forum.
- 2- Cooperation between national children forums in Saudi Arabia on the level of culture, education, society, psychology and health.
- 3- Inviting all children of Saudi Arabia (without discrimination) to join the forum to widen the range and circle of the memberships.
- 4- Encouraging the children of Saudi Arabia to dialogue and raise their problems and discuss them in an environment where they can exchange their ideas and thoughts freely.
- 5- Encouraging children's participation in framing their own policies about issues like the management of their schools, or any programs that concern them by participating in children parliaments and forums, children and youth networks, municipal and national councils and children "listening bodies."
- 6- Introducing children's issues and problems on a national level and allowing and stimulating children to find solutions for these issues and problems.
- 7- Training the children in the forum, both representatives and participating, on communication skills and making them aware of the rights set by the UNCRC.

- 8- Linking and networking the dialogues and discussions of the forum with similar structures on the Arab, regional, and international level, like the Arab Council for Childhood and Development, League of Arab States, World Health Organization etc.
- 9- Providing a resource of eligible, aware children from which children can be nominated to represent Saudi Arabia in different national, Arab, regional and international occasions and events.

There is no doubt that applying such programs and forums is a means of conformity of the provisions set for the child in Saudi Arabia with the provisions set in the UNCRC that highlights the role of the child as an effective body in reinforcing and protecting his/her rights.

b- The Right to the Freedom of Peaceful Assembly and the Setting up of Associations

The regulations of associations in Saudi Arabia defines the founders of associations as “fully eligible” citizens, which marginalizes the right of the child to set up associations. Accordingly, Article 15 of the UNCRC which obliges the member states to recognize the right of the child to peaceful assembly and setting up of associations would require amending the regulations of associations in Saudi Arabia in order for it to decrease the age of members and founders of associations. As a first step, the age of founders and members of associations could be decreased to fifteen, on the ground that this is the legal age for citizens to get a national ID card.⁴⁴¹

⁴⁴¹ Supra, note 254, p. 426.

Moreover, the regulations of associations in their current form also violate the provisions of Article 10 of the Islamic Covenant of the Rights of the Child.⁴⁴² Article 10 of this Covenant states that: “every child shall have the right to form and join any peaceful, civilian gathering in accordance with legal and statutory provisions in his/her society and in a way that is compatible with his/her age and does not affect his/her behaviour, health and heritage.” For the provisions of this Article and Article 15 of the UNCRC to be applied, amendment of the regulations of associations are called for to make them comply to international and regional standards of the rights of the child to peaceful assembly and setting up associations.

c- The Right to Freedom of Thought, Conscience and Religion

When it comes to the right to freedom of thought, conscience and religion of Article 14 (1) of the UNCRC, there is neither blame nor entitlement as this is a matter of heart and no human has control or censorship over it. Islamic Shari’ah has always urged that religion is a sacred matter that should be protected from assault, and it has also made freedom of religion and doctrine a given right to every human. Moreover, this matter of religion has a particular privacy, meaning that Islam does not force any one into leaving their religion or entering a new one. The Quran states:

⁴⁴² Issued by the Organization of Islamic Conference in 2005 and Saudi Arabia has joined under the royal decree no. m/54 on 21/9/2006.

“There is no compulsion in religion; truly the right way has become clearly distinct from error” ⁴⁴³

and also:

“so whoever wills – let him believe; and whoever wills – let him disbelieve.” ⁴⁴⁴

These verses of the holy Quran ensure that forcing religion upon any human, whether a man, woman, youth or child is a position that Islam totally refuses. However, this does not violate the right of parents to guide their child, which is delivered by Article 14-2 of the UNCRC.⁴⁴⁵ When it comes to the freedom of a Muslim changing his/her religion, then this is a matter that is not acceptable in Shari’ah. A Muslim is not allowed to change his/her religion because this falls under the Islamic concept of “going astray after directness”, and if this happens then the Muslim is known to have committed one of the hudud ⁴⁴⁶ offenses under Islamic Criminal Law.

Here, one has to differentiate between the freedom of thought, conscious and religion for the child and between practicing religious rituals in public places.

⁴⁴³ Quran [1:256].

⁴⁴⁴ Quran [18:29].

⁴⁴⁵ Article 14-2 states that: “States Parties shall respect the rights and duties of the parents and, when applicable, legal guardians, to provide direction to the child in the exercise of his or her right in a manner consistent with the evolving capacities of the child.”

⁴⁴⁶ In Islamic law, hudud usually refers to the class of punishments that are fixed for certain crimes that are considered to be "claims of God. They include theft, fornication (zina), adultery (extramarital sex), consumption of alcohol or other intoxicants, and apostasy.

The freedom of thought, conscious and religion is beyond the power of the state and its agencies. However, the practice of religious rituals in public places for non-Muslims collides with the public order, the provisions of the Shari'ah and with Article 1 of the Saudi Basic Law of Governance.⁴⁴⁷

Saudi Arabia has put a general reservation to all articles of the UNCRC that do not comply with the Islamic Shari'ah and for that Article 14 is included within these articles. However, in a more in-depth look at the provisions of Article 14, one will find that there is absolutely no collision of the Article with the Islamic Shari'ah since Article 14 (3) states that: "Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health or morals, or the fundamental rights and freedoms of others."

This section of Article 14 outlines an important restriction on the freedom of practicing one's religion where this right is restricted if it violates the state's public order. The restrictions set in Article 14 (3) should meet the reservation on Article 14 (1), since practicing any non-Islamic rituals in public violates the public order of the state acting as a shock for the public and does not match the religious status of Saudi Arabia, and its holy cities of Makkah and Medina, on the Islamic region level.

Moreover, fear was expressed that Article 14 not only undermines, but also intervenes with the attempts of parents to raise their children in their own religious values. However, in its almost 30 years in action, the Committee has

⁴⁴⁷ Article of the Basic Law of Governance states that: "The Kingdom of Saudi Arabia is a sovereign Arab Islamic State. Its religion is Islam. Its constitution is Almighty God's Book, The Holy Qur'an, and the Sunnah (Traditions) of the Prophet (PBUH)..."

not once intervened with parents' choice of religion. The committee has only raised concerns and produced recommendations and observations when governments have shown evidence of limiting religious freedom or evidence of discrimination against certain religions. An example of this can be seen in the Concluding Observations the Committee on the rights of the child returned to Germany, where concerns were raised because of a law that banned religious symbols in schools because "this does not contribute to a child's understanding of the right to freedom of religion."⁴⁴⁸ The Committee has also passed on recommendations in the Concluding Observations reports to both Korea and France where they suspected that children were discriminated against based on their religious choices and traditions.⁴⁴⁹

d- The Right to Access to Information and Material

The specialists at the Ministry of Information seek to achieve harmony between the Articles contained in the Media Policy in the Kingdom of Saudi Arabia⁴⁵⁰ and the UNCRC items contained in Article 17 and work to turn it into a media reality integrating with efforts of other authorities for preparing and raising the child so as to start achieving for himself and his community. This is evident through promoting the Ministry of Information to produce relevant

⁴⁴⁸ *Concluding Observations of the Comm. on the Rights of the Child: Germany*, U.N. Comm. on the Rights of the Child, 35th Sess., 30, U.N. Doc. CRC/C/15/Add.226 (Feb. 26, 2004).

⁴⁴⁹ *Concluding Observations of the Comm. on the Rights of the Child: Democratic People's Republic of Korea*, U.N. Comm. on the Rights of the Child, 50th Sess., ¶ 30, U.N. Doc. CRC/C/PRK/CO/4 (Mar. 27, 2009); *Concluding Observations of the Comm. on the Rights of the Child: France*, U.N. Comm. on the Rights of the Child, 52st Sess., ¶ 46, U.N. Doc. CRC/C/FRA/CO/4 (June 11, 2009).

⁴⁵⁰ The media policy document was issued in the Kingdom of Saudi Arabia by Council of Ministers' decision No. (961) dated 20/10/1402 AH (9/9/1982).

cultural materials, including books, newspapers, and magazines. This is by supporting and purchasing a rewarding quantities and free distributing them to children and adults. In addition, the local newspapers and magazines allocate appropriate spaces to the issues of childhood and family, where some children and young people contribute in writing the cultural materials.⁴⁵¹

In return of, Article 9 of the Media Policy confirms that the child is a pure innateness and fertile soil and that the future society form is derived from the child today.

Thus, the Saudi media shall give the effort and attention to the children's guiding, education and recreational programs and to evaluate these programs based on educational and scientific standards. This duty is entrusted to those of the exact competence in the area.⁴⁵² Based on previous data contained in this section, the analysis showed us that the national policy of the Kingdom of Saudi Arabia has dealt with the children's rights to care in terms of the health, social, educational and recreational care, that we can draw a clear and in-depth perception for the range of measures taken by the Kingdom to implement the UNCRC; that the Kingdom has provided the programs and

⁴⁵¹ *Supra*, note 272, p. 111-112.

⁴⁵² See Article (9) of the Media Policy in the Kingdom of Saudi Arabia.

In general, it is noted that all of these civil, social, economic and cultural rights interact within each group and also interact across different groups; the failure to take into account the consistency and integration among these rights leads to inconsistencies between policies and their objectives or leads to limited achievement to the objectives desired from the convention. The partial application for these rights is incompatible with the philosophy and vision of the international Convention on the Rights of the Child; Articles of the convention seek to achieve the common ultimate goal represented in ensuring a development of coherent and consistent for each child without discrimination. This Kingdom of Saudi Arabia was keen to confirm so by establishing aggregate / comprehensive laws to protect the child. In this regard, we call an invitation to prepare a unified guide for all legislation regulations relating to the children in the Kingdom, taking into account the compatibility with the CRC items; when there is a comprehensive and unified law regulating the work for the benefit of all children, it shall ensure the quality, comprehensiveness and effectiveness to apply their rights in a full and fair manner of application.

services in various areas of childhood care, such as health and education in order to achieve the provisions of the Convention; thus, the level of health was improved, the rates of oral vaccination increased, child mortality rates decreased and school desks were freely available for the children. Also, the Kingdom provided care programs for people with special needs; all that was through including the childhood stage in all actions and plans that are issued in the Kingdom of Saudi Arabia. Efforts are still continuous to achieve more development in some other areas, especially the criminal justice law for the juveniles: whereas the current fact still confirms the existence of some restrictions that must be remedied to achieve an integrated development in this area, it shall be by drafting advanced criminal laws and policies that put children at the top of their priorities.

In addition, the study indicated that the Kingdom, in order to protect and promote the rights of the child, has sought to issue many new regulations and amending a number of current laws, to keep up with its international obligations as a result of its accession to the UNCRC and to be in harmony with a number of other international conventions relating to the child as the Kingdom is a party in these conventions. These new and amended regulations a number of positive additions related to the completion of the legislative and regulatory structure to ensure applying the child's rights in the country.

Provision Rights:

a- The Right to Benefit from Social Security, Including Social Insurance

The Kingdom provides and secures care services for those citizens that are seen to be in need - as confirmed through Article (27) of the statute, which stipulates that "The state shall guarantee the right of its citizens and their families in an emergency of in case of disease, disability and old age. Likewise, it shall support the social security system and encourage individuals and institutions to contribute to charitable pursuits."

To achieve this, the Kingdom is keen to provide such care and insurance for children using the best, most practical and more useful methods; therefore, the Kingdom enacts laws, rules and regulations organizing this service, and sets up the bodies that supervise the provision of these services. It is custom to regard these laws as "security laws" and bodies that implement the social security are known as "social security bodies".⁴⁵³ In the context of this right, the Kingdom has issued the Social Security Law in 1427 AH (2006), which includes many provisions that acknowledge the statutory protection for the children and families who are in need; as well as laying down the mechanisms for these children and families to obtain this statutory protection by providing the financial and psychological assistance. The law, encoded in Article 3, determines the persons who have the right to a pension in accordance with its terms. These persons are grouped into five categories – our study will focus

⁴⁵³ Mohamed El-Sayed Arafa. "The Family's Rights in the Fields of Maternity, Childhood and Sexuality Substantively and Procedurally in the Saudi Regime", Arab Journal for Security Studies and Training, Naif Arab University for Security Sciences, Muharram 1433 AH / December 2011 AD, year 27, publication No. 54, p. 218.

on two such categories, namely the orphans and families with no breadwinner.

Article 1 of this law has identified them as:

- The orphan: "any male or female whose father died, below eighteen years of age, with no breadwinner or a sufficient source of living. The child of an unknown father or a father who is absent for more than six months, is also considered an orphan."
- The "family with no breadwinner": is any family with no breadwinner, either on account of their death, divorce, loss, imprisonment, abandonment or otherwise; and one that has no adequate source of living."

Many factors have been taken into account while determining these categories; the most important being that family members are considered victims of poverty. They are not responsible for their social status, or the deteriorating of it. I.e. an orphan with a deceased father and no other breadwinner in the family, is not at fault when it comes to his social status. This also applies to families that lose their sole breadwinner either because of death, divorce or because of his inability to provide for them.

Article 4 of the law ensures that provision of care is prolonged for men over the age of eighteen, given they are in education and do not enter employment before the age of 26 or until their graduation, whichever comes first. Girls will be provided for until they are married or enter employment, according to the guidelines specified in the executive rule. Article 6 of the law also identifies the specific amount of annual pension to be provided to these orphans.

At the same time, we observe that the Social Security Law does not only target provision of subsidies and pensions, but also includes the important aspect of working to improve and overcome their personal circumstances that have left them to be considered as persons in need. This law respects the human dignity of the child and provides them with homes with employees that can provide for them and gradually prepare them for their futures as active members of the society. This law has also delegated the Ministry of Social Affairs, cooperating with competent authorities, to take the necessary actions to ensure children obtain the necessary qualifications to enable them to earn their living, and to support the projects they undertake, according to the regulations set by the executive rule.

The social security sector has received great support and attention from the Kingdom; reflected in growing social security funds every year, with a view to achieve the ultimate service for all its beneficiaries - especially children. For example, the Kingdom adopted the "financial assistance program for school bags and uniforms", which is one of the nine programs supporting the social security under the Royal Decree No. (10003\mb) dated 19\12\1429 AH (2008).

Accordingly, the social security agency has deposited an amount of SR 28,143,520 (equivalent to 6,061,012 GPB) into the accounts of children participating in this program. This amount represents how much the program is costing for the first semester of the academic year 1433 \ 1434 AH (2012). The program aims to reduce the financial burden for the beneficiaries as it targets children of the school ages six to nineteen who are enrolled in the

public education system; the cash deposit into the children's accounts is executed twice a year. This confirms the Kingdom's willingness to continue educating these orphans, and to help them overcome the difficulties and obstacles that might face them while studying.

The social security law which was applied as of 1\1\1422 AH (2001), includes some provisions that protect children's rights and the family of the deceased who is included in the insurance claim. Whereas Article (2\8) of this law as well as the decision No. (128 \ Insurance) issued by the Minister of Labour and Social Affairs on 25\10\1421 AH (2000), relating to the executive rules of this law, determine the family members of the deceased who are covered by the insurance, they are namely:

"Male children under 21 years of age (including the 21st year) and female children until they are married. If the male children are still completing their education in an educational or professional institution, this maximum age is extended to 26 years of age. There are no age restrictions altogether if the person is unable to work because of a chronic illness or disability".

Accordingly, the child's status, financial subsidies and the social care resulting, in accordance with the provisions of the social security law, remain available to the male child until 21 years of age. Provisions may be extended to 26 years of age in two cases:

First: If the child is a student in an educational institution, such as a university or a higher education institute.

Second: If the child has joined a vocational institution or enterprise, and due to a chronic illness or disability has been subject to the basic regulations of the vocational rehabilitation programs, which are applied for the disabled.

We shall conclude from the aforementioned that the Kingdom considers it its responsibility to provide social security and social insurance as a regular service to children. Moreover, the Kingdom has sought to acknowledge these laws within its civil code, in order to achieve the greatest benefit that is possible for those marginalized children who are in most need of these subsidies. As a result, the Kingdom has designated the right of the social security and social insurance as a right that is provided for in the basic constitution, recognising the child's entitlement to obtain these services in accordance with the requirements of Article 26 of the Convention on the Rights of the Child.

b- The Right of a Child with a Mental or Physical disability to a Full Decent Life

According to the latest study conducted by King Saud University, the percentage of children with disabilities in Saudi Arabia are estimated to make up 6.3% of the total number of children in the Kingdom. According to this study, the factors contributing to the high incidence of disability are genetics, spread of hereditary blood diseases, as well as non-compliant marriages among relatives.

As a way of addressing challenges pertaining to children with disabilities in the Kingdom, the state has issued different types of legislation that aim to

ameliorate conditions aggravated by this problem. One of the most important legislations passed by the Saudi Council of Ministers imposes a medical examination on those wishing to marry, in an effort to curtail the birth of children with disabilities. The procedure of pre-marital screening applies to all Saudis under the Royal Decree No. (5) dated the fourth of Muharram 1423 AH (2002).

In this regard, another statistic, issued by the Ministry of Health in the Kingdom, suggests that the number of births in Saudi Arabia ranges from 400,000 to 500,000 a year, of which an estimated 400 to 500 children are born with disabilities. In relation to the Kingdom's total population, this rate is considered high. Additionally, statistics show that 1:1000 children in the Kingdom are born with disabilities in comparison to the other countries - the ratio stands at 1:4000 in America, Australia and Germany and 1:7000 in Japan. Consequently, the cost of treating these children is reportedly estimated at 50 million Riyals per year (10,696,193 GBP); i.e. the cost of treating and caring for each child with disability is estimated to be more than 100,000 Riyals each year (21,392 GBP).⁴⁵⁴

Research shows that treating, caring and early intervention may extend the lives of children with disability by about 20 years; in this case, the costs to the Kingdom entailed in treating 500 children with disabilities amount to more than a billion Riyals during that period,⁴⁵⁵ bearing in mind the parallel efforts on behalf of organisations from the public and private sectors, and those

⁴⁵⁴ "Wa'ad wa Injaz" King Salman Centre for Disability Research. p.38-39
<http://www.kscdr.org.sa/ar/news/أمرالمدينةالمنورةيرعالملقاءالتاسعلمؤسسبالمركزتحتعنوانوعدوانجاز> [Accessed 29 April 2018].

⁴⁵⁵ *Ibid.* p 38.

contributed by charities. Resulting from this, in 1426 AH (2005), the Prince Salman Centre for Disability Research in the Kingdom inaugurated the National Program project for early examination of children in the Kingdom, with regards to metabolic diseases, in cooperation with the Ministry of Health and other relevant governmental authorities and the private sector. In the Kingdom of Saudi Arabia, disability is regarded as a health, social, economic and psychological dilemma. This programme plans to contribute to the study of what is estimated to be 16 inherited diseases - ranging from the metabolic diseases and endocrinology diseases - genetic diseases that presumed to cause disability. Most of these diseases are treatable through early intervention, provided their early detection. One of the main advantages of this programme's outcomes is the anticipated reduction of psychological, social and economic family suffering, and the shrinking of the substantial budget set aside annually for the treatment and care of children with disabilities. In turn, these millions of riyals can be put to productive use in other fields serving people and societal development.

From the legislative perspective, the law on disabled care enacted by the Kingdom in 1421 AH (2000), identifies a person with a disability in its first article as: "Every person that is affected by whole or partial insufficiency in his / her physical, sensory, mental or communicative, educational or psychological abilities, to the extent that reduces the possibility of meeting his / her normal requirements in circumstances that are similar to the circumstances of non-disabled persons". Whereas it defines disability: as "injury of one or more of the following disabilities: visual impairment, hearing impairment, mental

disability, physical and kinetic disability, learning disabilities, speech disorders, behavioural and emotional disorders, autism, double and multiple disabilities and other disabilities that require a special care". In turn, the second article confirms the right of the disabled to prevention, care and rehabilitation services and encourages institutions and individuals to contribute in charitable ways to the field of disability. These services are provided to this category of children by the competent authorities in health, educational, training and rehabilitation fields as well as social, media and sports fields.

Moreover for the purpose of providing free, integrated care for those children, the Kingdom has established the Disabled Children's Association in 1402 AH (1982) - a national, charitable and leading association facing the issue of children's disability using comprehensively and systematically methods that benefit the entire society. This association targets children with disabilities from the time of birth until twelve years of age. The programmes of the association focus on treatment, education and rehabilitation as well as contribution to the set-up of a public opinion forum to create awareness of disability and how to deal with it. The basic rules of the association were developed through an integrated strategy designed to address the issues relating to children's disabilities and include the mission statement to:

- 1-** Establish specialized centres to provide comprehensive service for children with disabilities, whether this service is therapeutic, educational or rehabilitative, and to support his/ her family in coexistence with disabilities, advocating methods to deal with these disabilities.

- 2- Carry out an active role in the mission of educating and raising awareness around the causes of disability and methods of prevention in society, in order to form positive attitudes to deal with disability (to prevent and treat it) and to reduce, when possible, to prevent spreading, and avoid the occurrence of other disabilities, by establishing a specialized centre for disability research.
- 3- Contribute to establishing a scientific base for the programs of disabled care through supporting the research and studies in this field.

One of the most prominent achievements of the association is the establishment of the first Centre for Disability Research in the Middle East (Prince Salman Centre for Disability Research); the association is considered the first in developing a program that integrates children with disabilities into the mainstream schooling system, in addition to providing yearly social care programs including to hundreds of children with disabilities and with special needs. The association fosters and rehabilitates around three thousand children every year; having also established six service centres in Riyadh, Mecca, Medina, Jeddah, Al-Jouf, Hail and in the process of establishing one in Asir.

In parallel to this, the Kingdom has established the Foundation of Paralyzed Children's Care which aims to provide the appropriate social, health and psychological care for children with disabilities and those who suffer with birth or pathological defects that restrict their easy and natural movement. The Foundation's statement seeks to develop the capabilities of children with disabilities, to prepare them to accept their diagnosis and works to enable

them to adapt to society in both social and psychological terms. These institutions carry out their responsibilities to serve this category using various methods and means that ensure provision of proper care which is consistent with the needs and circumstances of children with disabilities.

On the basis of Saudi Arabia's policy that aims to facilitate the methods of care for children with disabilities, provide them employment and a full and decent life, the Labour Law of 1426 AH (2005) has dedicated an entire section to employment of persons with disabilities, whereas Article 24 sets forth the following obligation:

"Every employer, who employs 25 or more workers, and the nature of his work enables him to hire persons with disabilities who have been vocationally rehabilitated, shall employ at least 4% of the total number from the workers with disabilities who are vocationally rehabilitated, either through nomination, employment units or others."

Provision of education for children with disabilities was firstly done through mainstream schools in the Kingdom, contrary to what had happened in many European and American countries. Following on from this, provision of education for children with disabilities shifted altogether to specialised, separate schools, aligning with the ways in which education for children with disabilities was granted in the West. The first institute teaching those with special educational needs: Al Noor Institute for the Blind in Riyadh, emerged and was opened in 1380 AH (1960). Since then, provision of special education has gained momentum, despite the relatively recent experience of it in the Kingdom, and manifested in the creation of integrated rather than separate

educational systems, designed to create an educational environment that enables children with disabilities to invest in their potential and achieve their aspirations and ambitions, becoming active and effective members of society. Saudi Arabia has worked to integrate children with disabilities with their fellow students in schools, at cultural and sports events, scout and art camps and national festivals inside and outside of the Kingdom, through a number of development programs.

The Kingdom of Saudi Arabia is considered proactive in the Arab region, having adopted educational policies that are predominantly based on the latest educational methods which insist that integrating children with special educational needs into mainstream educational systems is considered a priority. As a result, educational integration in the Kingdom has become a tangible reality, confirmed by the latest statistics, which indicate that the number of children who benefit from special education services in schools which have integrated children with special needs, has greatly outnumbered their counterparts who benefit from these services in special education institutes.

In addition to the aforementioned, the Kingdom has added a new service in the outstanding care system for this category of children, after joining the International Convention for Persons with Disabilities on 24th June 2008, which was adopted by the General Assembly in its resolution No. (61\106) dated 13\12\ 2006; the Kingdom also joined the Optional Protocol of the Convention in 25th June 2008. The most prominent feature of the Convention is that its member states vow to ensure and fulfil all human rights and fundamental

freedoms for all persons with disabilities, without discrimination on the basis of disability; member-states also vow to take all the necessary procedures to make certain that children fully enjoy all these rights and fundamental freedoms.

The listed efforts in this subsection reflect the reality of the Kingdom's response to the issue of children with disabilities and its commitment to promote measures that will serve this important category. In addition to the Kingdom's willingness to provide the best possible care for the children with disabilities and to create a good social climate fostering a suitable environment for their growth and development, its response to the issues relating to children with disabilities also represents an embodiment and reiteration of the Kingdom's agreement with the Articles, especially Article 23, of the Convention on Rights of the Child.

c- The Right to Adequate Health Services

The Kingdom's efforts continue every year to develop the health care in the country; it ensures free health care for all its citizens, both young and old. To iterate the leading role played by the country in this regard, Article 31 of the Basic Law stipulates that: "The State shall be responsible for the care of public health, and shall provide health care to every citizen", it is followed by Article 32 of the same Basic Law confirming that: "The State shall endeavour to preserve, protect, and improve the environment and prevent its pollution". In

this context, the Kingdom has created a range of health policies supporting children, including the Health Law.⁴⁵⁶

The law “aims to ensure provision and organization of comprehensive and integrated health care for the whole population in an equitable and accessible manner.”⁴⁵⁷ This health care includes, in particular, “health care for mother and child and immunization programs.”⁴⁵⁸ The health care system in relation to motherhood and childhood in the Kingdom has seen remarkable progress during the last two decades; it is evident in the formation of several programs including: family health record program, maternity and child care program, integrated health care program for children, communicable disease control program and other programs.

The “Integrated Health Care Program for Children” is the most relevant program when evaluated against Article 24 of the UNCRC with regard to reducing child mortality. The Kingdom aimed to reduce the mortality of children under five to one-third, with a program that took place from 1990 to 2015. This program was implemented by providing a continuous follow-up when it came to the child’s development from the embryonic stage to the age of five. The “Saudi Health Passport” system was utilised to keep a record of visits, follow-ups and health procedures the child had gone through in governmental health centres.

⁴⁵⁶ The Health Law and its Implementing Regulations were issued under the Royal Decree No. (M / 11) dated Raby' Al-awal 11, 1423 AH (04/06/2002).

⁴⁵⁷ Article 2 of the Health Law.

⁴⁵⁸ Article 4 of the Health Law.

The positive developments in this area have resulted in an improvement in the health indicators for both the Motherhood and Childhood. The mortality of children under five was reduced to 19.5 cases per one thousand children (born alive) in 2010, a decrease of 55.7% from the level in 1990. Additionally, the infant mortality levels have also decreased to 16.9 cases per one thousand children in 2010; marking a decrease by 50.3% from the level recorded in 1990. These rates confirm that the Kingdom is consistently working towards achieving the provisions of the CRC that mandate the member states to fulfil persons right to the highest attainable standard of health.⁴⁵⁹

Mortality Rates per Thousand Children Born Alive Between 1990 – 2010

Index of targeted group	1990	2010
Mortality rates of children (under five)	44,0	19,5
Mortality rates of infants (under one)	34,0	16,9

Table 9

In light of the notion that immunisation plays a great role in maintaining children’s health by protecting children against diseases, the Kingdom has made provisions for an “immunisation program” for children. This program has fulfilled its pre-determined objectives and has shown remarkable progress, as illustrated in the table below:

⁴⁵⁹ *Supra*, note 298, pp. 63-66.

Percentage Increase in Children Immunised Against the Targeted Infectious Diseases During the First Year of their Lives.⁴⁶⁰

Statement	1990	2010
Diphtheria	93,5	98,0
Whooping cough	93,5	98,0
Neonatal tetanus	93,5	98,0
Polio	93,5	98,0
Mumps	-	98,2
Measles	88,2	98,2
Rubella	-	98,2
Tuberculosis	99,4	97,7
Hepatitis B	-	98,0

Table 10

As for the child nutrition and health, the Kingdom has prepared studies to apply the International Code of Marketing of Breast Milk Substitutes, which aims to encourage breast feeding. In addition, child-friendly hospitals in Saudi Arabia put a great emphasis on breastfeeding and raise awareness around the importance of breastfeeding, targeting both the mothers and those working in the health sector.⁴⁶¹ Regarding this, in 2004, Saudi issued the “Law of Trading

⁴⁶⁰ *Ibid.* p.64.

⁴⁶¹ The second periodic report provided by the Kingdom of Saudi Arabia to the Committee on the Rights of the Child under Article (44) of the CRC, previous reference, P. 40.

in Breast-Milk Substitutes,”⁴⁶² which aims to govern the provision of safe nutrition appropriate for infants. This is done by protecting and promoting the practice of breastfeeding, as well as ensuring the proper use of breastfeeding substitutes when there is need; the Law is implemented on the basis of appropriate awareness.⁴⁶³

The Law obligates broadcast channels and printed press to effectively contribute in raising awareness, to support the goals of this Law, through programmes and publications coordinated by specialists in this area.⁴⁶⁴ The Law also requests the health care institutions to take appropriate procedures to promote and protect the practice of breastfeeding by providing advice, information, and appropriate training to health workers.⁴⁶⁵ It is worth mentioning that the legislator has also cited provisions to punish any act that results in violation of the provisions of this Law and that is through its Articles 20 to 25. It is noted that health policy of the Kingdom is predominantly preoccupied with health care for mothers.

The Kingdom recognizes that the role of the mother in a child's life is essential, and indispensable and that the protection of motherhood provides an effective

⁴⁶² Law of Trading in Breast-Milk Substitutes, issued by Royal Decree No. M/49, dated 21/09/1425 AH (November 2004). According to the first article of the Law, breastfeeding substitutes mean: “any breastfeeding substitute that is industrially made according to the standards of the applicable Codex Alimentarius Commission and in accordance with the Saudi standard specifications, to meet the normal food requirements until the age of six months. It is a substitute which is provided and supplied to suit the physiological characteristics of the children (normal characteristics). This substitute includes home-prepared foods...”

⁴⁶³ Article (2) of the Law of Trading in Breast-Milk Substitutes.

⁴⁶⁴ Article (7) of the Law of Trading in Breast-Milk Substitutes.

⁴⁶⁵ Article (12) of the Law of trading in breastfeeding substitutes.

and direct contribution to the protection of children because the relationship between them is a closely associated one that cannot be ignored. This is known as "the indirect protection of the rights of the child" because of the natural correlation between the quality of motherhood and the quality of childhood, as dictated by nature. As for the CRC, although it represents most of the basic needs of the child, has overlooked the necessary right of the child when it did not provide for the child the right to breastfeed, touching on the practice only briefly in the provisions of Article 24 (2) to "ensure that all segments of society, in particular parents and children, are informed, have access to education and are supported in the use of basic knowledge of child health and nutrition, the advantages of breastfeeding..."⁴⁶⁶

The quantitative and qualitative development of the programmes for maternal care in the Kingdom have resulted in a clear improvement of indicators of these programs, as there has been reported a decrease in the rate of maternal mortality during birth - the percentage is calculated in terms of every hundred thousand live births. In addition, there was an increase in the proportion of births that have been conducted under the supervision of health professionals during the years 1990-2010.⁴⁶⁷

⁴⁶⁶ UNCRC Article 24.

⁴⁶⁷ *Supra*, note 298, p. 73-74.

Maternal Mortality and Births under the Supervision of Health Professionals

Target index	1990	2010
Rate of maternal mortality while giving birth	48	14
Proportion of births under supervision of health professionals	88	97

Table 11

Given the development that has been achieved in indicators of good health in persons during motherhood and childhood in the Kingdom, resulting from the spread of health services and health institutions in all regions, the average life expectancy rates have shown steady increase from 71.4 years in 1999⁴⁶⁸ to 73.7 years in 2010.⁴⁶⁹

As for the Kingdom's commitment to providing pure water to eliminate the risk of exposing children to environmental contamination, estimates suggest that the proportion of population who uses sources of enhanced drinking water in the Kingdom in urban areas has reached 97% in 2008 and in the same year, the percentage of those who use improved sanitation has reached 100%.⁴⁷⁰

Naturally, the budget allocated to the Ministry of Health from the total budget of the Kingdom had a prominent role in fulfilling the Kingdom's obligations in

⁴⁶⁸ Saudi Ministry of Economy and Planning, *Ninth Development Plan for the Kingdom of Saudi Arabia*, (Riyadh: Saudi Ministry of Economy and Planning, 1422-1436 AH (2010-2014)), 410.

⁴⁶⁹ Saudi Ministry of Health, *Statistical Yearbook*, (Saudi Arabia, 2010 (1431 AH)), 33.

⁴⁷⁰ The Children's Statuses in the World 2012, p. 97.

the field of children’s health care. Acting as a party state in the UNCRC, the Kingdom was committed to annually increasing these allocations until they reached SR 35,063,200 (7,045,014) in 2009 – 2010. This budget represents approximately 6.5% of the total budget of the country, amounting to 475 billion Saudi riyals. This set-aside budget is also considered amongst the highest over the previous years. The figures are indicated in the following table:⁴⁷¹

The Ministry of Health's Budget in 2006-2010 % of the General Budget of the Country

Year	Total budget of the country (Riyals)	Financial appropriation for the Ministry of Health (Riyals)	percentage
2006	335,000,000	19,683,700	5.9
2007	380,000,000	22,808,200	6.0
2008	450,000,000	25,220,000	6.1
2009	475,000,000	29,518,700	6.2
2010	540,000,000	35,036,200	6.5

Table 12

By allocating these resources, the Kingdom shows the extent of its commitments to comply with the obligations of the international children’s rights provisions of the CRC and in particular, in accordance with Article 24 of the Convention.

⁴⁷¹ *Supra*, note 468, p. 108.

Moreover, from a sociological point of view, a key principle relating to promotion and development of health is that children hold responsibility for their lives. To this end, children should be engaged in dialogue and decision-making. Additionally, the exercise of power by adults over children and how children respond to the power dynamic should also be taken into consideration.⁴⁷²

When it comes to the extent to which children should have rights that allow them to have a control over their health, Jennings argues that a young adolescent is unlikely to have substantial control over what they eat and drink, at the same time as their consumption patterns significantly influence their present and future health.⁴⁷³ Even though there are events and stories highlighted by media, that comment on the significant control and power at the disposal of children in the contemporary environment, Cattan and Tilford argue that there are circumstances where children are unable to act in an independent manner due to lack of competence.⁴⁷⁴

Another factor that leads to an adverse impact on the health of young children is their lack of willingness to engage in the shaping of health care. This is

⁴⁷² Allison James, and Alan Prout, (Eds.). *Constructing and reconstructing childhood: Contemporary issues in the sociological study of childhood*. Routledge. (2015).

⁴⁷³ Louise B. et al, Toward a Critical Social Theory of Youth Empowerment. *Journal of Community Practice*, 14(1-2), 2006) : 31-55.

⁴⁷⁴ Mima Cattan and Sylvia Tilford, Eds. *Mental Health Promotion: a Lifespan Approach*. McGraw-Hill Education (UK). (2006)

particularly true for children from ethnic minority backgrounds, as Wallerstein argued that such children lack confidence and therefore are less likely to engage and contribute towards maintenance of their own health.⁴⁷⁵ In this regard, Wiggins finds that there are several incentives that can positively influence the engagement and participation of young children in their own personal development, including pertaining to health care.⁴⁷⁶ This includes accreditation of skills and knowledge, tickets to popular events, vouchers and payment, which serve as catalysts at early stages of involvement in projects and facilitate children's involvement and personal development.

However, the need for financial and non-financial incentives as described above does not necessarily apply to all young people, as in some cases merely observing change and listening to elders is sufficient for some children to positively engage in their own personal development.⁴⁷⁷ The role of adults is therefore important in enabling children to take greater control in terms of developing themselves. For instance, Clark argues that adults should pay attention and ask the questions, such as how they can assist children to realise their potential, how they can treat each specific child and the way in which they can seek further information about each particular child.⁴⁷⁸

⁴⁷⁵ Nina Wallerstein, Commentary: Challenges for the field in overcoming disparities through a CBPR approach. *Ethnicity and Disease*, 16(1), (2006): S1.

⁴⁷⁶ Noelle Wiggins, Popular education for health promotion and community empowerment: a review of the literature. *Health Promotion International*, 27(3), (2012): 356-371.

⁴⁷⁷ *Supra*, note 473.

⁴⁷⁸ Alison Clark, Listening to and Involving Young Children: A Review of Research and Practice. *Early Child Development and Care*, 175(6), (2005): 489-505.

An important way in which children's empowerment and participation could be further developed is through enabling relevant stakeholders to get access to accurate, timely and suitable information in order to improve their own ability to arrive at timely decisions. This would allow the caretakers and those in charge of children to make suitable decisions, whilst encouraging children to get involved in their own decision-making, especially when it comes to the areas important to their personal development, including healthcare.

There are many resulting benefits when younger people are encouraged to participate in promoting and developing their own health. Wallerstein and Duran argue that the results specifically linked to physical and mental health and wellbeing of children include self-sufficiency and efficacy, in addition to feelings of control and power over their own lives.⁴⁷⁹ Wilson makes a similar argument by stating the presence of a mechanism whereby greater involvement and participation of children improves their sense of self-worth and personal development, along with their capacity to arrive at suitable and appropriate decisions.⁴⁸⁰

⁴⁷⁹ Nina B. Wallerstein, and Bonnie Duran Using community-based participatory research to address health disparities. *Health promotion practice*, 7(3), (2006): 312-323.

⁴⁸⁰ Nance Wilson et al., Training students as facilitators in the Youth Empowerment Strategies (YES!) project. *Journal of Community Practice*, 14(1-2), (2006): 201-217.

d- The Right of the Child to Rest and Enjoy Leisure Time

The youth represent a social group with its own needs that require considerable attention from both the family and the state. Since most of the young people enjoy long periods of leisure time, it is necessary to find the appropriate ways to take advantage of this period of time so that it can benefit them as well as the whole society. That is why the country has provided a range of free activities and entertainment, cultural and socially diverse programs to all children without discrimination and in conformity with their ages, thinking and desires.

These programs are designed to achieve the optimal investment for the child's leisure time, develop their talents and to ensure activity programmes appropriate for children and set in an adequate environment. The Kingdom has established sports stadiums, child scout-centres, student houses, youth hostels, theatres, art galleries, grand celebrations, and psychological workshops. The models of the activities performed by children include:⁴⁸¹

Social activity:

Such as full-day camps, student trips, summer centres, participation in weeks of awareness like the tree week, traffic week, mosques week, programmes celebrating the Universal Children's Day, exchange trips and visits, and the Festival of the Child. The number of programmes where children can practice has reached 384 programmes.

⁴⁸¹ The second periodic report provided by the Kingdom of Saudi Arabia to the Committee on the Rights of the Child under Article (44) of the CRC, previous reference, P. 62 and later pages.

Sports activity:

Participation is provided in all sports competitions at the level of individual and collective sports and at the local and international level to achieve a sense of belonging to the group and to have sportsmanship. Sports activities are implemented in schools through a variety of programs. This is in addition to the sports clubs provided by the General Presidency of Youth Welfare in the area of sports - these sports clubs are spread around the country.

Artistic activity:

For developing the artistic, innovative and creative sense in the children in the field of painting, decoration, handicraft and professional work. For this purpose, the country organizes art exhibitions and competitions, programme of the talented persons and participation in the international, Arab and Gulf children's art competitions.

Theatrical activity:

Implemented through a variety of programmes, including organization of writing competitions of plays for children, organising a child-oriented annual competition. Additionally, there are up to 20 yearly presentations and performances by theatre groups.

Besides approximately 150 theatre groups, there are competitions and theatrical activity in school holiday programmes during the summer.

Cultural activity:

This is represented in the seminars and dialogues organized for children, public speaking programmes, writing of stories and poems, participation in school journalism and broadcast as well as the male and female students' participation in the activities of the Saudi Society for Child-Oriented Culture and Arts Centre and the literary activities of clubs which are focused on culture for children.

Scout activity:

This includes Scout and voluntary camps' work to serve the pilgrims every year (Hajj), contribution to children used to the outdoors, participation in development and revival of programmes and gala occasions and organizing summer camps and trips such as "Discover Your Country".

Scientific activity:

This is done by organising scientific clubs, holding competitions in science and innovation to encourage children to pay attention to science, scientific laboratories, geology, biology, physics and computers, as well as participation in children's scientific research.

From the aforementioned, we conclude that the Kingdom has come far in relation to the concepts and provisions set forth in Article 31 of the UNCRC. It is apparent that the Kingdom respects and places emphasis on the child's right to participate in cultural and artistic life and that it encourages children to make

their most of leisure time through creation of cultural, artistic and recreational activities appropriate to their specific age group and identities.

e- The Right to Adequate Education Systems

The Kingdom devotes substantial attention to the education sector, because of its importance in the field of human resources development, increasing productivity and keeping up with scientific and technical developments. To confirm this interest, Article 30 of the Basic Law stipulates: “The State shall provide public education, and shall be committed to combating illiteracy”; also, Article 29 of this law states that: “The State shall foster sciences, arts, and culture, and shall encourage scientific research, protect Islamic and Arabic heritage, and contribute to Arab, Islamic, and human civilization”. In addition, the education system in the Kingdom and in accordance with Article 13 of the same law aims to: “instil the Islamic creed in the young, impart knowledge and skills to them, and prepare them to be useful members in the building of their society, loving their homeland, and taking pride in its history”.

Accordingly, the Educational Policy⁴⁸² in the Kingdom of Saudi Arabia was developed to be consistent with the Basic Law of the country and with the provisions of Articles 28 and 29 of the UNCRC.

Article (X) of this policy indicates that: “Seeking knowledge is obligatory for every individual by virtue of Islam; the country is responsible for publication

⁴⁸² Educational Policy in the Kingdom of Saudi Arabia was approved by the Cabinet by decision No. (779) dated 17/09/1389 AH corresponding 17/12/1969.

and facilitation in the various grades as much as it can and according to its capabilities”.

In addition to this, Article 34 of the policy compels member states to provide the child with information and different cultural experiences that will empower him in the future as a working and active member in the community. At the same time, Article 36 stipulates that member states ought to respect the child's dignity and provide appropriate opportunities to develop his capabilities, so that he can contribute to the development of the nation. The Kingdom ensures the right to education for people with special needs, in line with Article 56 of the same policy that stipulates to provide special education and care for students with physical and mental disabilities, in accordance with the guidance of Islam, which makes education truly a right granted to all citizens. On the other hand, the Kingdom is keen to care for those who are academically hindered, working to remove the causes of this delay in development and design permanent and temporary special programs according to their needs.⁴⁸³ The Kingdom has also adapted its educational policy to cope with the psychological disposition of the child in each phase of their education and help to facilitate normal development in spiritual, mental, emotional and social spheres.⁴⁸⁴

The High Directive Decree No. (7/B/5388) dated 2002 was issued to designate the kindergarten stage a separate core stage in public education, as well as to

⁴⁸³ Article (55) of the Education Policy in the Kingdom of Saudi Arabia.

⁴⁸⁴ Article (53) of the Education Policy in the Kingdom of Saudi Arabia.

develop a plan and a schedule that aims to gradually expand the kindergarten system across the Kingdom, taking advantage of the private sector (private education) to achieve this goal. The directive also seeks to establish an effective educational curricula for kindergartens to achieve the objectives of this stage.⁴⁸⁵

As a result of this interest, there has been an increase in the number of children joining kindergarten; this increase was from 96.1 thousand children in 2004 to 103.1 thousand children in 2008, with an annual growth rate of 1.8%⁴⁸⁶. In 2009/2010, the number grew to 106.3 thousand children.⁴⁸⁷

In spite of this, the proportion of Saudi children enrolled in kindergartens in the same age group is still less than 10% of the population, compared to the rate in Arab countries, which is less than 18%.⁴⁸⁸ This matter requires changing the perception prevailing on the kindergartens since they are an investment in a child leading to an economic and social return in the long term. Thus, the Ministry of Education was motivated to improve rates of joining this stage, and expected that by the end of the tenth development plan 2015 - 2019, rates of joining this stage will reach up to about 16% for children in the same age.

On the other hand, Saudi Arabia is keen to make education free at all stages for all children (male and female, Saudis and foreigners). Consequently, in

⁴⁸⁵ The second periodic report provided by the Kingdom of Saudi Arabia to the Committee on the Rights of the Child under Article (44) of the CRC, previous reference, P. 52.

⁴⁸⁶ *Supra*, note 467, p. 362.

⁴⁸⁷ See, World Data on Education Saudi Arabia. International Bureau of Education. UNESCO. 2010/2001. P.8 IBE/2011/CP/WDE/SU.

⁴⁸⁸ *Supra*, note 467, pp. 370- 371.

2004, the Cabinet decided that public education is compulsory for all persons aged six to fifteen, a decision based on the decision No. (Public Education / 27) dated 07/02/1422 AH (2001),⁴⁸⁹ issued by the Supreme Committee for Education Policy. In addition, the Committee has recently sought, within the compulsory education project, to develop a number of initial controls and sanctions, which will be applied to the parents or legal guardians when they do not adhere by the obligation of educating their children. The Committee asked to develop an item in the marriage contract stating that the husband is obligated to educate his sons and daughters. At the same time, the Committee acted to ban all the electronic transactions for parents who do not want to educate their children until the children are enrolled in schools. This measure is in addition to the Kingdom's commitment to help poor families to educate their children, and were applied in the academic year of 2014/2015.⁴⁹⁰ Accordingly, the Kingdom has ensured the application of provisions contained in paragraphs (A, B and H) of Article 28/1 of the UNCRC.⁴⁹¹ The following table

⁴⁸⁹ See: «Council of Ministers: Compulsory education to those who are aged from six to fifteen», Riyadh Newspaper, Raby' al-Thaani 27, 1425 AH corresponding to 15/06/2004, Publication No. (13143).

⁴⁹⁰ See: Mohammed Saeed Al-Zahrani, «including compulsory education of children and suspend the electronic transactions for unwilling, the marriage contract», Okaz newspaper, 05/06/1434 AH corresponding to April 15, 2013, Publication No. (4320).

⁴⁹¹ Article (28/1) of the Convention states that: "States Parties recognize the right of the child to education, and with a view to achieving this right progressively and on the basis of equal opportunity, they shall, in particular:

(a) Make primary education compulsory and available free to all;

(b) Encourage the development of different forms of secondary education, including general and vocational education, make them available and accessible to every child, and take appropriate measures such as the introduction of free education and offering financial assistance in case of need;

shows the evolution in the rate of net enrolment in primary education in the Kingdom during the years 1990 - 2010:⁴⁹²

Enrolment in Primary Education

Target Index	1990	2010
Net enrolment rate in the primary education (%)	76.8	96.6

Table 13

Within the framework of transition from free education to compulsory education, the Kingdom seeks, according to the content in Article 2 of the UNCRC on non-discrimination and Article 28 on Education for all, to eliminate the gender differences at all levels of education by the year 2015. To this end, Article 9 of the Educational Policy contains a specific target that states that girls' right to education, in a manner suitable to their nature and to prepare them for their duties in life, it is to be fulfilled with decency and dignity, and in the light of the Islamic law, which asserts that "women are the twin halves of men".

(c) Make higher education accessible to all on the basis of capacity by every appropriate means;

(d) Make educational and vocational information and guidance available and accessible to all children;

(e) Take measures to encourage regular attendance at schools and the reduction of drop-out rates".

⁴⁹² *Supra*, note 298, p. 43.

Despite the relatively late entry into education of girl children in comparison to boy children, there is an evident increase in girls' enrolment at various stages of education.

Girls' total enrolment in all stages of public education rose from 85.1% in 1990 to 99.1% in 2010, which compensated for the gender gap in enrolment indicators in primary, secondary and university education by 2010.⁴⁹³

Gender Gap in Enrolment

Target Index	1990	2010
The ratio of girls to boys in primary, intermediate, secondary and high education (%)	85.1	99.1

Table 14

In the same context, the Kingdom allows for foreign communities residing on its territory to open private schools to educate their children according to the curriculum⁴⁹⁴ in force in their countries, under the regulations of foreign schools in the Kingdom issued by the Cabinet's decision No.(36) dated 10/06/1997. Accordingly, the number of foreign schools licensed to operate in the Kingdom until the year 2008 reached 187 schools spread over sixteen educational directorates and provinces, with the number of students of these

⁴⁹³ *Ibid.* p. 53-54.

⁴⁹⁴ The number of foreign curricula taught in the Kingdom amounted to more than twenty approach, including the British, American, French, Filipino, Australian, Pakistani, Indian, Portuguese, Guinean, Mali, Japanese, Korean, Swedish, Eritrean, Turkish, German, Indonesian, Ghana, Italy, Greek, Sri Lankan and others approaches.

schools reaching more than 100,000 students. In turn, the number of male and female non-Saudi students in public schools amounted to approximately 592,227 students, at both primary, intermediate and secondary stages. Education is provided for this category of children in public schools on a cost-free basis.⁴⁹⁵

The system of private schools was seen to form for the first time in 1974.⁴⁹⁶ This was based on the Cabinet's decision No. 2007 in 3/12/1349 AH (1974). The main objective of establishing these schools was to provide the appropriate education for the sons and daughters of the resident foreign communities, and especially non-Muslim communities residing in the kingdom. Since, these schools were opened to all foreign communities of different nationalities and religions.⁴⁹⁷ Considering the aforementioned, the Kingdom's adoption of the listed decisions and regulations – not least considering the foreign child's inclusion, equally with the citizen students, in accordance with the educational policy in the Kingdom, represents an embodiment and a pre-text for the harmonisation of Saudi Laws with the UNCRC provisions; especially in relation to Articles 28 and 29 as well as Article 2 of the Convention based on the principle of non-discrimination.

⁴⁹⁵ The national report submitted by the Kingdom of Saudi Arabia to the Human Rights Council, the General Assembly, and United Nations on December 11, 2008, p. 12.

⁴⁹⁶ National public education is the education which is based on the efforts of individuals or private institutions under the supervision of the competent authorities in the country. Private school means each non-governmental institute practicing any kind of public, vocational or special education pre-high education stage.

⁴⁹⁷ The second periodic report provided by the Kingdom of Saudi Arabia to the Committee on the Rights of the Child under Article (44) of the CRC, previous reference, p. 54.

In conclusion, it is confirmed that achieving these fulfilments has not been possible without the full commitment of the Kingdom to provide the necessary financial resources to achieve this deployment and expansion of the child's right to education at all levels. The budget allocated to invest in human resources increased during the years 2005-2008. This increase was from 69.9 billion riyals to approximately 104.6 billion riyals, with an annual growth rate of 14.4%. This evidences the Kingdom's commitment to provide the required financial support for expansion of opportunities in the educational sphere.⁴⁹⁸ The allocation of spending on education in the Ministry of Education for boys and girls in 2009-2010 reached 83,614,802 million Saudi riyals. This amount represents approximately 17.6% of the Kingdom's total GDP amounting to 475 billion Saudi riyals.⁴⁹⁹ This amount increased during the Ninth Development Plan 2010-2014 reaching 498.4 billion riyals.⁵⁰⁰ It is a clear indication of the great amount of attention paid by the Kingdom of Saudi Arabia to children's education, development of knowledge and skills that will enable them to assume responsibilities such as achieving financial security and well-being and to be able to take advantage of all elements indicated in the provisions of

⁴⁹⁸ In 26/1427 AH (2006), the percentage of spending on education reached (6.2 %) of the GDP in the Kingdom, noting that, for the same year, Turkey spent (3.7%), Japan spent (4.9%), Germany spent (5.1%) and France spent (6.0%). Then in 2009, amount of spending on education increased to (8.7) of the GDP in the Kingdom. See both: The Ninth Development Plan, previous reference, p. 22 and the Millennium Developmental Goals, note 298. p.43.

⁴⁹⁹ Abdullah bin Mohammed Al Ma'youf, " An overview of statistical summary on public education in the Kingdom of Saudi Arabia, 1430 AH/1431 AH, of Educational Documentation Journal, Ministry of Education, Kingdom of Saudi Arabia. 1430/1431 AH, Publication No. (54), p. 32.

⁵⁰⁰ *Supra*, note 467, p. 377.

the Convention, achieving the purpose of the various aspects of education as provided for in Articles 28 and 29.

Children's rights hold great importance when it comes to education, as Cassidy argued that even though majority of parents serve the best interests of children most of the time, it is the case that some parents and guardians do not pursue and act in the children's best interests.⁵⁰¹ This is a key reason behind why there is increased attention given by academics and researchers to identify and subsequently promote children's rights, as there is recognition that parents or professional carers may not always act in the most professional and honourable manner to serve children's rights and their best interests.

It is important that children are able to interact and experience social relationships to promote their ability to exercise their participation rights. Bronfenbrenner argued that children should be provided the opportunity to engage in and participate in complicated patterns of activity in order to fully benefit from the guidance they receive from undertaking partnerships.⁵⁰² Children are unable to fluently and confidently express particular views, unless they experience conditions that assist them to formulate such views. This is consistent with sociocultural theory, which argues that children improve their personal development and degree of competence through engaging in activities that are beyond their existing skillset and comfort zone. Thus, children learn from being viewed as competent learners and are likely to

⁵⁰¹ Cassidy, C. (2012) Children's Status, Children's Rights and 'Dealing with' Children. *The International Journal of Children's Rights*, 20(1), pp. 57-71.

⁵⁰² Urie Bronfenbrenner, Contexts of Child Rearing: Problems and Prospects. *American Psychologist*, 34(10), (1979): 844.

maximise their learning when they have the opportunity to engage in partnership with caretaker adults. The participation of children and the resultant impact on their level of education also improves, as children are made to feel more comfortable and engage in learning activities that could be considered challenging.

The above argument about cooperation between adults and children to support children's ability to learn and maximise their education is reinforced by Smith, who stated that adequate support provided by adults could assist children to improve their concentration and interest, which in turn allow children to focus on fulfilment of their objectives whilst maintaining their attention and interest in key aspects of the tasks they are performing.⁵⁰³ Nevertheless, there is a need for greater social engagement between adults and children before children can take on more responsibility and maximise their own learning and education.

Carr et al. conducted research on children's perspective on early childhood services and concluded that giving importance to children, considering their voices and perceiving them as social actors with the arguments, views and opinions of their own allows children to improve their learning and development, as well as improves their confidence to engage with others.⁵⁰⁴ This approach from adults also contributes to assisting children to improve

⁵⁰³ Anne Smith, A. B. Children and young people's participation rights in education. *The International Journal of Children's Rights*, 15(1), (2007): 147-164.

⁵⁰⁴ Margaret Carr, Carolyn Jones, and Wendy Lee, Beyond listening: Can assessment practice play a part. *Beyond listening: Children's perspectives on early childhood services*, (2005): 129-150.

their communication and interpersonal skills, and persistence towards improving their competence instead of fulfilling objectives and goals that assist them in avoiding failure and gaining favourable judgments.

The specific approaches to education also have an important role, when it comes to the ability of children to learn. For instance, Carr et al. highlighted the importance of learning stories in improving the interest and willingness of children to engage at school.⁵⁰⁵ Furthermore, learning stories not only serves to energise and excite children but also teachers and parents, which leads to a greater effort and interest from the carers and parents to enhance the learning and development of children.

The above arguments with regards to children's rights in the context of education clearly highlights that there is a need to encourage and continuously support children to be active and regularly participate in development of their own skillset. This has been the case with children across many research studies whereby children are found to raise their voice and preference with regards to the fact that their wishes and choices should be taken into consideration by adults that are making decisions on their behalf.

Children need to be involved from an early age, should be included and respected as responsible participants, which serves to not only improve and maximise the learning and development of children but also positively affects

⁵⁰⁵ *Ibid.*

their confidence and ability to engage with larger groups of audiences whilst providing them with the confidence and empowerment to take responsibility for their own lives and future development from a relatively early age.

The arguments made above demonstrate the importance of looking after as well as listening to the children and encouraging them to be expressive in terms of expressing their views. This is especially the case as they begin to grow older, as encouraging the children to be expressive means they would become independent and over time, make more informed decisions with regards to their own future. Even though there is a risk of a lack of judgment from children when making decisions about their own future, nevertheless it leads to experience for children from an early age including an incentive to take greater responsibility for their own development.⁵⁰⁶

The comparisons made in this chapter give us a clearer understanding of where Saudi Arabia stands in regards to children's rights. In theory, although there will always be room for improvement, the efforts put ahead by the Saudi government cannot be denied. However, in practice, are those laws and conventions implemented in a way that conforms with international standards? Or in other words, is there such a thing as "international standards" of children's rights? If so, what is the way forward for children's rights in Saudi Arabia? With those questions we reach the final chapter in this research.

⁵⁰⁶ Lucinda Ferguson, Not merely rights for children but children's rights: The theory gap and the assumption of the importance of children's rights. *The International Journal of Children's Rights*, 21(2), (2013): 177-208.

Chapter 5

Conclusion

In terms of political rights and civil liberties, Saudi Arabia is classified as a third world country;⁵⁰⁷ despite harbouring a wealth of resources and exhibiting sophistication in other spheres. This discrepancy makes the study of human rights in general, and children's rights in specific, a very hard task. A gap is found between the legal theory and application of these rights, not least observed in reports submitted by Saudi Arabia to the UNCRC Committee, and the Concluding Observations sent back by the committee. These reports are a critical source for establishing a better understanding of the state of children's rights in Saudi Arabia.

Saudi Arabia has undoubtedly persevered with an effort to implement the UNCRC. This is best demonstrated by Saudi Arabia ratifying the Optional Protocol to the Convention on the Sale of Children, Child Prostitution and Child Pornography, in August 2010 and the Optional Protocol to the Convention on the Involvement of Children in Armed Conflict, in June 2011. Various institutional, legislative and policy measures have also been adopted to enable implementation of the Convention and its regulations; such as the Anti-Trafficking in Persons Law, Law of Protection from Abuse, and The Child Protection Law (previously mentioned in Chapter 2).

⁵⁰⁷ "Countries of the third world" http://www.nationsonline.org/oneworld/third_world.htm [Accessed 22 February 2018]

Theory vs. Reality

An in-depth review of reports and studies produced by human rights institutions in Saudi Arabia exposes a glaring gap between the theory and the application of children's rights in Saudi Arabia, including the issue around the definition of 'the child' itself. Theoretically, in more than one medium in Saudi Law, the age of children is classified as up to eighteen, however in practice this is not always the case.⁵⁰⁸ For example, in courts, judges have the discretion to determine when the age of majority has been reached, which in many cases has been judged to well be under eighteen years of age. This also means that judges can authorise marriages of theoretically underage girls or give death sentences to offenders under eighteen years of age, if deemed appropriate by the judge. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

⁵⁰⁸ Human Rights Watch, Saudi Arabia: 3 alleged child offenders await execution, 17 April 2016, [Accessed 22 April 2018]. <https://www.hrw.org/news/2016/04/17/saudi-arabia-3-alleged-child-offenders-await-execution>

⁵⁰⁹ See Amnesty International, Saudi Arabia: Juvenile offender's death sentence must shame the authorities into meaningful action, 29 September 2015, [Accessed 3 April 2018]. <https://www.amnesty.org/en/documents/mde23/2557/2015/en/> and

See Amnesty International, Juvenile activist's death sentence upheld, 16 September 2015, [Accessed 22 April 2018]. <https://www.amnesty.org/en/documents/mde23/2452/2015/en/>

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Another concern that the UNCRC committee raised was in regards to the mechanisms for implementing the UNCRC. The main concern remains the general reservation that Saudi Arabia has put in place, which ensures precedence of Shari'ah Law over the UNCRC, which systematically undermines the effectiveness of the Convention.

Religious law is an important component that makes up the processes that determines human action. We cannot say that religious law exclusively determines human's behaviour, but also we cannot say that the position of religious law on any given subject is not taken into account by individuals and official policy makers. The weight given to religious law in any given subject differs from individual to another and from a government to another and certainly from one period of history to another.

The main difficulty of establishing a universal set of standards lies in the fact that each religion has its own set of standards derived from their different sources. This can be seen mostly in states run by religious law, like Saudi Arabia or Malaysia where Islamic law precedes any international law, or the Holy See where Christianity also precedes any other law. Most religious laws do not relate to any other religions or traditions. In the cases where they do relate it is usually in a hostile and negative way since each religion has to claim the conformity of its members by asserting its superiority above other religions. However, one single principle that is shared by all religions and traditions, that can be the foundation of sustaining universal standards, is the principle that

one should treat others how he or she wishes to be treated. This principle is shared by all major and minor religions of the world and thus can be the base of universal standards leading eventually to international law.

The extent of implementation of UNCRC in Kingdom of Saudi Arabia can be compared to the implementation of UNCRC in Malaysia and other Islamic states or even to the Holy See. The comparison is reasonable, as Holy See is, like Saudi Arabia, a government driven by religion. Even though the Holy See has signed the UNCRC, it has been applied with reservations as well. For instance, one of the reservations has been with respect to the Article 24.2 of UNCRC 'family planning, education and services' whereby, according to Langlaude, the Holy See is of the viewpoint that it considers only those methods of family planning that are deemed morally acceptable i.e. the natural methods of family planning. Furthermore, the Holy See interprets the articles of UNCRC in a manner that safeguards the inalienable primary rights of parents, especially the rights concerning religion (Article 14), education (Article 13 and 28), privacy (Article 16) and association with others (Article 15). Hailu states that the reluctance of the Holy See to fully recognise the child as a subject of rights has prompted concerns amongst the CRC Committee. The objections raised by Vatican are argued to be a factor contributing to discrimination in Catholic institutions and schools, Haugen points out especially with regards to gender as well as the development of preventative health care. Furthermore Rashid and Barron write about the continued defiance on the part of the Holy See of some of the articles of the UNCRC and refusal of the Holy See to collaborate with the secular authorities regarding the investigations of child abuse indicates that children's rights as proposed by

UNCRC are not necessarily upheld by the Holy See. There are parallels to be drawn in the way the Holy See has implemented UNCRC and the way UNCRC has been implemented in the Kingdom of Saudi Arabia, as both have prioritised the religion when implementing the UNCRC.

In its Concluding Observations, the Committee on the Rights of the Child recommends Saudi Arabia to review the nature of its reservation with a view to withdrawing it, in accordance with the Vienna Declaration and Programme of Action adopted at the World Conference on Human Rights, held in 1993.⁵¹⁰ The revision of children's rights in Saudi Arabia in my chapter 4 and comparing them to UNCRC standards is a starting point for the recommendation set forth by the Committee to review the reservations and consider withdrawing them.

Beyond this set of reservations, another main concern around the implementation of the UNCRC provisions, is the lack of child rights perspective in Saudi Arabia's legislation. A child in Saudi Arabia is viewed as an object of protection rather than a subject of rights. There is no comprehensive law that embraces promotion, provision and protection of children's rights in their entirety, including the children's rights and principles encoded in the UNCRC. Additionally, there is a major absence of coordination between mechanisms existing at different levels of the administration. This point was raised in both of the Concluding Observations reports published in 2006 and 2016. It is

⁵¹⁰ UN Committee on the Rights of the Child (CRC), *UN Committee on the Rights of the Child: Concluding Observations, Saudi Arabia*, 17 March 2006, CRC/C/SAU/CO/2, [Accessed 26 April 2018]. <http://www.refworld.org/docid/45377ed70.html> and UN Committee on the Rights of the Child (CRC), *Concluding observations on the combined third and fourth periodic reports of Saudi Arabia*, 25 October 2016, CRC/C/SAU/CO/3-4, [Accessed 26 April 2018]. <http://www.refworld.org/docid/587cec3e4.html>

complimented by another concern around the allocation of resources; despite the large amounts of funds allocated to children development, the system to identify and track the budget allocated and spent on children is significantly lacking in capacity.

When it comes to rights of freedom of opinion and expression and freedom of thought, conscience and religion, Saudi Arabia has often been the subject scrutiny. As seen in Chapter 4, from a rights perspective, Saudi Arabia grants children right to express their views theoretically to their full extent. [REDACTED]

[REDACTED]

[REDACTED] Thus, the right to freedom of opinion and expression needs to be defined in clear legal terms that do not, when exercised to their full extent lead to consequential human rights violations such as death sentences, torture and arbitrary arrest. [REDACTED]

[REDACTED]

⁵¹¹ See Amnesty International, Urgent Action: Juvenile offenders risk execution, 15 October 2015, [Accessed 22 April 2018]. <https://www.amnesty.org/en/documents/mde23/2671/2015/en/>
<https://www.amnesty.org/download/Documents/MDE2346012016ENGLISH.pdf>

⁵¹² UN Committee on the Rights of the Child (CRC), *Concluding observations on the combined third and fourth periodic reports of Saudi Arabia*, 25 October 2016, CRC/C/SAU/CO/3-4, [Accessed 26 April 2018]. <http://www.refworld.org/docid/587cec3e4.html>

Non-discrimination is perhaps one of the concerns that is most recurring in recommendation reports published by international bodies regarding Saudi Arabia. Discrimination against the girl child is severe, and manifests itself in the denial of recognition of girls as full subjects of rights. They are discriminated against in *de facto* as in *de jure* terms, in part through a legal framework which imposes on them male guardianship, conditioning the enjoyment of their full rights; most specifically the right of movement, access to justice, access to health care services, identity documents and education, without the approval of their male guardian. It is important to note that the Committee on the Rights of the Child “draws the attention of the State party to its obligation to ensure that traditional, historical, religious or cultural attitudes are not used to justify violations of girls’ rights to equality before the law and to equal enjoyment of all the rights enshrined in the Convention”.⁵¹³ Other marginalised groups of children suffering from discrimination in Saudi Arabia are children with disabilities, children of migrant workers, children born out of wedlock and children belonging to religious minorities. Children of Saudi mothers and non-Saudi fathers also suffer a great deal of discrimination, since nationality is transmitted through the paternal and not the maternal line. This is a breach of Article 7 and 8 of the UNCRC, particularly if the child, as a consequence, becomes stateless.

Another concern, where there is a gap found between legal theory and practice, is the child’s right to life, survival and development. On 2 January 2016, 47 persons were executed, four of whom were believed to be under

⁵¹³ *Ibid.*

eighteen years of age when sentenced to death by the Specialised Criminal Court.⁵¹⁴ In January 2013, a Sri Lankan domestic worker was executed in spite of evidence that her identity papers were forged with a view of securing work in Saudi Arabia, and that she was in fact under eighteen years of age.⁵¹⁵ Both the Committee on the Rights of the Child and the Committee on the Elimination of Discrimination Against Women have raised concerns and called for prohibition of recruitment of children (especially girls) as domestic workers.

The majority of children who come into conflict with the law or are found to be in violation of religious prescription are arrested and imprisoned. Despite the Saudi Royal Decree No. M/2 that prohibits torture and degrading treatment, they often suffer from ill-treatment as a consequence. Children are reported to have been subject of interrogation techniques that amount to torture, authorised in Saudi Arabia and reportedly used to coerce juveniles into signing confessions, whether true or false.

In spite of adopting the Child Protection Law in 2014, corporal punishment remains an issue in Saudi Arabia, both in the school environment and also within the family setting.⁵¹⁶ This is an issue that needs the participation of society as a whole – public attitudes can only begin to change if awareness is raised using programs that involve children, families, schools, communities and religious leaders alike. These programs need to focus on the negative

⁵¹⁴ *Ibid.*

⁵¹⁵ See Amnesty International, Urgent Action: Further Information: Sri Lankan woman executed in Saudi Arabia: Rizana Nafeek, 9 January 2013, [Accessed 22 April 2018].
<https://www.amnesty.org/en/documents/mde23/003/2013/en/>

⁵¹⁶ UN Committee on the Rights of the Child (CRC), *UN Committee on the Rights of the Child: Concluding Observations, Saudi Arabia*, 17 March 2006, CRC/C/SAU/CO/2, [Accessed 26 April 2018].
<http://www.refworld.org/docid/45377ed70.html> para. 45.

effects of psychological and physical harm that corporal punishment causes. Furthermore, there ought to be a focus on alternative child rearing methods and promotion of positive, child-friendly, non-violent forms of discipline.

In Saudi Arabia, children with disabilities are significantly marginalised as a group in their right and access to education, with the vast majority of children with disabilities receiving their education in segregated institutions. Moreover, many of them are deprived of their right to education beyond middle school. The human rights approach recognised in the provisions of the UNCRC is distinctly absent in the treatment of children with disabilities in Saudi schools. They are not seen as subjects of rights nor are they seen as active participants or contributors to society.

When it comes to general education, primary education is compulsory for both boys and girls. However, no strict measures are taken in that respect and parents (or guardians) who refuse to enrol their children in schools are not penalised. As for the quality of education, only recently were standard, non-stereotyped education generalised in Saudi Arabia; e.g. physical education for girls has been made mandatory.

Regarding a main question of my thesis: is the right of the child to have her or his best interests taken as the primary consideration respected in Saudi Arabia?

Let us take as an example one of the most debated issues: underage marriage. The Committee on the Rights of the Child “urges the State party to

set, as a matter of priority, the minimum age of marriage at eighteen years of age for both girls and boys.”⁵¹⁷ In Saudi law, however, a judge decides if a girl (under eighteen years of age) is eligible for marriage. Parents or legal guardians of a girl below the age of eighteen years cannot marry their daughter off without a judge’s approval, even if their daughter gives her consent. In certain cases, judges can therefore consider underage marriage to be in the child’s best interests. From an international law perspective, one might find the idea of judges making decisions on a case by case basis not necessarily problematic. Thus, is Article 3, on the right of considering the child’s best interests, breached if the court deciding the question has the child’s best interests as a primary consideration? Are the child’s best interests in Saudi Arabia different from a child’s best interests in, for instance, the UK? Is childhood, as a concept, understood differently in different countries or different cultures? And more importantly, if the understanding of what a childhood should entail is not universal, can we ever speak of *universal children’s rights*?

The argument that the ‘universal’ rights encoded in the UNCRC are in fact based on a western concept of rights and standards of childhood has gained momentum since the birth of the Convention. The focus is on the idea that “western social policies emphasise the role of individual causations and professional interventions and de-emphasise the influence of the wider social,

⁵¹⁷ UN Committee on the Rights of the Child (CRC), *Concluding observations on the combined third and fourth periodic reports of Saudi Arabia*, 25 October 2016, CRC/C/SAU/CO/3-4, [Accessed 26 April 2018] <http://www.refworld.org/docid/587cec3e4.html>

economic, political and cultural circumstances.”⁵¹⁸ However, with this in mind, it is important to note that the majority of the rights specified in the UNCRC are in fact not specifically *children’s* rights, but rather fall into the broader category of human rights.⁵¹⁹ The reason these rights are restated in the UNCRC is because children are more prone to the abuse of those rights. The need to protect these rights is more pressing, since children suffer permanent and serious damage as a result of being deprived of such protection.

There continue to be certain issues around children’s rights that require further work from the Government of the Kingdom of Saudi Arabia. For instance, discrimination against girls and the practice of male guardianship over girls (United Nations Treaty Collection, 2018) is consistent with universalism, as the rights of children are not necessarily same. Based on the application of universalism, the prevalent practices in Saudi Arabia can be criticised. Similarly, based on cultural pluralism, minority groups are not necessarily fully engaged within the Saudi Arabian society. For instance, Office of the High Commissioner of the United Nations Human Rights reported that they are in the process of having discussions with the Government of the Kingdom of Saudi Arabia on the issues such as statelessness of the children from displaced and nomadic tribes in Saudi Arabia, discrimination against children that belong to religious minorities and a lack of presence of a legal framework that helps the children with the refugee status to seek asylum (OHCHR, 2019).

⁵¹⁸ Vanessa Pupavac, ‘The infantilization of the South and the UN Convention on the Rights of the Child’ in H.J. Steiner and P. Alston (eds.). *International Human Rights in Context*, 2nd ed. (Oxford: Oxford University Press 2000), p.517.

⁵¹⁹ Kristina Anne Bentley, "Can There Be Any Universal Children's Rights?" *The International Journal of Human Rights* 9, no. 1 (2005): 107-123.

According to Trosky, the universalist and cultural pluralist approaches to human rights lack the appreciation of cultural and religious values, especially from the Islamic perspective. An-Naim summarises universalism as a concept that means that the human rights are universal i.e. the rights of humans are the same for everyone and everywhere. Each individual is entitled to the freedom and inalienable rights and the same institutions of democratic organisation have relevance irrespective of the political and cultural context. The universality of human rights ensures the well-being of humans, as every individual has access to the same rights irrespective of what country or geographical location they are in.

In contrast to universalism, cultural pluralism is, according to Rohe, a condition where minority groups tend to fully engage in the dominant society whilst maintaining their cultural identity and differences. However, Reichert points out the ability of the minority groups to maintain their unique cultural characteristics including practices and values is premised upon the extent to which these cultural characteristics with the values and laws of the wider society. Under cultural pluralism, groups tend to co-exist in the society and incorporate the qualities of other groups as characteristics they should possess in the dominant culture.

However, as mentioned earlier, Hashemi sheds light on Islamic countries including Saudi Arabia's expression of their discontent with the application of universalism and cultural pluralism as the laws originated by the West do not take into consideration and appreciate the religious and cultural values

prevalent in the Islamic countries. Based on this argument, it is suggested that universalism in its current form should not necessarily consider the assumption of sameness and consistency across different cultures. Instead, the cultural and religious differences and the impact they have on the policies devised by countries should be taken into consideration by universalism and cultural pluralism when it comes to international law.

Following is a discussion in achieving a long lasting and authentic reconciliation between Islamic law in one hand, and international law on the other.

How “international” is international law?

In his book, *Toward an Islamic reformation*, An-Naim writes that in the historical perspective of international law, it is widely known that modern international law was written by European states, thus reflecting their interests and perceptions. According to their imperialist perception (and interest) the native people of Africa, Asia, and the Americas did not qualify for membership in the “civilised community of nations”.

To better understand the “European” perception at the time it is worth mentioning that historically, Islam was born in a harsh environment, where it was received with an aggressive and violent attitude by the Arab tribes of the seventh century. The Prophet Muhammed along with the first Muslims had to face violent reactions and fight for their survival until Islam prevailed throughout Arabia. The teachings of Islam does not allow the use of force unless it is for self-defence or for propagating Islam, though even propagation comes with a certain set of rules that needs to be met in order for force to be

used. Violence and force were the last resort after peacefully offering the religion, then giving an opportunity for the enemy to embrace the religion without fighting. Even then, violence was restricted to a battlefield and to fighting soldiers only.

Although it is arguable that in that historical context the use of force by early Muslims can be justified, in more recent times this justification is not arguable. In that historical context where violence was a means of survival in intercommunal and international relations, use of force can be justified. However in the present context where peace and coexistence has become the norm for humanity, use of force ceases to be justified.

However, like mentioned earlier in this research, it is important to emphasize that according to Muslim belief, Shari'ah in the past, present and future is based on its main sources; the Quran and Sunnah. The historical context of how those sources were used in the past does not imply their use in the present. They have been used to produce laws as a response to realities in the past and should be used to produce different laws to different realities in the present.

However, regardless of how Shari'ah can be developed and evolved, there are some general agreed on principles in Islamic law that are in clear conflict with international norms. The slight mention of these principles that are in conflict with international law might produce a significant impact on Islam's reactions to international law. Facing these conflicts might create a big tension between the Islamic law and the international law. This tension can only be resolved in an authoritative and conclusive matter in national and international settings.

An example of this can be seen in the Prince Khalid Alfaisal's institute of moderation; an institute that consolidates Saudi's moderation approach of the Islamic law into the world.

Going back into history it is beneficial to remember how international law was formulated. With the rise of the European power in the sixteenth century and the decline of the Islamic power, the ottoman empire, the most powerful Islamic state at the time, was forced to accept the principles of the international law as it was formulated by the European nations. Later on after World War I, with the disintegration of the Ottoman empire, many modern Muslim states started existing. An-Naim suggests that by that time the criteria of international acceptance and international law has already been established and had to be accepted by all states without their input into the subject. Because Shari'ah has a very powerful influence on Muslim's actions and thoughts, even if there was no Islamic formal legal system, Shari'ah is very much present in the minds and hearts of Muslims.

However, fast forward into the present day, despite the conflict between international law in theory and in practice that we can see in Saudi and many other countries today, international law has proven to be more international than it used to be. According to Annaim the pre-existing theory of islamic international relations already consist of some elements that should be used as the foundation for the reconciliation of Shari'ah and international law. First, in spite of the constant state of conflict between muslims and non-muslims, peaceful co-existence has occurred between them in the past. Second, the treaties between muslims and non-muslims have a strong international

approval. Third, peaceful international discourse and settlement of disputes have been resolved through diplomacy and arbitration. All of these along with many other positive elements of the Islamic tradition can be used as a foundation to find common grounds with international law.

Looking into writings of contemporary Muslim scholars, we find that most topics in conflict with international law, like discrimination against women and children, are usually overlooked. In the rare occasions where they are looked into, the research usually used Quranic perspectives out of context. Or like explained before, some Quranic verses have been applied in a time of war when Islam first emerged. An-naim proposes a method that he suggests is the only way to achieve sufficient reform, is where the Quranic verses and hadiths that are in conflict with international law are cited and explained within their historic contexts in able to see if they are legally applicable to Islamic law today.

In order to explore the concept of universalism of children's rights we will take as an example one of the rights that is indeed intended explicitly as a right of a child, namely Article 32 of the UNCRC - protection from "economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development." Child labour continues to be a serious concern in mostly developing states, where it is estimated that 250 million children between the ages of four and fourteen are

child labourers, almost half of them working full-time.⁵²⁰ The severity of consequences of child labour cannot be overstated, however, according to a Human Rights Watch report, “in some cases, a child’s labour can be helpful to him or her and to the family; working and earning can be a positive experience in a child’s growing up. This largely depends on the age of the child, the conditions in which the child works, and whether work prevents the child from going to school.”⁵²¹ Thus, the concern here is not whether the child works or not, but rather whether working will deny the child his or her *human rights*, such as the right to be protected from harm, ill-treatment, abuse and the right to receive an education.

Sustaining efforts to protect Children’s Rights in Saudi Arabia

As the most ratified Convention globally, the UNCRC is by far the most widely accepted human rights convention. The Convention owes its rapid popularity to its subject – children. States are not willing to be viewed as violators of the most vulnerable: children.⁵²² However, others suggest that this acceptance hinges on the notion that this treaty, in aiming to protect children’s rights, is

⁵²⁰ ILO (International Labour Organisation)

⁵²¹ Human Rights Watch Report: Child Labour (Human Rights Watch 2001), [Accessed 22 April 2018]. www.hrw.org/children/labor.htm.

⁵²² Emerging Limitations on the Rights of the Child: the U.N. Convention on the Rights of the Child and Its Early Case Law 1998.

less controversial in its mandate than the more specialised human rights conventions.⁵²³ The success of the UNCRC as the most widely ratified convention must not blind us to its weaknesses.

As an international human rights treaty, the UNCRC contains many weaknesses limiting its effectiveness. Here it must be again noted that the effectiveness of the UNCRC varies from state to state, depending on the absorption of international human rights law in the local laws of the country. In other words, the success of lawsuits brought on behalf of children in domestic courts depends on the extent to which the UNCRC is applied in the national laws.

Thus, the biggest weakness in the UNCRC revolves in the issue of whether it is a self-executing convention or a non-self-executing convention. “When an international agreement or treaty is self-executing, no domestic implementing legislation is needed, and the treaty is immediately applicable on a domestic level upon entry into force. If non-self-executing, then the ratification of a treaty will create international obligations for the state, but the treaty will not have domestic legal force”.⁵²⁴ Even if the UNCRC is found to be non-self-executing, the state is still obliged to adhere to its provisions. Professor Louis Henkin writes, “Rendering a treaty non-self-executing in no way reduces or significantly postpones our legal obligations”.⁵²⁵ The state has an obligation to

⁵²³ *Supra*, note 156.

⁵²⁴ see International Law: Cases and Materials 212-221 (Louis Henkin et al. eds., 1993).

⁵²⁵ Louis Henkin, *Treaties in a Constitutional Democracy*, 10 Mich. J. Int'l L. 406, 425 n.42 (1989).

"enact necessary legislation promptly so as to enable it to carry out its obligations under the treaty". A state, although not legally bound to adhere by the provisions of the UNCRC, has a duty to abide by the provisions once it has ratified the Convention.⁵²⁶

Moreover, Article 4 requires that state parties are obligated to take steps towards implementation of the Convention's provisions.⁵²⁷ This in itself implies that the CRC is intended to be non-self-executing and is dependable on national laws. According to the second part of Article 4; "States Parties shall undertake such measures to the maximum extent of their available resources." The lenient language used in this Article is there for the sake of developing countries, who might have withheld ratification if consideration was not given to their limited resources.⁵²⁸

Reservations raised by Saudi Arabia, and a number of other Islamic countries, are also a means of weakening the UNCRC. These governments reserve the right to express, when ratifying the Convention, reservations on all provisions

⁵²⁶ Vienna Convention, art. 18 (Obligation not to defeat the object and purpose of a treaty prior to its entry into force) ("A state is obliged to refrain from acts which would defeat the object and purpose of a treaty when: (a) it has signed the treaty or has exchanged instruments constituting the treaty subject to ratification, acceptance or approval, until it shall have made its intention clear not to become a party to the treaty; or (b) it has expressed its consent to be bound by the treaty, pending the entry into force of the treaty and provided that such entry into force is not unduly delayed").

⁵²⁷ Article 4 of the CRC: States Parties shall undertake all appropriate legislative, administrative, and other measures for the implementation of the rights recognized in this Convention. In regard to economic, social and cultural rights, States Parties shall undertake such measures to the maximum extent of their available resources and, where needed, within the framework of international.

⁵²⁸ The delegations of Brazil, India, Venezuela, Libya, and Algeria led the opposition to a proposal by the United States which would have removed the language regarding "available resources." It was this opposition that led to a compromise position, in which economic, social and cultural rights were addressed separately and allowances were made for available resources with respect to these rights. Considerations 1989 Working Group (1989), in Sharon Detrick, *The United Nations Convention on the Rights of the Child: A Guide to the "Travaux Préparatoires"* 641-642 (1992).

of the Convention that are deemed incompatible with Shari'ah law. It follows that although the UNCRC has received almost universal acceptance, had the right to express reservations been withdrawn, this would not have been the case. This wide acceptance was subject to (and was made possible thanks to) important reservations. Article 51 of the UNCRC openly allows for reservations, as long as they are "not incompatible with the object and purpose of the Convention," however doing so limits the scope and form of the UNCRC. Thus, states ought to be pressed to eventually withdraw their reservations, especially considering that - as discussed in chapter 4 - Shari'ah law is in line with most, if not all, of the provisions of the UNCRC.

Furthermore, it must be reiterated that the mission of the Committee on the Rights of the Child is to organise the reporting mechanism and to respond to state reports with non-binding recommendations and observations but rather function as recommendations for improving and sustaining efforts in protection of children's rights.⁵²⁹

So, how can Saudi Arabia make progress in regards to its notion of Rights?

At this point, it is important to recognize that the UNCRC is much more than just a legal document. Its success in contributing to and supporting the idea of children's rights deserves applause, not least in compelling governments to take the necessary steps in protecting the rights of the child.

⁵²⁹ See *Frequently Asked Questions*, UN, [Accessed 6 March 2017].
<http://www.un.org/esa/socdev/enable/convinfaq.htm>

Many states have considered implementing new laws and regulations set out in the provisions of the UNCRC by absorbing them into their national laws. Saudi Arabia can take the same steps and reproduce the provisions in the UNCRC as royal decrees, thereby instilling them with more influence and effect in domestic judicial courts. Reproducing the articles as royal decrees would also allow Saudi Arabia to safeguard the rights of the child without the suspicion of an “unwelcome” western impact. Continuous monitoring and pressure on governments to withdraw ratifications and instead to produce new laws and regulations in line with the provisions of the UNCRC, will increase the Convention’s effectiveness and significance in domestic courts. When discussing the applicability of the UNCRC, addressing the procedure in domestic judicial courts is an integral part of the solution. The reproduced laws, along with a fair and just procedure at the courts, form the core foundation for protecting children’s rights rather than a notion of a mechanism for doing so. Considering the importance of the domestic judicial systems, reproducing the articles of the UNCRC as royal decrees will ensure the application and implementation of the UNCRC’s provisions in ways that allow the UNCRC to live up to the great promise it holds as a comprehensive treaty for children’s rights.

All in all, this research into protecting children’s rights in Saudi Arabia has raised more questions than it has provided answers - questions that reveal avenues for further research, questions that guide us to explore children’s rights in Saudi Arabia in an unprecedented manner. In the words of Adam Lopatka, who served as the Chairman-Reporter of the Working Group that drafted the UNCRC, “[t]he Convention is an historic achievement of the United

Nations in the sphere of promotion and protection of human rights. However, it would be too much to treat the Convention as a sanctity without the need for improvement."⁵³⁰ Thus, the present day success of the UNCRC is not a reason to rest easily. The same can be said for children's rights in Saudi Arabia. Although the last decade has seen an exceptional leap in the sphere of the provision and protection of children's rights in Saudi Arabia, without continuous growth and progress, the achievements of yesteryear will be quick to fade into the distance.

⁵³⁰ Adam Lopatka, *An Introduction to the United Nations Convention on the Rights of the Child*, 6 Transnat'l L. & Contemp. Probs. P.259 (1996).

Post script: The effected events are in a state of flux in Saudi Arabia. My dissertation ignores anything that happened after 31 March 2018.

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