

The London School of Economics and Political Science

From Contestation to Convergence?
A Constructivist Critique of the Impact of UN Human Rights Treaty Ratification on
Interpretations of Islam in the Gulf Cooperation Council (GCC) Countries

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Abstract

This thesis discusses UN human rights treaty ratification in Gulf Cooperation Council (GCC) countries. Ratification of human rights treaties by most GCC countries, often with extensive reservations concerning the compatibility of certain provisions with Islam, has generated international debate about the applicability of international human rights norms in an Islamic context. With poor compliance records, GCC cases are seen to demonstrate that global human rights norms fail to diffuse and take hold in specific local contexts. This thesis disputes this claim by arguing that normative change can be observed in these cases. It offers a constructivist critique of “norm diffusion” literature by focusing on changes in language and ideas, rather than on legal changes and implementation. Using the cases of the Convention Against Torture, the Convention on the Rights of the Child, the Convention on the Elimination of all forms of Discrimination Against Women and the International Covenant on Civil and Political Rights, the thesis identifies when and how language and ideas about Islam and human rights have been shaped by UN conceptualizations of rights as a result of GCC engagement with these treaties. Examining both Arabic and English sources and carrying out analysis of the discourses in UN documents, employing legal analysis of recent constitutional documents and laws, and through interview research, the thesis demonstrates how arguments about Islam and human rights in the GCC have been shaped by treaty engagement since the 1990s. By demonstrating ratification’s impact on GCC actors’ use of UN human rights vocabulary and concepts within an Islamic context, the thesis argues that ratification matters more than the conventional literature suggests. It concludes that, even in cases that human rights treaties have failed to result in improved practices, they have contributed to the framing of interpretations of Islam alongside UN human rights concepts, a process that is worthy of greater scholarly attention.

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Introduction

When the Universal Declaration of Human Rights was first introduced at the United Nations in 1948, Lebanese politician and UN representative Charles Habib Malik proclaimed that the Declaration was a “potent ideological weapon” that “if wielded in complete goodwill, sincerity and truth, can prove most significant in the history of the spirit.”¹ The hope was that the Declaration, in solidifying and enshrining common understandings of human rights, would help secure their recognition and observance in every country, regardless of political and cultural differences.²

Most international relations scholars today agree that this view was overly optimistic. International human rights agreements, though numerous and wide in scope, are often violated without consequence. By most measures, the impact of international human rights law on improving states’ human rights records has been modest at best. And, although international human rights declarations and treaties enjoy widespread support and purport to represent international consensus regarding the meanings of human rights, conceptualizations of human rights remain disputed and heterogeneous across countries and cultures.

Some of today’s pessimism, however, is misguided. International human rights law does have an impact, although this impact is often subtle. To understand this subtle power of international law, scholars would benefit from closer consideration of the influence of UN human rights treaty ratification in cases such as those in the Middle East where compliance has been minimal, but human rights treaties have had other effects. To contribute to the scholarship on human rights law, I discuss in this thesis cases in the

¹ Charles Habib Malik as cited in Susan Muaddi Darraj (2010) *The Universal Declaration of Human Rights*. New York: Infobase Publishing, p. 83.

² Mary Ann Glendon (2001) *A World Made New: Eleanor Roosevelt and the Universal Declaration of Human Rights*. New York: Random House, p. 8.

Middle East where international human rights law is helping influence and frame debates about Islam and human rights, even where direct compliance with UN human rights treaties has been minimal.

This thesis disputes the dominant claim in international relations literature that Muslim-majority states with poor compliance records demonstrate the futility of international human rights law to take hold in different cultures. I argue that Muslim-majority states representatives' engagement with international human rights treaties and their committees has at times influenced how conceptualizations of Islam are communicated to fit international human rights norms, demonstrating a form of impact. This has been visible in the legally conservative countries of the Gulf Cooperation Council (GCC) (Saudi Arabia, Oman, the United Arab Emirates, Qatar, Bahrain and Kuwait), where laws tend to reflect traditional interpretations of Islam. These cases are the focus of the thesis. By considering the ways in which international human rights law has contributed to framing debates about human rights in the GCC countries, the thesis offers a more hopeful outlook for those concerned with the usefulness of the international human rights system.

i.1 Theoretical Puzzles: Constructivism and Norm Diffusion

International relations theory has grown to address questions about the impact of international law and broadly frames the theoretical basis for the thesis. A scholarship has intensified to assess the expansion of the international legal realm into a multiplicity of international treaties, conventions, agreements, and declarations aiming to influence and regulate the conduct of individual states. These documents have contributed to a growing

codification, or “legalization,” of the international sphere.³ However, because the international sphere lacks direct coercive enforcement mechanisms, international relations scholars have fundamentally challenged the “strength” of international law—and even its status as “law” at all. Jack Goldsmith and Eric Posner in *The Limits of International Law* (2005) articulate a popular view that the potential for international law to influence states is severely limited by the international system’s lack of coercive enforcement mechanisms.⁴ Such pessimism on the impact of human rights law has inspired books such as Stephen Hopgood’s *The Endtimes of Human Rights* (2013) and Eric Posner’s *The Twilight of Human Rights Law* (2014).

Realist international relations scholars tend to support the claim that international law has minimal direct impact on state behavior. In the realist view of scholars such as John Mearsheimer, human rights laws are seen as weak instruments. For realists, although questions of morality are well known to state leaders, “the necessities of power rarely allow them to act on these rules.”⁵ Therefore, issues of human rights norms, though present in the minds of leaders who may engage with them in surface discussions, do not have a direct impact on states. On the other hand, strains of liberal institutionalist thought, such as that described by Robert Keohane, identify the basis for political authority in international

³ See use of the term discussed by Abbott, Keohane, Moravcsik, Slaughter and Snidal (2003) in “The Concept of Legalization” in Simmons and Steinberg *International Law and International Relations*. Cambridge: Cambridge University Press, pp. 115-130.

⁴ Goldsmith and Posner (2005) *The Limits of International Law*. Oxford: Oxford University Press. Also see critique of human rights law with the argument that despite growing ratification of human rights treaties, there has been no significant decrease in human rights abuse in Eric Posner (2014) *The Twilight of Human Rights Law*. Oxford: Oxford University Press.

⁵ Jack Donnelly (2004) *Realism and International Relations*. Cambridge: Cambridge University Press. p. 28 also see the argument “realists believe that power is the currency of international politics,” also see discussion of the realist case in John Mearsheimer (2006) “Structural Realism,” in Tim Dunne, Mija Kurki, and Steve Smith (eds.) *International Relations Theories: Discipline and Diversity*. Oxford: Oxford University Press, p. 72. Also see the argument of how ideas, particularly religion, can matter to a Realist insofar as these ideas impact the organization of a system’s structure and the distribution of power within a system, in Jack Snyder (2011) “Introduction” in Jack Snyder (ed.) *Religion and International Relations Theory*. New York: Columbia University Press, pp. 1-23.

politics as a “fusion of power and legitimate social purpose,”⁶ Such an approach could lead scholars to expect compliance where it doesn’t exist, assuming that human rights treaties’ clear standards and legitimacy can help overcome uncertainty that traditionally undermines cooperation and should, in optimal environments of continued interaction, result in liberalized practices.⁷

Existing empirical scholarship on human rights treaty compliance tends to support the realist claim, and finds that there is little to no correlation between human rights treaty ratification and human rights compliance. Improvements in human rights records are simply “not associated” with UN human rights treaty ratification, argue Emilie Hafner-Burton and Kiyoteru Tsutsui, citing extensive evidence in global human rights practices over time among state signatories to the major UN human rights treaties.⁸ Lack of evidence that human rights treaties make a difference has contributed to “growing skepticism” that “the world’s idealists have thrown too much law at problems of human rights,”⁹ failing to address the challenges of human rights by introducing new treaties and allowing state signatories to throw around empty promises to fulfill human rights without directly addressing abuses.

However, not all evidence is conducive to pessimism. As Kathryn Sikkink writes in her 2017 book *Evidence for Hope: Making Human Rights Work in the 21st Century*,

⁶ See discussion of institutional liberalism in Robert Keohane (2011) “Twenty Years of Institutional Liberalism,” *International Relations*, Vol. 26, No. 2, pp. 125-138, p. 125.

⁷ Ibid.

⁸ Emilie Hafner-Burton and Kiyoteru Tsutsui (2005) “Human Rights in a Globalizing World: The Paradox of Empty Promises,” *American Journal of Sociology*, Vol. 110, No. 5, pp. 1273-1411. In fact, Hafner-Burton’s research finds that state parties to certain human rights treaties are more likely to violate human rights than non-signatories. See Emilie M. Hafner-Burton, Kiyoteru Tsutsui and John W. Meyer’s 2008 study of human rights treaty compliance in “Repressive States and Human Rights Treaties: International Human Rights Law and the Politics of Legitimation,” *International Sociology*, Vol. 23, pp. 114-116. [“Formal agreements by national governments intended to improve human rights practices have not only done little to achieve the goal, but also seem to have sometimes resulted in worse practices,” p. 116].

⁹ Beth Simmons (2009) *Mobilizing for Human Rights*. Cambridge: Cambridge University Press, p. 7.

“Understanding the diverse origins and deep institutionalization of human rights lets us envision a different future for human rights law and practice from what pessimistic literature predicts.”¹⁰ I argue that international law has been important despite the challenges in achieving compliance and, even if not directly improving human rights conditions, international human rights law has had other effects. Existing international relations theories have weaknesses in accounting for the nuanced and complex impacts of international law, particularly in cases where states fail to comply with their international legal commitments. I address these weaknesses by considering the subtle dynamics of engagement occurring and suggesting ways in which existing theories, particularly constructivist theory, can capture and account for these complexities in the under-explored cases of the GCC.

These theoretical questions are discussed in Chapter 1, primarily drawing on the constructivist literature on norm diffusion and relevant literature within international relations and political science on human rights norm localization and vernacularization.¹¹ Norm diffusion (or the process by which norms travel and take hold in new contexts) in constructivist literature is traditionally used to measure the degree to which norms have an impact on liberalizing policy. This thesis will consider the ways in which the concept can be nuanced to capture processes of norm diffusion and localization occurring as a result of UN human rights treaties in these countries, even where activism is highly constrained and policies are not liberalizing.

¹⁰ Kathryn Sikkink (2017) *Evidence for Hope: Making Human Rights Work in the 21st Century*. Princeton: Princeton University Press, p. 11.

¹¹ See this argument broadly laid out in Emanuel Adler (2013) “Constructivism in International Relations: Sources, Contributions, and Debates” in Walter Carlsnaes, Thomas Risse and Beth Simmons (eds) *Handbook of International Relations*. London: Sage.

i.2 The Research Question

In light of this theoretical discussion, the thesis asks: Given the fact that most states with Islamic legal systems ratify UN human rights treaties and issue statements about Islam throughout the ratification process, and yet many do not comply with their commitments, what, if anything, has been the role and impact of UN human rights treaty ratification on interpretations of Islam and human rights in countries with poor human rights records and conservative Islamic legal systems? How are conceptualizations of Islam raised and communicated during ratification and review processes, and how, if at all, do these conceptualizations evolve or change related to treaty commitment? Is there any normative impact on how ideas about Islam are framed and communicated (and thus evidence of “norm diffusion”), even if practices remain unchanged? If so, is there evidence that conceptualizations of human rights norms are changing (either converging or diverging) or do they remain the same throughout the years of engagement?

To contribute to the literature on Islam and UN human rights treaty ratification, the thesis explores the intersection of Islam and international human rights law to see how ideas about human rights are communicated and develop, without the limitations of a traditional emphasis on impact and compliance. Central to the thesis will be an exploration of the concept of “norm diffusion” (or the process of when and why norms can travel, grow and take hold beyond their place of origin¹²), and related understandings of norm localization and vernacularization that are discussed in Chapter 1. Such questions about the impact of UN ratification and review processes on interpretations of Islam require an understanding of a range of relevant theoretical, conceptual and historical context,

¹² See for example, work on norm diffusion by Keck and Sikkink (1998), Klotz (1999), Risse et al. (1999), Barnett and Finnemore (2004), Reus-Smit (2004) and Simmons (2009).

including background on the history and politics of human rights and Islamic law, which will be discussed in Chapters 1 and 2.

While the impact of human rights treaty ratification on ideas specifically related to *Islam* and human rights treaty ratification provides only one angle from which to consider the puzzles presented by ratification in the Middle East and does not fill all gaps on the subject, it will serve as the primary focus of the thesis. The impact of interactions between states committed to Islamic law and UN human rights treaties on the ways that human rights are communicated (the language and concepts about human rights used in discourses on human rights) will provide a specific lens into broader questions about the role of international law on domestic politics and broader conceptions of human rights.

i.3 The Argument

While it appears that UN human rights treaty ratification and review processes have had minimal direct impact on improving the protection of human rights in the GCC, this thesis argues that interactions with the UN human rights instruments and their committees over time still at times has a subtle impact on the realm of ideas – particularly, on capturing and framing how ideas and conceptualizations of Islam are discussed including the vocabulary used by state officials to discuss human rights. Quantitative evidence supports the realist claim that international human rights law has had little to no impact on compliance in the GCC, if impact is to be measured in compliance measures.¹³ Still, small

¹³ For example, in the CIRI database measuring annual records of governments' respect for a number of internationally recognized human rights areas, Saudi Arabia's CIRI 'torture' rating has not significantly improved since ratification (in 1997 the rating was 0 (frequently practiced), and the latest figure (2011) is also 0 (frequently practiced), although this rating slightly improved to 1 (occasionally practiced) in several years in between). In another example, when Bahrain ratified CEDAW in 2002 its CIRI rating for women's

strides have been made in the GCC since ratification of the treaties as UN human rights treaty ratification and review processes have contributed to the shaping how Islamic human rights concepts are discussed within the vocabulary of international human rights. As a result, understandings of Islam and Islamic practices have been undergoing a process of justification, in which meanings are being fit or framed within vocabulary and concepts of human rights established by the UN Conventions, which constitute a form of norm diffusion as well as processes of localization and vernacularization that merit more serious scholarly attention.

On the theoretical side, the thesis explores an empirical problem with significant theoretical relevance; although there are limitations to this approach in establishing changes. The thesis illustrates how discourses have been shaped in different ways over time and challenges the notion that ratification of core human rights treaties alongside poor compliance presents evidence of the failures of norm diffusion. I dispute the realist claim most directly, by arguing that international human rights treaty ratification in the region matters more than its scholars assume. I argue that the concept of norm diffusion developing most substantively within constructivist literature is useful, but that it requires an increased focus on processes of norm change reflected in ideas rather than policy. This focus on language is necessary in these cases in which more subtle changes in the realm of

economic participation was 1 (moderate discrimination), and this rating has vacillated between 1 and 2 in available data since then (a slight improvement of some rights with effective legal protections), more frequently at 1, indicating no steady improvement in practices following ratification. CIRI database available at <http://www.humanrightsdata.com/>. Similarly, Freedom House's 'freedom scores' for GCC states measuring political rights and civil liberties (which evaluate freedoms of expression, association, and belief, as well as respect for the rights of minorities and women) relevant to provisions of the human rights conventions ratified in the GCC states including the ICCPR and CEDAW have stayed relatively consistent over the past three decades at "not free", with the exception of Kuwait at 'partly free,' suggesting minimal impact of the ratification of relevant human rights treaties. Freedom House scores available at <https://freedomhouse.org>.

ideas can reflect an important, often under-valued, stage in the norm diffusion process that I highlight.

This empirical exploration helps advance a fuller understanding of the process of norm diffusion as it is occurring subtly in the GCC which is a necessary (but not sufficient) first-step towards liberalizing reform, and therefore, is a change process deserving of increasing attention of scholars and policymakers. The simple framing of certain issues as “human rights issues” in many cases examined in this thesis is noteworthy, as the language of human rights is a different way of conceptualizing and framing topics that had traditionally been discussed in terms of other concepts such as “dignity” and “justice.” However, this process is often not linear or clean, and in some instances the impact is minimal. Any changes in language used to discuss human rights have not been straightforward in the GCC, and have, at times, prompted significant resistance. The assumptions of this research are that even small shifts in language by framing issues in international human rights terms matter, in that they can set the stage and provide a more ideal environment for, although they cannot alone facilitate, liberalizing legal and policy reforms that more closely align with UN conceptualizations of human rights.

i.4 Case Selection

International human rights law in the Middle East presents a challenge to scholars of international relations theory, but also opportunity for greater scholarly inquiry. Scholarly attention to the subject of international human rights law in the Muslim-majority states of the Middle East region sometimes focus on problematizing the compatibility of

Islam with the idea of universal human rights most generally,¹⁴ without paying much attention to the politics of ratification in each unique domestic context. Some studies have begun to focus on the domestic politics surrounding the act of UN human rights treaty ratification in states in specific world regions (see, for example, Lutz and Sikkink's 2000 study on human rights treaty ratification politics in Latin America¹⁵ and Emilie Hafner Burton's work on authoritarian ratification of the CAT in "The Paradox of Empty Promises" 2005).¹⁶ However, comprehensive analysis of the history and politics related to ratification across the globe, particularly in the Middle East, is lacking.

Given the prominence of human rights concerns occurring in the Muslim-majority states of the Middle East, the lack of scholarly attention to the role of international human rights law in the region is problematic. Of the many important and complex factors influencing human rights treaty engagement across the region, Islam is a central feature of Middle Eastern states' engagement with UN human rights treaties. And yet, as Ann Elizabeth Mayer claims, there is an indifference to Islam within the international human rights scholarship. She argues that questions about Islamic law are not critically engaged with sufficiently in international human rights literature, saying, "[c]omparisons of Islamic rights standards with their international counterparts, if undertaken at all, are frequently underdeveloped, with a common disposition to minimize the extent to which Islamic

¹⁴ See, for example, a study of compatibility of Sharia law with the ICCPR in Donna Arzt (1990) "The Application of International Human Rights Law in Islamic States" in *Human Rights Quarterly*, Vol. 12, pp. 202-230. Also see Mashood Baderin (2007) "Islam and the Realization of Human Rights in the Muslim World: A Reflection on Two Essential Approaches and Two Divergent Perspectives," *Muslim World Journal of Human Rights*, Vol. 4, No. 1.

¹⁵ Ellen Lutz and Kathryn Sikkink, "International Human Rights Law and Practice in Latin America," *International Organization*, Volume 53, Issue 03, June 2000, pp 633-659.

¹⁶ Emilie Hafner Burton (2005) "Human Rights in a Globalizing World: The Paradox of Empty Promises," *American Journal of Sociology*, Vol. 110, No. 5, March, pp. 1373-1411.

human rights schemes both borrow from international law and deviate from it.”¹⁷ Echoing concerns about the paucity of literature on the topic, Mashood Baderin has claimed that “while Islamic law is recognized as a factor relevant to the introduction of international norms in Muslim areas of the developing world, legal scholarship on the subject has not been projected strongly enough to achieve effective harmonization of the differences in scope between Islamic law and international human rights law.”¹⁸

To respond to the need for greater exploration of these themes in the Middle East region, this thesis has selected the six Gulf Cooperation Council (GCC) countries (Saudi Arabia, Kuwait, Bahrain, Qatar, Oman and the United Arab Emirates) in particular as “hard” case studies to approach these questions about the impact of international law on conceptualizations of Islam and human rights and to offer the related critique on constructivist thinking on norm diffusion. GCC states, although not monolithic, have generally traditional interpretations of Islamic law, particularly in the area of personal status and family law, and therefore can be considered hard cases (or the cases expressing the most tension, and in this case lack of perceived and apparent legal compatibility) for the issue of the impact of international human rights norms.¹⁹ These six countries are also increasingly engaging with UN human rights treaties in recent decades, while their compliance levels remain generally poor. These countries often mention Islam in their reservations to UN treaties, although the nature and frequency of these statements about Islam vary remarkably.

¹⁷ Ann Elizabeth Mayer (2013) *Islam and Human Rights: Tradition and Politics* 5th ed, Boulder: Westview Press, p. xi.

¹⁸ Mashood Baderin (2003) *International Human Rights and Islamic Law*. Oxford: Oxford University Press, p. 30.

¹⁹ See discussion of the selection of “hard cases” in Detlef Sprinz and Yael Wolinsky, eds. (2002) “Cases, Numbers, Models: International Relations Research Methods,” Available at [http://www.sscnet.ucla.edu/polisci/faculty/trachtenberg/syllabi/lists/harvard/moravcsik%20\(sprinz%20wolinsky\).pdf](http://www.sscnet.ucla.edu/polisci/faculty/trachtenberg/syllabi/lists/harvard/moravcsik%20(sprinz%20wolinsky).pdf).

While this is a trend across the Middle East, these dynamics are perhaps strongest and most consistent among the conservative Gulf Cooperation Council countries where mentions of Islam are most substantive and frequent in reservations to UN human rights treaties, and interpretations of Islamic law are some of the most conservative and linked to traditional understandings in the region. These cases are more extreme as they seem to suggest that so-called “norm diffusion” has failed to take hold because of GCC states’ resistance to comply with various norms, often with reference to a deep commitment to Islamic law, seemingly placing Islam in conflict with global human rights standards. As such, the six GCC states serve as ideal cases from which to consider the questions raised in this thesis.

The thesis thus focuses specifically on these six countries of the Gulf Cooperation Council– not to exclude the range of other important cases in the Middle East, South Asia, Africa and beyond where Islam and human rights are being confronted – but because they present patterns of engagement about Islam and therefore offer useful similarities for analysis. In the GCC, the majority of states have ratified most or all of the core UN human rights treaties and have largely expressed support for these treaties in general; however, most have entered extensive “reservations” about possible conflict with Islam reflecting the region’s most conservative interpretations of Islamic Law, and generally the states fail to comply with their commitments. These countries offer useful cases from which to consider the questions posed in this thesis given their shared conservative interpretations of Islam enshrined in their legal and political systems.

The GCC states are seen generally to hold a “shared position in the world” including a “set of common perspectives” including a strong commitment to Islamic law.²⁰ These similarities are reflected in trends in their engagement with international human rights law. Because human rights treaty ratification by the GCC countries often stimulates a common thread of debate about interpretations of Islam and human rights, the six GCC countries provide useful cases from which to consider the impact of international human rights law engagement on how ideas about Islam and human rights are communicated and develop over time.

In addition to geographic, economic, cultural and historical ties between the Gulf states, they all share legal traditions strongly rooted in Islamic Sharia legal systems, although their interpretations of Sharia law more specifically do vary. Overall, the states of the Gulf share strong commitments generally to conservative principles in Islamic law. And yet, the Gulf states have evolved significantly in their interpretations of Sharia voiced in interactions with the UN human rights treaties over time, and the arguments they put forward about potential compatibility issues between Islamic principles and UN human rights treaty ratification have differed and changed between GCC states and over time.

Nazila Ghanea, who has carried out research on the impact of GCC states’ ratification of various human rights treaties, has identified ratification as an important “emerging trend” in the GCC reflecting these countries’ efforts to become global players. She writes, “GCC states have been an important part of the trend towards ratification of international human rights treaties, in particular since the 1990s. The GCC-wide ratification of the UN Convention on the Rights of Persons with Disabilities, for instance, shows that

²⁰ Paul Dresch (2005) “Introduction” in Paul Dresch and James Piscatori, *Monarchies and Nations: Globalization and Identity in the Arab States of the Gulf*. London: I.B. Tauris, p. 1.

GCC states consider UN human rights treaties as part of their international engagement with the UN and as part of policy and institutional change domestically.”²¹

The impact of human rights treaties is explored by focusing on four treaties as primary case studies explored in four chapters: the Convention Against Torture (CAT), the Convention on the Elimination of all forms of Discrimination Against Women (CEDAW), the Convention on the Rights of the Child (CRC) and the International Covenant on Civil and Political Rights (ICCPR). These treaties were selected as case studies from within the broader set of nine UN “core international human rights instruments”²² for two reasons. First, these four treaties were selected because they are the only core treaties from which at least one GCC state entered Reservations, Understandings and Declarations (RUDs) about Islam upon ratification. While GCC states’ ratification of other core human rights treaties could also intersect with understandings of Islam, GCC states have particularly entered an objection about Islam in the official RUDs to these four treaties.²³

²¹ Nazila Ghanea and Basak Cali (2013) “The Domestic Effects of International Human Rights Treaty Ratification,” Workshop Series Paper, University College London and University of Oxford, 20 June.

²² This term is used by the United Nations to refer to a set of nine human rights conventions consisting of: the Convention on the Elimination of All Forms of Racial Discrimination (CERD), the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights (ICESCR), the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), the Convention Against Torture and Other Cruel, Inhuman or Degrading Punishment (CAT), the Convention on the Rights of the Child (CRC), the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (CMW), the International Convention for the Protection of All Persons from Enforced Disappearance (CED) and the Convention on the Rights of Persons with Disabilities (CRPD). See list of ‘core’ treaties as defined by the Office of the United Nations High Commissioner for Human Rights at <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CoreInstruments.aspx>.

²³ Other UN conventions would also be relevant in other ways, for example the International Covenant on Economic, Social and Cultural Rights (ICESCR) could be considered given that the principles contained in the ICESCR intersect with understandings of Islam in the GCC. Mashood Baderin, for example, explores the rich intersections between the principles in the ICESCR and an Islamic legal perspective on rights, discussing the emphasis that Sharia places on the moral and legal obligation on the state to ensure economic, social and cultural welfare of people, alongside some of the areas of perceived conflict of implementing the ICESCR in an Islamic context, for example, alongside principles of a woman’s right to work in his chapter “The International Covenant on Economic, Social and Cultural Rights (ICESCR) in Light of Islamic Law” in Mashood Baderin (2005) *International Human Rights and Islamic Law*. Oxford: Oxford University Press. However, no reservations about Islam were entered by GCC states to the ICESCR (only two GCC states,

Second, these treaties were selected as cases because they are illustrative of different aspects of the debates on human rights and Islam. While they are not exhaustive, the four human rights treaties selected capture a wide range of arguments about Islam and human rights that illuminate different areas of the debates on human rights, from the rights of women and children, to conceptions of justice and punishment, and to civil and political rights and intersect with various areas of law. More to the point, these areas are seen as presenting areas of strong contention or conflict between ‘Islam’ and international human rights principles for different reasons (explored in the course of the thesis). In addition to the fact that these four treaties were the only core conventions in which GCC states entered RUDs about Islam, the analysis of these four treaties together captures a range of arguments about Islam and human rights as it relates to Islamic law. These cases could be expanded on in future research to address a wider set of treaties to further explore the research questions.

Interactions between the GCC states and the “core”²⁴ human rights treaty committees are varied, dynamic and evolving. Each chapter of the thesis will focus on one human rights treaty ratified by GCC states, and within each chapter, the ways in which GCC states have debated and negotiated interpretations of Islam in relation to their commitment to the treaty will be discussed. Chapters devoted to examining each human rights treaty will offer insight into the influence of UN human rights treaty ratification on discourses about Islamic understandings of human rights. Each chapter will investigate the impact of these treaties on interpretations of Islam in the GCC states, although relative

Bahrain and Kuwait, have ratified this Convention, but neither mention Islam in RUDs) and as such, it was not included as a case in the scope of this thesis.

²⁴ This term is used by the Office of the High Commissioner for Human Rights, see “The Core International Human Rights Treaties” (2006) Office of the United Nations High Commissioner for Human Rights. Available at <http://www.ohchr.org/Documents/Publications/CoreTreatiesen.pdf>.

attention to each country will depend on the material available. Each chapter's content and country focus will also be shaped by the degree of substance and engagement between each GCC state and the core UN human rights treaty, and as such chapters will take on slightly different formats.

i.5 Methodology and Sources

Each chapter will analyze relevant discourses to trace how interpretations of Islam have developed as a result of engagement with the treaties in the GCC. For my purposes, this will entail reading through legal, diplomatic and other texts related to UN human rights treaty commitment for the language used and nature of statements about Islam and human rights. This includes identifying the vocabulary used by state actors to discuss “human rights” in new or different ways. My approach consisted of reading through these records and documents, with a view to bringing forward a sensitive understanding of local meanings and context, to make assertions about the development of discourses on the topic over time.

The materials used to analyze discourses on Islam and human rights related to treaty commitment in the GCC are a combination of UN diplomatic documents, legal analysis of recently codified and developing constitutional documents and laws, and primary interview research. Each chapter traces and analyzes the ways in which Islam is represented and discussed in these interactions using documents ranging from formal Reservations, Understandings and Declarations submitted upon ratification, to official treaty reports to UN committees, to summary notes from in-person UN committee meetings, and statements from key local religious, political or social actors. For the most part, I have limited the analysis to seek direct mentions of Islam and human rights in these texts and

reports (although in a few cases indirect discussion of Islamic principles will also be used to contribute to a broader understanding of the nature and progression of discourse). As additional context, each chapter also explores domestic media coverage and other documentation of local coverage of the treaties to shed light on the development of language and concepts about human rights and Islam related to treaty ratification in each domestic context.

Primary interview research also informs the thesis. Interviews have been conducted to illuminate and contextualize my understanding of the discourses on Islam and human rights. Twenty-nine interviews were conducted for this thesis, as approved by the LSE International Relations department, stemming from two major sources. First, it draws on broad-based interviews I conducted from 2013-2017 in a collection of telephone, Skype and in-person meetings with individuals either living in or with knowledge of the GCC countries and/or the UN treaty bodies to enhance my understandings of changes in discourse and law related to Islam and human rights over time. These included individuals within the GCC or the UN system who work closely on issues of Islam, law, and/or human rights and/or those outside of the countries and institutions with expertise on these matters. Individuals were selected in all cases to provide some sort of illumination or context, should they not work directly on these matters, to expand my knowledge and understanding of the engagement between GCC states and UN treaty bodies. Throughout the years that the research was carried out I connected with a range of policymakers, diplomats, lawyers, human rights activists, expatriates and other individuals, at times identifying interviewees

using the “snowballing”²⁵ method of asking for recommendations of relevant individuals from a smaller set of initial interviewees, to provide interview responses concerning their understandings of Islam, law and human rights in the GCC to fortify and improve my understandings of the primary source material.

The second grouping of interview material stems from a trip in Summer-Fall 2016 to Doha, Qatar where I was based at Qatar University through the Gulf Studies Centre. During my time in Doha, my understandings were broadly informed by formal and informal conversations deriving from my fieldwork trip, and I benefitted from a number of specific sources of information stemming from semi-structured interviews I conducted primarily with academics, several law professionals and a number of local human rights activists. Interview subjects were initially selected to be lawyers and academics engaged with work relating to human rights, but these broadened out to include GCC citizens including a broader net of business people, academics, activists and journalists, including some non-local expatriates residing in the country.²⁶ In formal and informal conversations, I asked individuals based in Doha about their perspective on contemporary discourses on Islam and human rights, and, where relevant, their understandings of the nature of engagement with UN human rights treaty bodies to better inform my knowledge of the local perspective on these matters. A record of all interviews conducted for my thesis is available at the end of the dissertation, and in places where interviews illuminated my understanding, these are directly referenced and explained when appropriate within the text.

²⁵ See discussion of the “snowballing” method of qualitative interview research in Sven Berg (1988) “Snowball sampling” in Kotz, S. and Johnson, N. L. (eds.) *Encyclopedia of Statistical Sciences*, Vol. 8. Ann Arbor: University of Michigan Press, pp. 528-532.

²⁶ Interviewees were all informed about the thesis and purpose of interviews, and permission was requested for quoting individuals in this thesis as per the LSE guidelines. Guidance and permissions were granted for fieldwork from the LSE Department of International Relations (as available at <https://info.lse.ac.uk/staff/divisions/research-division/research-policy/research-ethics>). In cases where individuals have requested their names or organizations/titles not be listed, these have been removed.

i.6 Limitations on the Research

Questions about human rights and Islam are sensitive in the authoritarian countries of the GCC. The sensitivities to approaching these questions shaped the approach of my research and raised a number of unique challenges to gathering information. I reached out to various individuals in the GCC states involved in discourses on Islam and human rights, which helped enhance my understanding of the landscape of ideas around human rights shaping local understandings. This included outreach to human rights activists. The sensitivity around discussing topics of human rights heavily influenced my ability to conduct interview research seeking information about human rights activism with those residing in GCC countries. As one Riyadh-based diplomat phrased it in a phone interview, “This line is not secure. I cannot openly discuss matters of human rights with you.” In a Skype interview, a UAE-based human rights activist, currently under house arrest, offered a range of measured yet candid responses to my queries about the extent of his human rights activism. With both of us acutely aware of the possible implications of his discussions with me (he described to me many cases in which his phone lines had been tapped by the “security state” and he and his family had been intimidated and harassed), the questions I could ask and answers he could provide were silently tempered by security concerns. Most human rights activists residing in the GCC states that I interviewed did not wish to be named or attributed in my research, due to concerns for their and their families’ safety and the acute political sensitivity of the issues discussed.

A second challenge to my research on Islam, human rights and law in the GCC was the difficulty of accessing certain source material as a result of censorship, poorly updated

or partially missing archival material, the sudden removal of certain web-based information (such as temporarily or permanently shut-down websites) and the challenges of poorly translated material. I accessed a number of Arabic language sources using my knowledge of Arabic alongside help from a number of Arabic-speaking individuals.²⁷ At the same time, many records, for example, of official GCC state reports to the United Nations, suffer from poor, spotty, or slow archiving on the UN websites, and in some cases provided potentially inaccurate translations, with original Arabic source material sometimes missing. Additionally, it is sometimes difficult to access legal documents and drafting history in the region, as the GCC states have codified their legal systems relatively recently, and access to information about various legal developments and government process is somewhat irregular and piecemeal rather than clearly archived. Several Saudi and Emirati government websites, for example, stopped working for long stretches during the period of my research from 2013-2017.

It became increasingly clear when facing these challenges throughout my research that the UN human rights treaty bodies serve a unique role in helping collect relatively consistent material containing well-recorded information from actors across the GCC commenting on human rights over time. Despite missing elements and delays, the publicly accessible record-keeping contained in the UN OHCHR database of state reports to the CAT, CRC, ICCPR and CEDAW committees proved an invaluable resource to me given the difficulty of accessing consistent information on developing perspectives on human rights in the region. The methodological challenges faced help highlight the need for increased research and writing on the subject of UN human rights treaties in the GCC.

²⁷ Most notably Hassan Shiban who helped with in particular with the transliteration of Arabic materials for the references.

i.7 Thesis Roadmap

To explore these interactions and answer the questions posed, the first two chapters of this thesis discuss some of the relevant history, literature and theory. Chapter 1 situates the dissertation in the broader context of existing international relations theory on international human rights law, engaging primarily with a constructivist perspective. In particular, this section argues for the value of engaging with the concept of “norm diffusion” in cases traditionally ignored by international relations literature but contained in this thesis, suggesting that this can provide a valuable perspective on the evolution of certain language and concepts about human rights, regardless of compliance issues that follow. Chapter 2 then provides an overview of the relevant history related to the expansion of human rights treaties in the international system and the development of certain documents and perspectives on Islam and human rights more specifically. The following chapters will move to the contemporary empirical research, offering a series of chapters focusing on Islam and GCC states’ engagement with various individual UN human rights treaties. The series of treaty chapters will focus on GCC states’ ratification of the Convention Against Torture (CAT) (Chapter 3), the Convention on the Elimination of Discrimination of all forms of Discrimination Against Women (CEDAW) (Chapter 4), the Convention on the Rights of the Child (CRC) (Chapter 5) and the International Convention on Civil and Political Rights (ICCPR) (Chapter 6), with a discussion of the impact of ratification of these treaties on conceptualizations of Islam in the region. In closing, the final chapter of the thesis (Chapter 7) offers conclusions on what a close examination of these cases can contribute to ongoing scholarly work on Islam, human rights, and the Middle East region,

and comments on how the findings illuminate an understanding of the limits and potential for international human rights law. An appendix to the thesis explores the topic of CEDAW ratification in Kuwait in a particular newspaper, *Al-Anba*, discussing the findings as they relate to the thesis and addressing ideas for future research.

Chapter 1: International Law in Theory - International Law, Constructivism and Norm Diffusion

This chapter situates the thesis within the context of international relations theoretical scholarship on the impact of human rights law and norms. In this chapter I discuss some of the ways in which scholars have conceptualized and accounted for the impact of international law on norms. I demonstrate where international relations scholarship, particularly scholarship that uses a constructivist method and scholarship on norm diffusion, can help capture the manner by which international law can have an impact, but I also point out this literature's limitations, and propose how international relations scholarship can be enriched by the findings from this thesis.

This chapter first discusses the relevant theoretical and conceptual debates within international relations literature on human rights, norms and international law. I identify constructivism as the most useful method for this research, but also discuss areas in which constructivist thought can be amended to better consider the complexities of norm diffusion, including ways to account for the more subtle influences of international human rights law on human rights norms in the GCC. Then, I draw on the concepts of norm localization (Acharya, 2004) and vernacularization (Levitt and Merry, 2009) to suggest the various processes by which international legal norms might be expected to translate into local vocabularies (or fail to do so) in the specific contexts of the GCC in relation to treaty commitment. Finally, I situate the research in relation to these debates and concepts relevant to understanding norm diffusion to be drawn upon in the subsequent chapters on Islam and the CAT, CEDAW, CRC and ICCPR in the GCC.

1.1 Exploring the Impact of International Law on Norms: Key Debates

Norms, in the way they travel and impact states, are engaged with variously in international relations literature, and are particularly prominent in most constructivist accounts of international relations.²⁸ Norms in this sense are “shared expectations about appropriate behavior held by a community of actors [states]” and, “unlike ideas which may be held privately, norms are shared and social; they are not just subjective but intersubjective.”²⁹ International norms, and how they impact the logics of appropriateness governing how states believe that they should behave, constantly shape states and other agents’ understandings of their interests, and therefore understanding the nature and development of norms is critical to the constructivist body of work in International Relations. Often associated with constructivist work is the concept of norm “diffusion,” a term describing a process by which ideas and policies spread. “Norm diffusion” often refers to an international process by which norms travel across countries and cultures, but can also refer to an internal and domestic process. Norm diffusion has been a topic of increasing great scholarly debates in the past several decades of international relations (see, for example, Keck and Sikkink (1998), Barnett and Finnemore (2004), Reus-Smit (2004) and Simmons (2009)). The concept has been used broadly within the literature to consider a number of factors and indicators for scholars to trace the movement of norms.

According to Gilardi, the term can be utilized widely:

²⁸ Jeffrey Checkel (1998) “The Constructive Turn in International Relations Theory,” *World Politics*, Vol. 50, No. 2, pp. 324-348, p. 326. Termed by Ted Hopf in 1998 to be a “challenger to the continuing dominance of neorealism and neoliberal institutionalism in the study of international relations in the United States,” constructivism offers useful conceptual frameworks for considering Islam and human rights treaty ratification. According to constructivists, international politics has no definite nature or design; instead social and political organization in the international system is a product of social construction. To thus understand this social context in which international relations take place, constructivism emphasizes values, identity and beliefs. See Ted Hopf (1998) “The Promise of Constructivism in International Relations Theory,” *International Security*, Vol. 23, No. 1, pp. 171-200; Also see Wendt (2000) *Social Theory of International Politics*. Cambridge: Cambridge University Press.

²⁹ Martha Finnemore (1996) *National Interests in International Society*. Ithaca: Cornell University Press, pp. 22-23.

Diffusion can take place also within countries, among a wide range of public and private actors, and it can lead to the spread of all kinds of things, from specific instruments, standards, and institutions, both public and private, to broad policy models, ideational frameworks, and institutional settings.³⁰

Norm diffusion describes a process in which norms move from one context to another, rather than an outcome.³¹ The term is applied to the research questions in this thesis to consider the ways in which human rights norms enshrined in the UN conventions diffuse or move into the domestic contexts in the GCC countries. The idea is that norms travel and take hold in new contexts (the process of diffusion) in different ways, and constructivist literature has responded by attempting to trace, measure and account for this process.

Seen as a “consequence of interdependence,”³² norm diffusion is a concept used in international relations literature to consider when and how norms in international sphere influence state behavior (see Katzenstein, 1996 and True and Mintrom, 2001). Within this body of work international organizations such as the United Nations are often identified as playing a central role in this process as the “carriers” or “diffusers” of international norms.³³ Some constructivists argue that international organizations are “norm diffusers” that “teach states their interests.”³⁴ The argument from constructivists like Martha Finnemore is that international organizations such as the United Nations spread norms by establishing regimes, constructing discourse, and forming international agendas, which then

³⁰ Fabrizio Gilardi (2012) “Transnational diffusion: Norms, Ideas, and Policies,” published in Walter Carlsnaes, Thomas Risse and Beth Simmons (eds), *Handbook of International Relations*. Thousand Oaks: SAGE Publications, pp. 453–477.

³¹ Beth Simmons and Zachary Elkins (2005) “On Waves, Clusters and Diffusion: A Conceptual Framework,” *Annals of the American Academy of Political and Social Science*, Vol. 598, pp. 33-51.

³² Gilardi (2012).

³³ Park, Susan (2006) “Theorizing Norm Diffusion within International Organizations,” *International Politics*, Vol. 43, No. 3, July 2006, pp. 342-361(20). Also see Finnemore (1996), Checkel (1999), Grigorescu (2002).

³⁴ Susan Park (2005) “Norm diffusion within international organizations: a case study of the World Bank,” *Journal of International Relations and Development*, Vol. 8, No. 2, pp. 111-141.

impact states' policies and behavior. They are then seen as the “glue” of the international system, where international organizations act as “gate-keepers” of the international system, conferring legitimacy and structuring political interactions.³⁵

The concept of norm diffusion can help scholars establish whether – and, if so, to what extent – international human rights laws play a role in the development and spread of human rights norms in particular. This has been the subject of increasing scholarly attention. Margaret Keck and Kathryn Sikkink argue that, while human rights norms are well institutionalized in today's collection of international regimes and organizations, international human rights institutions often fail to “diffuse” these norms to state practice because, 1) international norms about human rights are highly contested and, 2) these norms challenge state rule over society and national sovereignty. Because of these challenges to diffusion, it is not human rights institutions alone, they argue, but the existence of Transnational Advocacy Networks (TANs) that enhance and often help facilitate norm diffusion to succeed in areas of human rights. The successful diffusion of human rights norms internationally “crucially depends on the establishment and the sustainability of networks among domestic and transnational actors who manage to link up with international regimes...”, when this process succeeds, international norms can be “internalized and implemented domestically” in a “process of socialization.”³⁶ Harold Koh has further developed this concept of transnational norm diffusion by focusing on the processes in which transnational actors and states use a combination of international and domestic legal processes to “internalize” international legal norms. Koh identifies the actors involved in promoting the internalization of international norms as “transnational

³⁵ Susan Park (2005).

³⁶ Keck and Sikkink (1999) “The Socialization of Human Rights Norms” in Stephen Ropp and Kathryn Sikkink, *The Power of Human Rights*. Cambridge: Cambridge University Press, pp. 4-5.

norm entrepreneurs, governmental norm sponsors, transnational issue networks and interpretive communities,” ... claiming through cycles of “interaction-interpretation-internalization, particular readings of applicable global norms are eventually domesticated into states’ internal legal systems.”³⁷ This helps capture how norms travel between states through the work of individuals and organizations that are engaged in ongoing efforts to promote norms, rather than states passively accepting them.

These TANs can include institutions such as NGOs and the United Nations, as well as individuals, and other advocacy networks: for example, relevant groups to transmit global human rights norms in the cases for this thesis include transnational advocacy networks focused on particular issues, such as Musawah (the Global Network for Justice and Equality in the Muslim Family, also known as Sisters in Islam), or country-specific initiatives such as the International Campaign for Freedom in the UAE, a UK based advocacy group for reform in the UAE. Norms can be expected to diffuse more successfully when actively campaigned for globally by these advocacy networks that link international advocacy with domestic groups. Therefore, most scholars recognize the importance of these types of advocates, as well as the constraints of these advocacy efforts in many cases, such as in the GCC, where the activism of these transnational advocacy networks and their linkages with local civic actors are limited by authoritarian regimes.

Arturo Carrillo has used the term “transnational norm entrepreneurs” to refer to non-state actors that can “mobilize public opinion at home and abroad; stimulate and assist in the creation of like-minded organizations in other countries; and carry out efforts toward persuading foreign audiences and elites that certain norms reflect a widely-shared or even

³⁷ Harold H. Koh (2007) “Is There a ‘New’ New Haven School of International Law?” *Yale Journal of International Law*, Vol. 32, No. 2, pp. 559-573; pp. 567-68.

universal moral sense...”³⁸ This highlights the fact that the implementation of international human rights law requires not just international and domestic actors, but also transnational and international advocacy, monitoring and engagement that can translate international norms in partnership with local advocates to help them to take hold domestically. With the limited freedom for these transnational and national actors to advocate substantially in the GCC context, particularly without the presence of domestic human rights advocates to link in with global organizations in a way in which they are able to advocate freely, one might expect these processes to fail, and for international law to have little or no impact.

But the problem with this literature is that it focuses almost exclusively on the impact of norms in the sense of the success of transnational advocates and norms entrepreneurs to achieve compliance measured in the form of the implementation of laws and policies. Finnemore and Kathryn Sikkink, for example, define the process in which norms diffuse as based on a “norm life cycle” – consisting of “norm emergence,” “norm cascade,” and “norm internalization.”³⁹ The idea is that norms are “internalized” (or successfully diffuse to become cemented shared expectations) when they “acquire a taken-for-granted quality and are no longer a matter of broad public debate.”⁴⁰ The suggestion is therefore that broad public debate on a norm indicates the norm has not been internalized and remains in the “cascade” phase in which norms are still being contested, and this does not account for cases, such as those discussed in this thesis, in which the public debate has shifted in nature or tone – a possible form of “diffusion” too subtle to fit into these existing understandings of internalization.

³⁸ Arturo Carrillo (2004) “Bringing International Law Home,” *Columbia Human Rights Law Review*, Vol. 35, pp. 527- 587, p. 537.

³⁹ Martha Finnemore and Kathryn Sikkink (1998) “International Norm Dynamics and Political Change,” *International Organization*, Vol. 52, No. 4, pp. 887-917, p. 895.

⁴⁰ Ibid.

Scholarship on norm diffusion therefore almost always links the concept of “norm internalization” (or the successful diffusion of a norm) to its influence on domestic law (Koh and Carrillo) or on policy and practice. For example, Jacqui True and Michael Mintrom (2001) provide evidence for the successful diffusion of women’s rights norms by claiming that networks of women’s organizations and international NGOs have made “gender inequity a salient issue and placed remedial strategies on the policy agendas of international organizations and national governments.”⁴¹ In their analysis of 157 states from 1975 to 1998, True and Mintrom find that international activism has affected the timing and type of national policy changes in many cases, reflecting the successful “diffusion of gender-mainstreaming” efforts, particularly by the UN and the transnational feminist movement. For example, they identify this impact as the Dominican Republic, Ireland, New Zealand and Tanzania all adopted gender mainstreaming mechanisms in their national policy institutions after the adoption of the Convention on the Elimination of all forms of Discrimination Against Women (CEDAW) in 1980, where these countries’ changes in policy appear to reflect the successful diffusion of CEDAW norms alongside the work of transnational women’s advocacy groups brokering and helping advocate for these norms. The idea is that individuals and institutions (international organizations and laws, networks of committed individuals, NGOs, or states) play a role in diffusing norms ultimately to “motivate international actors to change their behavior.”⁴² As such, successful diffusion is almost always measured in terms of the degree to which national governments’ policies change, and this is primarily measured by changes in laws and practices.

⁴¹ Jacqui True and Michael Mintrom (2001) “Transnational Networks and Policy Diffusion: The Case of Gender Mainstreaming,” *International Studies Quarterly*, Vol. 45, No. 1, pp. 37–38.

⁴² Susan Hyde (2015) The Problem of Insincere Compliance in International Relations: Norms, Policy Diffusion, and International Expectations, Working Paper. Available online at http://susan.hyde.co/Hyde_Insincere_Compliance.pdf.

In research dealing with similar questions, Alexandra Gheciu's 2005 study of the impact of NATO on "norm diffusion" in Eastern Europe also considers the transmission of norms as mainly visible in its impact on policy. Her study articulates the view that NATO has had an impact on teaching and persuading states to adopt a set of liberal-democratic norms in the former Eastern bloc, where successful norm diffusion is understood as it relates to reforms and policies which increasingly were adopted to align with NATO principles. Norm diffusion in her study is reflected in legislation and policy changes - reforms to improve communication and consultation with the public, the continuation of the civilizationalization of the Ministry of Defense, and the establishment of a more efficient and transparent (liberal) economic management of the defense sector.⁴³ She argues that these reforms reflected changes in belief (and therefore reflect a form of "norm diffusion") as ideas were deeply internalized, and not simply used to justify coercively induced changes stemming from NATO pressure. Changes in discourse articulated by officials such as Czech and Romanian elites were part of this process, but only as intermediary steps in which successful diffusion is linked most clearly to reforms in *laws, policies and practices*.

In fact, norm diffusion is so closely linked to questions of policy in international relations that there is a prevailing literature on so-called "policy diffusion" as a result of norm diffusion. For example, Brian Greenhill demonstrated the "success" in human rights "norm diffusion" in which intergovernmental organization membership has had a great impact on states' human rights practices and policies, where states have transmitted human rights norms from one group of states to another, resulting in a type of "policy diffusion." Beth Simmons and Zachary Elkins argued that the expansion of neoliberal economic

⁴³ Alexandra Gheciu (2005) "Security Institutions as Agents of Socialization? NATO and the 'New Europe,'" *International Organization*, Vol. 59, Fall, pp. 973-1012.

policies reflect a form of “norm diffusion” resulting in “policy diffusion” where incentives for states to adopt certain neoliberal economic policies were influenced by the foreign policy choices of other states, and, either through coercion, competition, learning and/or emulation, these norms have diffused, and have been impacted “through the more subjective pressures of prevailing global norms.”⁴⁴

Norm diffusion scholarship tends to address international norms in a broad sense, but there is a special treatment in this literature of the unique characteristics of the “norms” of international law. As Beth Simmons suggests, the ratification of an international human rights treaty holds “unique features” compared with broad international norms. “A ratified treaty recommitments the government to be receptive to rights demands. Ratification is not just a costly signal of intent; it is a process of domestic legitimation that some scholars have shown raises the domestic salience of an international rule.”⁴⁵ Simmons argues that in certain cases local populations can anchor their activism around ratification to hold their government to account. The power of international law to help bolster activism to support human rights norms is visible, she claims, for example in Japan, where CEDAW ratification without reservations helped social groups in Japan mobilize to advocate for greater respect for women’s rights, ultimately reflected in landmark domestic legislation on women’s rights including protections for equal employment “that likely would not have existed were it not for the external negotiation of the CEDAW.”⁴⁶

⁴⁴ Beth Simmons and Zachary Elkins (2004) “The Globalization of Liberalization: Policy Diffusion in the International Political Economy.” *The American Political Science Review*, Vol. 98, No. 1, pp. 171–89 also see Simmons, Beth A., Frank Dobbin, and Geoffrey Garrett (2006) “The International Diffusion of Liberalism,” *International Organization*, Vol. 60, No. 4, pp. 781–810.

⁴⁵ Beth Simmons (2009) *Mobilizing for Human Rights*. Cambridge: Cambridge University Press, p. 144.

⁴⁶ *Ibid*, p. 240.

Building on Simmons' view, I find that the ratification of UN human rights treaties attributes particular legitimacy to the human rights norms addressed in this thesis, which can, at times, help frame and support local activism. The GCC states' ratification of the CAT, CEDAW, CRC and ICCPR has, as Simmons would suggest, help raise the domestic salience of some of the norms enshrined in these treaties, even if the norms broadly contained in these treaties are not fully internalized and enforced in the GCC. Some of these ideas are explored in the appendix on press coverage of women's rights issues in Kuwait. The process by which transnational advocates and local activists help hold governments to account as is discussed in much of the aforementioned norm diffusion literature is important. However, in these cases where advocacy is highly constrained as in the GCC, it is also important to consider how other actors including government representatives (such as civil servants, diplomats, and government officials) move to legitimate, accept, resist or deny these norms contained in the treaties over time given their countries' commitments to the treaties.

1.2 A Nuanced View of Norm Diffusion

The concept of norm diffusion as it relates to the impact of international law can provide a meaningful conceptual tool for considering the questions posed in this thesis, however, as currently conceptualized in the literature as so closely linked to legal and policy change, it does not fully account for the complex nature of this process. Norm diffusion scholarship like that of Koh, Keck, Sikkink and Simmons would suggest that, because of a lack of linkages to transnational advocacy networks (often the result of restricted civil societies), international human rights instruments fail to successfully diffuse norms to Middle East signatory states, merely serving as a platform for hypocrisy on the

international stage. This doesn't capture the fact that new norms are taking hold as a result of UN human rights treaty engagement in cases where local advocacy organizations are weak and disempowered, but the changes are more subtle in these contexts.

The focus on impact and implementation of international law provides a blind spot for scholarly understandings of a wider set of ways in which international law can have an impact. As Checkel observes, the emphasis on "impact" in existing scholarship on norms ignores important changes in the norm diffusion process. He claims, "Compliance research has emphasized what students of public policy refer to as 'implementation'...For both compliance researchers and constructivists, an important and neglected question is how norms actually reach the domestic arena."⁴⁷ This thesis offers a critique of the constructivist literature on norm diffusion by answering Checkel's call for greater attention to the process of normative change in the realm of actors' language and ideas reflected in discourse. If, according to existing accounts, norm diffusion indeed fails in GCC states ratifying human rights treaties because these countries fail to comply with their human rights treaty commitments, we have little explanation for the changes in the framing of discourses on human rights and law occurring in these cases. This thesis aims to provide a nuanced critique of the norm-diffusion literature by focusing on the changes in language and meaning about human rights that occur when non-compliant states engage with human rights treaties over time.

Part of the reason why mainstream constructivist literature on norm diffusion fails to provide full accounts of outcomes and dynamics in the Middle East is that it tends to

⁴⁷ Checkel terms "norm empowerment" as a process "when the prescriptions embodied in a norm first become, through changes in discourse or behavior, a focus of domestic political attention or debate." Jeffrey Checkel (1997) "International Norms and Domestic Politics," *European Journal of International Relations*, Vol. 3, No. 4, p. 476.

suffer from Western-centrism. Bettiza and Dionigi suggest that literature on norm diffusion are characterized by such a bias, focusing too heavily on Western norms being spread from a “Western core to a non-Western periphery,” and tends over-emphasize political liberalization as a necessarily related outcome. “Constructivism’s Western-centrism,” Bettiza and Dionigi argue, “tends to overlook the fact that the international sphere is replete with normative contestation.”⁴⁸ This is problematic in considering the GCC, where actors and norm entrepreneurs are clearly “not solely norm-takers, but also active norm-makers, seeking to promote and internationalize their own beliefs, values and principles.”⁴⁹

The growing scholarship on how norms translate in more complex ways, with a focus on how ideas and language translate in new contexts, helps illuminate an understanding of the processes whereby norms can successfully travel and diffuse in varied cultural contexts. A useful contribution to the scholarship on norm diffusion has been the work of Amitav Acharya, who coined the term “norm localisation” in a 2004 article arguing using cases in the Association of Southeast Asian Nations (ASEAN) that international norms “diffuse” (or spread) most successfully when “local agents reconstruct the norms to ensure a better fit with prior local norms.”⁵⁰ This thesis orients its perspective on norm diffusion around Acharya’s contribution by building on his theory that “localising” norms is key to the diffusion of human rights norms. By extension, in order for norms to localize, norms must be adapted to a vocabulary that resonates with a specific context.

⁴⁸ Gregorio Bettiza and Filippo Dionigi (2014) “How do religious norms diffuse? Institutional translation and International Change in a Post-secular World society,” *European Journal of International Relations*, Vol. 21, No. 3, pp. 621-646.

⁴⁹ Bettiza and Dionigi also say, “It is no surprise, then, that Constructivist literature has been criticized over the years as suffering from a ‘liberal’ (Adamson, 2005), ‘cosmopolitan’ (Acharya, 2004) or ‘secular’ (Kubáľková, 2003) bias, which neglects non-Western normative agency,” Ibid, p. 1.

⁵⁰ Amitav Acharya (2004) “How Ideas Spread: Whose Norms Matter? Norm Localization and Institutional Change in Asian Regionalism,” *International Organization*, Vol. 58, No. 2, Spring, pp. 239-275.

This thesis focuses on changes in language as indicative of norm diffusion. This focus draws on assumptions from the growing scholarship that suggests changes in language are important to understanding norm change. For example, the work of Ann Marie Clark helps bolster my argument by demonstrating how changes in the vocabulary used to discuss human rights are significant, and can, ultimately, help lead to developments in human rights practices down the line, although it does not guarantee it.⁵¹ Clark's work identified how the incorporation of the term "*desaparecido*" (disappeared person) as a word in international human rights vocabulary helped provide a working "inquiry" vocabulary to frame debates and ultimately streamline and amplify activism for justice in *desaparecido* cases marked by human rights violations in both national and international contexts. She argues that, as this vocabulary becomes more and more integrated into the local human rights vernacular, "NGOs, governments, and IGOs can now refer to international standards of investigation," helping serve as an "international reference point" to guide human rights activism. This argument is also reflected in Hilary Charlesworth's work on the impact of a vocabulary of 'women's rights' on the international women's human rights movement, where "[r]ights discourse offers a recognized vocabulary to frame political and social wrongs."⁵² In this sense, norms may not need to substantively change in order to localize, they simply need to be translated and fit into a local vocabulary.

Further developing ideas about how human rights norms can travel and even take on new meanings in new contexts, Peggy Levitt and Sally Merry have developed the

⁵¹ See Ann Marie Clark's discussion of the *desaparecido* (disappeared person) as a new word in the international vocabulary as a result of the Pinochet coup as an important step in developments of human rights protection to protect against forced disappearances in Ann Marie Clark (2001) *Diplomacy of Conscience: Amnesty International and Changing Human Rights Norms*. Princeton: Princeton University Press, p. 73.

⁵² Hilary Charlesworth (1994) "What are 'Women's International Human Rights'?" in Rebecca J. Cook (ed), *Human Rights of Women: National and International Perspectives*. Philadelphia: University of Pennsylvania Press, p. 61.

concept of “vernacularization” to discuss the appropriation and local adoption of global human rights norms.⁵³ In their 2009 study of local uses of global women’s rights norms in Peru, China, India and the United States, Levitt and Merry describe this process of vernacularization as a process of norm translation in which norms do not simply transfer from one context to another, but indeed as they localize they take on new contours. They write: “As women’s human rights ideas connect with a locality, they take on some of the ideological and social attributes of the place, but also retain some of their original formulation.”⁵⁴ In their view, instead of seeing diffusion as the direct transfer of international human rights ideas as contained in UN conventions to local contexts supported by international and transnational movements and advocates, so-called vernacularizers (the leaders and staff in local organizations) re-define and adapt these concepts to “assimilate” the norm into local discourse, “connecting, in a variety, of ways, the discourse of the global with local and social justice ideologies, within the context of a particular organizational style and ethos.”⁵⁵ This can potentially promote international support for local human rights activists and growing national acceptance of an international norm, while it can also, sometimes simultaneously, prompt national resistance to accepting a global norm.

⁵³ Amitav Acharya has noted that norm localization and “vernacularization” are similar terms, explaining “Some scholars prefer the term ‘vernacularization’ to describe the transmission of ideas and norms from one context to another” and considers “vernacularization to be similar to constitutive localization.” Debates remain open, he explains, as to the key actors in these processes, as scholars take different approaches as to which agents to focus on in tracing how norms localize. Amitav Acharya (2018) *Constructing Global Order: Agency and Change in World Politics*. Cambridge: Cambridge University Press, p. 58.

⁵⁴ Peggy Levitt and Sally Merry (2009) “Vernacularization on the Ground: Local Uses of Global Women’s Rights in Peru, China, India and the United States,” *Global Networks*, Vol. 9, No. 4, pp. 441-461, p. 446.

⁵⁵ Peggy Levitt, Sally Merry, Rosa Alayza and Mercedes Crisostomo Meza (2008) “Vernacularization in Action: Combining Global and Local Ideas About Women’s Rights in Peru” (draft version), Working Paper, The Graduate Institute Geneva.

Evidence in support of the concept of vernacularization is documented, for example, in Koh, Wee, Goh and Yeoh's 2017 article on vernacularization in labor rights in Singapore, where civil society actors were able to advocate for a day off work for migrant domestic workers by adapting global labor rights norms and appealing to local morality and appealing to local Singaporean business culture.⁵⁶ Through this process the meanings of human rights extend and change beyond their original legal meanings, which should be expected in the GCC context (and, indeed, this is evidenced in the empirical chapters that follow in which concepts of "rights" and "equality" in Islamic contexts take on new and different meanings). It is reasonable to assume that the process whereby meanings of human rights as they are vernacularized is necessary in order to facilitate some implementation of international legal standards, even if as a result these understandings of human rights are changed to fit local contexts.⁵⁷

1.3 Norm Diffusion and Human Rights Language in the GCC

I identify a process of vernacularization in the GCC in the thesis by tracing how ideas about Islam and human rights are increasingly incorporating global rights terminology of "equality" and "non-discrimination" as communicated in a particular language to fit the GCC context. I adopt, in what follows, the concepts of norm localization and vernacularization as key concepts to describe how global human rights norms often translate into the GCC context. I also identify cases where some UN human rights concepts are failing to localize and vernacularize in the GCC cases. The thesis further develops the ideas in the work of Acharya, Levitt and Merry and others to suggest that non-local norms

⁵⁶ Chiu Yee Koh, Kellynn Wee, Charmian Goh and Brenda Yeoh (2017) "Cultural Mediation Through Vernacularization: Framing Rights Claims Through the Day-off Campaign for Migrant Domestic Workers in Singapore," *International Migration*, Vol. 55, No. 3, pp. 89-104.

⁵⁷ Levitt and Merry (2009), p. 460.

cannot easily take hold in a local culture foreign to these ideas without a process in which these norms are re-framed around local vocabulary and ideas about rights and that this is a meaningful step in the diffusion process.

Constructivist theorists might posit that in the cases of human rights treaty ratification in the Middle East where a high ratification turnout corresponds with low compliance in human rights practice, we see a case in which norm diffusion has failed to successfully take place, and that the changes in vocabulary and framing of debates around human rights norms are meaningless. The reality is, however, that the process of spreading liberal norms about human rights *has* succeeded in shifting the ways in which human rights concepts are communicated, including the integration of a vocabulary of international human rights being increasingly fit into the local discourses on Islam and human rights.

The empirical chapters that follow demonstrate that discourses on human rights norms are being subtly shaped by an international human rights vocabulary, even in the states with the most conservative interpretations of Islamic Law and limited civil societies. We can consider the potential for norm diffusion in changing the vocabulary and concepts used to frame and discuss human rights in these cases as the result of the states engaging with international law. If norm diffusion is evaluated in binary terms related to outcomes emphasized in the existing literature - it either succeeds in liberalizing practices or fails in doing so - I argue that other related processes, such as influencing language and concepts and understandings by framing discourse about human rights in target states that will be identified in this thesis, are ignored. This thesis will fill this gap by considering and accounting for these developments as part of a broader evaluation of the norm diffusion process.

In this thesis I identify the ways in which international human rights vocabulary and concepts spread and take hold in new contexts at times through localization and vernacularization where these terms take on slightly new meanings (as well as the cases in which this does *not* occur) as a result of interactions between GCC representatives and UN human rights treaties, regardless of results in the practice of human rights domestically, will be the focus of this thesis. Without a liberal vocabulary about human rights taking hold, liberalization in the sense of the respect for liberal human rights norms cannot take place (although changes in language and vocabulary do not *guarantee* changes in practices). A focus on changes that can serve as a pre-cursor to political liberalization, such as shifts in the vocabulary language and concepts used to frame human rights discourses, offers a different focus for the study of a process of norm diffusion that can help refine and nuance our accounts of the complex diffusion process in these cases.

Chapter 2: Islam, Law, and Human Rights in the Middle East and in the GCC

This chapter grounds the empirical analysis that will follow in chapters 3-6 in a discussion on how conceptualizations of Islamic law have developed flexibly and evolved over time across the Middle East. I demonstrate how debates on human rights have developed in some similar ways across the Middle East in relation to Islamic law, but also highlight how debates on Islam, law and human rights have taken on particular contours in specific contexts, and more to the point, how these have developed in particular ways in the GCC states. The chapter is organized in three sections, the first on Islam and law, the second on Islamic law and human rights, and the third on the Islam, law and human rights in the GCC states. I review the relevant literatures on human rights, Islam and law and discuss how these issues have developed in the Middle East in the first two sections, and then discuss these issues specifically in the GCC cases in the final section of the chapter.

The first section of this chapter presents some of the relevant history on Islam and law in MENA to help provide broader context for the later analysis on human rights law and ultimately, on these issues in the GCC. This focus on the wider region helps demonstrate that developments in the GCC were part of a broader phenomenon of legal changes in the MENA region during the modern period. In this section I discuss some of the relevant English-language literature, both classic and more recent, on Islam and law to explain how ideas about their intersection have developed in particular ways in relation to the development of modern nation states in the Middle East, with a focus on the development of Islamic legal systems in the 19th and 20th century. I demonstrate how Islamic law has evolved over time across varied social and political contexts. As Shari'a was reduced in scope by the 20th century to areas of personal status such as custody, marriage, and inheritance, it has developed in varied ways in its form and content over the

past century as the legal and political systems across the Middle East have developed and changed. I discuss how debates about contemporary Islamic legal thought and the concept of an “Islamic modernity” have emerged as a result of these changes, taking on particular meaning in any given context.

I then discuss how conceptualizations of human rights have developed alongside modern Islamic legal systems in the second section of the chapter, to capture how arguments about human rights are framed within an Islamic context. I review how “human rights” are discussed with particular language in the MENA region with reference to Islamic principles. In this section I establish how Islamic understandings of rights have been integrated into global discussions of rights with many Muslim-majority states engaged in efforts to define and promote human rights, while also acknowledging the distinctive language and concepts about human rights as they have developed in the Muslim world.

The chapter in its third section turns to the GCC more specifically, to offer background on how the negotiation of ideas about Islam related to these states’ commitments to UN human rights law is situated within this broader history in which conceptualizations Islam, law and human rights have developed and evolved in a dynamic way in the particular legal, political and social contexts of these countries. UN human rights treaty ratification in the GCC can be understood as one of many points from which these ideas are confronted and negotiated by states, and fit within the contours of modern nation states, including within codified national legal systems. In acknowledging this context and the plasticity of Islamic law over time, the reader can more fully understand the implications of the argument I put forward about the impact of UN human rights treaties in

the GCC, and the implications of this research for understanding Islam, human rights and law more broadly.

2.1 Islam and Law

The questions about Islam and human rights law addressed in this thesis must first be understood within the broad context in which Muslim societies have developed around the modern nation state structure, and how “Islamic legal systems” have as a result developed in changing and evolving forms. Since the early expansion of the first Islamic empire from the 7th century, law in the Middle East has conventionally been perceived as “anchored to religious institutions and personnel.”⁵⁸ Law in the region was seen as derived from divine origin, based on the Qu’ran and the examples of the Prophet in the Sunnah. In reality, however, far from standing as some static authority based entirely on divine teaching, the sacred law has been closely intertwined with the social and political context in which it was interpreted throughout history, broadly invoked in early Islamic history by clerics (*‘ulama*) and interpreted to regulate a wide range of affairs, including civil transactions, taxation, penal law, and most other areas of criminal and social law. Sami Zubaida compellingly supports this view about the dynamic nature of Islamic law over time, claiming, “There is a common view that the Shari’a is fixed and clearly discernible from its sacred sources....Shar’ia is a product of articulations of legal discourses and institutions to varying patterns of society and politics. The holy law has co-existed and

⁵⁸ Sami Zubaida (2005) “Islam and Secularization,” *Asian Journal of Social Science*, Vol. 33, No. 3, pp. 438-448, p. 440.

interacted with statute laws issued by rulers, as well as customary conduct, sometimes extending its vocabulary and concepts to cover these existing practices.”⁵⁹

Islamic jurisprudence is traditionally conceptualized as based on four sources: the *Quran* (central religious text), the *Sunnah* (words or actions attributed to the prophet), *qiyas* (analogical reasoning) and *ijma* (juridical consensus). Islamic law is also interpreted through *ijtihad* (independent reasoning), a practice that is seen differently from various jurisprudential perspectives of the main Islamic legal schools (*madhab*) (most commonly Hanafi, Maliki, Shafi’i, Hanbali and Jafari). While the specifics of the various jurisprudential perspectives and sources of law are not discussed in great detail in the empirical chapters that will follow, given their differences are less often relevant to the broader debates examined, their bearing on statements about Islamic law will be discussed and expanded on where relevant.

Despite the fact that Islamic legal systems have maintained some features across the Middle East, Western secular legal traditions have also had an increasingly strong influence on modern Middle Eastern legal systems. Starting with the Ottoman system of the 19th century, modern state legal systems across the Middle East were highly influenced by European law.⁶⁰ “Even when the *Shari’a* was declared to be the source of legislation, as in the Ottoman civil law codification of the 1860s known as the *Majalla*, these elements were cast in the European mold. The law was “etatized” and, as such, divorced from its anchor in religious institutions.”⁶¹ “The process of modernization and reform in the Ottoman lands

⁵⁹ Sami Zubaida (2004) *Law and Power in the Islamic World*, New York: I.B. Tauris, p.1.

⁶⁰ Of course there is a rich history of Islamic legal systems between the 7th and 19th centuries. For the purpose of this research, I focus on the development of these systems in conjunction with the modern nation-state. For a fuller history, please see Noel James Coulson (1964) *A History of Islamic Law*. Edinburgh, Edinburgh University Press.

⁶¹ Zubaida (2004), pp. 130-135.

and elsewhere generated many upheavals and dislocations...” Zubaida writes, and of these upheavals was a great shift to more modernized legal systems.⁶² Wael Hallaq suggests this process was so significant that it “structurally dismantled” the previous socioeconomic system, as “Shari’a lost its autonomy and social agency in favour of the modern state; Shar’ia was henceforth needed only to the limited extent that deriving certain provisions of it – provisions that were reworked and re-created according to modern expediency-legitimized the state’s legislative ventures.”⁶³

By 1900, religious law in the “vast majority of Muslim lands” was “reduced in scope” to areas of personal status such as child custody, marriage, and inheritance.⁶⁴ Wael Hallaq argues that this was because Islamic personal status laws were “of no use to the colonial powers as a tool of domination” and Colonial Europe “promoted the idea that personal law was sacred to Muslims and that, out of sensitivity and respect, colonial powers left it alone.”⁶⁵ As family law emerged as a “symbol of Islamic identity,” it “represented what was taken to be the last fortress of the Shari’a to survive the ravages of modernization.”⁶⁶ However, where conservative principles of Islamic law remained on the books in certain Middle East states in areas of criminal law, for example, imposing extreme conservative punishments, in practice these were rarely applied. As Zubaida articulates, these harsh punishments were not historically commonly imparted under Islamic law, saying, “Contrary to the current image of the shari’a and its courts based on its functioning in some modern authoritarian regimes, shari’a judges historically tended to be sparing in

⁶² Zubaida (2004), p. 4.

⁶³ Wael Hallaq (2014) *The Impossible State: Islam, Politics and Modernity’s Moral Predicament*. New York: Columbia University Press, p. ix.

⁶⁴ Wael Hallaq (2011) *Introduction to Islamic Law*. Cambridge: Cambridge University Press, p. 115.

⁶⁵ Ibid.

⁶⁶ Ibid.

the application of corporal punishments of amputations and executions. These were undertaken more freely by the rulers.”⁶⁷

As Sharia was interpreted to fit the contours of nation states, scholars of Islam have debated the concept of a modern Islamic society,⁶⁸ Efforts to “modernize” Islam have been visible for example in the work of Shaykh Muhammad’Abduh in Egypt (inspired by Jamal al-Din al-Afghani) and Sir Sayyid Ahmad Khan in South Asia. Both worked in favor of the “modern scientific spirit,” for example, critically analyzing the scientific plausibility of spiritual miracles.⁶⁹ Al-Afghani and Abduh both insisted on the openness of Islamic law to reinterpretation, particularly using “itjihad” (independent reasoning [often legal, of a jurist]) to do this. Muhammed Iqbal (Pakistan, 1877-1938) also helped contribute to thinking on modernity in Islam, contributing to thought which aimed to modernize not by eliminating religion from the public sphere but aimed to separate traditional religious ideas and practices from the non-religious intellectual and scientific sphere. A number of these Islamic scholars of modernization claimed Islam had great potential to advocate for so-called “modern” freedoms, for example, equal gender rights, but historical conditions limited the ability to achieve certain goals of equality during the time of the Prophet, and

⁶⁷ Zubaida (2004).

⁶⁸ Although the term ‘modernity’ is contested (and some varied interpretations of this term within the Islamic context are discussed below), I broadly use the concept understood as the move from the unquestioned authority of “tradition” towards the features of nation-states, including, crucially, the authority of codified laws and state bureaucracies. The term ‘modern’ is also used as a broad term to describe the contemporary period of history. The contemporary idea of something being ‘Islamic’ is, in itself, arguably a ‘modern’ phenomenon, connected to the broader ‘othering’ of cultures and societies in recent history by Western societies. As Amira Sonbol writes, “...(t)he term ‘Islamic’ is in fact a product of the modern world; it was used before the modern period to refer to the way Muslims lived, the laws they observed, the history they wrote....(t)here were no lists of what is Islamic, nor was establishing such lists central to Muslim discourses, until the modern period.” Amira Sonbol (2012) “Introduction: Researching the Gulf,” in *Gulf Women*. Bloomsbury Publishing, p. 4. Also see discussion of modernity’s impact on Islam in Fazlur Rahman (1966) “The Impact of Modernity on Islam,” *Islamic Studies*, Vol. 5, No. 2 (June), pp. 113-128.

⁶⁹ Ibid, p. 116.

thus should be goals leading to adaptability in interpreting Islamic social order in contemporary Islamic society.

Lasting elements of the Islamic legal system across the Middle East today reflect varied and at times politicized meanings attributed to various areas of religious law in the region, particularly in the areas of morality and justice. Efforts to harmonize Islam and modernity were sometimes visible, for example, in Turkey's abolishing of Sharia law in 1924-36, or Egypt's abolishing of Sharia courts in 1955 subject to family law exceptions. Islamic scholars such as Abd al-Razzaq al-Sanhuri in Egypt in 1947 made claims for Egyptian law to be based on three sources – customary law, sharia law, and natural law, and adhered to the concept of "*talfiq*" (picking and choosing) from different Islamic understandings. Coulson observes that the Iraqi Civil Code promulgated in 1953 reflected this modernizing process, where many rules were "derived from the Hanafi codification of the Majalla and from traditional Shari'a texts, while other provisions, on such matters as insurance and aleatory contracts, rest squarely on European sources. Family law, on its side, has been increasingly permeated with Western standards and values, and it is here that the juristic basis of the law, viewed as a whole, appears most complex."⁷⁰ Here ideas about Islamic morality are melded with modern features of individualistic values, helped illustrate the complex and dynamic nature of modern Islamic legal systems deriving from diverse sources.

With what Bassam Tibi terms the "return of the sacred" evidenced in modern political Islam, there is an effort today to achieve a "unique and peculiar Islamic modernity" across the Middle East region, which I argue is particularly pronounced in the GCC context where traditional interpretations of Islamic law are being fit into modern state

⁷⁰ Coulson (1964), p. 218.

systems and bureaucracies⁷¹ And yet criticisms remain that there has been a widespread failure to achieve a “systematic expression of Islam in effective modern terms” in the Middle East, and attributes this to the politico-economic subjection of the Muslim world.⁷² Tibi suggests there has been a failure to achieve “an adequate way to interpret the Qur’an and Sunnah to meet modern needs,” a problem he suggests manifests, for example in Saudi Arabia’s efforts to “purify” Islam.⁷³ Tibi’s point is important as it relates to the Saudi case, in that sensitivities around the idea of a Western imposition of modernity are common narratives among the traditionalist forces in the Kingdom. This is often linked to “[t]he political resonance of the shari’a, historically and at the present,” as Zubaida writes, which “is associated with its function as a language of justice. It is not just ‘law’ in the modern sense, but a total discourse of religion, morality and justice. As such it is always exploited as a medium of contest...”⁷⁴

Reformism movements to modify Islamic law are a widespread, but relatively new phenomena. A “debate and enquiry into the reform of established norms of the Sharia, in particular Islamic family laws”⁷⁵ has been occurring on a wide scale across country contexts today, and reform efforts have had some, limited, success in “directly appealing to the primary sources of Sharia” to help address the injustices in certain long-prevailing understandings of Islamic family law.⁷⁶ “Islamic law” in its contemporary usage is therefore a broad term for a range of jurisprudential ideas and interpretations, which are

⁷¹ Bassam Tibi (2009) *Islam’s Predicament with Modernity: Religious Reform and Cultural Change*. Oxon: Routledge, p. 29.

⁷² Rahman (1966), p. 118-119.

⁷³ Ibid.

⁷⁴ Ibid, p. 4

⁷⁵ Javaid Rehman (2007) “The Sharia, Islamic Family Laws and International Human Rights Law: Examining the Theory and Practice of Polygamy and Talaq.” *International Journal of Law, Policy and the Family*. Vol. 21, pp. 108-127, p. 123.

⁷⁶ Ibid.

reflected in very different ideas depending on who is asked. As Baderin contends, “Islamic law is not strictly speaking monolithic. Its jurisprudence accommodates a pluralistic interpretation of its sources, which does produce differences in juristic opinions that can be quite significant in a comparative legal analysis.”⁷⁷ This is the important point given the dynamic history, that “(w)hen reference is made to “Islamic law,” [say, a Saudi lens], a host of diverse positions...comes into the picture.”⁷⁸ Taking its cue from this position, this chapter, having identified how aspects of Islam have been interpreted in particular ways to fit into modern nation states’ legal systems, will go on to discuss the specifics of interpretations of Islamic law, particularly those in the GCC, rather than to suggest the term represents some monolithic block.

2.2 Islam and Human Rights

This chapter now turns to the conceptualizations of human rights within Islamic legal thought, to help ground the thesis’ upcoming exploration of international human rights treaties in the GCC context. Scholarly understandings of “human rights” and “Islam” are often couched – either explicitly or implicitly – in an ongoing debate concerning “universalism” (the idea that certain human rights are absolute moral truths) and “cultural relativism” (the idea that “rights and rules about morality are encoded in and thus depend on cultural contexts”).⁷⁹ The GCC reservations about Islam to the UN conventions could, at face value, be seen as reinforcing the idea that Islam is not “compatible” with

⁷⁷ Mashood Baderin (2003) *International Human Rights and Islamic Law*. Oxford: Oxford University Press, p. 32.

⁷⁸ Ibid, p. 32.

⁷⁹ Henry Steiner and Philip Alston (2000) *International Human Rights in Context, Law and Politics* *Morals*, 2nd ed, Oxford: Oxford UP, p. 266.

international understandings of human rights. However, my understanding is that this debate is often over-simplified, and fails to capture the dynamic and complex nature of understandings of Islam and human rights, which I discuss in this section.

Human rights for my purposes are most simply understood as the “rights one has simply because one is human”⁸⁰ and more specifically in this thesis as the equal and inalienable rights of human beings enshrined in the Universal Declaration of Human Rights and subsequent international laws. Human rights have traditionally been understood alongside a unique vocabulary and framework in an Islamic context. Interpretations of Islamic law traditionally share a distinct set of vocabulary and concepts that differ from that of Western legal systems, although often related concepts about justice, dignity and respect for others are integral to Islamic understanding. As mentioned, it is much more common, for example, for Islamic legal system to discuss the “duties” of individuals and groups as opposed to their “rights.”

Generally, human rights is viewed in Western nations as a product of Western liberalism, which advocates values such as freedom, liberty, individualism, and tolerance. In many Muslim nations however, Western liberalism is considered as very permissive and capable of corrupting the moral values of society as prescribed by the Shar’iah. Conceiving liberalism and human rights as notions of total liberty and freedom of the individual to do whatever he pleases is however wrong because that will contradict the basic foundations of political and legal authority. By their nature, both law and political authority constitute some limitation upon the freedom and liberties of individuals.”⁸¹

As Jack Donnelly articulated in a 1982 *American Political Science Review* article, the concept of “human rights” as a term and concept is an “artifact of modern Western

⁸⁰ Jack Donnelly (2007) “The Relative Universality of Human Rights,” *Human Rights Quarterly*, Vol. 29, No. 2, May 2007, p. 283.

⁸¹ Baderin (2003), p. 45.

civilization.”⁸² Still, most non-Western states have engaged similar concerns through the lens of “human dignity,” making the concept of human rights not entirely foreign, but differently conceived, outside of the “west.”

In support of Donnelly’s view, “dignity” is a prominent concept integral to conceptualizations of “human rights” in the Muslim-majority world. In fact, a range of related but different vocabulary and concepts are necessary for understanding the ways that “rights” are understood more natively within the Islamic tradition. As Abdul Aziz Said wrote in *Human Rights Quarterly* in 1979, “Human rights” in Islam must be understood in relation to an alternative vocabulary and language based on Islam’s rich and unique understandings of justice, duty and truth. He writes, “[Islam] is a belief system predicated fully upon *Haqq*, which is the Arabic word for right. But *Haqq* is also truth. It is justice. It is duty. It is the word of the Divine. *Haqq* is God. The essential characteristic of human rights in Islam is that they constitute obligations connected with the Divine and derive their force from this connection.”⁸³ Said’s perspective here helps illuminate the point that human rights concepts must be understood in terms of a different vocabulary in order to more fully relate to local ideas and understandings.

Islamic perspectives on human rights are often highly related to UN conceptualizations of “human rights” when understood based on the unique language and concepts of *dignity* and *duty* contained in Islamic text. Human “dignity” is not just an

⁸² Jack Donnelly (1982) “Human Rights and Human Dignity: An Analytic Critique of Non-Western Conceptions of Human Rights,” *The American Political Science Review*, Vol. 76, No. 2, 1982, pp. 303-316.

⁸³ Abdul Aziz Said (1979) “Precept and Practice of Human Rights in Islam,” *Universal Human Rights [Human Rights Quarterly]*, Vol. 1, No. 1, pp. 63-80 also see the discussion of the concept of human dignity playing a “central role in human rights discourse,” as illustrated by the ICESCR and ICCPR that state their basis in the “inherent dignity of the human person,” in Christopher McCrudden (2008) “Human Dignity and Judicial Interpretation of Human Rights,” *European Journal of International Law*, Vol. 19, No. 4, pp. 655-724; pp. 655-666.

Islamic idea, it is also integral to the UN human rights system.⁸⁴ For example, the International Covenant on Civil and Political Rights is based on the rights of human kind as they “derive from the inherent dignity of the human person.”⁸⁵

Islamic understandings of rights do differ substantially from Western understandings, but these differences must be contextualized. As Katerina Dalacoura explains, “[T]he position of the individual, the centrality of duty in traditional Islamic justice and the equality of believers, inform the relationship between authority and society (in Islamic thought).”⁸⁶ The argument here is that tensions between Islamic and Western understandings of human rights remain, for example, as they relate to ideas about women’s rights to equal treatment under the law and harsh Islamic *hadd* punishments for violating God’s law. Still, she explains, “some ideas in the religious doctrine and even in the sharia...can provide building blocks for a conciliation of Islam and human rights, among which are the equality of believers, respect for minorities and the belief that the ruler must obey the law. Duties can imply correlative rights...” (although they don’t have to).⁸⁷ Indeed many of the concepts of “rights” contained in the UN treaties examined in this thesis are inextricably linked to correlative “duties” for others to ensure or provide for this right (for example, the right of a child to be adopted is related to the Convention on the Rights of the Child’s imperative (or duty) for state authorities to ensure an adoption process to pursue the best interests of the child). It is in these two complementary sides of human rights as both rights and related duties that the human rights language in international law often translates

⁸⁴ Abdul Aziz Said (1979) “Pursuing Human Dignity,” *Society*, Vol. 15, 34-8. p. 63.

⁸⁵ ICCPR.

⁸⁶ Katerina Dalacoura (2007) *Islam, Liberalism and Human Rights: Implications for International Relations, Third Edition*. London I.B Tauris & Co., p. 48.

⁸⁷ Ibid.

most smoothly into Islamic contexts.⁸⁸ However, as will be demonstrated in the empirical chapters, UN language and concepts are at times incorporated in GCC language on human rights, demonstrating the diffusion of a specific language reflecting ‘global’ human rights values as upheld within the frameworks of UN human rights law.

The idea that UN human rights conceptions need to become more inclusive in their language and understandings to the cultural and religious perspectives of Islamic societies in particular has been made clear, for example, in the 1980s after the establishment of the CEDAW convention, when the UN requested an initiative to “promote or undertake studies on the status of women under Islamic laws and customs and in particular on the status and equality of women in the family.”⁸⁹ Such concern about the applicability of international law to Islamic laws and customs is also visible in the reports and statements of Muslim states to the UN human rights committees, and in the existence of a Committee on Islamic Law and International Law within the International Law association.

It would also be naïve to say that the widespread ratification of “universal” human rights standards contained in the core UN human rights treaties settles the debate about

⁸⁸ There is of course an ongoing debate on the compatibility of Islam and UN human rights concepts, and how the two are sometimes seen to “differ.” Scholars like Baderin acknowledge differences in legal and philosophical perspectives, but dispute the idea of incompatibility, writing, “[w]hile the political and legal philosophy of Islam may differ in certain respects from that of the secular international order, it does not necessarily mean a complete discord with the international human rights regime. Removing the traditional barriers of distrust and apathy would reveal that diversity is not synonymous to incompatibility” Baderin (2003), pp. 30-31. This point is often contested, however, and the claim that Islam is not harmonious with UN human rights philosophies can be illustrated, for example, by the statement of OIC head Iyad Madani, who stated in 2014 that “There are a number of [human rights] issues that go beyond the normal scope of human rights and clash with Islamic teachings.” Arab News (2014) “OIC Seeks Rights Debates Based on Islamic Values.” *Arab News*, 4 February. Available at <http://www.arabnews.com/news/520321>. A wide discussion of the historical and contemporary debates on the applicability of international human rights philosophies in various religious contexts is also available in John Haskell (2017) “The Religion/Secularism Debate in Human Rights Literature” in Martti Koskeniemi and Monica Garcia-Salmones Rovira (eds.) *International Law and Religion: Historical and Contemporary Perspectives*. Oxford: Oxford University Press

⁸⁹ UN Doc A/42/38. Chairperson of the Committee on the Elimination of Discrimination Against Women, (1987) 10 April (para 579).

cultural relativism in favor of universalism – the widespread practice of reservations (RUDs) as well as the substance of certain treaties, which acknowledge a diversity in cultural and legal perspectives among member states, demonstrate that UN human rights regimes only function when a certain degree of multi-culturalism and diversity in human rights perspectives is acknowledged. This is codified in writing, for example, in Article 31 (2) of the ICCPR (1966) – which states that in electing members of the Human Rights Committee, “Consideration shall be given to equitable geographical distribution of members and to the representation of the different forms of civilization and of the principal legal systems of the State Parties.” A similar provision is contained in Article 8 of the CERD (1965) and Article 9 of the statute of the ICJ (1945) on electing diverse judges.

The engagement of Muslim perspectives, from the start, in the establishment human rights law at the UN helps clearly challenge claims that these documents are entirely Western and incompatible with Islam. As Mayer writes, “Muslim states contributed to the formulation of international law through their active participation in the UN and its affiliated organizations”...as “constructive input from Muslim states influenced foundational UN human rights instruments.”⁹⁰ And yet, ongoing reservations from Muslim states to the conventions regarding Islam can suggest certain concerns about the application of these conventions in an Islamic context. The reality is that the issue is not black and white, and more complex. As Baderin puts it, “the theory of cultural relativism is prone to abuse and may be used to rationalize human rights violations by different regimes,”⁹¹ and this is clearly a problem in the GCC where regimes often cling to relativist arguments about Islamic law, culture, and/or custom to rationalize clear human rights abuses. As both

⁹⁰ Ann Elizabeth Mayer (2013) *Islam and Human Rights: Tradition and Politics* 5th ed. Boulder: Westview Press, p. 21.

⁹¹ Ibid, p. 27.

relativism and universalism can lead us to extreme views that fail to account for the complex realities of UN human rights in history and practice, this thesis endeavors to explore the ways in which universalism and relativism are simultaneously negotiated by the UN and the GCC in the ongoing interaction over UN human rights treaties– and how neither the international community nor the GCC states adhere strictly to either side of the debate. Instead, GCC interaction with UN human rights exposes a complexity and malleability in positions and arguments about human rights that will be traced and analyzed.

Human rights have been a topic of growing attention over the last century across the MENA region, with human rights constituting an area of “major concern” for Muslim societies in the 20th and 21st Century.⁹² Just as majority-Muslim states began interacting with UN human rights instruments, there was also an expansion of Arab regional and Islamic religious instruments and documents purporting to define and protect human rights. In 1990, states of the Organization of the Islamic Conference (OIC) consisting of 57 Muslim-majority member states adopted their own document purporting to define and protect human rights from an “Islamic perspective.” They drafted and presented the Cairo Declaration on Human Rights in Islam during the 19th Islamic Conference of Foreign Ministers of the OIC in Cairo, Egypt, from 31 July to 5 August 1990, gaining forty-five OIC member states in support as signatories. The document claims to provide an Islamic interpretation of human rights, affirming the Islamic Shari’a as the “sole source” of human rights.

The Declaration begins by “recognizing the importance” of issuing a document on human rights in Islam to “serve as a guide for member states in all aspects of life,” and to

⁹² Katerina Dalacoura (2007) *Islam, Liberalism and Human Rights*. London: I.B. Tauris.

“contribute to the efforts of mankind to assert human rights.”⁹³ The OIC Declaration’s efforts to define and protect human rights could be seen in contrast to developing “western” conceptions of human rights enshrined in the various UN human rights treaties introduced during the 1970s, ‘80s, and ‘90s, thus serving as a challenge to efforts in developing conceptions of “universal” human rights. When the OIC formally presented its Cairo Declaration on Human Rights in Islam in 1992 to the UN Commission on Human Rights, a United Nations International Commission of Jurists condemned the document as contrary to principles and goals of UN human rights efforts.⁹⁴

Ann Elizabeth Mayer argues that these regional and Islamic human rights efforts in some ways reflect the direct influence of UN documents, for example, in their use of UN terms and phrases. As she observes in her study of Arab states’ ratification of CEDAW “...when Arab countries elect to join the international human rights system, they are obliged to respond to public critiques of how their domestic laws and policies fall short by international standards,”⁹⁵ and often concede that Islam is indeed compatible with their commitments and take up support for UN language about rights such as ‘gender equality.’ However, where Mayer has a more pessimistic view, in that the adoption of these phrases remain empty shells – I offer a slightly different take, that these changes constitute a subtle but substantive transformation of meanings and understandings of human rights concepts which are contributing to a process of modernization in the GCC.

⁹³ Cairo Declaration on Human Rights in Islam (adopted 5 Aug 1990) UNGAOR, World Conference on Human Rights, 4th Session.

⁹⁴ It should be noted that during this time, attempts were made to address issues of compatibility of Islamic Law within the international legal order by, for example, including Muslim judges on the International Court of Justice.

⁹⁵ Ann Elizabeth Mayer (2004) “Internationalizing the Conversation on Women’s Rights: Arab Countries Face the CEDAW Committee” in Haddad and Stowasser, *Islamic Law and the Challenges of Modernity*. Walnut Creek, CA: Altamira Press, p. 133.

Mayer's claim is that, while documents like the Cairo Declaration borrow from UN definitions and terminology, they also tend to modify these terms and phrases subject to Sharia, "thereby diluting them."⁹⁶ "Islamic human rights schemes, such as the one promoted by the Organization of the Islamic Conference," Mayer argues, "have consistently used distinctive Islamic criteria to cut back on the rights and freedoms guaranteed by international law, as if the latter were excessive..."⁹⁷ Mayer indeed argues that Muslim jurists oftentimes use UN human rights documents such as the UDHR and other rights specific instruments as a "template" in a way retroactively claiming that Islam and the Quran "anticipated and implemented modern human rights." Mayer's argument helps provide a useful frame for the chapters that will follow, which will explore where Mayer's argument may be applied or challenged in Gulf cases where modern human rights language has been incorporated during or after ratification of UN human rights conventions. Even Mayer concedes, for example, that CEDAW engagement with Arab states is noteworthy, saying, "Even as they [Arab states] resist reforming their laws to bring them into compliance with CEDAW, the fact that these countries work so hard to portray themselves as compliant with the principles of international human rights law signals that change is afoot."⁹⁸ By studying the nature of discourse about human rights in the region related to ratification, and viewing where this may or may not be more substantively influencing conceptualizations of Islam in the region, we can begin to consider the extent to which these changes in language might hide the reality of the violation of human rights, or the extent to which they may change the way human rights are understood and communicated, thus opening opportunities to liberalization and the upholding of rights.

⁹⁶ Ibid.

⁹⁷ Ibid.

⁹⁸ Ibid, p. 134.

The expansion of Islamic and regional instruments alongside some hostile statements from Islamic voices against UN human rights initiatives no doubt contribute to a discourse about potential “incompatibility” between Islam and UN human rights law. While, for the most part, efforts to address a sensitivity to cultural religious difference have been a part of UN human rights programs since the drafting of the UDHR in 1948, tensions related to Islam and UN definitions of human rights have been the subject of ongoing debate. At times, this has resulted in hostile statements such as, in a most extreme example in 1984, when Iran’s Ayatollah Khomeini spoke out against the UN’s human rights agenda, saying, "When we want to find out what is right and what is wrong, we do not go to the United Nations; we go to the Holy Koran. For us the Universal Declaration of Human Rights is nothing but a collection of mumbo-jumbo by disciples of Satan."⁹⁹

A sense of conflict between the UN and Islam in the region also is manifested in debates over the creation of other UN institutions such as the International Criminal Court and International Court of Justice. Dissatisfaction with a lack judges from Muslim-majority countries in these institutions was voiced by representatives of Muslim states during the creation of the ICC and the ICJ to suggest an incompatibility between these international courts and Islamic principles, and the lack of diversity in the legal traditions informing the judges on these courts has been a topic of ongoing debate. The scarcity of Muslim judges in the creation of the International Criminal Court caused Iranian representatives, for example, to take issue with compatibility with their national laws in two ways: claiming both that non-Muslim Judges may not be familiar with Sharia principles and justice would be imposed in violation of Islamic law, and also that justice would be served by non-

⁹⁹ As cited in Ann Elizabeth Mayer (2013) *Islam and Human Rights: Tradition and Politics*. 5th ed, Boulder: Westview Press, p. 27.

Muslim judges to Muslim people, which Iranian representatives suggested could violate theological principles – using the example of penalties from Sharia such as “whipping and sectioning of limbs” which some international lawyers recognize as torture or even could fall under “crimes against humanity” (dependent on scale), but are often interpreted as divinely sanctioned under Islamic Law.¹⁰⁰

The International Criminal Court’s founding treatise, the Rome Statute, contains a clause in Article 80 on “non-prejudice to national application of penalties and national laws.” This clause was in part entered to ensure that capital punishment in the Sharia would not be in contradiction with the ICC’s founding statute, perceived as a nod to the criticisms of Iranian delegates, as well as in an attempt to gain acceptance from the United States. Despite this compromise, neither Iran nor the United States has fully ratified the Rome Statute.¹⁰¹

Because of the sensitivity of issues of religion and custom, particularly concerning areas such as family law, a number of scholarly projects arose in the 1990s to explore the compatibility of the major UN human rights treaties developing during this time with understandings of Islamic law.¹⁰² It grew increasingly common, for example, for legal

¹⁰⁰ Hiran Abtahi (2005) “The Islamic Republic of Iran and the ICC,” *Journal of International Criminal Justice*, (July), Vol. 3, No. 3, pp. 635-648.

¹⁰¹ Ibid. Also see Statement by Dr Saeid Mirzaei Yengejeh, Representative of the Islamic Republic of Iran before the Sixth Committee on Agenda Item 164 Establishment of the International Criminal Court, New York, 12 November 2001 (‘Yengejeh Statement of 12 November 2001’), available at: <http://www.iccnw.org/countryinfo/northafricamiddleeast/iran.html>.

¹⁰² See, for example, Bharathi Anandhi Venkatraman (1995) “Islamic States and the United Nations Convention on the Elimination of All Forms of Discrimination Against Women: Are the Shari’a and the Convention Compatible?” *The American University Law Review*, Vol 44. Also see Mashood A. Baderin (2001) “Modern Muslim States Between Islamic Law and International Human Rights Law” SOAS thesis eprint, and Manisuli Ssenyonjo (2012) “Jihad Re-examined: Islamic Law and International Law,” *Santa Clara Journal of International Law*, Vol. 10, No. 1, pp. 1-33.

scholars to enquire whether or not the women's convention (CEDAW) was fundamentally incompatible with Islamic *Shari'a* law.¹⁰³

As discussed in the section on Islamic law, Islamic legal systems as they developed alongside the modern nation state conferred a legitimacy to state systems. "More than just establishing a religious and legal order, Islam is an institution of legitimacy in many States of the Muslim world. Many regimes in the Muslim world today seek their legitimacy through portraying an adherence to Islamic law and traditions. Thus any attempt to enforce international or universal norms within Muslim societies in oblivion of established Islamic law and traditions creates tension and reactions against the secular nature of the international regime...."¹⁰⁴ This is illustrated, in one example, by Iranian representative to the UN Said Raja'i-Khorasani in 1984 who spoke at the 29th session of the UN General Assembly, saying "...in full accordance and harmony with the deepest moral and religious convictions of the people and therefore most representative of the traditional cultural, moral and religious beliefs of Iranian society. It recognized no authority...apart from Islamic law... (therefore) conventions, declarations and resolutions or decisions of international organisations, which were contrary to Islam, had no validity in the Islamic republic of Iran."¹⁰⁵

And yet, over a decade later, Deputy Permanent Representative of Iran to the UN Mr. Ziaran stated in 1998 at the Third Committee of the 53rd Session of the General Assembly that "The government of the Islamic Republic of Iran is fully committed to the promotion of human rights....not out of political expediency rather it stems from the

¹⁰³ See, for example, Bharathi Anandhi Venkatraman (1995) "Islamic States and the United Nations Convention on the Elimination of All Forms of Discrimination Against Women: Are the Shari'a and the Convention Compatible?" *The American University Law Review*, Vol 44. No. 5.

¹⁰⁴ Ibid, p. 30.

¹⁰⁵ UN GA 38th session, third committee, 65th meeting, 7 December 1984 A/C.3/39/SR.65.

supreme teaching of Islam...the government of the Islamic Republic of Iran would extend its full cooperation to the human rights mechanisms of the UN.”¹⁰⁶

The complexity of the relationship between interpretations of Islam and international law is perhaps most explicitly visible in the Reservations, Understandings and Declarations (RUDs) Muslim-majority states often submit to the United Nations upon ratification of human rights treaties, and this will be a key feature of the empirical chapters that follow on GCC ratification of the CAT, CEDAW, CRC and ICCPR. The vast catalogue of *sharia*-based ‘reservations’ at the UN, Baderin argues, lacks coherence. There are paradoxes in different Muslim-majority states’ statements about Islam revealing that interpretations of Islam are heterogeneous: RUDs about Islam can contradict one another, sometimes significantly so. All countries are permitted under the 1969 Vienna Convention on the Law of Treaties to put forward reservations (limiting the scope) and declarations (stating understandings and intent) upon ratification of treaties so long as these do not violate the “object and purpose” of the treaty (a vague line that is still in dispute in many cases among member states). Many countries submit RUDs, and these vary in nature, style and scope. The U.S. commonly enters lengthy reservations limiting specific clauses in human rights treaties.

Concerns about Islam manifest in the initial interaction between states and UN human rights treaties in a number of ways. Arguments about Islam can have a direct influence on the rejection of certain treaties, as well as a direct influence on limiting the scope of commitments through RUDs. Islam can also play a role in later qualifications and justifications of practices in treaty review meetings, even when these concerns are not

¹⁰⁶ IRNA (1998) “Iran Fully Committed to Promoting Human Rights.” *Tehran Times*, November 12. Available at <http://www.tehrantimes.com/news/20806/Iran-Fully-Committed-to-Promoting-Human-Rights>.

initially voiced in RUDs. Countries sometimes withdraw their reservations about Islam. Reservations about Islam, Baderin suggests, can sometimes be invoked to conceal other considerations (such as the political concerns of autocracies) – or, other considerations (such as assertions about sovereignty or social values) can even be used to conceal Islam. To Baderin, “...where Sharia is used to justify certain reservations, the incoherence of its use as reflected by contradictory reservations on obscure grounds, raises doubts as to the true role of Sharia in limiting human rights provisions...”¹⁰⁷ adding, “A comparative analysis between the adherence to CEDAW and CRC accounts for this ambiguous and incoherent trend in which States have entered reservations on articles they purport to accept in the context of other human rights instruments.”¹⁰⁸ Nisrine Abiad similarly disputes the use of Islam in reservations, saying “[a]n analysis of the domestic human rights practices of certain Muslim States reveals that reservations made on the basis of adhering to the principles of Sharia are hardly convincing.”¹⁰⁹

It is my view that, where there is room for legitimate concern about the compatibility of interpretations of Islam and human rights treaties, the Muslim-majority countries’ sometimes inconsistent and even incoherent use of Islam in RUDs supports the view that there is no *clear* compatibility problem between Islam and UN human rights treaties. This thesis does not endeavor to make any normative or theological claims about what Islam *does* or *should* say in relation to international law, however, it looks at what *is* said about Islam in these cases, under the assumption that tracing and understanding any

¹⁰⁷ Ibid, p. 98.

¹⁰⁸ Ibid, p. 88.

¹⁰⁹ Nisrine Abiad (2008) *Sharia, Muslim States and International Human Rights Treaty Obligations: A Comparative Study*. British Institute of International and Comparative Law, p. 82.

changes in the interpretations of Islam voiced within this context provides an important area of inquiry for scholars to more deeply monitor and understand.

An overemphasis on any regional contention with UN instruments tends to ignore the high acceptance and engagement, however superficial, between Muslim countries and the vast catalogue UN human rights instruments – evidenced by the frequency and diversity of the region's ratification and engagement with the various UN instruments. Muslim-majority states are continually engaging with these institutions in frequent and different ways. Tracing the nature and progression of these interactions by looking for trends and variation in the ways in which language and concepts about Islam are influenced will therefore offer a useful point from which to view the development of arguments and language concerning Islam and human rights over time, which will be offered in the chapters that follow.

2.3 Islamic Law and Human Rights in the GCC

Given this broader context in which conceptions of Islam, law and human rights have developed and encountered the modern nation-state, the GCC cases offer a unique set of countries sharing some commonalities in their Islamic legal systems from which to consider the questions in this thesis about how ideas about Islam and human rights are debated. These countries share certain characteristics that will be elaborated on in this section, as well as some differences. GCC states are similar in that they have mainly codified their national laws and family codes relatively recently as compared with the broader Middle East, and these countries share certain traditional interpretations of Islam enshrined in their modern legal systems.

Although the governments and societies of the GCC states have clear differences, they have much in common, and are often viewed as close “relatives” by their neighbors and own governments and citizens.¹¹⁰ These countries formalized their political partnership with the founding of the Gulf Cooperation Council as a formal organization in 1981, aimed to unify “trade, finance, customs, industry, military, and regional cooperation.” This helped bolster the shared identity in the region, sometimes referred to as *Khaleeji* identity (of the Gulf).¹¹¹

The GCC states have a complex relationship with “modernity.” A modernizing process in the GCC is most visibly reflected in efforts to institutionalize and codify national laws (largely in the 1990s) and in efforts to engage in projects of economic and social modernization, measurably in the oil boom eras of the 1970s and early 1980s, and in the post-2011 period following the Arab Uprisings. Efforts in social modernization have been reflected in projects such as the construction of museums, universities, economic and legal self-governing “free zones” to attract business, and clean energy projects. As GCC scholar Steffan Hertog puts it, GCC states present a strange mix of modernism alongside distinctly un-modern attributes, saying, “The Gulf ’s oil monarchies present an unusual mix of quite powerful central states that can reach deep into individuals’ lives (as modern nation-states do) and the parallel existence of social, ethnic and legal enclaves (a characteristic of pre-

¹¹⁰ Paul Dresch and James Piscatori, eds. (2005) *Monarchies and Nations: Globalisation and Identity in the Arab States of the Gulf*. London: I.B. Tauris, pp. 1-5.

¹¹¹ Gaith Abdulla (2016) “Khaleeji Identity in Contemporary Gulf Politics,” Oxford Gulf and Arabian Peninsula Studies Forum, St. Antony’s College, Oxford University, Annual Report. Note that the special relations among GCC states are not without tensions resulting for differing geopolitical objectives and perspectives among various GCC states, which have, at certain moments, resulted in political conflict. For example, in 2014, Saudi Arabia the United Arab Emirates and Bahrain suspended relations with Qatar citing breaching of the 2013 GCC security agreement (including harboring “hostile media” referring to Al Jazeera). Similar tensions were most recently reflected in Saudi Arabia, the United Arab Emirates and Bahrain cutting diplomatic ties with Qatar in June 2017 over conflict relating to Qatar’s alleged support of Iran and the Muslim Brotherhood (see Al Jazeera (2017) “Timeline of Qatar-GCC Disputes from 1991 to 2017,” 9 June. Available at <http://www.aljazeera.com/indepth/features/2017/06/timeline-qatar-gcc-disputes-170605110356982.html>.)

modern empires).”¹¹² The mix of modernism and pre-modern attributes differs between each GCC state. Madawi al Rasheed discusses the modernist project in Saudi Arabia as “muted” in her book *Muted Modernists*. She claims that the “modernist project has proved to be a challenge in the Saudi context,” although a “modernist intellectual trend” persists despite efforts by the regime to silence many associated individuals associated with the movement.¹¹³

Law in the GCC intersects with Islam in myriad and varied ways. As Islamic legal scholar William Ballantyne puts it, “The Sharia runs like a golden thread through the jurisprudence of the Gulf States,”¹¹⁴ although the sources of jurisprudence and the extent of the role played by Sharia in each Gulf state varies. But, while there exists today a strongly rooted tradition of conservative Islamic law in this area of the Middle East, these roots have more recent origins than some might expect. During the 19th Century the Gulf States used the Majallat al-Ahkam al-Adiliya, a codification of Islamic civil law according to the Hanafi school of thought, as the official law of the Ottoman Empire in all civil affairs. Most family problems were solved in accordance with Shari’a or by tribal customs at least in general derived from Sharia.¹¹⁵ “The official discourse of the Ottoman state venerated the shari’a,” Sami Zubaida writes. The Sultan was viewed as “defender of the faith” and “always declared his steadfast adherence to the holy law”, and Ottoman courts included religious officers of high rank, the Shaykh al-Islam and the Qadiaskars. Other ranks in Ottoman bureaucracy “included a vast section of religious institutions of justice and

¹¹² Steffen Hertog (2017) “A Quest for Significance: Gulf Oil Monarchies’ International ‘Soft Power’ Strategies and their Local Urban Dimensions,” unpublished version LSE eprints, http://eprints.lse.ac.uk/69883/1/Hertog_42_2017.pdf.

¹¹³ Madawi al Rasheed (2015) *Muted Modernists: The Struggle Over Divine Politics in Saudi Arabia*. Hurst.

¹¹⁴ William M. Ballantyne (1985) “The States of the GCC: Sources of Law, The Shari’a and the Extent To Which It Applies,” *Arab Law Quarterly*, Vol. 1, No. 1, pp. 3-18, p. 3.

¹¹⁵ Mohammed al-Moqatei (1989) “Introducing Islamic Law in the Arab Gulf States: A Case Study of Kuwait,” *Arab Law Quarterly*, Vol. 4, No. 2, pp. 138-148.

education, with a hierarchy of graded posts and remuneration...”¹¹⁶ Part of the rationale behind the salience of Islamic law in the Arabian Peninsula under the Ottomans was strategic, as Selim Deringil argues, a maneuver by Ottoman rulers, who “looked down upon the Arabs of the hejaz as ‘uncivilized.’” Islamic legal systems were thus imparted upon the area at that time in an attempt to push away customary laws and practices local society at that time.¹¹⁷

The legal relevance of Sharia today is strongest and most pervasive in the legal systems of the Arab Gulf states, making them central to this thesis. All GCC states hold Islamic sharia as a primary source of law in their recent constitutions. The result is a vague legal primacy of divine law interwoven in the fabric of the modern legal order, and, “[r]ather than constitutions in the region sanctioning Islam as an official religion and observance of the Islamic sharia in specific areas, these provisions imply that the Shari’a itself stands prior to the positive legal order – including, potentially and by implication, the constitution itself.”¹¹⁸

Muslim citizens in all GCC states are subject to each country’s system of Islamic law, and the countries vary in the degree to which Islamic law applies to non-Sunni and/or non-Muslim citizens, and non-citizens. It is important to note that the predominant *madhhab* (school of jurisprudence) from which each legal system claims its basis differs between GCC states. Kuwait, Bahrain, and large parts of the UAE are based on the Maliki *madhhab* (which relies on the Quran and the Hadiths as well as consensus of the people of Medina). Bahrain (with a majority Shi’a population) and its Al Khalifa (Sunni) ruling

¹¹⁶ Zubaida (2004), p. 113.

¹¹⁷ Selim Deringil (1998) *The Well-Protected Domains*. London: IB Tauris, pp. 50-52.

¹¹⁸ Nathan Brown and Adel Omar Sherif (2004) “Inscribing the Islamic Shari’a in Arab Constitutional Law” in Haddad and Stowasser, *Islamic Law and the Challenges of Modernity*. AltaMira Press, p. 63.

monarchy also subscribes to the Maliki *madhhab*. Qatar and Saudi Arabia are based more on the Hanbali *madhhab* (based on Quran, Hadiths and Sahabah (the views of Mohammad's companions). Oman mostly follows the Ibadi *madhhab*, a distinct madhab that exists mainly in Oman and parts of North and East Africa.) These varied schools of jurisprudence influence interpretations of Islam across the GCC, however, this thesis looks beyond these categories to more deeply consider the substantive differences and similarities in interpretations of Islam across human rights topics within each country. For this reason, the label of the *madhhab* itself is less important than the subtleties in specific jurisprudential interpretation applied in each case to various topics of law in the region that will be analyzed and compared across relevant topics across the GCC in each treaty chapter.

In Saudi Arabia, in particular, Islamic law has remained in a much more traditional and conservative form than in other states of the Middle East. This is what Zubaida calls the "Saudi Exception,"¹¹⁹ saying, "The Kingdom of Saudi Arabia is the one major country in the region which has not followed the general pattern of the codification and etatization of law. Saudi courts and *qadis* (judges) rule in accordance with Hanbali *fiqh* (jurisprudence), which is not codified as state law but formally left largely to the discretion and *ijtihad* (reason) of the qadi....the ulama remain the main legislators."¹²⁰ In Saudi Arabia, strong adherence to conservative principles in Islamic law has also resulted from the monarchy's quest for legitimacy. Zubaida argues that the political importance of Shari'a is strong in bolstering the Saudi monarchy, saying, "...Religious legitimacy and its agents have been crucial for the defense of the [Saudi] dynasty against modernist political

¹¹⁹ Zubaida (2004), p. 153.

¹²⁰ Ibid, p. 153.

opposition of nationalism, constitutionalism and democracy, as well as against the Islamic opposition from various quarters, mainly centered on the dependence of the dynasty on US power, as well as the perceived hypocrisy and corruption of the royal house and its circles.”¹²¹

National law in Saudi Arabia was only formally codified in the late 20th century. Saudi Arabia’s current constitutional document (*Basic Law*) was initially ordered by decree under King Abd al-Aziz (who ruled 1902-1953), who announced the desire to draft a constitution “aimed to assure the world and Saudi citizens that the new Kingdom intended to partake fully of modern governance,”¹²² although the Basic Law was officially established much later in 1992 under King Fahd. Its first article establishes the primary role of Islam in the Kingdom’s legal system, saying, “The Kingdom of Saudi Arabia is a sovereign Arab Islamic state with Islam as its religion; God's Book and the Sunnah of His Prophet, God's prayers and peace be upon him, are its constitution...”¹²³ While the Basic Law ushered in a newly codified system of laws governing the Kingdom, it did “not...introduce meaningful changes or innovations in the governance practices and structures of the Kingdom,”¹²⁴ and entrenches a high degree of power in the monarchy with space for only weak participatory institutions and a restricted civic space.

Other GCC states have developed national legal documents similar to the Basic Law of Saudi Arabia. While some date back to independence in the 1960s and 70s, others

¹²¹ Ibid, p. 155.

¹²² Abdulaziz H. Al-Fahad (2005) “Ornamental Constitutionalism: The Saudi Basic Law of Governance.” *Yale Journal of International Law*, Vol. 30. p. 377.

¹²³ Saudi Basic Law. Accessed from http://www.wipo.int/wipolex/en/text.jsp?file_id=200064.

¹²⁴ Zubaida (2004), p. 378.

date to the 1990s, and many have undergone at least one round of revisions and reform.¹²⁵

While all the Gulf Constitutions claim links to religious authority, they are not limited entirely or uniformly to entrenching solely Islamic precepts. For example, with the exception of Saudi Arabia, a number of key banking laws in the Arab Gulf are based on western banking systems. Islamic law still remains the main source for determining family law across the Gulf, particularly in areas of inheritance and wills. The links between Islam and law in areas of human rights will be further explored in the treaty chapters that will follow.

The GCC legal systems today share certain common features, particularly in their commitment to certain interpretations of Islamic principles as they relate to personal status and family law. All six GCC states refer to sharia law as the key source of jurisprudence for matters of family law, sharing traditional understandings of complementary (rather than “equal”) rights and duties of men and women in marriage, and all GCC states criminalize certain practices under Islamic law such as fornication (sex outside of marriage). All six GCC states have certain traditional interpretations of Sharia in marriage law, for example, patriarchal marriage laws including legal recognition for polygamous marriages, and in most of the GCC traditional Sharia understandings weigh male testimony above that of women in court.

While many of these countries have long applied Islamic principles to adjudicate areas of family and personal status, only more recently have these Islamic family laws been formally codified. The concept of formal national codification of the family code was a subject of much contention across the GCC. There was pushback in Bahrain, for example,

¹²⁵ Gulf Research Center (2006) “Constitutional Reform and Political Participation in the Gulf.” Available at http://graduateinstitute.ch/files/live/sites/iheid/files/shared/executive_education/Oil%202012-2013/ConstitutionalReformPoliticalParticipation.pdf.

against codifying a unified Muslim family code for many years bolstered by those such as Ayatollah Shaykh Hussain al-Najati, who argued that sharia law should not be implemented and interpreted through parliaments, calling it “risky” and saying “...If we decide today that parliament has the authority to pass this law, then we can’t take this authority away in the future.”¹²⁶ Others were concerned that a unified law was too inflexible, and “binds the shar’i judge” and does not allow him the required discretion.¹²⁷ Ghada Jamshir, head of the Committee for Women’s Petition (est. 2003) who advocated for a codified code in Bahrain argued instead that the promulgation of a unified Muslim family law would “reassure” and “guarantee women their rights rather than leaving them at the mercy of fate.”¹²⁸ (It must be noted that in Bahrain there was particular controversy regarding the promulgation of a unified code given the separate sharia courts governing the Sunni minority and the Shi’i majority).¹²⁹

Ultimately, those arguing for codification in the areas of Muslim family law triumphed in most GCC states. Kuwait was the first in the Gulf to enact its family code, and did so relatively early in 1984. Other GCC states codified the area of family law decades later, most recently the United Arab Emirates in 2005, Qatar in 2006 and Bahrain (applying only to Sunni Muslims) in 2009. Saudi Arabia has not formally codified the family code. A number of these GCC family codes were developed after the Muscat Document of the GCC Common Law of Personal Status – a “model text” for the Gulf on Muslim personal status law – was enacted as a ‘reference’ for family law across the Gulf

¹²⁶ Al-Najati as quoted in Lynn Welchman (2007) *Women and Muslim Family Laws in Arab States: A Comparative Development of Textual Development and Advocacy*. Amsterdam University Press, p. 29 quoting Ghada Yusuf Jamshir (ed) (2005) *Al-jallad wa al-dahiya fi al-ahakim al-shariyya*. Beirut.

¹²⁷ Welchman (2007) quoting Jamshir (2005) quoting a Shi’i judge, p. 22.

¹²⁸ Ibid, quoting Jamshir, p. 23.

¹²⁹ Note that Bahrain issued a unified code in 2017.

in 1996. The only other Muslim regional personal status document drawn up by the League of Arab States in the late 1980s (known as “The Draft Unified Arab Law of Personal Status.”)¹³⁰ In following with the Muscat Document the Gulf states’ family codes share similar features, but differ in their identification of procedures in the case that an issue is not directly covered in the text – (particularly in the Islamic jurisprudential school from which the issue should be addressed).¹³¹

The GCC family codes also differ in their position on those who are subject the law. In Qatar, for example, the Law of the Family applies to “all those subject to the Hanbali school of law,” while “family matters of non-Muslim parties shall be subject to their own provisions” (Article 4). Additionally, those Muslims who adhere to other schools of jurisprudence may apply their own rules or opt to apply the national family code.¹³² In contrast, the UAE Personal Status code applies to all its citizens “unless non - Muslims among them have special provisions applicable to their community or confession.” And it equally applies to non-citizens “unless one of them asks for the application of his law.”¹³³

In this context of codification of the family laws, since the turn of the 21st century the GCC states have all engaged in reform efforts that claim to reshape the strategies of governance. These have been introduced through glossy ‘vision documents’ and accompanied by varied degrees of legal and political change. Ahmed Dailami describes this period as “...an unprecedented attempt in the Gulf to marry technocracy, good governance and legal reform. As a ‘third way’ between revolution (Iran) or imposed democracy (Iraq)

¹³⁰ Lynn Welchman (2010) “Bahrain, Qatar, UAE: First Time Family Law Codifications in Three Gulf States” in Bill Atkin (ed.) *International Survey of Family Law* 2010 edition. Bristol: Family Law, pp.163-178.

¹³¹ Ibid.

¹³² Qatari Law Promulgating the Family, Law no.22 of 2006, *Official Gazette* no.8 of 28 August 2006.

¹³³ UAE Law of Personal Affairs, Federal Law No. 28, Issued on 19/11 2005. Available at <http://ejustice.gov.ae/portal/page/portal/eJustice%20MOJ%20Portal/About%20Us/Law%20of%20Personal%20Affairs>.

and the status quo, governments throughout the Gulf Cooperation Council embarked on reform initiatives almost immediately after the start of the Iraq War of 2003,” and he describes the changes as a “response to internal and external pressure for public participation in the business of government.”¹³⁴ These resulted in vision documents (or ‘national strategies’) that “skirted a middle way between a constitution and a manifesto” around 2005-2010 that “claimed to offer a new direction of economic growth and political flourishing in the Gulf States.”¹³⁵ Pressures from human rights monitors and activists, including the UN human rights treaty committees, and domestic activists calling for governments to uphold their global treaty commitments can certainly be understood as part of this external and internal pressure to appear to democratize governance. These efforts have continued, for example, in the April 2016 announcement of Saudi Arabia’s ‘Vision 2030,’ a broad plan for economic restructuring and growth and public service expansion which references being respectful of “human rights” as part of the vision.¹³⁶

Chapter Conclusions

The broader ways in which GCC states communicate understandings of human rights as they relate to Islamic law will be addressed in the treaty chapters that follow in light of this chapter’s discussion of the dynamic history, inextricably linked to politics, in which these understandings have been communicated and developed. The above discussion on Islam, modernity, law and human rights, both in the wider context and in the GCC,

¹³⁴ Ahmed Dailami (2017) “Militancy, Monarchy and the Struggle to Desacralist Kingship in Arabia” in Faisal Devji, Zaheer Kazmi (eds) *Islam After Liberalism*. London: Hurst. p. 213.

¹³⁵ Ibid.

¹³⁶ Saudi Vision 2030. Available online at <http://vision2030.gov.sa/ar>.

helps highlight the dynamic conceptual context in which UN human rights treaties are being constantly negotiated in the Muslim-majority world and in the GCC states. Areas of law in the GCC that relate to the family, personal status, criminal law and political rights have developed a particularly conservative interpretation in the GCC and yet there is a growing engagement between GCC states and UN human rights committees over the potential for reform in these legal areas as they relate to the GCC states' commitments to UN human rights law. I now demonstrate in the following empirical chapters how arguments about Islam, law and human rights have developed in particular ways in relation to the engagement between GCC states and the UN conventions on torture, women and children and the covenant on civil and political rights. These treaty chapters, together with the thesis conclusion, offer commentary on how GCC states are engaging with UN human rights treaties around a particular discourse which sometimes highlights a degree of flexibility and interpretation in conceptualizations of "Islamic" law, "Islamic" human rights, and "Islamic" modernity, as well as the cases in which interpretations of Islam in these discussions remain more rigid and less open to change.

Chapter 3: Islam and the Ratification of the UN Convention Against Torture (CAT) in GCC States

To explore the impact of UN human rights treaties on conceptualizations of Islam and human rights, this chapter discusses the nature and progression of GCC countries' engagement with the UN Convention Against Torture (CAT) on ideas about Islam and punishment. GCC countries ratified the CAT relatively recently, starting in the 1990s, and the resulting engagement has contributed to a growing and evolving discourse on Islam, human rights and punishment unfolding across the region. In dialogues related to CAT ratification, GCC actors have discussed forms of punishment such as flogging as stoning under Islamic law alongside human rights vocabulary of the individuals' right to protection from torture and cruel punishment - a process which, I argue, is a form of norm diffusion in relation to "norm localization" and "vernacularization" elaborated in the theoretical sections of this thesis.

Although the CAT today has today been widely ratified across the GCC, its acceptance in the GCC was delayed and gradual. Most GCC states ratified in the 1990s and 2000s, many years after the treaty's initial introduction at the UN in 1984, and relatively late when compared with the broader MENA region. Kuwait was the first to ratify in 1996, with Saudi Arabia, Bahrain and Qatar ratifying the CAT soon after in the late 1990s and early 2000s. The UAE ratified most recently in 2012. Oman has received continued requests from the UN and various governments and advocacy groups to ratify but has not yet changed its position.¹³⁷ The CAT today holds 157 UN state parties, including all MENA states except Iran and Oman.

GCC Ratification of CAT
Kuwait 8 Mar 1996
Saudi Arabia 23 Sep 1997
Bahrain 6 Mar 1998

¹³⁷ See, for example, 2013 UN Universal Periodic Review. Available at <https://www.upr-info.org/followup/index/country/oman>.

Qatar 11 Jan 2000
UAE 19 July 2012

There is ongoing concern from global human rights monitors regarding torture and cruel punishment in the MENA region, and particularly in the GCC. Despite efforts to define and outlaw torture and cruel punishment in a growing body of international human rights law, these practices remained rampant across the globe throughout the 20th century.¹³⁸ The UN General Assembly adopted the CAT on 10 December 1984 and it entered into force on 26 June 1987.¹³⁹ The CAT outlaws torture alongside broader “cruel, inhuman and degrading treatment or punishment,” and sets out a number of imperatives for state parties to enforce. Article 1.1 of the CAT expands on existing definitions of torture contained in the UDHR and ICCPR adding in specifications for *mental* torture, as well as highlights possible motivations behind the act that constitute torture in contrast to punishment stemming from “lawful sanctions.” The CAT defines torture as,

Any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person, information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.

The CAT goes on to outlaw even broader practices that it terms “cruel, inhuman, or degrading.” However, these practices are not elaborated on or defined. Article 16 of the CAT leaves open-ended these ‘other’ forms, saying,

¹³⁸ Writing in 1978, philosopher Henry Shue noted that, “No other practice except slavery is so universally and unanimously condemned in law and convention...yet unlike slavery... the practice of torture remains widespread and growing.” Henry Shue (1978) “Torture,” *Philosophy and Public Affairs*, Vol. 7, No. 2, pp. 124-143, p.124.

¹³⁹ Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (adopted 10 December 1984, entered into force 26 June 1987) 1465 UNTS 85 (CAT).

Each State Party shall undertake to prevent in any territory under its jurisdiction other acts of cruel, inhuman or degrading treatment or punishment which do not amount to torture as defined in Article 1, when such acts are committed by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. In particular, the obligations contained in articles 10, 11, 12 and 13¹⁴⁰ shall apply with the substitution for references to torture or references to other forms of cruel, inhuman or degrading treatment or punishment¹⁴¹

In terms of enforcement, Article 2 of the CAT requires each state party to “take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction,” ensuring “no exceptional circumstances...may be invoked as a justification of torture.”¹⁴² The remainder of the Convention empowers an official Committee Against Torture to review state practices and make recommendations, and also allows state parties to refer a dispute to the International Court of Justice under Article 30.¹⁴³

The definitions and imperatives set out on the CAT, while an achievement in their reflection of a degree of global consensus on torture and punishment, are often legitimately criticized for providing unclear standards and definitions. As the quote above makes clear, the CAT defines torture as harm which involves “severe pain and suffering” under coercive

¹⁴⁰ These clauses are regarding education of state actors on torture prevention policies, review of practices, and investigation proceedings.

¹⁴¹ The concept of cruel punishment during the time of drafting was synonymous with “severe” in the British context seen as punishments disproportionate to the crime, while the American interpretation was more focused on certain unsavory methods that constituted cruelty (Granucci, 1969, p. 860). The CAT does not settle the issue of interpretation of the concept of cruelty, instead leaving it open to interpretation.

¹⁴² Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (adopted 10 December 1984, entered into force 26 June 1987) 1465 UNTS 85 (CAT).

¹⁴³ Notes on CAT Procedure: The Convention empowers its Committee to hold two annual sessions, where reports are examined from a number of state parties orally in the presence of at least one representative of the state being examined. State Parties are informed in advance of talking points that will be discussed (‘Lists of Related Issues’). Upon completion of the session, the Committee adopts conclusions and recommendations, entering into dialogue meetings with State Party representatives, and a separate working group exists to review individual communications received under article 22 of the Torture Convention, which solicits communications from private parties and examines their validity, and makes recommendations to the Committee.

circumstances for obtaining information, but not for suffering stemming from so-called “lawful sanctions” and, notably, does not elaborate or provide further information on what constitutes “severe” in this context, an adjective which some, such as US lawyer Gail Miller, claim is “virtually impossible to quantify.”¹⁴⁴ Cruelty, degradation and inhumanity are equally unclear concepts in the CAT, as the treaty merely calls to outlaw “cruel” “inhuman” and “degrading” punishment without elaborating on the practices that might fall into these categories. In an interview with a CAT Committee member, I was told that these terms and categories are “purposefully left open-ended” to “encourage and reflect consensus on broad shared principles about human dignity.”¹⁴⁵

All GCC state parties to the CAT are accused of violating their CAT commitments in laws, practices and policies that support or fail to protect against torture and cruel punishment. The GCC states are not alone in their failure to comply with the CAT. Despite the fact that the aforementioned anti-torture efforts in international law met with widespread ‘support’ in ratification on UN books, concerns over torture remain strong. According to Amnesty International, some 112 countries across the globe tortured their citizens in 2012.¹⁴⁶

CAT ratification in the GCC and the resulting engagement between GCC and UN CAT Committee representatives has helped expose a degree of contestation and dynamism among GCC actors’ ideas about Islam and punishment. Islam stands, at times, at the core of evolving discussions about the CAT in the GCC because of so-called “Islamic”

¹⁴⁴ Gail Miller (2005) “Defining Torture.” Floersheimer Center for Constitutional Democracy, Benjamin N. Cardozo School of Law, Available at <https://cardozo.yu.edu/sites/default/files/Defining%20Torture.pdf>.

¹⁴⁵ Interview with UN CAT Committee member, by phone, April 25, 2017.

¹⁴⁶ Dignity Institute (2013) “112 Countries Tortured their Citizens in 2012,” May. Available at <http://www.dignityinstitute.org/servicenavigation/news-and-activities/international-news/2013/05/112-countries-tortured-their-citizens-in-2012-amnesty-international.aspx>.

punishments conducted in these countries. Despite Islam's centrality in these discussions, however, Islam's exact role in informing legal understandings of criminal punishment in the GCC is evolving, moving, and underexplored in the international legal scholarship. CAT ratification in the GCC helps expose some fluidity in conceptualizations of Islam and punishment in the region.

There is great diversity in interpretations of Quranic text concerning Islam and punishment in broader Islamic legal scholarship not reflected in recent laws that will be discussed in the chapter. Those involved in constructing laws on Islam and punishment in GCC states often do so behind closed doors and without transparency or accountability requiring that they justify how Islamic ideas are reflected in the law. CAT ratification therefore serves an important role in these countries by stimulating a growing debate about Islamic justifications for certain punishments to help demonstrate compatibility between Islam and the CAT, where discussion (and disagreement) about Islamic ideas about punishment is otherwise scant and muted.

The analysis in this chapter also reveals that these meetings open up legitimate contestation that can result as the CAT and GCC laws do not necessarily provide clear and specific definitions. The CAT is revealed to be vague and unclear in the definitions put forward of "torture" and "cruel punishment" – making it possible to contest where any number of practices may or may not fit under these terms. CAT ratification and resulting domestic debates capture the attempts by GCC officials to harmonise conservative Islamic ideas about punishment with 'global' conceptions of individual freedoms and rights.

Part I of this chapter provides background on the history and development of concepts of "torture" and "cruel punishment" in international law, as well as on the ways

these concepts are addressed in various interpretations of Islamic law, with reference to related developments in defining and regulating torture in GCC regional “Arab” and “Islamic” institutions emerging around the 1990s and 2000s. Part II then explores the influence of the CAT in the region by examining a number of illustrative examples of GCC-CAT engagement, looking in depth at the cases of Saudi Arabia and Qatar, where discourses on Islam between these countries’ representatives and the CAT Committee have been the most numerous and contentious. This section considers the related domestic political context in these cases. It discusses, among other influences, the role of religious actors and arguments about Islam involved in the process of ratification and submission of Reservations, Understandings, and Declarations (RUDs), as well as in state interactions with the UN Committee Against Torture and domestic responses to these interactions. The end of this section will also provide some discussion of how these in-depth studies compare to other GCC CAT party engagement – Kuwait, Bahrain, and UAE – and non-party to CAT, Oman. In closing, Part III of this chapter discusses how norm diffusion identified in these cases can be understood compared in context with chapters on other human rights treaties that will follow.

3.1 Torture and Cruel Punishment in Islamic Legal Thought

Islamic *Sharia* law and customary understandings of Islam have historically influenced (and continue to influence) criminal law and punishment in the GCC in varying ways depending on the interpretation. The influence of Islamic law in condoning practices such as floggings, stoning and amputations varies between various interpretations of Islamic jurisprudence (*fiqh*). The analysis that follows demonstrates that Islamic law

neither comprehensively bans torture and cruel punishment, nor does it prevent such a ban. As Sadiq Reza claims, Islam's stance on torture is as much "a matter of politics as of law" – "those who seek justification for investigative torture in the *fiqh* [Quran and Sunna] or *siyasa* [governance in accordance with Sharia] will find it there; so too will those who seek its prohibition."¹⁴⁷ Reza therefore suggests that perceived conflict between Islam and the CAT in the GCC is a matter of interpretation. The religious basis of Quranic punishments for *hadd* crimes (that are "few in number but notoriously harsh in nature") are largely unquestioned, and yet, there is no doubt that "most if not all of these punishments are irreconcilable with contemporary norms of human rights."¹⁴⁸

Historically, extreme punishment of suspected criminals aiming to extract confessions was practiced in pre-modern Islamic societies, and indeed in most pre-modern societies. Several reports cite a companion of Muhammad who used punishment or threats of punishment to gain information from suspected criminals or witnesses. In the 10th century, a judge in Baghdad reported flogging as common practice for criminal investigation, and flogging was later institutionalized in the early Ottoman criminal procedures, evidenced in a 16th century criminal code. While judicial approval was allegedly required in some cases, and Qadis sometimes intervened to prevent torture, the practice was widely reported across pre-modern Muslim societies.

Modern Islamic punishments have evolved from many of these pre-modern practices, although a literal interpretation of Islamic text calling for whippings, floggings and stonings –often performed in public – are instituted in the law and/or practiced in a number of GCC countries, including Qatar, UAE and Saudi Arabia. This is often seen as an

¹⁴⁷ Sadiq Reza (2007) "Torture and Islamic Law," *Chicago Journal of International Law*, Vol. 8, No. 1, pp. 21-41.

¹⁴⁸ Ibid.

attempt from the conservative establishment in these countries to harken back to some of the extreme and brutal nature of these pre-modern acts. Judicial corporal punishment including whipping and caning is practiced in a number of Muslim-majority countries across Asia, Africa and the Middle East, including across the GCC including the UAE, Qatar and Saudi Arabia. Saudi Arabia legally authorizes floggings for any “major crimes” (including rape, theft and drug crimes) and there are more regular reports of these forms of punishment in Saudi Arabia than in other GCC states. Some 15 countries, including Iran, Sudan, Afghanistan and Mali, reportedly practice stoning, although in some cases it is practice extrajudicially. Stoning remains legal, but rarely practiced, in the GCC in Saudi Arabia, the UAE and Yemen. In these countries numerous people have been sentenced to stoning, although there are no recent reports of stonings being carried out. In Qatar, stoning is technically legal but not recently practiced.¹⁴⁹

3.1.1 Punishment in Islamic Texts

There is much evidence of ‘torture’ and other ‘cruel punishment’ being denounced as a violation of Islamic law among public and private actors in the GCC. In just one example, Saudi newspaper *Daily News* reporting on a prominent torture case involving a foreign maid highlights the claim, “barbarity won’t be tolerated in a society that prides itself on its Islamic values.”¹⁵⁰

¹⁴⁹ Cornell Center on the Death Penalty Worldwide, Cornell Law School. Available at <https://www.deathpenaltyworldwide.org/country-search-post.cfm?country=Qatar>.

¹⁵⁰ “Saudi Daily Harshly Criticizes the Treatment of Foreign Maids in Saudi Arabia and the Gulf,” Middle East Media Research Institute (MERI), June 23, 2008. Available at <https://www.memri.org/reports/saudi-daily-harshly-criticizes-treatment-foreign-maids-saudi-arabia-and-gulf>.

Islamic legal understandings of punishment are based on varied interpretations of the Quran and Hadiths. Concepts of “cruelty,” “degradation” and “torture” are present in the Quran and Hadiths in various contexts, and their practical import is debated between and within Islamic schools of thought. These texts often frame these concepts in the language of “duties” and of community and family welfare (crucially, for the discussion that will follow, different from the language of “individual rights” contained in the CAT).

Harsh physical punishment is perhaps most prominently found in Quran 24:2, which calls for flogging as punishment for sexual promiscuity, saying,

The [unmarried] woman or [unmarried] man found guilty of sexual intercourse – lash each one of them with a hundred lashes, and do not be taken by pity for them in the religion of Allah, if you should believe in Allah and the Last Day. And let a group of the believers witness their punishment.¹⁵¹

Contemporary interpretations of this verse vary widely, and will be discussed here. Islamic law sets out a number of ‘categories’ for types of criminal offense, prompting varied types of penalties based on the nature of the crime. These include: those offenses said to violate divine authority and prescribed a specific punishment in the Qu’ran (*hadd/hadud(pl.)*), those said to violate the divine as well as another individual, resolved in quid-pro-quo exchanges (such as money paid to the family of a murder victim, ‘blood money,’ or retribution) (*qisas*), those against another individual that fall under a judge’s discretion (*ta’zir*), offenses against the public policy of a state that call for administrative penalties (*siyasa*) and offenses that can be addressed by personal penance (*kaffara*).¹⁵² The first three offenses of *hadd (hadud pl.)*, *jinayat*, and *ta’zir* are to be adjudicated before a religious judge (*qadi*) unless a state has moved jurisdiction under another court. *Fuqaha*

¹⁵¹ Quran 24:2.

¹⁵² Silvia Tellenbach (2014) “Islamic Criminal Law” in Markus Dubber and Tatjana Hornle (eds) *The Oxford Handbook of Islamic Criminal Law*. Oxford: Oxford University Press.

(jurists) from the different schools of Islamic law present varying perspectives on how these punishments are imparted.¹⁵³

While there is some variance among Islamic legal schools of jurisprudence (*madhhab*), the five common Sunni schools (Hanafi, Maliki, Shafi'i, Hanbali, Zahiri) and two Shia schools (Ja'fari, Zaidi) tend to converge in their understanding of divine (*hadd*) crimes to include: sex outside of marriage, false accusation of unlawful sexual acts, wine drinking (sometimes any alcohol), theft, and highway robbery, and, sometimes, apostasy. Punishments understood to be divinely sanctioned for *hadd* offenses include flogging, amputation, exile, or sometimes, stoning and other forms of execution such as beheading.

3.1.2 Punishment in Islamic Societies Over Time

Scholars viewing these legal standards note that today's relatively strict interpretation of *hadd* crimes and legal punishment may not have, in fact, originated in such rigid form. Islamic legal scholar Joseph Schacht writes that the rules of punishment in Islamic law, seemingly rigid and set in current form from direct reference to Quranic verses, did not, in fact, originate clearly and strictly from the time of Mohammed, and were highly contested in their origins. Schacht makes the point that the religious basis of this law was evolving and changing over time until the early 'Abbasid period (yrs. 750-1517). Early Islamic society began to form religious legal institutions along the ancient Arab system of arbitration, in which punishments were often imparted for political reasons, for example, for disloyalty. More extreme practices of stoning to death as a punishment for adultery

¹⁵³ FB Hakeem (2003) "Alternative Perspectives on Penalty Under Sharia: A Review Essay," *International Journal of Comparative and Applied Criminal Justice*, Vol. 27, No. 1, pp. 85-105.

(*rajm*) according to interpretation of alleged commands of the Prophet also have contested Quranic origins, the verse claimed to be entirely spurious by some early Muslim sects such as the Khawarij/Khajirites.¹⁵⁴ It was only after the first century of Islam, he argues, that concepts of punishment began to coalesce into the form commonly invoked today.

This is also Sami Zubaida's point in his book *Law and Power in the Islamic World*. Zubaida provides historical evidence against a myth of monolithic traditional Islamic law based on Shariah claiming Islamic law was more fluid in its initial formation, greatly influenced by the interests of early political and administrative elites.¹⁵⁵ Wael Hallaq writes that early Islamic *qanun* (or laws promulgated by Muslim sovereigns) permitted torture – often to extract confessions from thieves, and encouraged the execution of highway robbers under the Sultan's authority, however, Islamic legal jurists at this time, Hallaq insists, voiced considerable objection to some of these practices. Usury, extra-judicial taxes, and torture, he writes, were “perhaps the most objectionable pieces of legislation in the view of the jurists,” explaining that some Shaykh al-Islams even militated against the *qanun* over issues of taxation and torture.¹⁵⁶

From the early period of Islam, jurists have held great authority to interpret Islamic Sharia law on the basis of the divine texts. These jurists typically held positions which would today be seen as outside of “government,” deriving their authority from their proficiency and integrity in discerning Sharia law. The jurists' views typically appear as a *fatwa* (legal opinion) responding to a question, and are considered interpretive. The

¹⁵⁴ Sahih Al-Buhkari, trans. Muhammad Muhsin Khan (1997) *The Translation of the Meanings of Sahih Al-Bukhari Arabic-English, Volume 8*. Riyadh: Darussalam Publishers, p. 334, 420 and discussion in Ann Black, Hossein Esmaeili, and Nadirsyah Hosen (2014) *Modern Perspectives on Islamic Law*. Edward Elgar Publishing, pp. 222-223.

¹⁵⁵ Sami Zubaida (2004) *Law and Power in the Islamic World*. New York, NY: I.B. Tauris.

¹⁵⁶ Wael Hallaq (2001) *Introduction to Islamic Law*. Cambridge: Cambridge University Press, p. 78.

rulers' *siyasa* represent "Islamic law" as an interpretation complementary to *fiqh*, and *siyasa* and *fiqh* constitute "two realms" of Islamic law. Early Islamic views on torture were indeed diverse, as evidenced by the varied positions held by prominent Islamic jurists in early Islam, outlined here under three main categories.

A number of prominent Islamic jurists put forward the view that beatings to obtain confessions were impermissible, as put forward by leading early Islamic jurists, Zahiri jurist Ibn Hazm (d. 1064), and Shafi'i jurist al-Ghazzali (d. 1111). By contrast, a second view held by other jurists was that criminal suspects previously convicted for crimes could be beaten to gain a confession – a claim made by prominent voices of their time such as Hanbail jurist Ibn Taymiyya (d. 1328), Maliki jurist Ibn Farhun (d. 1396) and Hanafi jurist al-Tarabulusi (d. 1440). A third view was held that beatings for confessions were forbidden for qadi judges in Islamic courts, but permitted for lawyers and other government authorities, as held by Shafi'i jurist al Mawardi (d. 1058), a very influential political theorist in Islam, who claimed flogging was permissible for confessions "according to the strength of the accusation" (*ma'a quwwat al-tuhmah*), which, Islamic legal scholar Sadiq Reza, claims best reflects the practice of torture in Islamic history. Al Mawardi's view, Reza suggests, "allows Islamic law to have it both ways when it comes to torture", with the *fiqh* providing a purified theoretical prohibition, but *siyasa* licensing the practice for practical purposes.¹⁵⁷

The development of Quranic *hadd* punishments influenced by politics, Sadiq Reza argues, "richly illustrates....an essential dynamic of Islamic law: the interplay between the jurists of Islam, whose doctrines and discourses over fourteen hundred years form the

¹⁵⁷ Sadiq Reza (2007) "Torture and Islamic Law," *Chicago Journal of International Law*, Vol. 8, No. 1, 1 June. p. 27.

corpus of formal Islamic jurisprudence, and Islam's political authorities, whose rules and actions both depend on the jurists' doctrines for legal legitimacy and constitute a complementary source and measure of Islamic law.”¹⁵⁸

Despite evidence of a malleable early history, today a relatively rigid instantiation of codes of punishment in Islamic law concerning *hadd* crimes is clearly visible in GCC states with common punishments of flogging, amputation, and exile prescribed in law throughout the region along strict guidelines in religious law. (This can be seen as a relatively foreign process to other perspectives on Islam as Islam places “great emphasis on the conscience and interpretation of the believer” rather than on authorities imposing its standards¹⁵⁹). Olivier Roy highlights the point that, while today there is a trend towards “clericalization” with institutionalized religious elites, the institutionalization of religious elites within government is a more modern phenomenon. Islamic religious authorities today have gained strong (although varied) influence in the state pushing for the complete and total implementation of Sharia in states like Saudi Arabia, and this influence is most pervasive in areas of family law and criminal law for *hadd* offenses across the region.¹⁶⁰

Although there exists strong convergence relating to sanctioning certain extreme punishments in criminal law in MENA states today, lesser penalties are far more commonly imparted in the contemporary Middle East for most *hadd* offenses, with the more extreme forms of punishment prescribed by law often seen as more metaphorical than literal. The prevalence of more literal interpretations across the GCC states,

¹⁵⁸ Ibid, p. 23.

¹⁵⁹ Interview with Saudi human rights activist, by phone, April, 2017. Also see discussion in Abdullahi Ahmed An-Na'im (2009) *Islam and the Secular State: Negotiating the Future of Shari'a*. Cambridge, MA: Harvard University Press, p. 4, 20-4.

¹⁶⁰ Olivier Roy (1994) *The Failure of Political Islam*. Cambridge: Harvard University Press. p. 29.

particularly the effort to maintain these in law, makes them unique and extreme compared with other Muslim-majority states.

These types of literal interpretations of Islamic punishments are practices often deemed “cruel” by most human rights monitors. However, their purpose is meant to be purely punitive, and thus not in breach of the notion about *intent* contained in the CAT definition of torture (with the intention of the punishment of obtaining information). Still, the practices are still understood by many human rights monitors as in violation of the ‘cruel treatment’ clause. The extremity of physical suffering endured by those accused of *hadd* crimes has grown to be a topic of concern of numerous human rights advocates.

When considering practices of punishment invoking Islamic law as a basis, it is important to make explicit that even the most basic terms “torture” and “cruel, inhuman, and degrading” as qualities describing banned punishments have highly contested interpretations globally, and that their meanings when applied to qualifying modern punishments is continually debated. Islamic legal scholar Talal Asad argues that the concepts of torture and cruel punishment are given much of their operative sense from history and culture, and, while international law helps introduce new ways of conceptualizing ‘suffering’ and ‘sufferer,’ their dedication to eliminating pain and suffering can be both vague and problematic, and often “conflicts with other commitments and values” including the “duty of the state to maintain its interests.”¹⁶¹ This is a claim often invoked by GCC states in UN meetings to defend practices like corporal and capital punishment. There is a clearly unsettled tension between these states’ interests and certain

¹⁶¹ Talal Asad (1996) “On Torture, or Cruel, Inhuman, and Degrading Treatment,” *Social Research*, Vol. 63, No. 4 (Winter), pp. 1081-1109.

global values put forward in CAT meetings, and attempts by GCC states to navigate these tensions will be explored later in this chapter.

3.1.3 Punishment in Islamic and Arab Human Rights Instruments

Most Muslim-majority states, including declared Islamic states, have ratified regional and Islamic declarations and codes condemning torture and “cruel punishment” or “degradation.” These include the 1990 Cairo Declaration on Human Rights in Islam, the 1994 Arab Charter on Human Rights, and the recent 2015 GCC Human Rights Declaration, all of which contain clauses expressly prohibiting torture and cruel punishment. For example, the “Universal Islamic Declaration of Human Rights” of 1981, an early document drafted by Islamic Councils from a number of MENA states, enshrines a “right to protection against torture,” and, like the CAT, the declaration condemns the infliction of both physical and mental torture or punishment (translated as “degradation,”) for the purpose of gaining information. The “Draft Charter on Human and People’s Rights in the Arab World” put forward by the Arab Union of Lawyers in 1987, and, later the “Cairo Declaration on Human Rights in Islam” adopted by the Organization of the Islamic Conference in 1990 also outlaw *both* torture and cruel treatment. Article 20 of the Cairo Declaration expressly denounces both in some detail, saying,

It is not permitted without legitimate reason to arrest an individual, or restrict his freedom, to exile or to punish him. It is not permitted to subject him to physical or psychological torture or to any form of maltreatment, cruelty or indignity...¹⁶²

¹⁶² Cairo Declaration on Human Rights in Islam (adopted 5 Aug 1990) UNGAOR, World Conference on Human Rights, 4th Session.

Similarly, the 1994 (revised 2004) Arab League Arab Charter on Human Rights prohibits “physical or psychological torture or...cruel, degrading, humiliating, or inhuman treatment” (Article 8), although the Charter does not go far in defining or elaborating on these terms.

The recent 2014 GCC Human Rights Declaration reiterates this same commitment under article 36, saying “Torture is prohibited whether physically or psychologically as is cruel, inhuman or degrading treatment.”¹⁶³ When I contacted staff members in the national human rights institutions of GCC states to ask about the significance of the declaration’s stance on torture in their human rights work, few would comment on the 2014 declaration and the inclusion of this clause, indicating that the profile of this recent declaration and its anti-torture clause in GCC affairs is modest, at best. The Saudi National Human Rights Committee replied to my query regarding the use of the declaration and its anti-torture clause by saying, “Regarding your question the Society uses the GCC Human Rights Declaration just as the Islamic [Cairo] & the Arabian [Arab] Human Rights Declaration” and informed me that the NHRC was “not directly involved in the drafting of the GCC declaration, which is determined at the GCC level.”¹⁶⁴ An EU diplomat based in Riyadh informed me in an interview that the GCC human rights section was “nascent” and “disjointed,” and that the torture clause in the GCC declaration was a “good first step” and “start” despite the shortcomings clearly visible in protecting citizens from harm in local laws and practices. “Having GCC-led declarations on the topic is a good way ...as a

¹⁶³ GCC Human Rights Declaration for the Member States of the Cooperation Council for the Arab States of the Gulf (adopted 9 December 2014). Gulf Cooperation Council.

¹⁶⁴ E-mail correspondence, Nuha Alissa, Information Center The National Society for Human Rights, April 21, 2017.

starting step... to take these issues into the sub-regional level. It is becoming more clear however that many practices violate their own commitments.”¹⁶⁵

It is evident in this chapter’s discussion that the line between just punishment and unlawful torture is not clear in UN definitions, and that there is much room for legitimate varied interpretation and contestation under Islam in CAT committee meetings over defining these terms. This process of interpretation and contestation is the focus of this chapter’s analysis, and the chapter next demonstrates how, through this process, GCC states are generally adapting the language and concepts used to justify these Islamic practices around modern human rights concepts, even if the concepts of ‘torture’ and ‘cruel punishment’ remain vague in their exact meanings and the practices remain unchanged.

3.2 Torture and Cruel Punishment in the GCC

The states in the MENA region, and the GCC in particular, receive widespread criticism from human rights monitors such as Amnesty International and Human Rights Watch, as well as from other governments for practicing torture.¹⁶⁶ Noting the pervasiveness of allegations of torture in MENA, Laleh Khalili and Jillian Schwedler found through an examination of incarceration practices in the Middle East over time that “complex operations of state power” and “concentrations of coercive power” in the states of the Middle East have led the region to act as some of the worst offenders in torture abuses. In 2010 these scholars claimed that “[t]he [Middle East] region harbors numerous mukhabarat states that extensively police and incarcerate its citizens, engaging in

¹⁶⁵ Interview with EEAS – GCC human rights committee member, Brussels, by phone, 27 April 2017.

¹⁶⁶ Human Rights Watch (2016) “Arab Gulf States: Attempts to Silence 140 Characters,” 1 November. Available at <https://www.hrw.org/news/2016/11/01/arab-gulf-states-attempts-silence-140-characters>.

widespread torture and implementing spectacular punishments.”¹⁶⁷ Reporting in 2014 after the region underwent massive political upheaval brought by numerous national uprisings, Amnesty International noted ongoing concern about torture, saying, “A common feature across the Middle East and North Africa is the extent to which governments have resorted to torture and other ill-treatment to tighten the state grip on dissent and protests or to respond to perceived threats against national security.”¹⁶⁸

Sadiq Reza combined data from a study by Oona Hathaway in 2002 measuring instances of torture across Muslim countries party to the CAT during the 1980s and 1990s using data from Human Rights Watch and Amnesty International with a 2005 study of Constitutional declarations in forty-four Muslim-majority countries by Stahnke and Blitt, to claim some correlation between “the degree to which a Muslim-majority country professes a commitment to Islam and the extent to which torture is practiced there.”¹⁶⁹ Reza found through this data that Muslim-majority countries that “declare themselves to be Islamic states appear to torture more than other Muslim-majority countries”.¹⁷⁰ However, Daniel Price’s research that same year testing the correlation between human rights records of a country and so-called “Islamic political culture” of a country, found no link, suggesting other factors, such as extreme styles of autocracy, may be more suggestive of torture than Islamic legal systems.¹⁷¹ It seems clear that Islam as a religion itself is not the direct link in

¹⁶⁷ Laleh Khalili and Jillian Schwedler (2010) *Policing and Prisons in the Middle East: Formations of Coercion*. New York: Columbia University Press.

¹⁶⁸ Amnesty International (2014) “Torture in 2014, 30 Years of Broken Promises,” Available at <https://www.amnestyusa.org/reports/torture-in-2014-30-years-of-broken-promises/> p. 38-40.

¹⁶⁹ Sadiq Reza (2007) “Torture and Islamic Law,” *Chicago Journal of International Law*, Vol. 8, No. 1, pp. 21-41, p. 31.

¹⁷⁰ Ibid.

¹⁷¹ Daniel Price (2002) “Islam and Human Rights: A Case of Deceptive First Appearances,” *Journal for the Scientific Study of Religion*, Vol. 41 No. 2, June, pp. 213-225.

such studies, rather the fact that Muslim-majority countries have high rates of torture is linked to other factors.

This chapter focuses on the six GCC countries, where concerns about torture have been consistently voiced. Human Rights Watch reported in 2016 about the GCC that “Hundreds of dissidents, including political activists, human rights defenders, journalists, lawyers, and bloggers, have been imprisoned across the region, many after unfair trials and allegations of torture in pretrial detention. GCC rulers’ sweeping campaigns against activists and political dissidents have included threats, intimidation, investigations, prosecution, detention, torture, and withdrawal of citizenship.”¹⁷² An “alarming number” of cases of torture and cruel punishment in the recent five years in Kuwait, from the “ill-treatment of activists from Kuwait’s stateless Bidun community,” detained following demonstrations in 2011 and 2012, to the use of torture in 2015 in high profile “terrorism” cases with confessions extracted through torture or other ill-treatment.¹⁷³ Global human rights monitors have documented high-profile cases of torture, for example, of a group of businessmen forced into confessions in the United Arab Emirates in 2016, and of foreign workers in Qatar during that same year.^{174 175}

Saudi Arabia in particular is a country of great global concern regarding torture and ill treatment occurring inside the Kingdom. Although the Saudi Criminal Procedure Code

¹⁷² Human Rights Watch (2016) “Arab Gulf States: Attempts to Silence in 140 Characters.” 11 January. Available at <https://www.hrw.org/news/2016/11/01/arab-gulf-states-attempts-silence-140-characters>.

¹⁷³ Amnesty International (2016) “Kuwait: UN Review Must Halt re-Legitimization of Torture and Other Ill-Treatment,” 24 July, Available at <https://www.amnesty.org/en/press-releases/2016/07/kuwait-un-review-must-halt-re-legitimization-of-torture-and-other-ill-treatment/>.

¹⁷⁴ Owen Bowcott (2016) “Businessmen Held in UAE Were Tortured into Confessions,” *The Guardian*, 14 February. Available at <https://www.theguardian.com/world/2016/feb/14/businessmen-uae-tortured-into-confessions-un-report>.

¹⁷⁵ Amnesty International (2016) “Qatar: Conviction of Three Filipinos Despite Torture Allegations Strongly Condemned,” 3 May, Available at <https://www.amnesty.org.uk/press-releases/qatar-conviction-three-filipinos-despite-torture-allegations-strongly-condemned>.

prohibits “torture” and “undignified treatment” (Article 2), it does not provide any specific definitions or criminal sanctions for government officials who torture. Human Rights Watch reported in 2016 that Saudi prisons sometimes subject detainees to torture and other ill-treatment, including at detention facilities run by Saudi Arabia’s Public Security Department (police) and by the General Directorate of Investigation (*al-Mabahith*).¹⁷⁶ Similarly Human Rights Watch has documented widespread allegations of torture in the UAE prison system, citing “credible allegations that security forces tortured people held in pretrial detention” and sometimes forced disappearances.¹⁷⁷ Similar accusations of torture particularly in prison and detention systems including using tactics such as whippings, floggings and starvation to extract confessions have been lodged against the rest of the GCC states, including Oman¹⁷⁸, Kuwait¹⁷⁹, Qatar¹⁸⁰ and Bahrain.¹⁸¹

Most GCC states have legal systems that allow for corporal punishments for *hadd* crimes (for a range of ‘moral’ crimes including murder and adultery) which sanction practices such as flogging, whipping and stoning either in law or practice under their criminal justice systems. These punishments do not amount to ‘torture’ because they are not aimed to extract confessions, however, they can be seen as a violation of standards about human dignity contained in the CAT related to ‘cruel’ punishment because of the harsh pain these practices inflict. Floggings and other corporal punishments for violating

¹⁷⁶ Human Rights Watch (2016) “UN Committee Against Torture: Review of Saudi Arabia,” 26 April, Available at <https://www.hrw.org/news/2016/04/26/un-committee-against-torture-review-saudi-arabia>.

¹⁷⁷ Human Rights Watch (2016) “UAE: Torture and Forced Disappearances,” 27 January. Available at <https://www.hrw.org/news/2016/01/27/uae-torture-and-forced-disappearances>.

¹⁷⁸ Human Rights Watch: Oman. Available at <https://www.hrw.org/middle-east/n-africa/oman>.

¹⁷⁹ Human Rights Watch (2014) “Kuwait: No Response to Torture Allegations,” 2 April, Available at <https://www.hrw.org/news/2014/04/02/kuwait-no-response-torture-allegation>.

¹⁸⁰ Amnesty International (2016) “Qatar: Upholding Torture-Tainted Convictions Exposes “Deep Flaws” in Justice System,” 3 May, Available at <https://www.amnesty.org/en/latest/news/2016/05/qatar-upholding-torture-tainted-convictions-exposes-deep-flaws-in-justice-system/>.

¹⁸¹ Human Rights Watch (2016) “Bahrain: Lagging Efforts to End Torture,” June 13. Available at <https://www.hrw.org/news/2016/06/13/bahrain-lagging-efforts-end-torture>.

Islamic law in the GCC are most commonly applied in practice today Saudi Arabia, although reports have been made of floggings imparted by Islamic courts in Qatar and in UAE, and many of these countries defend these practices by citing deference to Islamic Law.

3.2.1 Islam and GCC Reservations, Understandings and Declarations to the CAT

Despite slow ratification of the CAT across the GCC, there was little concern with applying the tenets of the convention in accordance with these states' commitment to Islam, at least in letter. Islam appeared relatively irrelevant to GCC acceptance of the CAT when reviewing the substance of the Reservations, Understandings, and Declarations (RUDs) submitted. Where RUDs were submitted to the CAT by states in the region upon ratification, they are highly specific to particular articles concerning procedure, and relatively limited compared with the longer and more sweeping RUDs about Islam sometimes submitted to the other UN human rights treaties (such as the CEDAW and the CRC, which will be discussed in the next two chapters).¹⁸² Only in *one* case did a formal RUD submitted to the UN Committee Against Torture upon ratification of the CAT mention concerns about Islam (this state, Qatar, went on then to remove this reservation – a move to be discussed later on). This relative scarcity of reservations about Islam in GCC RUDs to the CAT helps support Price's view about the erroneous links between Islamic religion itself and torture.

Although Qatar mentioned Islam in its initial reservations before withdrawing them, Qatar holds the lowest torture rating compared with its GCC neighbors, according to Oona

¹⁸² Particular resistance in the case of the CAT is mainly against paragraph 1 article 30 of the Convention, relating to competence of the committee and referral of cases to the ICJ.

Hathaway's measures. Qatar faced significant backlash from some 12 other CAT state parties¹⁸³ (primarily from Europe) that expressed formal concern with Qatar's reservation mentioning Islam, many describing it as vague and unclear. While seven MENA states ratified the CAT without reservation, those MENA states that did submit RUDs primarily expressed concern with the same enforcement aspects of the convention: the reach of the UN CAT Committee to assess and refer alleged uses of torture and the competence of the International Court of Justice to adjudicate these cases. Ratifying MENA and GCC states almost never expressed concern over arguably more substantive elements of the Convention such as its definition of torture and imperatives set for governments to denounce and eliminate the practice.

MENA RUDs to CAT (* indicates one or more withdrawn)

Mention of Islam	1* ¹⁸⁴
Article 20 (competence of CAT committee investigations)	4* ¹⁸⁵
Articles 21 & 22 (competence of CAT Committee)	2* ¹⁸⁶
Article 30 (competence of the ICJ for referral)	5 ¹⁸⁷
Other Concern	6
No Reservation	7

3.3 GCC-CAT Engagement: Country Examples

¹⁸³ Concerns about Qatar's initial RUD about Islam entered to the CAT from: Finland, France, Germany, Luxembourg, Netherlands, Norway, Spain, Sweden, Italy, Denmark, Portugal and United Kingdom http://www.bayefsky.com/html/qatar_t2_cat.php. For example, Finland issued a complaint on 16 January 2001 saying: The Government of Finland also notes that the reservation of Qatar, being of such a general nature, raises doubts as to the full commitment of Qatar to the object and purpose of the Convention and would like to recall that, according to the Vienna Convention on the Law of the Treaties, a reservation incompatible with the object and purpose of the Convention shall not be permitted."

¹⁸⁴ Qatar submitted in 2000, Reserved "Any interpretation of the provisions of the Convention that is incompatible with the precepts of Islamic law and the Islamic religion" (*later withdrawn and amended*).

¹⁸⁵ Bahrain, Kuwait, UAE, Tunisia (*withdrawn*).

¹⁸⁶ Qatar (*withdrawn*), Tunisia (*withdrawn*).

¹⁸⁷ Kuwait, Morocco, Saudi Arabia, Turkey, UAE.

To examine conceptions of Islam and punishment related to CAT ratification in the region, it is important to understand some of the unique social, legal and political contexts within the GCC. Presented here are two in-depth cases where discourses on Islam and punishment relevant to CAT ratification have been most significant at the UN committee: Saudi Arabia and Qatar. In both cases, there is significant effort to present conceptions of Islamic punishment as in contrast with UN concepts of prevention of torture and cruel punishment.

Saudi Arabia will be discussed at the most length in this chapter because interpretations of Islam and punishment are most extreme in this country in the imposition of traditional legal understandings of *hadd* punishment, and therefore have been the most contested in UN CAT meetings. Qatar is also extensively discussed because its controversial RUDs about Islam have stimulated similarly important and more substantial debate. The remaining GCC states have stimulated less substantial UN dialogue concerning Islam and conceptions of torture, even though they offer some important insight and receive some discussion together in the final section of the chapter. While these remaining cases will be discussed in less detail, the chapter argues a similar effect can be observed across the entire GCC.

3.3.1 Saudi Arabia and the CAT

Saudi Arabia ratified the CAT in 1997 under a royal decree by King Fahd (r. 1982-2005). Ratification has provoked significant debate concerning so-called Islamic punishments in the Kingdom (such as flogging, stoning and amputation for violations of

“god’s law”) and the CAT, which are discussed in this section. As a result of CAT ratification and review processes, among other influences, “torture” and “cruel punishment” are terms increasingly being discussed in Saudi Arabia. Ultimately, ratification has helped contribute to a regular and growing collection of public statements from some officials suggesting certain practices such as flogging are unsavory and, in certain cases, un-Islamic.

3.3.1.1 Islam, Law and Punishment in Saudi Arabia

A deep intersection between interpretations of Islam and ideas of justice is woven in the fabric of the Kingdom’s recently codified laws and criminal procedures. Saudi Arabia’s developing legal codes reference Islam in many areas of justice. Its 1992 Basic Law (a constitution-like document issued by King Fahd following the Iraqi invasion of Kuwait and First Gulf War consisting of 9 chapters and 83 articles) and 2005 amendments do not explicitly outlaw torture. This can be viewed in comparison with the other five GCC states that have outlawed torture in their primary constitutional documents. However, changes to Saudi Arabia’s law incorporated a clause in 2001’s Law of Criminal Procedure outlawing torture.¹⁸⁸ The Basic Law does enshrine a principle of “no punishment without law” under Article 38, stating, “Punishment shall be restricted to the actual offender. No crime shall be established as such and no punishment shall be imposed except under a judicial or law provision. No punishment shall be imposed except for acts that take place after enactment of the law provision governing them.”¹⁸⁹ It does not, however, extend specific discussion of permissible punishments or enshrine explicit protections against torture or cruel treatment.

¹⁸⁸ Law of Criminal Procedure, Royal Decree No. M/39 of 16 October 2001. National Gazette no.3867 of 3 November 2001.

¹⁸⁹ Saudi Arabia Basic Law of 1992.

Saudi Arabia ratified the UN Convention Against Torture in 1997, a year after joining the Convention on the Rights of the Child (in 1996). However, despite initial moves in support of human rights law during this period, the regime has been wary to engage with other UN human rights instruments, such as the ICCPR and ICESR which it has not ratified. Upon accession to the CAT, the Kingdom entered the following reservations,

The Kingdom of Saudi Arabia does not recognize the jurisdiction of the Committee as provided for in article 20 of this Convention. The Kingdom of Saudi Arabia shall not be bound by the provisions of paragraph (1) of article 30 of this Convention.¹⁹⁰ [These provisions relate to the competence of the UN CAT committee to refer cases to the International Court of Justice].

The primary concerns voiced in these reservations thus relate strictly to the authority and competence of UN actors, rather than more substantively with the imperatives and definitions contained in the Convention itself. Noticeably absent from the Saudi reservations were any more substantive quarrels with the definition of torture, as well as any mention of Islamic religious practice or law, despite the fact that the regime did not hesitate to enter reservations related to Islam to other conventions around this time, for example, in RUDs submitted in 1996 to the CRC and in 2002 to the CEDAW.

The CAT was ratified during the reign of King Fahd during a period of some (somewhat cosmetic) efforts to promote rule of law and human rights, while at the same time continuing to clamp down on domestic calls for reform. King Fahd approved the first Saudi National Society for Human Rights in 2004, some seven years after ratifying the CAT, with goals including “protecting human rights and combating torture, violence and

¹⁹⁰ These provisions pertain to referring cases to the International Court of Justice (ICJ).

intolerance.”¹⁹¹ This was one of few officially sanctioned civic organizations for human rights in the Kingdom, where civil society organizations are few, and those that exist have been required register with the government and often lack independence.¹⁹² King Fahd also established in 1994 two new religious councils: a Supreme Council for Islamic Affairs (to oversee educational, economic, and foreign policy issues) and the Council for Islamic Mission and Guidance, responsible for overseeing moral behavior and proper conduct of Saudis abroad and at home.¹⁹³ In 1992, the King announced by Royal Decree the introduction of Saudi Arabia’s “Basic Law,” the first public document outlining the nature of the state and stating a legal framework of the government. (While this was the first constitution-like document of its kind in the Kingdom, it was far from revolutionary in substance, making official structures and laws which were already well established in custom). However, processes of codification have also led to the incorporation of certain modern human rights concepts such as the addition of a modern anti-torture clause in the 2001 Law of Criminal Procedure.

Law on criminal and judicial procedure in 2001 and 2007 in Saudi Arabia has articulated and institutionalized a relatively rigid understanding of Islamic punishment, providing procedure for flogging, stoning and amputations for various *hadd* crimes including murder, apostasy and adultery. At the same time, however, these recent codes have formally incorporated a number of modern concepts: including clauses referencing protection from “bodily harm” and “torture”, alongside other concepts such as “judicial

¹⁹¹ Saudi National Society for Human Rights <http://nshr.org.sa/en/>.

¹⁹² Abeer Allam (2004) “World Briefing: Middle East, Saudi Arabia,” *The New York Times*, 11 March, Available at <http://www.nytimes.com/2004/03/11/world/world-briefing-middle-east-saudi-arabia-a-human-rights-first.html>.

¹⁹³ Stig Stenslie (2011) *Regime Stability in Saudi Arabia: The Challenge of Succession*. London and New York: Routledge.

review” and “rule of law.” As a result, the law both appeals to certain modern ideas about protection from cruelty while maintaining room for certain punishments such as flogging and amputation commonly seen in international law as ‘cruel.’¹⁹⁴

The 2001 Law of Criminal Procedure, issued by Royal Decree just three years after CAT ratification, incorporated the clause under Article 2 banning torture and degrading treatment reflecting some language and concepts contained in the CAT such as the right to protection from bodily harm and degrading treatment. Article 2 states, “No person shall be arrested, searched, detained, or imprisoned except in cases specified by the law... A person under arrest shall not be subjected to any bodily or moral harm. Similarly, he shall not be subjected to any torture or degrading treatment.”¹⁹⁵ (While Article 1 of this same Law of Criminal Procedure code states, “Courts shall apply Shari’ah principles, as derived from the Qur’an and Sunnah,” and Article 20 calls for legal procedure surrounding punishments “involving death, stoning, amputation, or flogging,” suggesting these remain legal options for criminal punishment). (Importantly, this law thus illustrates an attempt to frame harsh Islamic punishments as not constituting “cruelty.”)

The Saudi Law of Criminal Procedure outlaws torture and degrading treatment while providing procedures for flogging, stoning and amputation: this is an inherent tension with the CAT committee’s interpretation of flogging in CAT committee statements and reports as “cruel and degrading.” However, these practices are in letter (but sometimes not in practice) subjected to legal and procedural boundaries, such as the opinion of unanimity among multiple judges (Article 129) and only in cases specified under law (Article 2 and

¹⁹⁴ See the discussion of UN conceptions of flogging as cruelty in Tobias Kelly (2009) “The UN Committee Against Torture: Human Rights Monitoring and the Legal Recognition of Cruelty,” *Human Rights Quarterly*, Vol. 31, No. 3, pp. 777-800.

¹⁹⁵ Law of Criminal Procedure, Royal Decree No. M/39 of 16 October 2001, Official Gazette no. 2867 of 3 November 2001.

129). Article 3 reinforces the primacy of Sharia law, saying, “No penal punishment shall be imposed on any person except in connection with a forbidden and punishable act, whether under Shariah principles or under statutory laws, and after the person has been convicted pursuant to a final judgment rendered after a trial conducted in accordance with Shariah principles.” Article 11 requires approval from a permanent panel within the Supreme Court, saying, “Sentences of death, stoning, amputation or *qisas* (retaliatory punishment) in cases other than death that have been affirmed by the Appellate Court shall not be final unless affirmed by the Permanent Panel of the Supreme Judicial Council.”¹⁹⁶ Death, stoning and amputation are only authorized with permission from a Royal Order (Article 220a). The 2007 Law of the Judiciary also sets out procedure for Islamic punishments, stating, under Article 10, setting out standards for five judges to review sentences of death, stoning, amputation or *qisas*.

It is difficult to trace the drafting history of these recent laws, particularly to understand the origins of the Islamic opinions expressed in these laws about flogging and stoning (which are framed here as not constituting “cruel punishment” given Article 2 of the same code outlawing torture and degrading punishment). The reason is that Wahhabi Islamic scholars who interpret and enforce Islamic law play important but opaque roles in the Kingdom, contributing largely “behind closed doors” (as one Saudi activist I interviewed phrased it) as policy advisors who help bolster legal and political institutions in the Kingdom based on conservative views on Islamic punishment institutionalized in various forms in the judicial system.¹⁹⁷

¹⁹⁶ Article 11.

¹⁹⁷ Interview with Saudi activist, Washington DC, by phone, 2017.

Prominent Wahhabi views in the Kingdom continue to influence national laws on punishment and rest heavily on relatively literal interpretations of Islamic texts. In such interpretations, punishments such as public floggings and beheadings are promoted because they are seen as an important link to the punishments imparted in early Islam during the Prophet Mohammed's time.¹⁹⁸ The harsh nature of such punishments is therefore important in the Wahhabi project to bring Saudi society closer to the perceived 'purity' of Islam during this time. From this perspective, "stoning for adultery and fornication, flogging and amputation for stealing, and punishments of retribution, are sanctioned by the Quran and unchangeable," as Shahid M. Shidullah claims.¹⁹⁹ Wahhabi influence remains strong in the Kingdom: current King Salman has appointed 3 descendants of Wahhabism's founder to his cabinet, indicating the continued prominence of Wahhabist-al Saud deal-making.²⁰⁰

Saudi Arabia's 2001 Code of Criminal Procedure and 2007 Law of the Judiciary reflect the tension between the al-Saud establishment's efforts to modernize law against resistance from religious elite to preserve and re-enforce literal interpretations of Sharia during the periods in which these laws were drafted. The relationship between the monarchy and certain members of the religious elite was particularly strained during King Fahd's rule and around the time of CAT ratification. A number of strains of Islamic thought were developing at the time, including *al-wasatiyyun*, a group of modernist Islamic intellectuals, and *al-takfir*, militant Islamic leaders who declared *takfir* (accusation of apostasy) against the royal House of Saud and its supporters.²⁰¹ Following this, the regime

¹⁹⁸ Interview with female Saudi female activist, Washington DC, by phone.

¹⁹⁹ Zack Beauchamp (2015) "Saudi Arabia Still has Pubic Beheadings," *Vox*, January 19. Available at <http://www.vox.com/2015/1/19/7559007/saudi-arabia-punishments>.

²⁰⁰ Carol Chosky and Jamsheed Chosky (2015), "The Saudi Connection: Wahhabism and Global Jihad," *World Affairs Journal*, May/June, Available at <http://www.worldaffairsjournal.org/article/saudi-connection-wahhabism-and-global-jihad>.

²⁰¹ *Ibid*, p. 48.

dismissed a number of clergy from official positions. King Fahd was also accused of the maltreatment of some religious opponents (allegations in 1998 from Amnesty International to the UN accused King Fahd's regime of torture and other mistreatment of prominent Shia clerics such as Sheikh Hassan Muhammed Nimr and Bandar Fahd al-Shihri).²⁰² CAT engagement concerning Islamic law and legal change around this period cannot be understood without acknowledging the complexity of this relationship between the regime and religious establishment.

3.3.1.2 Torture and Cruel Punishment in Saudi Arabia

Despite ratification of the CAT under King Fahd in 1997 and certain legal changes including the 2001 incorporation of an anti-torture and degradation clause in the Code of Criminal Procedure, allegations of torture in Saudi Arabia remained common. Concerns about corporal punishment and other practices that remained technically legal under the Criminal Procedure, were also a matter of concern. Allegations remained frequent under King Fahd's successor, King Abdullah (1 August 2005 - January 23, 2015). In 2000, authorities acknowledged 120 executions during the year (increasing from 100 in 1999) for convictions of murder, drug charges, rape, and armed robbery. There were also numerous reports of amputations in 2000, including up to seven reports of multiple amputations (hand and leg) for crimes of robbery, as well as hundreds of accounts of flogging with a cane for lesser offenses such as alcohol consumption.²⁰³ According to the Associated Press, five

²⁰² Amnesty International (1998) "Amnesty International Report 1998 - Saudi Arabia," 1 January, Available at <http://www.refworld.org/docid/3ae6a9f944.html>.

²⁰³ U.S. State Department (2001) "Saudi Arabia: Country Reports on Human Rights Practices," Bureau of Democracy, Human Rights, and Labor. February 23. Available at <http://www.state.gov/j/drl/rls/hrrpt/2000/nea/817.htm>.

Saudi citizens were sentenced to 2,600 lashes and six years in prison, and four to 2,400 lashes and five-years imprisonment, for ‘deviant sexual behavior’ in 2013.

Of particular concern for human rights monitors has been alleged cruel punishment of migrant workers, a large demographic (numbering nearly 9 million by 2014).²⁰⁴ Reporting in 2004 Human Rights Watch expressed “deep concern” that “thousands of migrant workers serving time in Saudi prisons will be deported at the end of their sentences without any opportunity to complain about torture and seek a remedy.”²⁰⁵ In one high profile 2005 case, a Saudi court ordered an Indian migrant’s eye be gouged out in response to his role in an altercation injuring a Saudi citizen.²⁰⁶ Some migrant workers were also allegedly given capital punishment and beheaded in Saudi Arabia without the knowledge of their embassies or relatives.²⁰⁷

Some international NGO human rights reports alleging torture since Saudi Arabia ratified the CAT make a point of underlining Saudi Arabia’s hypocrisy as a state party to the Convention. For example, Amnesty International insists that the implementation of physical penalties “make a mockery of the fact that Saudi Arabia is a signatory to the international Convention against Torture.”²⁰⁸ This view was in my interview with an Amnesty International official who called Saudi Arabia’s imposition of harsh punishments “flagrant” and “glaring” violations of today’s human rights standards.²⁰⁹

²⁰⁴ Human Rights Watch (2013) “Saudi Arabia: Protect Migrant Workers’ Rights,” July 1. Available at <http://www.hrw.org/news/2013/07/01/saudi-arabia-protect-migrant-workers-rights>.

²⁰⁵ Human Rights Watch (2004) July Vol. 16, No. 5(E).

²⁰⁶ Human Rights Watch (2005) “Saudi Arabia: Court Orders Eye to be Gouged Out.” December 9. Available at <http://www.hrw.org/news/2005/12/08/saudi-arabia-court-orders-eye-be-gouged-out>.

²⁰⁷ Virginia N. Sherry (2004) “Bad Dreams: Exploitation and Abuse of Migrant Workers in Saudi Arabia.” Human Rights Watch Report. Vol. 16.

²⁰⁸ Amnesty International (2016) “Report: Saudi Arabia King Urged to Commute Cross Amputation Sentences,” 16 December. Available at <https://www.amnesty.org/en/for-media/press-releases/saudi-arabia-king-urged-commute-cross-amputation-sentences-2011-12-16>.

²⁰⁹ Interview with Drewery Dyke, in person, Oxford UK, March 2017.

The continued allegations of torture after CAT ratification are also highlighted in *Jones vs. Ministry of Interior* (2006), a legal case referencing Saudi Arabia's commitment to the CAT in arguments adjudicated in British courts. The case generally relates to the issue of sovereign immunity's applicability to suits against officials acting in an "official capacity," but more in doing so the case reviewed a situation in which a British citizen alleged being tortured while in custody in Saudi Arabia.²¹⁰ British officials denounced such torture, stating that its rejection is a subject of "express agreement" in the world, "expressed in the UN Convention Against Torture...to which both the UK and the Kingdom [of Saudi Arabia], with the overwhelming majority of other states, are parties. It is common ground that the proscription of torture in the Torture Convention has, in international law, the special authority which the claimants ascribe to it..."²¹¹ In this case, Saudi Arabia's ratification of the CAT is utilized as leverage for international law's "special" authority, while renouncing of torture is claimed to reflect a sort of worldwide consensus, indicating that, had the Kingdom declined the convention, it could still be held accountable to relevant "norms" of customary international law as viewed as a fundamental principle of international law (*jus cogens*).

3.3.1.3 Saudi Arabia - CAT Committee Dialogues

Saudi Arabia has participated in two reporting follow-up dialogue cycles with the CAT Committee in Geneva since its accession in 1997. These meetings between UN and

²¹⁰ Oliver Jones and Clayton Utz (2007) "Jones v. Ministry of Interior of Kingdom of Saudi Arabia: An Exercise in Interpretation." *Singapore Yearbook of International Law*, Vol. 11, pp. 163-175. Available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1688211.

²¹¹ "Opinions of the Lords of Appeal for Judgment in the Cause." United Kingdom, House of Lords, June 14, 2006. Available at <http://www.publications.parliament.uk/pa/ld200506/ldjudgmt/jd060614/jones.pdf>.

Saudi officials have focused around the country's first report (due in 1998 and submitted in 2001 and second report (due in 2010 and submitted in 2015). A series of oral and written exchanges between the UN Committee and a number of Saudi Representatives recorded in a series of first and second summary reports and exchanges taking place in 2002 and 2016 respectively in relation to these two reporting cycles. A third round of reports and meetings is due in 2017. These records and exchanges where Islamic and punishment are discussed are reviewed here. I will discuss the most significant occasions in which Islam has been negotiated in these meetings here to demonstrate their impact on a developing discourse which approximates the legal concepts encapsulated in modern international law.

These interactions have stimulated significant discussion and contestation between UN and Saudi representatives about interpretations of Islam on ideas and practices related to torture and punishment in the Kingdom. The regime has not had to publicly elaborate on and justify its claims regarding Islamic justifications for certain punishments in such a significant way in any other format. As such, these statements about ideas about Islam and punishment put forward in these CAT dialogues are unique, rare and important. This is all the more so because, as one Saudi activist I interviewed put it "...there is no local discourse about the validity of Islamic punishments [in Saudi Arabia]. The Islamic reasoning behind these policies cannot be traced or attributed..."²¹²

Despite lingering evidence of torture and cruel punishment, Saudi Arabian diplomats have been engaged in evolving, and, in some cases, modernizing discourses on Islam and punishment in UN CAT Committee meetings. These exchanges are reviewed in this section. Initial CAT dialogues have focused on the legality of certain so-called Islamic punishments, including floggings and whippings. These exchanges have resulted in

²¹² Interview with Saudi citizen in Washington DC, by phone, 15 April 2017.

continued and increasing framing of Islamic law by Saudi representatives as anti-torture. Pressure to justify practices in these meetings has ultimately resulted in some Saudi representatives describing whippings and floggings as rare and only permissible in grave cases with extreme circumstantial reasoning to justify it under Islam, as well as in favor of protecting the individual from unjust physical harm under a free and independent judiciary. In a few cases, the statements by Saudi officials in these meetings have been more progressive than the law in denouncing practices such as flogging in ongoing attempts to justify and account for Islamic understandings on punishment in CAT Committee meetings.

In its initial report in 2001, Saudi Arabia lauded Islam's compatibility with the Convention. The report initially frames the idea of protection of its citizens under Islam, saying that the Convention was being fully respected and applied in domestic law,

The Kingdom of Saudi Arabia protects human rights through its system of law and order in the light of its Constitution... [A]cts of torture were already prohibited in the Kingdom's judicial and administrative legislation.²¹³

The UN Committee Against Torture responded in 2002 with concern about a lack of legal protections against torture in the Kingdom, with particular alarm about the impact of certain interpretations of Islamic law in the Kingdom on "extreme" forms of punishment such as floggings and stoning.

While noting the State party's indication that Shariah expressly prohibits torture and other cruel and inhuman treatment, the State party's domestic law itself does not explicitly reflect this prohibition, nor does it impose criminal sanctions. The Committee considers that express incorporation in the State party's domestic law of the crime of torture, as defined in article 1 of the Convention, is necessary to signal the cardinal importance of this prohibition.²¹⁴

²¹³ CAT/C/42/Add.2, p. 2.

²¹⁴ CAT C/CR/28/5, p. 2.

The Committee took further issue with the following punishments often associated with religious law for *hadd* crimes, including:

[UN Committee ‘Issues of Concern’] The sentencing to, and imposition of, corporal punishments by judicial and administrative authorities, including, in particular, flogging and amputation of limbs, that are not in conformity with the Convention.²¹⁵

The Committee also expressed concern with the so-called ‘religious police’ or *mutawe’en*, citing additional concern related to,

[UN Committee ‘Issues of Concern’] The jurisdiction of the Mutawe’en officials to pursue, inter alia, violations of the moral code and to proscribe conduct they identify as not conducive to public morality and safety. The Committee is concerned that the powers of these officials are vaguely defined by law, and that their activities may violate the Convention.²¹⁶

Saudi representatives pushed back against these and a number of other accusations and concerns by the CAT Committee in a follow up meeting that occurred in May 2002 defending controversial punishments as legitimate under Islam. In defending their practices, they referenced respect for a range of more modern concepts such as ‘rule of law’ and individual rights to protection from ‘cruelty.’ During this meeting, Saudi representatives acknowledged a number of the punishments cited by the Committee were indeed practiced. However, they insisted such practices were related to punishments explicitly set out by Islamic law and were not in “violation” of Saudi Arabia’s commitment to the CAT because the CAT allows for lawful sanctions:

[Mr. Al-Hogail] (Saudi Arabia) said that Saudi Arabia was an Islamic State that applied the dictates of the Holy Koran. The Koran set out specific sanctions such as amputation, flogging (whipping) and stoning for certain crimes. Those sanctions could neither be abrogated, nor amended since they emanated from God. The strict application of the Koran was a sign of governmental authority in an Islamic State, and the State was bound to refrain from taking any decision that ran counter to the Shariah.

²¹⁵ Ibid.

²¹⁶ Ibid.

On acceding to the Convention, as in the case of all other international treaties, the Government of Saudi Arabia had stated that it saw no conflict between the Convention and the Shariah. The Shariah defined torture as the infliction of bodily or mental harm or cruelty to animals, and prescribed appropriate punishment for such crimes.

...The sanctions referred to in the Koran were not forms of torture within the meaning of article 1 of the Convention - which excluded pain or suffering arising from, inherent in or incidental to lawful sanctions - precisely because they were the law of the land. The Saudi Arabian Code of Criminal Procedure prohibited the infliction of any punishment other than that prescribed by the Shariah or the law.

Mr. Al-Shamkh (Saudi Arabia) said that, while his delegation appreciated the Committee members' openness, it felt that the oral questions they had put did not reflect much depth of knowledge of Saudi Arabia. They had ignored the fact that, in Islamic countries such as Saudi Arabia, the Koran and the Sunna were the Constitution; to attempt to amend such a Constitution was to violate divine law and anyone calling for such amendments was not a good Muslim.

Corporal punishment was intended as a deterrent: under Shariah law, it should not be administered if there was any doubt about the guilt of the individual or the evidence in the case. The aim was not to punish but to rehabilitate and to protect society.²¹⁷

The above exchange from two Saudi delegates in May 2002 CAT review proceedings demonstrates how Saudi representatives in these meetings make statements to justify practices of punishment in the Kingdom around the state's duty to protect society while protecting citizens from unlawful punishment (rather than the individual's right to be protected from torture). Although the meanings may be two sides of the same coin – the right to be protected is complemented by the duty to protect - the language and concepts of duties as opposed to rights, as well as the differences in how torture and inhuman punishments are defined in these early dialogues are significant in demonstrating differences in discourses on torture and human rights between the UN and the Saudi delegates.

²¹⁷ Summary Records, CAT/C/SR.519, pp. 3- 4.

A Saudi representative also replied to accusations that the *Mutawe'en* (termed by the committee 'religious police') were engaging in activities in violation of the Convention, saying,

[Mr. Al-Hogail] (Saudi Arabia) Members of the "religious police" (to use the Committee's designation) attended human rights seminars on a variety of topics at the Police Academy, and there were also special courses and seminars for military and security officers. Incidentally, there had never been, nor could there be, any differences of opinion among Islamic scholars regarding the use of corporal punishment as specified in the Koran. Since those sanctions were divinely ordained, it would be impossible to interpret them in such a way as to avoid their application. The so-called "religious police" operated under a code of regulations. They were civilian government officials selected on the basis of scholarly qualifications and good reputation. They were trained in special institutes.

In comments revealing some tension between Saudi representatives and the UN committee members as the meeting came to a close, summary reports indicate a Saudi representative Mr. Al-Madi expressed some disapproval with the nature and content of accusations made against Saudi Arabia by the UN CAT Committee. UN representative Mr. Yakovlev replied with goodwill that the UN was sensitive to Islamic religious principles.

[Mr. Al-Madi] (Saudi Arabia) pointed out that the Committee against Torture was not a judicial tribunal; its function was to start a dialogue with the States parties. He regretted that that admirable purpose had been somewhat contradicted by the Committee's response to his country's initial report.

[Mr. Yakovlev] (UN representative) said---In particular, he was sympathetic to the special situation of a State party like Saudi Arabia, which was founded on strictly religious principles.

Another UN representative, Mr. El Masry,²¹⁸ also expressed a deep sense of understanding and goodwill for the Saudi representatives' Islamic system, highlighting his understanding of the prohibition of torture in Islamic law and tradition:

[Mr El Masry] (UN Committee Rapporteur) Noting that it had taken Europe 2,000 years to prohibit torture, he commended Saudi Arabia on the positive steps it had taken in a very short period. Whereas, in Western judicial systems, torture had been considered until the eighteenth century an acceptable means of obtaining the truth. Islam had, in the seventeenth century, proclaimed the equality of all human beings and prohibited the torture of both human beings and animals. Saudi Arabia was working on the basis of a very strict application of Islamic principles and, in view of that country's special place in the Islamic world, it was vital that it should remain within the Convention and work with the Committee to reach a common understanding. Noting both the size and the impressive quality of its delegation, he thanked Saudi Arabia for its replies and looked forward to the future dialogue between the State party and the Committee.²¹⁹

Saudi Arabia Second CAT Report and Dialogue, 2015

There has been important progression in the use of UN concepts in the next cycle of engagement between Saudi and UN representatives. A second cycle of reports and dialogues after Saudi Arabia issued its second periodic report CAT/C/SAU/2 in January 2015 moved forward these dialogues on Islam and punishment around an increasingly modern discourse about Islamic views against cruelty. In advance of CAT Committee meetings surrounding Saudi Arabia's second periodic review, the CAT Committee sought to continue discussion of Islamic sharia punishment such as flogging in its List of Issues Prior to Reporting, requesting,

Please provide information on the steps taken to ensure the compatibility of the obligations of the State party under the

²¹⁸ The Committee appoints one of their members as "country rapporteur" to take the lead in drawing up the list of issues for a specific country.

²¹⁹ Summary Records, CAT/C/SR.519, p. 9.

Convention, such as the prohibition of ill-treatment, even if inflicted as a consequence of judicial punishment, such as flogging, and its domestic legislation and jurisprudence based on its own interpretation of certain religious principles.²²⁰

Saudi Arabia's response in its second report to such concerns again framed the issue of torture in language concerning the Kingdom's legal duties to protect its people under Islam (rather than expressly through the rights of the individual to be protected from torture). However, in these meetings Saudi representatives adapted their language increasingly to include language about upholding "human rights" in the Kingdom by engaging in fair and just punishments.

The below series of excerpts highlight the significant points in Saudi Arabia's second periodic report in which Islam was discussed. Again Islam is framed as anti-torture, and in full harmony with UN concepts of 'human rights.'

The provisions of Islamic sharia, from which the Kingdom derives its laws, prohibit acts of torture and the use of cruel or degrading treatment, whether in ordinary, exceptional or emergency circumstances.²²¹

The Kingdom is committed to United Nations programmes and activities in the field of human rights education, in compliance with the requirements of Islamic sharia in that regard.²²²

Further statements from Saudi delegates framed Islamic impositions of certain punishments such as corporal punishment not only using religious justification, but also simultaneously framing these justifications around the concept of the "rule of law,"

On the basis of the sharia doctrine of the fruit of the poisonous tree [concerning evidence obtained illegally], all evidence obtained by unlawful means is inadmissible and ineffective in proceedings. Evidence obtained through a forced confession, torture or an unauthorized search of dwellings

²²⁰ CAT/C/SAU/Q/2.

²²¹ CAT/C/SAU/2, p. 14.

²²² Ibid, p. 21.

is considered unlawful and without merit in legal proceedings in that the means used to arrive at such evidence are invalid. This principle is affirmed in article 188 of the Code [2001 Law of Criminal Procedure], which provides that: “Any action inconsistent with the provisions of Islamic sharia or laws derived therefrom shall be invalid.”²²³

It is worth mentioning here the provision in Islamic sharia that the confession and actions of a person subjected to coercion have no validity and no consequential effect. All Islamic jurists are in agreement on this matter in that it is one of the principles of justice. In order to guarantee that no torture occurs during investigation, the [Saudi] Code of Criminal Procedure states in article 70 that no accused person may be separated from the lawyer or representative present with him during the investigation.²²⁴

The Kingdom of Saudi Arabia wishes to thank the Committee for its observations and emphasizes in this context that pain or suffering arising only from, inherent in or incidental to lawful sanctions is excluded from application of the provisions of the Convention, pursuant to article 1 thereof, and that all sanctions in the Kingdom are imposed in accordance with the provisions of its domestic laws, which are derived from Islamic sharia.²²⁵

The corporal punishments applied in the Kingdom stem from the implementation of the Basic Law of Governance, article 1 of which provides that the Constitution of the Kingdom is the Book of God and the Sunna of his Prophet, may God’s blessings and peace be upon him. Those punishments are thus derived from the provisions of Islamic sharia and entail no breach thereof. Furthermore, article 1 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment excludes from the application of its provisions pain or suffering arising only from, inherent in or incidental to lawful sanctions. It must also be emphasized that sentences of corporal punishment are handed down by the judicial authorities alone and are not enforced except pursuant to a final court judgement with *res judicata* effect. Hence, they are not in breach of the Convention.²²⁶

These exchanges demonstrate the continued effort by the Saudi delegation to justify their practices of punishment as not constituting “torture.” The Saudi representatives suggest that corporal punishments under Islam as imparted in the Kingdom are “lawful sanctions” (and therefore do not violate the CAT), while the CAT delegation has contested

²²³ CAT/C/SAU/2, p. 24.

²²⁴ Ibid, p. 30.

²²⁵ Ibid, p. 33.

²²⁶ Ibid, p. 34.

that such punishments do constitute torture.²²⁷ Despite the conflict between the Saudi and CAT Committee positions forms of corporal punishment in the Kingdom, both converge on the idea that ‘torture’ is wrong. Where they draw the line is different, but, in name, the concept of ‘protection from torture’ is a discussed as a point of convergence.

Responses to the second periodic report included six “shadow reports” from global NGOs concerned with cases of torture including Human Rights Watch, Lawyers Without Borders, Alkarama Foundation (Switzerland), and Reprieve (UK). Final meetings between Saudi representatives and the UN CAT Committee resulted in two relevant statements from Saudi representatives concerning Islam and punishment. The Saudi delegation reiterated assurances that torture was a crime in the Kingdom.

Torture was criminalized and punished, among others, by Islamic sharia, Decree No. 43 of 1958 [a decree which condemned ‘abuse of power’ with up to 10 years imprisonment although every translation I located does not explicitly mention ‘torture’] the Convention and the Code of Criminal Procedure [seemingly referring to the 2001 which outlaws torture and degrading punishment but allows for floggings stonings and amputations] which were implemented through training programmes and procedures for investigations, prosecutions and trials.²²⁸

Mr. Al-Shahrani (Saudi Arabia) said that the report referred to by Ms. Belmir was incorrect. The sentence had not yet been carried out. Committee members would do well to rely on credible sources of information rather than on what appeared to be little other than baseless slander....International instruments to which Saudi Arabia was a party had the force of law in the country. The provisions of those instruments could therefore be invoked in domestic proceedings. As a rule, Saudi law did not condone flogging . Prisoners, for instance, could not be lawfully flogged. The public execution of sentences was regulated, and the practice was related to the rights of the victims of the crime, who could pardon the perpetrator if they so chose, in which case the sentence could be reviewed.

²²⁷ The vague nature of the CAT’s “lawful sanctions” clause is undeniable as the CAT does not provide any definitions or clarifications regarding practices, although the UN Special Rapporteur on Torture Nigel Rodley claimed that the term “lawful sanctions” was intended to allow for practices “the international community deemed permissible sanctions, such as imprisonment,” and not “extreme” practices such as flogging and starvation, see Miller (2005).

²²⁸ CAT/C/SR.1402, p. 2.

In connection with corporal punishment, he referred Committee members to the replies to the list of issues²²⁹

There is clear lack of agreement between Saudi and CAT committee members throughout these meetings as to whether or not flogging and other corporal punishments in the kingdom constitute “torture” and/or “cruel punishment.” However, these dialogues progressed towards some eventual convergence ultimately by 2015 reflecting a common position that flogging is an unfavorable practice. Initial dialogues brought out statements from Saudi representatives claiming Islam and by extension law in Saudi Arabia does not condone cruel treatment, however certain punishments like floggings for *hadd* crimes were defended as being legal sanctions under Islam to protect society, and therefore not cruel or degrading. There is a clear backtracking from previous statements in the second periodic dialogues in 2015, where representatives changed their argument to eventually introduce the claim that flogging is not, as a rule, a desirable punishment and is therefore not “condoned” in the Kingdom.

The above section demonstrates two observations about the nature of discourse resulting from engagement between Saudi representatives and the CAT Committee since ratification. First, it demonstrates how Saudi representatives sometimes discuss Islam and punishment in these meetings differently from UN representatives by using the language of “duties” (of the state to protect citizens from torture, with reference to Islamic understandings of justice) and community wellbeing, rather than the predominant language of “rights” given by the UN and its CAT Committee (meaning the “individual’s right to” protection of the state from torture, without reference to religion). Second, it captures and amplifies a converging discourse among GCC and UN representatives in these meetings

²²⁹ CAT/C/SR.1405, pp. 6-7.

moving away from purely religious frames to justify law and practices and incorporating UN language concerning respect for “justice” “rule of law” and “human rights” as concepts under Islam that oppose the idea of cruelty, ultimately arriving at some convergence in the idea that flogging for example is a generally unfavorable practice in Islamic law and international law. These observations will now be discussed in relation to broader statements from Saudi Arabia domestic actors related to CAT ratification and broader relevant (although limited) discourses in the Kingdom on Islam, torture and punishment.

3.3.1.4 Domestic Discourses on CAT, Islam and Punishment in Saudi Arabia

The CAT’s clear reach into Saudi domestic politics has been limited, due to the regime’s firm grasp on the public space, however, the CAT has still had an impact on local discourses. Even within Saudi Arabia’s strict press environment (the press is consistently rated ‘not free’ by Freedom House²³⁰), local journalists have used the state’s official support for the Convention to leverage arguments regarding the need for safeguard against torture. For example, in a December 2013 ‘local view’ opinion piece in *Saudi Gazette* by Ali al-Shuraimi, a prominent reporter for the newspaper, the Saudi journalist reports in an incident in a Briman Prison in Jeddah where an inmate was allegedly taunted and tortured by other prisoners. “The Kingdom became a member of a UN convention against torture and other forms of harsh treatment or inhuman humiliation of prisoners,” al-Shuraimi writes, saying, “This prisoner’s dignity should be protected because after all he is a human

²³⁰ Freedom House: Saudi Arabia Fact Sheet. Available at <https://freedomhouse.org/country/saudi-arabia#.VT4klK1Viko>.

being, even if he has committed a crime.”²³¹ Incidentally according to follow-up reports, those inmates accused of torturing were punished with jail time and lashes.²³² The journalist’s invocation of the CAT in his piece is significant as it invokes ratification as leverage to promote an anti-torture agenda (in a case not perpetrated by the state), even if this type of activism is rare and muted in its effect given the state-owned media and clamped space for civic action.

Local ideas about Islam and punishment in Saudi Arabia are difficult to ascertain. As one interviewee from Saudi Arabia put it “There is no freedom to publicly discuss such matters.”²³³ Still, a number of prominent voices from government representatives, law experts and journalists have engaged in some public debate about the appropriate position of Islamic law in the Kingdom particularly concerning Islamic understandings justifying and condoning floggings.

Some prominent voices among the religious and political elite in Saudi Arabia have responded to global criticism of certain practices like flogging by justifying the practices as condoned and compelled by Islam. For example, in response to tense interactions between Saudi delegates and the UN Committee Against Torture in 2001 and 2002, Saudi Arabia’s Grand Mufti Abdu’l Aziz al-Sheikh (1999-) [the most senior Sunni religious authority in Saudi Arabia (and a royal appointee)] made a statement criticizing the UN Committee in Jeddah- based daily newspaper *Daily Okaz*, saying UN claims that Saudi Arabia was in violation of the international accord were based on “lies, jealousy, and ignorance of Islamic

²³¹ Saudi Gazette (2015) “RP Apologizes to UN for 20 Years of ‘Incompetence,’” *Saudi Gazette*, 27 April, <http://www.saudigazette.com.sa/index.cfm?method=home.PrintContent&fa=regcon&action=Print&contentid=2009050537104>.

²³² Saudi Gazette (2014) “Torturers of Briman Prisoner Receive Jail Terms and Lashes,” *Saudi Gazette*, 13 May, Available at <http://www.saudigazette.com.sa/index.cfm?method=home.regcon&contentid=20140513204944>.

²³³ Interview, by phone, Saudi female academic, Washington DC, 20 April 2017.

Law.”²³⁴ The *Daily Okaz* reports, “In comments published in the Daily Okaz newspaper Thursday, Sheik Abdulaziz al-Sheik rejected a U.N. report's findings that Saudi Arabia was breaking an international accord banning torture by carrying out punishments like floggings and amputations...” “What is being raised (in the report) aims to slander Islam and make Muslims confused about their religion,” al-Sheik said, adding that only God's law should be implemented.²³⁵ Despite his country's voluntary accession to the CAT and his direct link as an appointee of the King that ratified the Convention, Al-Sheikh has continued to be vocal in his criticisms of the United Nations' human rights agenda. In one editorial he wrote, “The enemies of Islam are incensed at the Kingdom's blessings,” saying, in response to UN human rights criticisms, “Everyone knows that these are fabricated and baseless, coming from a side that hates Islam and wants to get at it using the pretext of human rights.” Another statement from al-Sheikh reads, “What is behind the ferocious campaign against the Kingdom, which uses human rights as a cover... Is the Kingdom the sole target of this campaign, or does that go beyond to its obligation of implementing Islamic Shari'a? More precisely, is the target of this campaign Islam as a religion and legislation and as a way of life of people? In our view it is all these combined.”²³⁶

The Grand Mufti's strict interpretations of Sharia echo similar statements made by prominent clerics in defence of floggings and stoning. For example, Saudi cleric ‘Abd Al-Qader Shiba Al-Hamad at the Al-Nabawi Mosque in Medina, a prominent and ancient Mosque in Saudi Arabia, appeared on Channel 1 of Saudi TV in January 2005 discussing

²³⁴ *Daily Okaz* (2002) “Top Islamic Cleric Criticizes UN Watchdog for Accusing Saudi Arabia of Flawed Torture Record,” 23 May, Available at <http://iona.ghandchi.com/Saudi/abdulaziz.htm>.

²³⁵ Ibid.

²³⁶ From Amnesty International Report <http://www.amnesty.org/fr/library/asset/MDE23/034/2000/fr/eec65809-df4b-11dd-89a6-e712e728ac9e/mde230342000en.html>.

the proper Islamic punishments for homosexuality which included flogging, stoning, beheading and rolling those accused down a mountain, demonstrating his vocal public support for some of these controversial punishments stemming from important Saudi mosques.²³⁷

Still, despite the Grand Mufti's criticisms of the UN and some prominent voices underlining Islamic calls for extreme punishments like flogging and stoning, the below discussion of a prominent flogging case have stimulated contestation between Saudi elites over the legitimacy of certain harsh punishments imposed in the Kingdom under Islamic reasoning, with some government and legal experts from the Kingdom speaking out to condemn the floggings as un-Islamic.

Discussions about torture and cruel punishment in Saudi Arabia have been particularly heated in relation to a number of high-profile cases of floggings that have garnered global media attention in recent years. Several of these cases involving allegations of torture have been raised in CAT proceedings and have contributed to broader relevant discourse on torture and cruel punishment in the Kingdom. One prominent case is that of Raif Badawi, a Saudi Arabian blogger and activist who was charged of "insulting Islam" and tried on several counts in the Jeddah Criminal Court including charges of apostasy, which were later removed.²³⁸ Badawi was sentenced to seven years in prison and

²³⁷ Middle East Media Research Institute (2005) "Saudi Cleric 'Abd al-Qader Shiba al-Hamad: Punishment for Homosexuality is Flogging, Stoning, Beheading, or Rolling Down a Mountain." Video Clip. Available at <https://www.memri.org/tv/saudi-cleric-abd-al-qader-shiba-al-hamad-punishment-homosexuality-flogging-stoning-beheading-or>.

²³⁸ Albawaba (2015) "Ghumūd ḥawla jald Rā'if al-Badawī li-al-marrah al-thāniyah" (Uncertainty Surrounding Raef Badawi's Second Flogging) (5 February). Available at <https://www.albawaba.com/ar/%D8%A3%D8%AE%D8%A8%D8%A7%D8%B1/%D8%BA%D9%85%D9%88%D8%B6-%D8%AD%D9%88%D9%84-%D8%AC%D9%84%D8%AF-%D8%B1%D8%A7%D8%A6%D9%81-%D8%A8%D8%AF%D9%88%D9%8A-%D9%84%D9%84%D9%85%D8%B1%D8%A9-%D8%A7%D9%84%D8%AB%D8%A7%D9%86%D9%8A%D8%A9-653240>

600 lashes in 2013, and then re-sentenced to 1000 lashes and ten years in prison in 2014, however, although 50 lashes were carried out on January 9, 2015, the follow-up sets of lashings he has been sentenced to have been postponed eight times.²³⁹ A prominent Saudi cleric Sheikh Abdul-Rahman al-Barrak issued a statement elaborating that Badawi was an “unbeliever” (*kafir*) because his blog stated that Muslims, Jews, Christians and atheists were equal.²⁴⁰

Representatives of the Kingdom have faced vocal global criticisms for violating commitment to the CAT in the flogging of Badawi. For example, U.S. government representatives called for his release under the U.S. Commission on International Religious Freedom in 2016,²⁴¹ and Lawyers Without Borders submitted a shadow report to the CAT Committee’s second periodic review of Saudi Arabia saying, “The Criminal Court of Jeddah therefore rendered a judgment contrary to Islamic law, Saudi procedural rules and the national and international standards on the right to a fair trial. Hence, the judgment should be null and void under articles 187 and 189 of the Law of Criminal Procedure²⁴²”). However, the Kingdom has not responded by rescinding the sentence, and the reasoning (and potential longevity of) the postponement of the floggings are unclear.

The Badawi case has stimulated a lively debate on Islamic understandings of cruelty and justice. Some in the Kingdom have defended the practices while highlighting Islam’s emphasis on justice and humanity, while others have outright condemned the floggings as

²³⁹ From Raif Badawi’s foundation website, run by the Badawi family in Canada, available at <http://www.raifbadawi.org/about-raif-badawi/all-about-raif-badawi.html>.

²⁴⁰ Al Moslim (2011) “Al-Shaykh al-Barrāk: Mā yanquluhū Rā’if Badawī min kufrīyyāt tarwīj li-al-kufr wa-al-ilhād” (Sheikh Barrak: Raef Badawi’s Heretic Views Promote Blasphemy and Apostasy) Available at <http://almoslim.net/node/162191>.

²⁴¹ US Commission on International Religious Freedom Press Release (2016) “Saudi Arabia: Release Raif Badawi.” July 28. Available at <http://www.uscirf.gov/news-room/press-releases/saudi-arabia-release-raif-badawi>.

²⁴² Lawyers without Borders, Canada, Plea for the Release of Raif Badawi.

un-Islamic. For example, although Saudi representatives defended Badawi's sentence in CAT meetings in 2015 (denying the case as evidence of torture by claiming 1) that the lashings were misreported and 2) that flogging is admissible under Islam), the Saudi Ambassador to the United Nations Abdallah Y. al-Moulami disagreed with this in Saudi daily Arabic newspaper *al Madina* in October, 2015 saying the floggings of Raif Badawi were excessive and therefore criticized the Court of Jeddah's decision to flog him, suggesting the punishments not only violate international law, but also Islamic Law. Given Islam's principles of "justice and decency," Al-Moulami claimed that the lashes were un-Islamic. Al-Moulami suggests in his statement that the purpose of the punishment violates Sharia because it is intending to impose "physical harm and pain," and to "humiliate" the perpetrator, rather than the Sharia prescribed maximum of than ten lashes, which, al-Moulami states, should serve as "symbolic punishment designed to deliver a message to the offender without physical torture upon him."²⁴³ Al-Moulami goes on to claim that the punishment of floggings in general provide "contradictions" with international law saying "I won't tell you more about the contradictions of the punishment of flogging with the international norms and laws, which consider them a form of torture internationally outlawed." He suggests that floggings, if imposed within the conservative limits of Sharia and without intent to humiliate or harm, may be legitimate, however, that they are at tension with international standards, particularly as excessive as those in Badawi's sentence. He concludes his statement saying, "If the judgment of flogging was based on the extent of the limits of God we would have complied and agreed with it based on the sharia law of Allah and the prophet, but it is obvious that the judiciary's judgment was determined based

²⁴³ Abdullah Yahya (2010) "Hal al-jald 'uqūbat idhlāl?" (Is Flogging a Punishment of Humiliation?). *Al Madina*. Available at <http://www.al-madina.com/article/354662/>.

on the punishment of “Ta’azir” which in fact is discretionary power. And perhaps it was supposedly better to apply the words of God Almighty which says “and repress anger and forgive people and Allah loves the doers of good.”²⁴⁴ The question remains as to the significance of CAT specifically in informing al-Moulami’s public rebuttal of the Badawi decision, however, the violation of ‘norms of international law’ suggests the violation of the CAT must to some degree inform, anchor and strengthen Al-Moulami’s claims.

The case – and, specifically, its possible use as evidence that Saudi Arabia is in breach of commitments to international law and to Islamic law - has also stimulated discussion in Saudi Arabia on punishment in Islamic law. In an official statement on the case, Saudi Arabia’s Ministry of Foreign Affairs defended the decision while highlighting “sacred rights” upheld by Islam saying, “The Kingdom of Saudi Arabia has been one of the first States to promote and support human rights. Though these commitments are more than obvious, some international quarters and some media, regrettably, have emptied human rights of their sublime meanings,” adding that the Saudi constitution “originates from the Islamic Sharia which enshrines one’s sacred rights to life, property, honour, and dignity.”²⁴⁵

Saudi Arabia’s ambassador to the UK Mohammed bin Nawaf bin Abdulaziz called the issue a “distraction” exposing “misunderstandings” about Saudi Arabia in a 2015 Op-ed in *The Telegraph* saying, “Saudi Arabia is a sovereign state. Our Kingdom is led by our rulers alone, and our rulers are led by Islam alone. Our religion is Islam and our constitution is based on the Holy Qu’ran. Our justice system is based on Sharia law and implemented *by our independent judiciary* [my italics]. Just as we respect the local

²⁴⁴ Ibid.

²⁴⁵ Chris Green (2015) “Raif Badawi: Saudi Arabia Accuses Western Media of Attacking its Sovereignty,” *The Independent*, 9 March, Available at <http://www.independent.co.uk/news/world/middle-east/raif-badawi-saudi-arabia-accuses-western-media-of-attacking-its-sovereignty-10096252.html>.

traditions, customs, laws and religion of Britain, we expect Britain to grant us this same respect. We do not seek special treatment, but we do expect fairness. I do recognise, though, that we in the Embassy can do more to create a better understanding of my country.” This statement demonstrates growing incorporation of human rights language and concepts contained in the CAT and other international laws, such as the concept of an “independent judiciary” alongside Islamic justifications for these controversial punishments.

Islamic legal scholar Ayoub M. Al-Jarbou argues that “judicial independence” is not a concept originating in traditional Saudi legal understandings, making it notable to see the term raised in Mohammed bin Nawaf bin Abdulaziz’ statement. Al-Jarbou observes “there is near unanimous agreement among scholars that heads of state [in Arabia] have total authority over the judiciary...”²⁴⁶ and judges have been removed at will by heads of state dating back even to the early days after the death of the Prophet. However, Al-Jarbou highlights the fact that there is some diversity in scholarly understandings on judicial independence and so-called “separation of powers” in Sharia and in the Kingdom. Although judges in Saudi Arabia must accept state authority, they should be free from interference when deciding cases and controversies, “the only explanation for such independence,” Al Jarbou claims, “is that they are afraid of not being ‘just judges.’” He cites a hadith saying “ God is with the judge as long as he does not commit injustice. When he commits injustice then He leaves him, and Satan attends him” (Abu Isa al-Tirmidhi, 1330). The statement from Saudi Ambassador to the UK defending the decision of Saudi courts against Raif Badawi by referring to the concept “judicial independence” in Saudi

²⁴⁶ Ayoub M. Al-Jarbou (2004) “Judicial Independence: Case Study of Saudi Arabia,” *Arab Law Quarterly*, Vol. 19, No. 1/4, p. 15.

Arabia captures some diffusion of norms in that Saudi Arabia is increasingly making efforts to frame practices around these UN concepts.

In these collected statements stimulated by global concern over the Badawi case, CAT ratification is one piece of a broader dialogue concerning the legitimacy of floggings under international law, which can be understood in a broader contemporary debate often otherwise stifled by a restricted press and civil society in Saudi Arabia in which understandings of punishment in Islam are dynamic and contested between political actors. Some small gains in law stimulated by ratification, for example, could be identified in the Saudi Code of Criminal Procedure outlawing “torture and degrading punishment” in 2001, despite the fact that floggings, stoning and amputations are still incorporated in the criminal procedure.

3.3.2 Qatar and the CAT

I turn now to the case of Qatar –a state that acceded to the CAT several years after Saudi Arabia in 2000, and sixteen years after the Convention’s adoption. The small Gulf monarchy was the only MENA state to enter reservations about Islam upon accession, only to amend these reservations later on. Although Qatar has consistently held a superior record in torture practice than Saudi Arabia, ratification does not appear to have had any independent effect on improving frequency or nature of torture practice, and allegations of torture have continued with some frequency into the post-ratification period. Still, engagement with the CAT has had a similar framing effect on discussions about law and punishment in Qatar, which are increasingly being discussed alongside CAT-aligning concepts of ‘human rights,’ ‘just punishment’ and ‘fairness’.

Thirty years after its Basic Law of 1970 outlawed torture, Qatar acceded to the CAT on January 11, 2000 during the early years of Emir Hamad bin Khalifa Al Thani's reign (27 June 1995 – 25 June 2013). The monarchy's accession to the then fifteen year-old UN treaty soon became controversial after Qatar submitted controversial reservations invoking religious concerns upon acceding to:

(a) Any interpretation of the provisions of the Convention that is incompatible with the precepts of Islamic law and the Islamic religion; and (b) The competence of the Committee as indicated in articles 21 and 22 of the Convention

When Qatar acceded with these reservations attached, a number of UN states denounced the move, claiming Qatar's reservations were in violation with the "object and purpose" of the treaty, and thus in violation of designations set out in the 1969 Vienna Convention on the Law of Treaties. Twelve UN states individually levied complaints to the UN Committee Against Torture in response to Qatar's accession: Finland, France, Germany, Luxembourg, the Netherlands, Norway, Spain, Sweden, Italy, Denmark, Portugal, and the United Kingdom. The Spanish delegation, for example, submitted that it "[c]onsiders the reservation made by the Government of the State of Qatar to be incompatible with the purpose and aim of the Convention, in that it relates to the entire Convention and seriously limits or even excludes its application on a basis which is not clearly defined, namely, a general reference to Islamic law," and other concerned member states filed similar complaints.

Since accession, Qatar has submitted regular reports to the CAT committee in two cycles in 2006 and 2012. On 5 November 2012, over a decade following its controversial accession to the CAT, Qatar announced during a Committee Against Torture review hearing at the UN that it had decided to amend its general reservation to the CAT submitted

in 2000. The regime submitted the following revised reservation, stating, “The State of Qatar: 1) partially withdraws its general reservation [to the CAT, relating to compatibility with Islam], while keeping in effect a limited general reservation within the framework of Articles 1 and 16 of the Convention, and 2) withdraws its reservation to the mandate of the Committee Against Torture as stipulated in Articles 21 and 22 of the Convention.”

This withdrawal and amendment of Qatar’s general reservation to the CAT relating to potential conflict with Islam was remarkable, given that nearly twelve years had passed since the state had endured criticism regarding the general reservation. The reasons for this remain unclear, and must be explained overall as part of broader attempts to pursue a more “modern” image promoting Qatar’s reputation as a “good global citizen”²⁴⁷ on the international stage. Notably, the sudden change to Qatar’s status took place during a period in which Qatar reconsidered and amended a number of its reservations, also to the CRC. The time had long passed since the Qatari reservation was first made an issue, and the Emir had offered no response previously to criticism regarding the mention of Islam in Qatar’s accession. UK researchers Basik Cali and Nazila Ghanea have observed that Qatar lifted its reservations to the CAT and CRC after recommendations from UN Committees were voiced, and the Qatari Ministry of Foreign Affairs declared a “reservation review strategy.” When Cali and Ghanea asked Qatari representatives why reservations were lifted, a participant replied, “We withdrew all our reservations in 2010 because with the change of society and decision making ideas we found that there were no remaining conflicts.”²⁴⁸

²⁴⁷ This is the EU-EEAS/GCC diplomat’s point in an interview, by phone, 28 April 2017.

²⁴⁸ Nazila Ghanea and Basik Cali (2013) “The Domestic Effects of International Human Rights Treaties,” Workshop Series Report, 20 June, Available at https://www.academia.edu/7140048/The_Domestic_Effects_of_International_Human_Rights_Treaty_Ratification_in_the_Gulf_Cooperation_Council, p. 13.

Qatar initially acceded to the CAT during a period of liberalization and modernization under Sheikh Hamad in the late 1990s and early 2000s. During this time, the state became the first Gulf country to grant women the right to vote in 1999, the same period in which the state espoused promises to uphold human rights and ratified the CAT and the CRC. Two years after ratifying CAT, the 2004 Penal Code set out penalties for public officials who torture, saying,

A penalty for a period not exceeding five years shall apply to any public officer who uses torture, force or menace with an accused, a witness or an expert or orders such measures to cause him to confess a crime, make statements or disclose information in this respect or to hide any said issues.²⁴⁹

The 2004 Criminal Procedure Code also outlawed physical and moral harm in respect for human dignity, saying,

No person shall be arrested or detained save for pursuant to an order issued by the competent authorities, and in the cases prescribed by the law. The arrested person shall be treated in such a way that maintains his human dignity, and shall not be harmed physically or morally.²⁵⁰

International NGOs such as Amnesty International and Human Rights Watch lauded this period of liberalization in the early 2000s. However, despite some advancement, the government still faces accusations of perpetrating certain abuses, including sporadic allegations of torture, both before and after the state's controversial accession to the CAT in 2000 as well as in the years following Qatar's loosening of its formal reservations to the Convention. Amnesty International, for example, accused the state of torturing detainees Abdullah al-Khawar and Salem al-Kawari, allegedly detained without charge or trial in

²⁴⁹ Law No. 11 of 2004, Issuing the Penal Code, *Official Gazette*, 30 May 2004, Article 159.

²⁵⁰ Law No. 23/2004 Regarding Promulgating the Criminal Procedure Code, *Official Gazette* 29 August 2004, Article 40.

2011, saying they were “beaten, suspended by their limbs, deprived of sleep, and subjected to cold temperatures for long periods while interrogators sought to obtain “confessions.”²⁵¹ Allegations relating to this case were brought forward during a November 2011 review of Qatar’s implementation of the CAT, where the Committee urged the state to better ensure safeguards for existing legal protections to be guaranteed in practice.

3.3.2.1 Qatar - CAT Committee Dialogues

Qatar’s discussions with the CAT committee have in many ways been centered on the issue of Islam. The monarchy’s controversial reservations citing potential conflict with the “precepts of Islamic law and the Islamic religion” quickly became a focal point in UN CAT committee dialogues. And yet, the proceedings lacked more substantive controversies regarding punishment in Islam that were more visible in the Saudi case, focusing mainly on questions of language rather than practice.

Qatar’s CAT Committee dialogues thus far have taken place following two reporting cycles, in 2006 and in 2012. Following ratification in 2000, Qatar was due that year to submit an ‘initial report,’ but only did so four years later in 2005 responding directly to aforementioned concern repeated by the UN Committee that Qatar’s reservation citing religion conflicts with the object and purpose of the treaty. After eventually submitting their initial report, Qatari delegates entered into a series of follow-up dialogues with the UN Committee in the form of follow-up reports in writing as well as in-person meetings throughout the summer of 2006.

²⁵¹ Amnesty International (2013) “Qatar: 2013 Report,” Available at <http://www.amnesty.org/en/region/qatar/report-2013> also see for 2014 example Al Arabya (2014) “Filippino ‘spies’ held in Qatar allegedly tortured.” Available at <http://english.alarabiya.net/en/News/middle-east/2014/05/29/Filipino-spies-held-in-Qatar-allegedly-tortured.html>.

In its initial report, Qatar assured the committee of legal protections against torture in the Kingdom, writing,

The Islamic sharia totally prohibits acts of torture and other forms of ill-treatment, since such acts are an affront to human dignity, which the religion enjoins us to respect and protect.²⁵²

Unsatisfied with this assurance, the CAT Committee followed up in their July, 2006 ‘concluding observations’ with reiterated concerns related to the controversial reservation, saying,

The Committee is concerned about the following matters: the broad and imprecise nature of the State party’s reservation to the Convention, which consists of a general reference to national law without specifying its contents and does not clearly define the extent to which the reserving State has accepted the Convention, thus raising questions as to the State party’s overall implementation of its treaty obligations.²⁵³

The Committee added in May 2006 ‘follow up issues’ concern related to the objections from numerous other CAT state parties, stating,

States parties had registered objections [to Qatar’s reservation] on the grounds that it consisted of a general reference to national law without specifying the degree of acceptance of the country’s obligations under the Convention. Clarification of the extent of Qatar’s commitment to fulfill those obligations would be helpful.²⁵⁴

Qatari delegates responded by enumerating various legal protections in place against ‘torture,’ including some proposed reforms, saying,

A bill had been drawn up to abolish the penalties of flogging and stoning. Article 1 of the Penal Code stipulated that Islamic sharia applied to the crimes of theft, banditry, adultery, apostasy and alcohol consumption, when the perpetrators or victims were Muslims. Under the same article, stoning and amputation concerned only a very small number of offences and were hardly ever put into practice.²⁵⁵

²⁵² CAT/C/58/Add.1, p. 47.

²⁵³ Ibid, p. 13.

²⁵⁴ CAT/C/SR.707, p. 3.

²⁵⁵ CAT/C/SR.710, p. 5.

One delegate added clarification that punishments varied based on the religion of the person culpable, and added that harsher punishments were ‘rarely’ applied, saying,

Mr. Al-Thani (Qatar) recalled in connection with flogging and amputation that, under article 1 of the Penal Code, that penalty was applicable only if the guilty person and the victim were Muslim and exclusively in the case of hadd or religious offences. However, although they were provided for by law, those penalties were only very rarely applied in practice. Moreover, in the draft amendments to the Prisons Act, it was proposed that the provision authorizing such penalties should be repealed.²⁵⁶

Another Qatari delegate concluded that Qatar was even open to reconsidering its controversial reservations, which were later removed in 2012, adding,

Mr. AL-Boainain (Qatar), welcoming the constructive dialogue established with the Committee, said that its observations on the reservations entered by Qatar on its accession to the Convention would be duly transmitted to the competent authorities

Qatar’s second report in 2011 took up again the issue of Islam and punishment in the kingdom, using the language of “human dignity” and “freedom” to describe Islamic protections for its citizens against torture.

Qatar acceded to the Convention against Torture on 11 January 2000 and confirms its adherence to the principles and purposes of the Convention taking as its starting point the precepts of Islam, the official religion of the State, which advocates respect for human dignity and freedom and equality for all without discrimination on the basis of race, colour, gender or religion.²⁵⁷

And yet, in a July 2012 meeting, Qatar reversed its position in defense of its controversial reservation and announced its withdrawal of the reservation, saying,

Mr. Jabr Al Thani (Qatar) said that since the consideration of its initial report, the State party had amended the Criminal Code to include a definition of torture fully consistent with that contained in article 1 of the Convention, withdrawn its reservations to articles 21 and 22, amended its general reservation to the Convention relating to articles 1 and 16, and decided to

²⁵⁶ Ibid, p. 8.

²⁵⁷ CAT/C/QAT/2, p. 3.

review the provisions of the law dating from 2002 on the protection of society, in order to better promote civil liberties. Furthermore, Qatar had established an administrative control authority, responsible for monitoring the transparency and integrity of the civil service and combating all forms of corruption, and its National Human Rights Committee was currently drafting a national plan to promote and protect human rights.²⁵⁸

Despite amending its reservation, the CAT committee has continued to express concern over Qatar's compliance with the Convention. The Committee applauded the amended reservations as a favorable step, but still expressed concern over the implementation, the Chairperson insisting that, "[A]lthough the legal structure appeared to be reasonably complete, there was a notable lack of any recorded infringement of rights during the reporting period, which indicated a problem with the system."²⁵⁹ In its List of Issues prior to submission of Qatar's third periodic report (due in 2016), the CAT Committee requested further explanation regarding how the amended reservation might improve compliance.²⁶⁰

In a March 2011 follow-up, Qatari delegates replied to some of these concerns by 1) reiterating the defense of accusations of flogging by claiming the punishment is never used, and 2) highlighting harmony between Islamic law and international law in informing the national human rights committee referencing the concepts of "human rights" and "freedom," saying,

Response to the recommendations contained in paragraph 12 of the concluding observations: The penalties of stoning, amputation and flogging. According to article 1 of the Criminal Code, these penalties apply only to hudud offences. In practice, however, they are not used. There is no mention of the penalty of flogging in Act No. 3 of 2009 regulating penal and correctional institutions. Unlike the previous law (Act No. 3 of 1995

²⁵⁸ CAT/C/SR.1104, p. 2.

²⁵⁹ CAT/C/SR.1107, p. 7.

²⁶⁰ CAT/C/QAT/QPR/3, p. 8.

regulating penal and correctional institutions), the new Act (No. 3 of 2009) makes no provision for the use of flogging as a disciplinary sanction....²⁶¹

The National Human Rights Committee was established by Decree-Law No. 38 of 2002 as an independent national body for the promotion and protection of human rights. The objectives of the Committee are to: Promote and protect human rights and fundamental freedoms, Enrich and spread a culture of human rights inspired by Islamic law and all international human rights treaties.²⁶²

As these excerpts demonstrate, Qatar made an initial reservation on the basis of Islam, and initially moved to defend the right to certain laws of punishment on religious grounds. Later, its delegates ultimately argued as CAT meetings progressed that harsh ‘Islamic’ punishments are never in fact applied, and, therefore, moved away from the initial effort to defend Islamic punishments as being exceptional.

3.3.2.2 Domestic Discourses on CAT, Islam and Punishment in Qatar

Qatar’s engagement with the CAT is just one factor contributing to a broader story in which Qatari discourse on torture and cruel punishment has been framed around concepts of “human rights” (and, particularly those of “individuals”) and “just” and “humane” punishment informed by Islam in Qatar.

As was the case in Saudi Arabia, controversy concerning Islam and punishment has related to a number of controversial flogging cases. A number of these have reached global audiences and been widely publicized by international human rights monitors. For example, the conviction of a Syrian man Omar Abdullah Al-Hassan for drinking and having sex outside of marriage sentenced to 40 lashes in Qatar in 2011 raised controversy regarding the humanity of the sentence. In reference to the case, Qatar’s former Minister of Justice Dr.

²⁶¹ CAT/C/QAT/2/Rev.1, p. 26.

²⁶² Ibid, p. 10.

Najeeb al-Nuaimi told *Doha News* in an October 2012 statement that flogging was both rare and, in his view, undesirable in the Kingdom, saying, "...Qatar only selectively applies sharia-related corporal punishments. For example, it does not sentence people to lose their fingers or hands for stealing, as was the case 1,500 years ago." *Doha News* further reported, "Al-Nuaimi said this is because many Islamic schools of thought did away with such punishments centuries ago after taking into account social conditions, such as people stealing food because they were poor or hungry. He added that he believes flogging should be abolished because jail time is just as effective a deterrent against many crimes, and human rights need to be taken into consideration during modern times."²⁶³

A foreign aid worker in Qatar I interviewed described Qatar's "desire to appear modern" to be particularly acute since 2015. She perceived a quest for greater "international status" was reflected in many of the policies and modernizing projects taking place in the country. She cited a range of motivations for recent reforms, from business interests, diplomatic aspirations to be an "international cultural hub," to concern about public image in the upcoming 2022 FIFA World Cup.²⁶⁴ In her view, human rights projects could take advantage of this sensitivity to public image by pushing for modern human rights reforms that boost Qatar's international standing. This sensitivity to international reputation was discussed in many of the interviews I conducted while visiting Doha in late summer and early Fall 2016, perhaps most clearly visible in the great publicity efforts around Doha at this time to promote the construction of the upcoming World Cup stadium

²⁶³ Doha News (2016) "Four Things to Know About Floggings as Punishment in Qatar," June 17. Available at <https://dohanews.co/four-things-to-know-about-flogging-as-a-punishment-in-qatar/>.

²⁶⁴ Interview with Francesca Ricciardone, in person, Solidarity Center, Doha, Qatar, September 7, 2016.

(and to diminish negative press regarding the role of immigrant laborers in sometimes abusive conditions involved in building the stadium complex).²⁶⁵

Notably, Qatar's only human rights group to submit a Shadow Report to the CAT, the Human Rights Committee of Qatar, did not mention Islam or *hadd* punishments, although it did criticize some aspects of general maltreatment of prisoners. The removal of Qatar's reservations received little domestic attention, suggesting the move to soften the stance regarding compatibility between the CAT and Sharia may have held much more significance in Geneva than in Qatar. While there appears to be little domestic press coverage of the UN committee meetings, local press has published general stories on torture and the CAT, for example in an April 14, 2014 article in daily Qatari newspaper al-Watan "Half the world practices torture," an article reporting on recent UN report announcing new figures indicating an increase in global torture practices despite 30 years of torture's condemnation under the CAT.²⁶⁶

In certain cases, Qatari discourses have centered around the precepts of international laws including the idea of protection from torture as a human right protected in international law. Another al-Watan article from April 2012 covered "systematic torture" in Syria as revealed by the UN CAT Committee earlier that month.²⁶⁷ And, in a draft resolution of November 14, 2014, Qatar led the charge representing nearly 60 UN member states to submit a draft resolution at the UN General Assembly regarding human rights

²⁶⁵ See, for example, negative media coverage on World Cup laborers, including reports of silencing international reporters attempting to expose abuses in 2016 and 2017: BBC Coverage "Qatar 2022: 'Forced labour' at a World Cup stadium," BBC News, 31 March 2016, Available at <http://www.bbc.co.uk/news/world-middle-east-35931031> and Human Rights Watch report. "Dispatches: Qatar Quashing Reporting on World Cup," Human Rights Watch, 12 May 2015, Available at <https://www.hrw.org/news/2015/05/12/dispatches-qatar-quashing-reporting-world-cup>.

²⁶⁶ Al Watan (2014) "Half the World Tortures." Available at <http://www.al-watan.com/viewnews.aspx?n=4A47AC47-E282-4CA7-AD25-F21E9185A763&d=20140514>.

²⁶⁷ Al Watan (2012) "Systematic Torture in Syria." Available at <http://www.al-watan.com/viewnews.aspx?n=9483A22E-8E88-4DDC-B5A5-A40CCD6CF085&d=20120517>.

concerns related to conflict in Syria. Led by HE Sheikha Alia Ahmad al-Thani, Qatar's first female ambassador to the UN, the resolution addresses, "sexual violence, child abuse, enforced disappearances, arbitrary detention, torture, prevention of humanitarian assistance and the issue of the differentiation between civilian and military targets, as well as the issue of accountability for violations of international law committed in Syria," referencing the importance of international human rights instruments including the CAT.²⁶⁸

The increasing discussion of respect for Islamic law in Qatar in harmony with CAT principles of prevention of cruel treatment and torture in CAT meetings and broader discourses indicates the significance of international law as an anchor for helping promote these discourses. Just as the interactions between the state and the CAT were revealed as dynamic in the previous section on Saudi Arabia, the case of Qatar reveals how ratification stimulated discourse about Islam and human rights and helped frame a more modern discourse about just punishment in the language of individual "human rights." These changes were most clearly demonstrated in the removal of Qatar's RUDs to CAT, but also visible in subtle changes in broader discourses on punishment.

3.3.3 Other GCC State Engagement with CAT: Bahrain and Kuwait

Parallels can be observed between Qatar and Saudi Arabia's engagement with the CAT and that of other GCC states. A review of CAT Committee proceedings reveals important similarities in framing of dialogues between other GCC representatives and the CAT committee discussing Islam around concepts of judicial independence and individual

²⁶⁸ Qatar News Agency (2014) "Qatar Submits Draft Resolution to UN General Assembly on Human Rights Situation in Syria" 14 November. Available at <http://www.qna.org.qa/en-us/News/14111408370008/Qatar-Submits-Draft-Resolution-to-UN-General-Assembly-on-Human-Rights-Situation-in-Syria>.

human rights (including the right to be spared cruelty of certain practices such as flogging). Oman has not ratified and the UAE has failed to issue any reports, with an overdue first report from 2013 still pending. A member of the EU delegation to Saudi Arabia informed me in an interview that Bahrain has committed to submitting the report in 2017 as part of broader efforts of expressing “goodwill” in EU-Bahrain human rights dialogues. Both Oman and the UAE have broadly outlawed torture and degrading/undignified treatment in their basic laws, Oman in 1994 and UAE in 2004. Therefore CAT ratification and/or engagement cannot explain the addition around this time of all anti-torture clauses in the GCC, however, I argue, the ‘framing effect’ of CAT engagement has been less discernible in these cases where there is less available dialogue on Islam and punishment because Omani and Emirati diplomats have not entered into such dialogue at the UN.²⁶⁹ Other GCC states Bahrain and Kuwait have engaged with the committee in a number of reports and meetings and reflected similar styles of engagement concerning a modernizing discourse related to Islam and the CAT developing in these dialogues.

Global human rights monitors most commonly criticize GCC states, including CAT parties Bahrain, UAE, and Kuwait, for practicing capital punishment, sometimes by extremely drawn out processes such as stoning. With a few prominent cases of capital punishment in Bahrain making global headlines in 2014, an Iranian representative reportedly criticized Bahrain for failing to adapt its ‘tactics,’ saying, “Instead of resorting to worn out tactics, the authorities in Bahrain should initiate trust and pave the way for serious

²⁶⁹ Oman Basic Law of 1994 states in Article (20) “No person shall be subjected to physical or psychological torture, inducement or demeaning treatment...Any statement or confession proven to have been obtained under torture, inducement, demeaning treatment, or the threat of any of these acts, shall be deemed void.” The UAE Constitution of 2004 amendments states in Article 26 “No person may be arrested, searched, detained or imprisoned except in accordance with the provisions of the law. No man shall be subjected to torture or other indignity.”

dialogue between the people and the rulers," Iran's Foreign ministry spokeswoman Marzieh Afkham was quoted as saying by the state news agency IRNA.²⁷⁰ Although "In Kuwait, prior to the war, apparently it was "normal routine" for searches, arrests, deportations, torture, imprisonment and executions to take place without any prior judicial process"²⁷¹ floggings are not generally imposed today in that country. The applicability of certain Islamic conceptions of punishment in Kuwait has been subject to some important domestic debate in Kuwait especially, the GCC state with the most democratic system of representation compared to the rest of the GCC. In fact, increased representative politics in Kuwait brought forward some calls for stricter more literal Islamic punishments to be incorporated into law. Members of the Salafi movement in Kuwait for example, somewhat fragmented today, organized in 1996 with the support of Kuwaiti MPs Walid Tabtabae and Mukhalid al'Azmi to propose penalties to the National Assembly of Kuwait to establish more strict laws of punishment based on Sharia such as flogging and amputation.²⁷²

As is the case with other GCC-CAT dialogues, Kuwait and Bahrain's engagement with CAT have framed and captured developing dialogue about Islam and punishment in these countries. Kuwaiti representatives after ratifying CAT defended the right to maintain laws which allow for capital punishment under Islam, however, in these defenses these practices were framed in their first CAT review meeting in 2011 as necessarily *legal* under Kuwait's commitment to Islam, but extreme and rare, saying,

Mr. Razzooqi (Kuwait), It was difficult to abolish capital punishment because it formed part of the Islamic sharia. However, the conditions to

²⁷⁰ Al Akhbar (2014) "Saudi Carries Out 86th Execution of 2014 as Bahrain Stones Two to Death" (2014) *Al Akhbar*, 29 December. Available at <http://english.al-akhbar.com/node/23054>.

²⁷¹ James W. Messerschmidt (2016) *Hegemonic Masculinities and Camouflaged Politics: Unmasking the Bush Dynasty and its War Against Iraq*. New York: Routledge.

²⁷² Falah Abdullah al-Mdaires (2010) *Islamic Extremism in Kuwait: From the Muslim Brotherhood to al-Qaeda and other Islamist Political Groups*, New York: Routledge. Also see: Arabia Online (1999) "Islamist Kuwaiti MPs Advocate Islamic Punishment," Available at <http://www.corpun.com/kwju9901.htm>.

be met for its imposition were so exacting that it was scarcely ever imposed. Nobody had been executed for more than four or five years. He had never heard of any case in which an accused had been sentenced to amputation of his or her hands or feet. Such sentences did not exist in Kuwait.²⁷³

Kuwaiti delegates in CAT meetings also responded to criticisms of the committee by invoking principles of judicial independence. Replying to a “list of issues” raised by the CAT Committee in 2015 about unfair trials, Kuwaiti delegates responded by defending Kuwaiti law with reference to these modern concepts, saying,

Within the context of the principle of the separation of powers, the constitutional provision governing the relationship between the country’s Amir and the judicial power is worded differently from that governing his relationship with the executive and legislative powers. Hence, under articles 51 and 52 of the Constitution, the legislative and executive powers are vested in the Amir, the Council of Ministers, ministers and the National Assembly (Parliament) whereas, under article 53, the judicial power is vested in the courts, which exercise it in the name of the Amir within the limits prescribed in the Constitution. 17. The work of judges is periodically appraised in order to ensure the proper administration of justice and completion of cases. Such appraisals are carried out by the Justice Inspectorate, which comprises qualified and experienced judges.²⁷⁴

In meetings with the CAT Committee, Bahrain’s delegates echoed claims voiced by Saudi Arabia and Qatar regarding Islam as a source of protection against torture fully compatible with the CAT. For example, Bahraini delegates in UN meetings stated that Islamic law did not stand in the way of basic freedoms, including freedom of expression – in response to criticisms of the torture and cruel treatment of certain prominent bloggers and social media users who have criticized the government.²⁷⁵ In its initial report to the CAT Committee in 1999, Bahrain reported that the laws in Bahrain are based both on Islamic principles and principles of “popular participation,” saying,

²⁷³ CAT/C/SR.989, p. 2.

²⁷⁴ CAT/C/KWT/3, p. 7.

²⁷⁵ See, for example, Human Rights Watch (2016) “The UAE: Torture and Forced Disappearances,” 27 January. Available at <https://www.hrw.org/news/2016/01/27/uae-torture-and-forced-disappearances>.

They provide for the establishment of a political system based on a constitutional monarchy that relies on consultation, Islam's highest ideal of government, and on popular participation in the exercise of power, a modern political idea.²⁷⁶

Bahrain's delegates also made direct mention of Islamic law's compatibility with principles of "freedom," saying in summary dialogues,

Mr. AL-Boainain (Bahrain) Freedom of expression and scientific research was guaranteed under the Constitution, and everyone had the right to express his opinion orally or in writing, without prejudice to Islamic law and the unity of the people.²⁷⁷

3.4 Chapter Conclusions

CAT ratification across the GCC and the resulting engagement exposes how dynamic and evolving meanings attributed to human rights and punishment are within the GCC and at the United Nations. Despite the fact that CAT fails to provide detailed or clear definitions of practices, it has productively stimulated a developing dialogue about just and unjust punishment in the region converging around concepts of justice that result in the denunciation of certain extreme punishments such as flogging as un-Islamic. CAT ratification has helped draw to the light a visible conflict between relatively nascent codified laws in the GCC concerning stoning and flogging, and generally accepted standards against cruelty international law. In place of a stifled local discourse, GCC officials are engaged in a well-documented dialogue at the UN moving their positions to incorporate UN concepts on rights alongside the religious justification of ideas and practices of punishment.

²⁷⁶ CAT/C/47/Add.4, p. 5.

²⁷⁷ CAT/C/SR.656, p. 8.

CAT ratification has also helped frame dialogues around a number of converging concepts about human rights related to punishment under Islam in the GCC. In response to CAT commitments, GCC scholars, lawyers, politicians and diplomats engaged in UN meetings and broader local discourses on punishment increasingly discuss so-called “Islamic” punishments of flogging, stoning and amputation alongside modern concepts of judicial independence, rule of law and individual rights consistent with the CAT. CAT meetings and relevant broader dialogues demonstrate a general increase in denunciation of certain practices such as flogging as generally unsavory in Islam and, if legal, necessarily rarely imparted because of modern ideas of human dignity. In most cases, this has been reflected in (albeit sometimes cosmetic) legal changes that outlaw torture and cruel treatment. Despite these changes being cosmetic, they nevertheless signify a shift that should be important for those interested in the impact of international law.

This process of increasing convergence was relatively pronounced in the Qatari case, where a changing position on Islamic conceptualizations of just punishment was made clear in the removal of its RUDs and statements in local discourses renouncing cruel treatment as an important Islamic virtue. Similar change was visible, although more subtly so, in the case of Saudi Arabia where authorities defended certain practices such as flogging consistently in CAT meetings, and only quietly and after numerous meetings did Saudi authorities move to suggest these practices are rare and unsavory.

CAT ratification thus exposes clear tension between GCC legal standards and global standards on torture and cruel punishment. Such global exposure of the legal tensions brought forward by CAT holds potential as being productive for human rights down the line, as it shames these regimes which are clearly sensitive to reputation and bad

publicity. This acute sensitivity to reputation in the region is what Steffen Hertog describes as “local [GCC] ruling elites’ quest for social recognition and status in international society...” making “their domestic non-compliance with important international norms more visible and problematic.”²⁷⁸

A Saudi expert I interviewed echoed these claims about GCC sensitivity to criticism with visible optimism, saying Saudi Arabia and other GCC states are “extremely concerned” with being perceived as supporting Islamic extremism of terrorist groups including ISIL, and engaged in “publicity campaigns” and “reputation investments” to distance regime image from the idea of Islamic extremism.²⁷⁹ The CAT has contributed to helping incentivize these reputation-concerned regimes to, at most, re-consider and, at least, make a greater effort to justify criminal procedures alongside modern ideas about justice and punishment. This is particularly valuable in these countries where domestic debate about Islamic law as interpreted by the regime is rare, stifled and often gravely restricted.

The impact of CAT helping to stimulate and capture the integration of UN human rights concepts in discourses on punishment in the GCC could be easily misunderstood as a “west” – to – “east” imposition of norms. However, the process is in fact much more dynamic and intersubjective. The CAT fails to provide specific and definitive agreement among state parties on the exact definitions of “torture” and “cruel punishment.” It is vague in its definition of torture (allowing for unrestricted punishment carried under “lawful sanctions”) and equally unclear in its concepts of “cruel” “inhuman” and “degrading” punishment, as the CAT does not elaborate on which specific practices might fall into these

²⁷⁸ Steffen Hertog (2017) “A Quest for Significance: Gulf Oil Monarchies’ International Soft Power Strategies and their Local Urban Dimensions.” LSE Kuwait Programme Paper Series. March. Available at http://eprints.lse.ac.uk/69883/1/Hertog_42_2017.pdf, p. 7.

²⁷⁹ Interview with Hala al Dorasi, Arab Gulf States Institute, Washington, by phone.

categories. This chapter demonstrates how CAT ratification has therefore stimulated a growing debate about Islam and punishment in the GCC states, helping capture converging discourses invoking international human rights concepts to frame conceptions of Islamic punishments across the GCC.

The most productive contribution of CAT in the GCC may be on the increasing use of UN human rights concepts in Islamic discourse on punishment at this stage, rather than on law. This is not a clear or linear progress, as engagement has stimulated some backlash. For example, Wahhabi elite in Saudi Arabia have in recent years spoken out more firmly in favor of stoning and flogging as a return to “pure” Islam. Additionally, added exposure of CAT can contribute to negative media that has sometimes forced cruel punishment underground.²⁸⁰ Interview research I conducted revealed that increasing attention to cruel treatment in Saudi Arabia has in fact had the perverse effect of pushing flogging practices from taking place in public to inside prisons. Several interviewees I spoke to claimed that, although reports of public floggings in the Kingdom have been sporadic since 2013, the rate of these punishments has not declined; floggings are more commonly being carried out behind closed-doors now in prisons. In this sense, ratification may be seen to have had negative impacts on human rights by forcing violations underground where they are harder to report and address.

Engagement with CAT is just one piece of a broader story in which GCC states are increasingly engaged in efforts to negotiate two opposing aims – to appear modern and in-line with international norms, while simultaneously aiming to maintain conservative interpretations of Islam in criminal law. This tension has resulted, in most cases, in a degree of modernization in laws across the GCC. Still, there is a strong resistance to legal and

²⁸⁰ Interview with Saudi human rights activist based now in Washington DC, by phone, April 2017.

policy change in the GCC that would outlaw certain Islamic punishments including stoning, amputation and flogging. Even in cases where protections against torture and cruel punishment are increasingly formalized in statements from officials and in reformed codes of criminal procedure outlawing torture and cruel punishment, these anti-torture statements and clauses are most often open-ended and vague, and have not prevented widespread abuse.

Still, while acknowledging the risk of abuse and backlash, GCC states' engagement with the CAT has produced a modest but important framing effect on discourse. GCC representatives increasingly discuss Islamic understandings of justice and punishment as firmly against "torture" and "cruel punishment." This is a necessary though not sufficient first step in liberalization, as changes in laws and policies can be bolstered by these broader changes in ideas supported by the discourses reviewed in this chapter. Importantly in the case of the CAT, the relevance of Islam to GCC understandings of just punishment did not substantively manifest in initial RUDs. Such initial statements issued by GCC states upon ratification did not initially capture significant commentary on Islam and thus did not have any initial "framing" effect on discourse about Islam and torture during this step in the ratification process. Later on in the process of diplomatic dialogues between GCC state parties and the CAT Committee however, Islam became a topic of key – and at times central – concern, and a framing effect resulting in changed language and concepts used to discuss Islam as against torture manifested in CAT meetings with GCC diplomats over time. These changes reflect developments in the nature and frequency of human rights norms invoked in these contexts as they are increasingly framed to align with UN concepts – and, as such, I argue they constitute a stage of norm diffusion.

CAT ratification in the GCC has revealed tensions between Gulf states' desire to be perceived as modern and compatible with international human rights efforts alongside an opposing desire to assert arguments about Islamic exceptions to UN human rights efforts. Where UN human rights treaties have failed to result in improved human rights practices on the ground in a conventional understanding of successful norm diffusion, they have provoked increased communication over an evolving and variegated dialogue about Islam and human rights. This is a form of norm "localization" in a diffusion process. Without modernizing and liberalizing language and concepts about human rights, one cannot expect liberalized practices. Changes in language about norms is as a necessary, but not sufficient, step in the norm diffusion process worth tracing more deeply in the academic literature on norms and the Middle East. The findings reveal the GCC states are not monolithic in the ways in which they communicate understandings of Islam and punishment, while highlighting the continued relevance and centrality of Islamic understandings of punishment to debate on punishment in the region.

By exposing this dynamism, where the CAT Committee fails to provide meaningful and consistent standards regarding acceptable behaviors, it succeeds in provoking ongoing dialogue about Islam and punishment. While GCC states justify certain legal norms and practices of punishment as 'divinely sanctioned', these justifications are vibrant and moving when pressed in dialogue with the CAT. This dynamic intersection between Islam and international law will now be explored in the chapters that follow in the context of several other human rights treaties in the GCC to seek to offer broader insights about Islam, human rights and international law.

Chapter 4: Islam and the UN Convention on the Elimination of all forms of Discrimination Against Women in the GCC

This chapter discusses the impact of the ratification of the UN Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) on interpretations of Islam in the GCC. As was the case with the CAT, interaction with the UN women's rights convention has helped contribute to some framing of certain issues affecting women as "human rights" concerns, and has stimulated the use of CEDAW vocabulary and concepts such as "women's rights" and "gender equality" in an Islamic context by the treaty's GCC state parties. Ratification of CEDAW in the GCC has occurred alongside the codification of family codes across the region and, in some cases, has helped create the conceptual context for legal and policy reform granting some greater rights to women. It has also helped highlight a number of key areas of conflict between the CEDAW and some unchanging Islamic legal understandings of gender in the region in conflict with the Convention's precepts, which will be discussed throughout the chapter.

Adopted at the UN in 1979 and entered into force on 3 September 1981, the CEDAW has today been ratified by most UN states. With 188 state parties from every world region, the CEDAW holds a greater number of parties than the CAT (which, as discussed in the last chapter, has just 157), although its acceptance has been gradual. Only two MENA states – Jordan and Afghanistan – initially expressed support by signing the CEDAW during its introduction at the UN in 1980. Many MENA states then ratified after some delay, most acceding throughout the '90s and '00s, and today a majority of MENA countries are party to the convention.²⁸¹

²⁸¹ The fact that all GCC states has ratified is notable given that the United States has signed but not ratified the Convention, positioning it alongside a handful of other states non-party to the CEDAW including the Holy See, Palau, Iran, Somalia, South Sudan, Sudan and Tonga.

The Convention has been ratified by all six GCC states, starting with Kuwait in 1994, some 14 years after CEDAW's initial introduction at the UN. Kuwait was followed by Saudi Arabia ratifying CAT in 2000, Bahrain in 2002, the UAE in 2004, Oman in 2006 and Qatar in 2009.

CEDAW GCC Ratification

Kuwait – Acceded 1994
Saudi Arabia – Acceded 2000
Bahrain – Acceded 2002
United Arab Emirates – Acceded 2004
Oman - Acceded 2006
Qatar – Acceded 2009

Sometimes referred to as the “international bill of women’s rights,” the CEDAW has placed women’s rights as central human rights concern at the United Nations as well as in the work of most major international NGOs.²⁸² Article 1 of the UN Charter lists respect for human rights and fundamental freedoms “for all...without distinction as to, inter alia, sex,” and the 1948 Universal Declaration of Human Rights and subsequent Covenants on Civil and Political, and Economic, Social and Cultural Rights also affirm the respect for human rights without distinction based on sex.

Despite some mention of gender rights in developing international law at this time, protection for women remained weak and fragmented early on in the early history of the UN, although a growing women’s right movement was increasing momentum during the 1960s and 1970s.²⁸³ In light of growing international women’s rights activism, the 1979

²⁸² Equality between genders is a relatively new concept in global politics, but today is considered a basic principle of the work of United Nations, which sets out a “faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women...” in the preamble of its Charter.

²⁸³ In the face of growing women’s rights activism, the UN General Assembly in December 1963 requested that its Economic and Social Council work with a newly created UN “Commission on the Status of Women” to prepare a draft declaration for one instrument combining all international standards “articulating the equal rights of men and women,” an effort supported by a number of women’s rights activists from both within and outside the UN at this time. The effort culminated in the creation of the Declaration on the Elimination of

the UN General Assembly went forward unanimously to adopt the legally binding Convention on the Elimination of All Forms of Discrimination Against Women (resolution 34/180).²⁸⁴ The text of the CEDAW begins in its preamble by recognizing the failure of existing protections in international law to guarantee the rights of women, saying, “Concerned...that despite various instruments...extensive discrimination against women continues to exist...” Article 1 of the CEDAW defines ‘discrimination’ as:

Any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.²⁸⁵

To prevent such discrimination, the CEDAW asks that states “take in all fields, in particular in the political, social, economic and cultural fields, all appropriate measures...to ensure the full development and advancement of women...” It enshrines various other rights including equal access to food, health, education, and employment as well as non-discrimination in political participation. Under Article 5, states are called to “modify the social and cultural patterns of conduct” available to eliminate discriminatory attitudes and practices towards women. Article 6 calls for the elimination of “exploitation of prostitution” and various forms of trafficking. The CEDAW also endeavors to address and define certain areas of women’s rights through articles 16-22 in marriage and family life, including the

Discrimination Against Women, adopted by the General Assembly 7 November 1967. Activists continued to push for the adoption of a comprehensive and legally binding instrument, calls for which were included on the agenda, for example, of the “World Plan of Action” adopted at the World Conference of the International Women’s Year held in Mexico City in 1975.

²⁸⁴ “World Conferences on Women,” UN Women. Available at <http://www.unwomen.org/en/how-we-work/intergovernmental-support/world-conferences-on-women>.

²⁸⁵ “World Conference on Women,” Official UN Source Page, Available at <http://www.un.org/womenwatch/daw/cedaw/text/econvention.htm>.

right to share parental rights, freely choose a spouse and enter into marriage with full consent.

Regarding Marriage, Article 16 of the CEDAW states,

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:

(a) The same right to enter into marriage; (b) The same right freely to choose a spouse and to enter into marriage only with their free and full consent; (c) The same rights and responsibilities during marriage and at its dissolution...

Articles 23-30 deal with the effect and administration of the Convention, including empowering it to solicit and review reports as well as the potential for cases to be referred to the International Court of Justice.

This chapter presents how ideas about Islam and women's rights have been discussed in relation to GCC countries' interactions with the CEDAW and its committee over time since ratification in the region in the late 1990s and 2000s. To approach the research questions in this thesis, there is more to focus on in the case of the CEDAW, compared to the CAT, because of the significance of Islam in understandings of women's rights in the GCC. And yet, despite a clear tension expressed in GCC RUDs about possible conflict between CEDAW and Islam, further interactions between GCC states and CEDAW reveal a range of varied and evolving ideas and concepts about international law, women and Islam. This dynamic and varied intersection informing so-called compatibility between Islam and women's rights in international law across the region and over time,

often perceived as a key “fault line” between the GCC and the “west,”²⁸⁶ has been a subject of much attention but little scholarly consensus.²⁸⁷

This chapter further develops the argument that engagement with the CEDAW serves as a unique space in which conceptions of Islam and women’s rights have been framed and developed around a number of UN concepts. These discussions on Islam and gender in the GCC are being reformulated away from some traditional understandings and towards a greater convergence, at least on the surface level of language, with UN concepts of “equality” and “justice.”

Lena-Maria Moller claims that CEDAW formed the “international impetus”²⁸⁸ alongside domestic pressures for an overall development of more modern family law across the Arab Gulf (most notably as a result of the accession of Bahrain, Qatar and UAE to CEDAW in the 2000s). As was the case with CAT, CEDAW alone did not necessarily force or directly cause reform, however, it served as an important force for helping local actors solidify and leverage certain arguments, particularly, I argue, about Islam’s compatibility with certain CEDAW concepts.

As was the case in the preceding chapter’s discussion of CAT, these dynamics will be demonstrated as being varied across the GCC, and the process of convergence of Islamic

²⁸⁶ Conversation with Jean Quataert, University of Syracuse and Routledge History of Human Rights series editor, May, 2016.

²⁸⁷ See debate over so-called ‘compatibility’ with and ‘tension’ between Islam and CEDAW for example, in Michele Brandt and Jeffrey Kaplan, “The Tension Between Women’s Rights and Religious Rights: Reservations to CEDAW by Egypt, Bangladesh and Tunisia,” *Journal of Law and Religion*, Vol. 12, No. 1 (1995-1996) pp. 105-142., L Tønnessen “Feminist Interlegalities and Gender Justice in Sudan: The Debate on CEDAW and Islam, Religion & Human Rights, 2011 and Venkatraman (1995), “Islamic States and the United Nations Convention on the Elimination of All Forms of Discrimination against Women: Are the Shari’a and the Convention Compatible,” *American University Law Review*, 1994.

²⁸⁸ Lena-Maria Möller (2016) “Struggling for Modern Family Law” in Ed. Nadima Yassari, *Changing God’s Law: The Dynamics of Middle Eastern Family Law*, Abingdon: Routledge, p. 92.

interpretations of women's rights with UN concepts has been subtle, contentious and not necessarily clear or linear.

This chapter first provides background on the history and development of the promotion of women's rights in international law, including regional and Islamic declarations on women's rights, and a discussion on women in the GCC states. It then explores CEDAW ratification in Kuwait and the UAE in detail, countries with some of the most substantive discourses on Islamic conceptions of women's rights in exchanges with the CEDAW Committee, and then will offer further discussion on observable trends that can be identified across broader GCC. In closing, the chapter offers an account of what an understanding of these cases reveals about Islam, women, and the politics of the CEDAW across the region more broadly.

4.1 Women in Islamic Law and Society

This section first discusses some of the aspects of ideas about Islamic law that shape interpretations of women's rights in Islamic thought, and second discusses this topic as it relates more specifically to the GCC states. Reviewing the impact of the CEDAW in the GCC requires first an understanding of the nature and influence of the unique and at times varied perspectives on gender, social relations and the family in the broader history of Islamic thought. Gender plays a dynamic and important role in Islamic law – and, in particular, plays a central role in the domain of Islamic family law.

Interpretations of the Quran and Sharia place emphasis on the role of women in society and in the family as separate from that of men. Interpretations of Islam can impact various areas of woman's rights, from conceptions of gender impacting justice, marriage

and custody to labor, dress and social order. Islamic understandings of gender were influenced by traditional family social structures shaping social order in early Islam, but have also been influenced by evolving interpretations of religious text, traditions and customs over time.²⁸⁹

Islamic law, as a reflection of the social structures of early Islamic communities, has been shaped by gendered social and legal structures since its inception.²⁹⁰ The relationship between Islam and gender is complex, and, even though interpretations throughout history – as with many today in the GCC – violate conventional understandings of “equality,” there is also a rich history of efforts to “protect” women and enhance their position within an Islamic framework. The patriarchal history of Islam is undeniable, but the ways in which gender is confronted in contemporary Islamic legal contexts must be understood within complex and dynamic social and political histories, at times unique to the GCC contexts.

One of the most central issues in relation to gender and Islam is issue of marriage. The Quran and Hadith provide moral guidance and rules for relationships of various types (for example, between parents and children or between masters and slaves) but give primacy of place to guiding marital relations.²⁹¹ Marriage under Islamic law is considered both an essential element of leading a good Muslim life as well as a legal contract requiring certain conditions to be deemed acceptable. These are both rules for drawing up the marriage contract as well as rules guiding the rights and duties of husbands and wives after marriage.

²⁸⁹ John L. Esposito (1982) *Women in Muslim Family Law*, Syracuse University Press.

²⁹⁰ Wael.Hallaq (2011) *Introduction to Islamic Law*, Cambridge: Cambridge UP, p. 65.

²⁹¹ Judith E. Tucker (2008) *Women, Family and Gender in Islamic Law*, Cambridge: Cambridge UP.

The concept of *nushuz* (disobedience) orders marriage under Islamic law, which has been interpreted by some jurists to include requirements, for example, for a Muslim wife to obey a husband's orders for intimacy, and remain at home or travel with him at his request – a concept still contentious but strongly maintained in laws in the GCC. Requirements for female obedience are sometimes linked to verses from the Quran suggesting harsh punishments for those who “disobey,” for example, “Men are the managers of the affairs of women for that God has preferred in bounty one of them over another, and for that they have expended of their property. Righteous women are therefore obedient, guarding the secret for God's guarding. And those you fear may be rebellious admonish; banish them to their couches, and beat them. If they then obey you, look not for any way against them.” (4:34). This verse is often cited as evidence of patriarchal understandings underpinning Islam requiring female submission to men and, even, condoning physical violence against women.²⁹²

The Quran states that both a man and a woman must consent to marriage, and a marriage contract must be sealed with a *mahr* (dower) gift from the man (4:4). Quranic text provides that a man must treat his wife “justly,” and may take “three or four” wives if able to treat them favorably (4:3).²⁹³ A Muslim man must provide for his wife (Quran (2:233)), a duty often interpreted to include a man's provision of food, clothing and lodging. The complementary relationship between (male) maintenance (of the wife) and (female) obedience (towards the husband) have shaped Islamic understandings of gendered martial

²⁹² There have been a number of prominent Islamic feminist scholars who dispute this claim by offering varied interpretations of verse 4:34 and other similarly problematic verses. For example, American feminist Islamic scholar Amina Wadud has argued that “attitudes towards women at the time and place of the revelation helped to shape the particular expressions in the Qur'an,”²⁹² and that “Some of the greatest restrictions on women, causing them much harm, have resulted from interpreting Quranic solutions for particular problems as if they were universal principles.”²⁹²

²⁹³ Judith Tucker (2008) *Women, Family and Gender in Islamic Law*, Cambridge: Cambridge UP, p. 46.

relations which remain influential in many contemporary Islamic legal settings, and particularly strong in the GCC context.

4.2 Islam and Women in the GCC

While concerns about gender inequality and discrimination are truly global, they are of acute concern in the Middle East and North Africa, and in the GCC in particular. The World Economic Forum, a Swiss NGO based in Geneva running a Global Gender Gap index since 2006 which quantifies “the magnitude of gender disparities” across four key areas of health, education, economy and politics consistently ranks more states in the Middle East as the worst perpetrators of unequal treatment of women as compared with any other region. It ranks the Arab Gulf states in particular among the worst perpetrators of gender injustice. While all six GCC states have today signed the CEDAW, its Index ranks GCC states as 113²⁹⁴ and lower out of 142 rated countries in the index from low (best) to high number (worst)).²⁹⁵ And, according to Freedom House’s civil and political rights measures, the Gulf countries stand as some of the worst perpetrators of gender injustice – scoring consistently lowest in areas of legal rights, political rights, and measures of women’s “personal status and autonomy.”²⁹⁶

²⁹⁴ Most recent World Economic Forum Global Gender Gap Index 2014 rankings for GCC states: Kuwait 113, UAE 115, Qatar 116, Bahrain 124, Oman 128, Saudi Arabia 130. Rankings are 1 (best) to 142 (worst).

²⁹⁵ This index measures “gender gaps” and assigns global rankings according to “measures of gender-based gaps in access to resources and opportunities in individual countries” along sectors: economic participation and opportunity, educational attainment, health and survival, and political empowerment. Available at <http://reports.weforum.org/global-gender-gap-report-2014/rankings/>.

²⁹⁶ Sanja Kelly (2008) “Recent Gains and the New Opportunities for Women’s Rights in the Gulf Arab States.” *Freedom House Report*. Available at <https://freedomhouse.org/sites/default/files/Women%27s%20Rights%20in%20the%20Middle%20East%20and%20Noth%20Africa,%20Gulf%20Edition.pdf>.

The contours of the laws relating to certain areas of marriage family and inheritance directly taken from the Quran had remained relatively constant across the Middle East until the early twentieth century. Only around the time of the fall of the Ottoman Empire did reforms begin to sweep the region. Egypt, for example, reformed its family code and reorganized its religious courts after World War I, and modified its laws of inheritance after World War II. Egypt enacted its law of Personal Status in 1962 that helped restrict (but did not abolish) polygamy, and a Syrian law of Personal Status in 1953 restricted the practice by requiring a man prove his ability to support additional wives, but maintained the practice.²⁹⁷ Tunisia abolished polygamy in 1956. Polygamy remains legal in some MENA states, including in the six GCC countries, although it is relatively rarely practiced (reports say it accounts for 5-7 percent of all marriages in the GCC countries, and there is indication this is declining²⁹⁸). Some of the GCC rulers live in polygamous marriages themselves, in some ways legitimizing it and suggesting it is unlikely that the current GCC regimes would abolish it.

As with CAT, diverse interpretations of Islam that impact women's rights in the Middle East, and gender policies across the Islamic world vary. Tensions between Islamic law and CEDAW often relate to women's ability to gain equal status in family laws and more broadly in areas such as employment and mobility. In countries such as Syria, Lebanon and Qatar women cannot confer their nationality to their children if the child's father is a non-citizen. In Saudi Arabia, most women must travel with a male chaperone or *Mahram*. Many MENA states have labor laws that restrict a woman's access to

²⁹⁷ Majid Khadduri (1978) "Marriage in Islamic Law: Modernist Viewpoints," *The American Journal of Comparative Law*, Vol. 26, No. 2, pp. 214-1216.

²⁹⁸ Melanie Swan (2015) "Young Emiratis See Polygamy Declining," *The National*, May 27. Available at <https://www.thenational.ae/uae/young-emiratis-see-polygamy-declining-1.130508>.

employment, such as higher costs for employers hiring women including restrictions on the number of hours women can work, provision of childcare, and access to transportation. Violence against women in MENA, including honor killings, remains an issue of concern.²⁹⁹

Recent strides have been made advancing women's rights reforms across the GCC, for example, in 1994, Oman became the first GCC state to grant women voting rights (although those granted these rights were restricted to a select group chosen by Sultan Qaboos).³⁰⁰ In 1998 voting rights and rights to run for office were extended to women in Qatar, and women in Qatar first held government positions and voted respectively in 2000 and 2001. Saudi Arabian women most recently were able to vote in municipal elections in 2015. Women and men are formally granted "equal rights" in the constitutions of Oman, UAE and Bahrain, and promised protection from "discrimination based on sex" in Qatar, although a number of these documents simultaneously stress concepts which may violate CEDAW requirements for full enjoyment of legal equality, such as the concept of varied "duties" between sexes also contained in these constitutional documents.³⁰¹

GCC countries codified their personal status laws only recently, starting with Kuwait in 1984, and Qatar, the UAE, Bahrain and Oman did so in quick succession over a decade later based on a standardized legal document, the "Muscat Document of the Uniform Code of Personal Status of GCC Countries," issued by the Gulf Cooperation Council in 1996. Saudi Arabia remains the only GCC country without a codified personal

²⁹⁹ Adam Coogle (2016) "Recorded 'Honor' Killings on the Rise in Jordan," Human Rights Watch, 27 October. Available at <https://www.hrw.org/news/2016/10/27/recorded-honor-killings-rise-jordan>. Also see Phyllis Chesler (2010) "Worldwide Trends in Honor Killings," *Middle East Quarterly*, Spring, pp. 3-11.

³⁰⁰ Ebtisam Al Kitbi (2008) "Women's Political Status in the GCC States," Carnegie Endowment for International Peace. August 20. Available at <http://carnegieendowment.org/sada/21229>.

³⁰¹ See, for example, Bahrain's Basic Law Article 5 "The State guarantees reconciling the duties of women towards the family with their work in society, and their equality with men in political, social, cultural, and economic spheres without breaching the provisions of Islamic canon law (Shari'a)."

status law, although proposed versions were put forward for example in 2013 by the Shura Council.³⁰² GCC personal status laws vary – for example, they differ in their interpretation of the degree to which a judge holds discretion, vary in their level of detail and topics covered, and differ in their rules regarding those subject to the law such as non-Muslims, varied Muslim sects, and non-citizens.

As with torture and cruel punishment, norms about gender based on Islam institutionalized in laws and practices today in the GCC are a matter of interpretation of Quranic text. In an interview with Hala Aldorasi, a Saudi scholar currently working at the Arab Gulf States Institute of Washington D.C., laws and practices based on claims about Islam in the Gulf today are largely a reflection of interpretation rather than theological fact – Aldorasi has written extensively on the problem of viewing gender norms under Islam as established and unchangeable, saying, “unequal gender norms, in terms of privileges granted to men and restrictions imposed upon women, are not necessarily a direct result of Islamic teachings.” Instead, often a matter of interpretation when viewed in historical socio-political context.³⁰³

Laws and policies in the GCC reflect a particular interpretation of Islam which, in varying ways and to various extents, provide men with different (and often, greater) rights than women including the ability to hold office, access public services and, in a number of cases, move freely. The Gulf states share a “patriarchal ethos”³⁰⁴ and conservative Islamic social and cultural norms that shape the experiences of women in the family and in political

³⁰² Hala Al Dorasi (2016) “The Personal is Political: Gender Identity in the Personal Status Laws of the Arab Gulf.” Arab Gulf States Institute of Washington. Available at http://www.agsiw.org/wp-content/uploads/2016/08/Aldosari_ONLINE_updated.pdf.

³⁰³ From conversations with Hala al Dorasi. Aldorasi makes similar points in Ibid.

³⁰⁴ May Seikaly, Rahil Roodsaz and Corine van Egten (eds) (2014) “The Situation of Women in the Gulf States,” European Parliament. Document for the Committee on Women’s Rights. Available at [http://www.europarl.europa.eu/RegData/etudes/STUD/2014/509985/IPOL_STU\(2014\)509985_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/STUD/2014/509985/IPOL_STU(2014)509985_EN.pdf).

and social life. Gender policies in the region often reflect ideas about complementarity (rather than equality) between sexes. While there is a respect for the “spiritual equality” between men and women in Islamic thought across the region, this has manifested, “through the interpretive process, into a practical hierarchy of gender roles, in the name of conjugal harmony and family unity.”³⁰⁵ GCC states all in turn engender family and personal status laws based on conservative interpretations of Islamic Sharia law that causes gender to be viewed as a legitimate distinguishing feature for differentiated treatment in various areas under the law. Nevertheless, the GCC states do differ in numerous ways in this regard – while they all legitimize inequality under the law under Islamic religious arguments referencing Sharia legal interpretations, the ways in which these inequalities exist under the law and the degree to which inequality is institutionalized as a result differs between the GCC states and has changed within each state over time to varying degrees.

The GCC states’ recent family codes are similar to one another in many broad areas, but also differ somewhat. For example, Qatar’s family code allows provisions for a woman’s (*khul’*) divorce as an act of the wife, whereas UAE and Saudi Arabian law does not provide for this, and gives men a unilateral right to divorce (*talaq*). GCC states all share traditional understandings of the authority of men within the family to some degree, which have been reformed in other countries such as Morocco and Tunisia. Most GCC states require a male guardian to complete a marriage contract, and the GCC family codes all enshrine the authority of a husband over the wife in return for a wife’s maintenance and include various gendered understandings of rights and duties within marriage.³⁰⁶

³⁰⁵ Suha Taji Farouki and Basheer M. Nafi, eds. (2004) *Islamic Thought in the Twentieth Century*, London: IB Tauris, p. 233.

³⁰⁶ Lynn Welchman (2012) “Musawah, CEDAW, and Muslim Family Law” in Anver Emon, Mark Ellis and Benjamin Glahn, *Islamic Law and International Human Rights Law*. Oxford: OUP.

Saudi Arabia enforces one of the strictest interpretations of Islamic law that restricts women in the family and in social and political life in various ways. Sharia law controls women's mobility to the greatest extent in Saudi Arabia, where a male guardian (*wali*), often a father brother or husband, is required to facilitate numerous areas of female movement and activity such as travel, conducting official business, or seeking medical procedures.³⁰⁷ While notable progress has been made in Saudi Arabia and across the Gulf, in Saudi Arabia particularly, fewer professional positions are considered appropriate for women and women have restricted access to work.

Kuwait holds the most liberal stance on women's civic and political rights of the GCC states overall, where women represent over half of the work force and first gained the right to vote in parliamentary elections in 2005. Bahrain also holds a relatively liberal position on women's rights compared with the rest of the GCC, where women have held a right to vote since 2002 and have enjoyed relatively equal access to education. Qatar, the UAE and Oman hold more conservative environments concerning the rights of women, something Dr. Khalid M. Al-Azri attributes the restrictions on women in these states to the fact that fewer opportunities to push reforms have emerged in these states as they have had "less experience with participatory democracy" and "less politically energized environments."³⁰⁸ Reform efforts have sprung up in recent years, however, even in the more conservative GCC states. In Qatar and the UAE, Al-Azri argues, recent reforms have been motivated by the fact that women and their achievements are being perceived as a

³⁰⁷ Human Rights Watch (2017) "Saudi Arabia: End Male Guardianship." Available at <https://www.hrw.org/endmaleguardianship>.

³⁰⁸ May Seikaly, Rahil Roodsaz and Corine van Egten (eds) (2014) 'The Situation of Women in the Gulf States,' Directorate-General for Internal Policies: Policy Department, Citizens' Right and Constitutional Affairs. Available at [http://www.europarl.europa.eu/RegData/etudes/STUD/2014/509985/IPOL_STU\(2014\)509985_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/STUD/2014/509985/IPOL_STU(2014)509985_EN.pdf), p. 20

“symbol of the country’s modernity.”³⁰⁹ Any progress has seemed most limited in Oman, where a quiet and conservative approach to women’s rights shapes the political atmosphere. From Al-Azri’s perspective, all the GCC states use progress for women’s rights as a way to project a modern image, to varying degrees, to an international audience.³¹⁰

4.2.1 GCC Regional Instruments and Women

Islamic, Arab and GCC regional institutions have developed over the late 20th and early 21st century to address gender under an Islamic perspective. The aforementioned Muscat Document enshrined understandings of personal status in the GCC states, and contains various clauses indicating gender-based understandings of separate rights and duties (for example, Article 38 “Rights of the Wife from her Husband” including alimony, permission to visit parents, and to be treated equal to “other wives if the husband has more than one” and Article 39 “Rights of the Husband from his Wife” including care and obedience).

The 1990 Cairo Declaration on Human Rights in Islam provided little protection for women’s rights compared with the detailed conceptions of women’s rights enshrined at the UN around this time. The Cairo Declaration mentions gender twice – firstly it seeks to protect women in conflict, saying, “[I]t is not permissible to kill non-belligerents such as old men, women and children.”³¹¹ Secondly, regarding marriage, the Cairo Declaration states, “The family is the foundation of society, and marriage is the basis of making a

³⁰⁹ Ibid.

³¹⁰ Ibid.

³¹¹ Cairo Declaration on Human Rights in Islam (adopted 5 Aug 1990) UNGAOR, World Conference on Human Rights, 4th Session.

family. Men and women have the right to marriage, and no restrictions stemming from race, colour or nationality shall prevent them from exercising this right.”

Similarly, the original 1994 Arab Charter on Human Rights contained relatively minimal substantive protections for women’s rights. However, facing criticism from various human rights organizations for failing to stand up to international human rights standards, the Charter was redrafted with the aid of a five-person committee of Arab human rights experts, notably two of which were women.³¹² The Charter was then amended to include more protections for women in marriage and family, as well as in the workplace, was accepted by the Arab League in 2004, and entered into force March 15, 2008.

The revised Charter states,

The family is the natural and fundamental group unit of society; it is based on marriage between a man and a woman. Men and women of marrying age have the right to marry and to found a family according to the rules and conditions of marriage. No marriage can take place without the full and free consent of both parties. The laws in force regulate the rights and duties of the man and woman as to marriage, during marriage and at its dissolution.³¹³

Regarding women in the workplace, the Charter incorporates a non-discrimination clause,

There shall be no discrimination between men and women in their enjoyment of the right to effectively benefit from training, employment and job protection and the right to receive equal remuneration for equal work.³¹⁴

³¹² Mervat Rishmawi (2005) “The Revised Arab Charter on Human Rights: A Step Forward?” *Human Rights Law Review*, Volume 5 Issue 2, pp. 361-376.

³¹³ Arab Charter on Human Rights (adopted 22 May 22, 2004, entered into force 15 March 2008) League of Arab States. Rep. 893.

³¹⁴ Ibid.

The 2014 GCC Declaration on Human Rights reflects similar elements of the Arab Charter: a broad non-discrimination clause and an article affirming the primacy of the family (“under Islamic law”), including “the right to marry and found a family.”

Article (15) Men and women have the right to marry and found a family. Marriage shall only be entered into with the free will and consent of the intending spouses according to the provisions of Islamic sharia Law and regulation (law).

Article (2) People are equal in human dignity, in rights and in freedoms, and are equal before the regulation (law). There is no distinction between them for reasons of origin, gender, religion, language, color, or any other form of distinction.³¹⁵

Bahrain-based legal scholar Dr. Pasquale Borea described these provisions as “productive” but “nascent” efforts to reflect the compatibility of Islamic Law with human rights. He named this, beyond “universalism” and “cultural relativity” as a sort of so-called “pluriversal” effort by GCC states to offer a specifically Islamic interpretation, seemingly localizing international norms about equality and non-discrimination alongside Islamic views on distinction in roles within the family.³¹⁶ He explained the declaration was an important part of growing efforts to expand human rights language in Bahrain, saying the declaration was a “nice surprise” although it was “general” and “not all that different” from existing documents including the Arab Charter. He praised the declaration by saying it serves as evidence that “everything is moving very slow but it's moving. That's what is important.”³¹⁷

³¹⁵ GCC Human Rights Declaration for the Member States of the Cooperation Council for the Arab States of the Gulf (adopted 9 December 2014). Gulf Cooperation Council.

³¹⁶ Conversation in interview, also see “Royal University for Women Conference on Women and Society” (2016), Kingdom of Bahrain, 19-20, April, Conference Report. Available at <http://www.ruw.edu.bh/conference/doc/Conference%20Reports/Report%20-%20Day%202%20LAW%20Parallel%20Sessions.pdf>.

³¹⁷ Interview with Dr. Pasquale Borea, Bahrain, by phone, June 2017.

These developments in regional law, ultimately reflected in the most specific (and “historical”) event of the GCC declaration, reflect a degree of convergence in which GCC states’ laws increasingly are enshrining a so-called legal “right” to “equal treatment” among genders – a key concept in the CEDAW. I will discuss how these regional instruments are part of a broader story in which engagement between GCC states and CEDAW has served as a productive source of framing for those involved in interpreting Islam in the GCC around UN concepts of “equality” “fairness” and “non-discrimination.” The regional instruments, culminating most recently in the GCC instrument, are both reflective and constitutive of these changes. To understand the process of change more specifically, the individual interactions between GCC states and the CEDAW are now discussed.

4.2.2 Islam and GCC Reservations, Understandings and Declarations to CEDAW

By 1995, 12 of the 132 State Parties to the CEDAW were majority Muslim in population.³¹⁸ And yet, perceived conflict between the provisions of the Women’s Convention and the Islamic Sharia was widespread among many UN states, including the State Parties themselves, where Islamic Law was often as a common denominator in sometimes sweeping reservations about Islam brought forward by majority Muslim states to the convention upon ratification.³¹⁹

All six GCC states made some mention of possible conflict with Islam in Reservations, Understandings and Declarations (RUDs) to the CEDAW. The GCC is not

³¹⁸ These include Bangladesh, Egypt, Indonesia, Iraq, Jordan, Libya, Mali, Morocco, Tajikistan, Tunisia, Turkey, and Yemen.

³¹⁹ Bharathi Anandhi Venkatraman (1995) “Islamic States and the United Nations Convention on the Elimination of All Forms of Discrimination Against Women: Are the Shari’a and the Convention Compatible?” *The American University Law Review*, Vol 44, No. 5.

alone in entering concerns related to Islam as some 16 UN states mentioned concern related to compatibility of the CEDAW with Islamic religious principles in RUDs. Common concerns voiced in both RUDs to CEDAW regarding Islam are often related to specific articles regarding nationality, freedom of movement and marriage, as demonstrated below.

GCC RUDs to CEDAW

Mention of Islam	6 ³²⁰
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MENA RUDs to CEDAW

Mention of Islam	11 ³²¹
Article 9 (concerning equal right to nationality)	13 ³²²
Article 15 (concerning freedom of movement/residence)	9 ³²³
Article 16 (concerning equal rights in marriage)	15 ³²⁴
Article 29 (concerning referral to the ICJ)	13 ³²⁵
No Reservation	1 ³²⁶

Islam is the most prominent topic raised in GCC RUDs to the CEDAW. GCC states raised concern about Islam more often in RUDs to CEDAW than other Muslim-majority countries. Despite the clear pattern of concern about Islam and CEDAW in the GCC, the individual GCC states reference these Islamic concerns in their RUDs to CEDAW in

³²⁰ GCC Reservations to the CEDAW mentioning Islam entered by: Bahrain, Kuwait, Oman, Qatar, Saudi Arabia, and the UAE

³²¹ Reservations to the CEDAW mentioning Islam entered by: Bahrain, Egypt, Iraq, Kuwait, Libya, Morocco, Oman, Qatar, Saudi Arabia, Syria and the UAE

³²² Reservations to Article 9 entered by: Algeria, Bahrain, Egypt, Iraq, Jordan, Kuwait, Lebanon, Morocco, Oman, Saudi Arabia, Syria, Tunisia, Turkey and the UAE

³²³ Reservations to Article 15 entered by: Algeria, Bahrain, Jordan, Morocco, Qatar, Syria, Tunisia, Turkey, and the UAE

³²⁴ Reservations to Article 16 entered by: Algeria, Bahrain, Egypt, Iraq, Jordan, Kuwait, Lebanon, Libya, Morocco, Oman, Qatar, Syria, Tunisia, Turkey and the UAE

³²⁵ Reservations to Article 29 entered by: Algeria, Bahrain, Egypt, Iraq, Kuwait, Lebanon, Morocco, Saudi Arabia, Syria, Tunisia, Turkey, the UAE and Yemen

³²⁶ No reservations from Afghanistan

diverse ways. References to Islam in RUDs range from broad, sweeping statements about any possible conflict with Islam without specification, to more specific statements discussing possible conflict between Islamic law and issues of marriage and family life or other topical areas like inheritance.

For example, Saudi Arabia entered a single, sweeping reservation upon ratification saying,

In case of contradiction between any term of the Convention and the norms of Islamic law, the Kingdom is not under obligation to observe the contradictory terms of the Convention.³²⁷

Oman also entered a sweeping reservation citing Islam.³²⁸

By contrast, the United Arab Emirates, Kuwait, Bahrain and Qatar entered more specific statements about Islam in RUDs. These specific areas in which GCC states have referenced conflict with Islam can be broadly categorized as concerning the following 1) anti-discrimination under the law, 2) marriage, divorce and the family, 3) inheritance, and 4) adoption.

Specifically, the UAE entered a reservation asserting there is conflict between the CEDAW's Article 2(f) concerning anti-discrimination and Islamic Sharia law concerning inheritance, saying,

The United Arab Emirates, being of the opinion that this paragraph violates the rules of inheritance established in accordance with the precepts of the Shariah, makes a reservation thereto and does not consider itself bound by the provisions thereof.³²⁹

³²⁷ CEDAW: Reservations. Available at <http://www.un.org/womenwatch/daw/cedaw/reservations-country.htm>.

³²⁸ Oman's Reservation to CEDAW: Oman reserves to "All provisions of the Convention not in accordance with the provisions of the Islamic sharia and legislation in force in the Sultanate of Oman."

³²⁹ CEDAW Reservations. Available at <http://www.un.org/womenwatch/daw/cedaw/reservations-country.htm>.

While the UAE's statement does not go on to clarify exactly how Islamic interpretations of rules of inheritance in the UAE conflict with the CEDAW, the reservation offers a markedly more specific reference to concerns about Islam than the comparatively vague statements offered by Saudi Arabia and Oman. Similar to the UAE, Bahrain entered reservations that mention Islamic concerns concerning specific articles, specifically articles 2 (concerning anti-discrimination policy) and 16 (concerning marriage and family).³³⁰ Kuwait took more specific issue only with Article 16(f), dealing with adoption and guardianship, saying, that this is because "it conflicts with the provisions of the *Islamic Shariah*, Islam being the official religion of the State."³³¹ Qatar provided the most numerous mentions of Islamic religious incompatibility with three possible areas, Article 15 (1) dealing with inheritance, Article 16(1) (a) and (c) dealing freedom to enter into marriage and to have the same rights and responsibilities, and Article 16 (1) (f) dealing with adoption, explaining, in all three Articles concerned, that the reasoning for reservation is that "it is inconsistent with the provisions of Islamic law and family law".³³²

Overall, GCC RUDs to the CEDAW offer a varied collection of statements about Islam and women's rights. Together, they offer a pattern of resistance against areas of CEDAW's conceptualizations of rights, while also offering a diversity of claims and arguments about Islam's specific compatibility with the international instrument. Despite

³³⁰ Bahrain's Reservation to CEDAW: "....the Kingdom of Bahrain makes reservations with respect to the following provisions of the Convention: Article 2, in order to ensure its implementation within the bounds of the provisions of the Islamic Shariah; Article 16, in so far as it is incompatible with the provisions of the Islamic Shariah;"

³³¹ Kuwait's reservation to CEDAW: "The Government of the State of Kuwait declares that it does not consider itself bound by the provision contained in article 16 (f) inasmuch as it conflicts with the provisions of the *Islamic Shariah*, Islam being the official religion of the State."

³³² Qatar's Reservation to CEDAW: "Article 15, paragraph 1, in connection with matters of inheritance and testimony, as it is inconsistent with the provisions of Islamic law. Article 16, paragraph 1 (a) and (c), as they are inconsistent with the provisions of Islamic law. Article 16, paragraph 1 (f), as it is inconsistent with the provisions of Islamic law and family law. The State of Qatar declares that all of its relevant national legislation is conducive to the interest of promoting social solidarity."

holding similarities in interpretations of Islamic law domestically, specific clauses discussed in RUDs differ. These RUDs also noticeably focus on areas of family life as a central concern, without much specific mention of civil and political rights. This next section will demonstrate how diplomatic dialogues between GCC states and the UN have significantly progressed since initial RUDs to address a wide range of more specific concerns, as well as to reflect a degree of conceptual evolution and modernization occurring in interpretations of Islam in the GCC.

4.3 GCC-CEDAW Engagement: Country Examples

While family and social issues served as a focal point for GCC RUDs submitted to CEDAW, Islam has served as a broader topic of contention in subsequent GCC interactions with the CEDAW committee, and has expanded to focus on political issues, particularly related to women's participation in government and politics. CEDAW ratification has stimulated a space for dialogue in which conceptions about Islam and women's political role have been contested. Interactions have also served as a forum in which GCC representatives have all pushed back against UN imposition of certain "universal standards" in various way, all the while all consistently framing Islam in language of women's rights, particularly as a religion firmly in support of modern concepts including "equality" and "non-discrimination" between genders. This section discusses the impact of CEDAW on interpretations of Islam in Kuwait and the UAE in detail, where there has been longest and most substantive engagement, and discusses broader trends across the other GCC countries.

4.3.1 Kuwait and the CEDAW

Kuwait was the first GCC state to ratify CEDAW in 1994, and, due to the longer time period as a state party and the liveliness of domestic debates on women, Kuwait has had the most dense and substantive engagement between CEDAW Committee Members and Kuwaiti authorities concerning interpretations of Islam and women's rights. Kuwait initially ratified CEDAW under its third Emir, Jaber al-Ahmad al-Jaber al-Sabah (r. 1977-2006). Sheikh Jaber was both a reformer and a moderate conservationist of Kuwait's institutions and social identity, known for his somewhat reclusive personality following his exile in Saudi Arabia during the Iraq's invasion of Kuwait. Kuwait's ratification of CEDAW took place during a period in which calls for reforms to enhance women's rights were building among local activists and, not long after ratification, a number of important although modest, reforms were enacted progressing the women's rights movement.

As the most institutionally democratic state in the GCC, Kuwait's National Assembly plays a role in legislating treaties. Treaties are entered into by royal decree. The decision is then "communicated immediately" to the National Assembly, which is required to enact relevant laws to conclude the treaty's enforcement.³³³ Kuwait ratified CEDAW in 1994 alongside the following reservations about Islam, law and/or custom related to equal rights to vote and hold office, to pass nationality, to care for children, and the competence of the Committee to refer cases, saying,

Reservations: [concerning equal rights to hold office],

³³³ Under Article 70 Kuwait's Constitution: "Legal status of treaties The Amir shall conclude treaties by Decree and shall communicate them immediately, accompanied by relevant details, to the National Assembly. After ratification, sanction and publication in the Official Gazette the treaty shall have force of law."

1. The Government of Kuwait enters a reservation regarding article 7 (a) inasmuch as the provision contained in that paragraph conflicts with the Kuwaiti Electoral Act, under which the right to be eligible for election and to vote is restricted to males.

2. Article 9, paragraph 2 [concerning equal right to pass nationality]

The Government of Kuwait reserves its right not to implement the provision contained in article 9, paragraph 2 of the Convention, inasmuch as it runs counter to the Kuwaiti Nationality Act, which stipulates that a child's nationality shall be determined by that of his father.

3. Article 16 (f) [concerning children's rights]

The Government of the State of Kuwait declares that it does not consider itself bound by the provision contained in article 16 (f) inasmuch as it conflicts with the provisions of the *Islamic Shariah*, Islam being the official religion of the State.

4. The Government of Kuwait declares that it is not bound by the provision contained in article 29, paragraph 1 [concerning right of referral to the ICJ].

Women's suffrage was narrowly approved in Kuwait, in a 2005 bill with 37 votes for and 21 against in the National Assembly. Calls for women's suffrage in Kuwait had been growing for years (a bill proposing opening the vote for women was levied in the National Assembly as early as 1973, but rejected by conservative opposition), and calls for women's voting rights particularly strengthened over the period in which Kuwait ratified CEDAW in the 1990s. For example, in 1992, before CEDAW ratification, more than 100 women staged protests at polling stations during National Assembly elections, demanding their right to vote, and proclaiming this is consistent with Islam.³³⁴ Sheikh Jaber attempted to extend suffrage to women by royal decree in 1999, but strong conservative forces within the National Assembly rejected his proposal. It wasn't until December 2005 (just over a

³³⁴ Ed. Haideh Moghissi (2005) *Women and Islam: Images and Realities*, Volume 1. Abingdon: Taylor and Francis, p. 333.

decade after CEDAW ratification), when calls for suffrage mounted (for example with 1,000 supporters of women's suffrage surrounded the parliament in protest) that the local assembly approved women's voting.

Eight months later, the government of Kuwait announced on 9 December 2005 its decision to withdraw its reservation to Article 7(a) concerning Kuwait's Electoral Act, citing changes to the law allowing women to vote.³³⁵ Nisrine Abiad identifies this change as important for recognizing the variance in the ways in which Muslim countries communicate their positions on women's rights. For example, Pakistan reserved to various parts of the CEDAW without referencing Islam, using secular law "as an excuse to place limitations to CEDAW which are really motivated by Sharia."³³⁶ Kuwait's initial statement about electoral rights, not directly linked to Sharia but perhaps implicitly related –clearly illustrates the possibility for certain interpretations of Islam and women's rights as initially expressed in reservations to be open to change.

4.3.1.1 Women in Kuwait

Women's rights advocates have achieved significant gains under reforms in the law in Kuwait, most notably in the aforementioned 2005 overhaul to the electoral law allowing women to vote and hold office, enjoying many of Kuwait's democratic elements not characteristic of other GCC states. Unlike other GCC states, however, Kuwait's Constitution of 1962 (reinstated in 1992) does not contain an explicit clause guaranteeing equal rights to men and women under the law, failing to meet a requirement under the

³³⁵ Kuwait: Reservations, Understandings and Declarations. Available at http://www.bayefsky.com/html/kuwait_t2_cedaw.php.

³³⁶ Nisrine Abiad (2008) *Sharia, Muslim States and International Human Rights Treaty Obligations: A Comparative Study*, London: British Institute of International and Comparative Law, p. 92.

CEDAW committee to enshrine basic protections of non-discrimination in the country's legal fabric. Gender is addressed in the Basic Law mainly as it relates to a woman's role within the family. Article 9 of Kuwait's Basic Law claims a special role of women and children and the family as a foundation of society requiring special protection, saying,

Article 9 Right to found a family. The family is the foundation of society; its mainstays are religion, morals and the love of country. The Law shall preserve its entity, shall strengthen its bonds and shall, under its aegis, protect mothers and infants.³³⁷

Over the past decades since CEDAW ratification, women have achieved increased access to higher education. Today women make up two thirds of university students and have also increased their representation in the work force, despite a number of restrictive laws.³³⁸

Despite CEDAW ratification, women also face prominent legal inequalities related to personal status law, relating to areas including testimony, nationality, divorce and inheritance. For example, damage testimony is provable under the law with the testimony of "two men, or a man and two women" (Article 133), and a husband holds authority over his wife (Article 8) including the right demand a wife's relocation (Article 90).³³⁹

Efforts for further reform to conform Kuwaiti law with CEDAW principles have experienced ebbs and flows in recent years, most prominently playing out between reformist and conservative forces in the National Assembly. Controversy occurred in April 2014 when the Justice Ministry prohibited women from applying for certain legal post, and Kuwait does not hold protections in the law against domestic violence and sexual

³³⁷ Kuwait Constitution of 1962, reinstated in 1992.

³³⁸ For example, women are restricted under law from working certain hours or working certain jobs for reasons of morality, see Kuwaiti Law of Labor in the Private Sector, Law no. 6 of 2010, *Official Gazette* no.963 of 21 February 2010.

³³⁹ Kuwaiti Personal Status Law, Law no.51 of 1984, *Official Gazette* no.1570 of 23 July 1984.

harassment, and efforts to reform law to include legal protections have been the subject of ongoing resistance from conservative voices in the National Assembly since 2014.³⁴⁰

4.3.1.2 Kuwait - CEDAW Committee Dialogues

There is a visible change from more conservative and inflexible interpretations of Islam voiced by Kuwaiti officials in initial CEDAW meetings in 2004, to later meetings where officials offer more flexible and modern interpretations of Islam by 2017. These meetings have progressed from 2004 to 2017 to reflect increasing convergence with CEDAW in the language and concepts invoked about Islam and women's rights. Kuwait's engagement has taken place around three major reporting cycles in 2004, 2011 and 2017.

Kuwait's initial report (due 1999, submitted 2004) contained a number of assurances that women are treated equally in Kuwait, and, particularly, under Islamic law. However, the meetings also included statements about the inflexibility of Islamic law, and Kuwait's representatives claimed that numerous requests from the CEDAW committee to reform the law could not be followed because Islamic law could not be changed. Kuwait's initial 2004 report claimed Kuwaiti Law was compatible with principles of equality by issuing assurances of equality provided for in the Kingdom's system of law based on Islam, saying,

Under the Kuwaiti Constitution, the principles of equality and nondiscrimination are fundamental constituents of Kuwaiti society, as stipulated in article 7, prior to which the Preamble to the Constitution already designates equality as one of the cornerstones on which Kuwaiti society is based. In addition, article 8 of the Constitution provides for the principle of equal opportunities for citizens

³⁴⁰ Human Rights Watch (2015) "World Report 2015: Kuwait." Available at <https://www.hrw.org/world-report/2015/country-chapters/kuwait>.

It is clearly evident ... that the State is committed to the achievement of equal rights and obligations for women and men in a manner consistent with the nature of Kuwaiti society and the provisions of Islamic law which regulate personal status in Kuwait.³⁴¹

The same report also discussed women's rights alongside Islamic understandings, particularly Islamic concepts of "obligation," stating,

The Division for Family and Women's Affairs This Division was established pursuant to Ministerial Ordinance No. 65 of 1997 as part of the Children's Department at the Ministry of Social Affairs and Labour and is specially tasked with: - Developing an integral plan for the advancement of Kuwaiti women based on the values of Kuwaiti society and the teachings of the true religion of Islam- Seeking ways and means of raising women's awareness of their rights and family obligations;³⁴²

The report also addressed women's rights in relation to Kuwait's Islamic values when addressing the issue of sexual violence and prostitution,

The Government of Kuwait first of all wishes to state its position on this matter, which is that it rejects all practices connected with traffic in women and the exploitation of women in prostitution, as well as all other similar practices, since they represent a form of modern slavery which is inconsistent with the most basic human rights and with human dignity and values. They are also inconsistent with the provisions of Islamic law, which calls for virtue and forbids such acts. Moreover, they are incompatible with public order and morality.³⁴³

The final element of the 2004 report focusing on Islam discussed the importance of Islam in informing women's associations in the country, and again framed the discussion around the language of duties in the home, stating,

These associations [Kuwait's state-sponsored women's associations] endeavour to diffuse the culture of religion, promote the revival of the Islamic heritage and disseminate the truths and virtues of the Muslim

³⁴¹ CEDAW/C/KWT/1-2, p. 13.

³⁴² Ibid, p. 16-17.

³⁴³ Ibid.

religion. They also encourage women to serve society by throwing their energies into voluntary work and using their cultural, educational and technical potential to that end, in particular women who are fully devoted to matters of the home and have sufficient time to engage in voluntary work. In addition, in order to serve women and encourage them to perform their functional role in society, the majority of women's associations opened model nurseries to provide childcare for working mothers, who consequently feel more relaxed at work in the assurance that their children are receiving care and attention in such nurseries. It should be said that women's involvement in voluntary work is not simply confined to the realm of women's associations, as they also give assistance to various private associations operating in the cultural, social and vocational fields...

Follow-up meetings that same year introduced a number of exchanges between CEDAW Committee members and Kuwaiti officials contesting interpretations of Islam – these were specifically focused on the issue of a woman's right to vote and hold office and to move and marry freely without the authority of a male guardian. In these exchanges, Kuwait's officials suggest that these are rules governed by Islam and, therefore, these rules cannot be changed, and CEDAW committee members disputed these claims.

Ms. Belmihoub-Zerdani said that Kuwait's reservation to article 7 of the Convention was contrary to the Convention and to the Koran, because in the past, at the very birth of Islam, as exemplified by the first and last wives of the Prophet Mohamed, women had always played key roles in politics. Therefore, she wondered how any man today could deny to a Muslim woman in a Muslim country the right to engage in politics.³⁴⁴

A CEDAW Committee member also expressed that perceived conflict with Islam may be the result of misunderstanding of Islam, saying,

Ms. Morvai (CEDAW Committee): There should be some encouragement and some grants could even be given to female academics to undertake research on evolutionary interpretations of the Koran and convince legislators that the participation of women in politics was not inconsistent with the teachings of the Koran. Some informal lobbying could also be conducted.

³⁴⁴ CEDAW/C/SR.634, p. 7.

Ms. Morvai observed that many people, especially in Western countries, continued to believe that women in the Islamic world lived a life “behind the veil”—largely confined to their homes and restricted to a domestic role—and that she herself had been amazed to read in the report of the significant accomplishments made in a number of fields. It was sometimes thought that a society based on spirituality could not fail to be restrictive of women’s rights, and it was important to understand that spirituality and women’s rights were not mutually exclusive. She urged the Kuwaiti delegation to give more visibility to the fact that there was not necessarily a contradiction between the two.

A Kuwaiti official replied that various aspects of Islamic law, including areas of personal status such as laws on adoption and marriage, simply could not be changed, regardless of requests from the Committee, because changes would violate Islamic principles.

Ms. Nazar (Kuwait): Regarding Kuwaiti’s reservation to article 16 (f), she said that guardianship in Kuwait was governed by civil law and the law governing the rights of individuals stemming from the Islamic Shariah, which did not permit the system of adoption envisaged under article 16 of the Convention.³⁴⁵

With regard to marriage and divorce, a girl had to be at least 15 and a boy 17 in order to marry. In cases where the girl had not yet reached the age for marriage, she could be married with her father’s permission. Violence against women in the family was condemned by the Koran and was in fact penalized by law. In accordance with Islamic law, the waiting period for divorce was two years in order to give the parties an opportunity to reconcile or to ensure that the woman was not pregnant.... Under the Civil Code, either partner could request divorce if it was impossible to continue in the marriage or if there was some major failing on the part of either partner; in such cases divorce would be granted if there was mutual consent. A woman also had the right to request dissolution of the marriage if the man was not providing adequate support to the family.³⁴⁶

A second round of meetings following up on these discussions and focusing on a second report in 2010 reveal a change in the arguments about Islam discussed in the

³⁴⁵ CEDAW/C/SR.642, p. 2.

³⁴⁶ Ibid.

meeting. While a number of statements by Kuwaiti officials again discuss Islamic principles as specific and unable to be amended, statements progressed to include, 1) greater incorporation of language of gender equality and non-discrimination discussed as principles compatible with Islam, and, 2) a new inclusion of arguments by Kuwaiti officials that certain laws and practices could, in fact, be open to being changed, such as changes to open positions in the judiciary to women.

Kuwait's second report in 2010 started by framing an understanding of Kuwait's law informed by Islam as being "naturally" compatible with CEDAW principles of equality and non-discrimination (although there is no specific *gender* equality clause in the Constitution). The statement begins,

The Kuwaiti Constitution is based on well-established principles, which naturally include those of equality and non-discrimination between men and women in the light of the provisions of Islamic law, as is clear from the following: • All people are equal in human dignity and in rights and duties before the law, without distinction as to colour, language or religion, as stated in article 29 of the Constitution.³⁴⁷

Still, despite assurances of compatibility, Kuwaiti officials claimed, again, that certain aspects of law that concern the CEDAW Committee cannot be changed because of Islam:

Mr. Almutairi (Kuwait) said that, in the light of the fact that Kuwaiti law drew on the principles of Islamic law, which governed all matters relating to personal status, marriage, divorce and inheritance, the legal provisions pertaining thereto could not be amended. Muslims were expected to abide by those principles. Under the Personal Status Act, both spouses could seek a divorce before the courts, including on grounds of polygamy. The courts took the circumstances of each case into account in determining whether any injury had been caused. In cases where injury had been caused, there were clear provisions for

³⁴⁷ CEDAW/C/KWT/3-4, p. 4.

resolving financial issues relating to the case; where no injury had been caused, that task was left to the discretion of the courts.³⁴⁸

Follow up meetings to this report in 2011 once again offered a platform for debate about interpretations of Islam. These meetings raised particular disagreement among those in the meetings over the right of women to rule under Islam, with a CEDAW Committee member raising concern about misinterpretations of Islam reflected in Kuwait's law, saying,

Ms. Jahan [CEDAW Committee] said that she would appreciate clarification regarding women's exclusion from succession to the title of Amir, the reasons for which were explained in paragraph 3 of the State party's replies to the list of issues (CEDAW/C/KWT/Q/3-4/Add.1). She was particularly puzzled by the last sentence of that paragraph, which stated that under Islamic law women did not have the right to rule. Her country was also an Islamic State and an active member of the Organization of Islamic Cooperation (OIC) yet had had a female Prime Minister for the past 20 years. The current opposition leader was also a woman. Other OIC members including Indonesia, Pakistan and Turkey had also had female Heads of State. She therefore refuted that statement. Nowhere in the Koran was it stated, either directly or indirectly, that women were not permitted to rule.³⁴⁹

Ms. Rasekh [CEDAW Committee] said she considered the statement that women could not be leaders according to the Koran to be, not only a misconception, but also disrespectful to women. There had been many female leaders since the time of Muhammad and many Islamic States had been led by women. Women's exclusion from succession could not therefore be based on the Koran. Since, in the State party's case, as the head of the delegation himself had explained, the exclusion was based on a social contract between the State and its people, it was a rule that could and should be changed.³⁵⁰

Kuwait's response offered a step-change from previous meeting. The Kuwaiti representatives suggested these rules under Islam could, in fact, be changed, and introduced the concept of the necessity for social change to take place gradually.

³⁴⁸ CEDAW/C/SR.1012, p. 9.

³⁴⁹ CEDAW/C/SR.1011, p. 5.

³⁵⁰ Ibid, p. 6.

Mr. Razzooqi (Kuwait) said that he agreed with the previous three speakers. Nothing in Islam stood in the way to the achievement of equality between men and women. However, it took time for society to change. The four women who had been elected to the National Assembly marked a step towards the achievement of equality. Kuwait was divided into 5 districts with 10 parliamentarians elected from each district. In one district, a woman had won the highest number of votes and in another the second highest. Thus, although their numbers were still low, women had made a strong showing in the parliamentary elections. Women were represented in all sectors of the economy. There was a woman ambassador in Brussels and Chile. The time would come when there would be more women in such posts abroad. Two women had been appointed ministers, one of whom had recently resigned. The debate on whether to appoint women to the judiciary was still under way and the Government would continue to advocate for women judges. Kuwait was heading in the right direction and was striving to build on the positive changes that had been made.³⁵¹

Mr. Razzooqi (Kuwait) said that, although marriage in Kuwait was subject to certain regulations under Islamic law, Kuwaiti society was gradually embracing the modern world. That process of change was most apparent among the younger generation of Kuwaitis, as was demonstrated by a low marriage rate and parents electing to have fewer children in order to guarantee them a better quality of life.³⁵²

Kuwaiti officials' statements also progressed in this meeting to more substantively frame Islamic laws around CEDAW concepts of rights of women including the concept of "consent," saying,

Ms. Altararwa (Kuwait) said that, under the provisions governing marriage guardianship, the guardian (wali), who was usually the father of the bride, could supervise the marriage arrangements, but the marriage contract could not be concluded without the woman's consent. Should the father of the bride object to the marriage, he was replaced by the judge in the task of concluding the contract. Under sharia and by law, a woman was entitled to have her marriage annulled provided that she gave up her financial entitlements when the marriage was brought to an end.

³⁵¹ CEDAW/C/SR.1012, p. 11.

³⁵² Ibid, p. 9.

At this time in 2011 the state-sponsored Kuwait Society for Human Rights also submitted a Shadow Report contributing to further debate concerning Islamic principles, in this moment surrounding honour crimes, claiming these practices are un-Islamic and rather socially-constructed, saying,

Honour crimes are of social nature not Islamic. Islam does not permit a husband to kill his wife even being caught red-handed with adultery, but the social culture considers such act as means to restore man's dignity before society. The Kuwaiti legislator does not regard such crimes from a religious point but based on emotional and social values. So commutation of penalty applies in such cases.

These 2010-2011 exchanges opened up the idea of flexibility and adaptability of Islamic law, with sentiments from Kuwait's officials put forward regarding the wish to modernize Kuwait's laws. These meetings helped provide an environment in which interpretations of Islam and women's rights were contested in regular meetings between Kuwaitis and CEDAW Committee members, and pushed forward a structured dialogue reflecting increasing convergence. Comparing 2004 and 2010, there are growing attempts in the latter exchanges to frame Islam around modern concepts of justice, consent, and non-discrimination.

A final exchange in 2016 relating to Kuwait's third report further cements evidence of an ongoing modernizing process occurring in CEDAW meetings with Kuwait. The 2016 third report most substantively discussed the intent to criminalize 'discrimination' under the law, and to promote equality in the law. Kuwait's 2016 report also introduced the concept that Islamic Sharia is not all encompassing and un-moveable, beyond assurances in 2010 about flexibility of Islam, these meetings added the concept of complementing Islamic law with other (i.e. more modern) sources, saying

Goals and policies for women's welfare and empowerment in the 2015/2016 — 2019/2020 development plan (a) Caring for and developing the capacities of Kuwaiti women: 1. Review and update of all legislation relation to Kuwaiti women's issues to help remove all forms of discrimination against women, without conflicting with the principles of the Islamic Shariah;

Commenting on article 2 of the Constitution, the Explanatory Memorandum to the Constitution points out that this article does not stop at the statement, The religion of the State is Islam but stipulates that the Islamic Shariah — i.e. Islamic jurisprudence — shall be a main source of legislation. In formulating the provision thus, the legislature is directed towards an essentially Islamic perspective without being prohibited from introducing provisions from other sources regarding matters whereon Islamic jurisprudence has not formulated a ruling or where it would be preferable to develop provisions designed to keep abreast of the exigencies of natural development over time. Indeed, the provision allows modern penal laws to be adopted alongside the punishments mandated by the Shariah. This, however, would not hold up if the text said: the Islamic Shariah shall be the main source of legislation. The import of the provision is that it is impermissible to adopt another source in respect of any matter on which the Shariah has ruled, thereby possibly putting the legislature in an extremely embarrassing situation, if practical considerations had caused it to hesitate in its commitment to the opinion of Islamic jurisprudence in certain matters, such as company law, insurance, banks, loans, mandatory punishment and the like. It will be noticed that the Constitution, which affirms that the Islamic Shariah shall be a main source of legislation, only places the legislature under an obligation to adopt the provisions of the Islamic Shariah to the extent that it is able to do so, while calling upon the legislature unequivocally and clearly to take this approach. As such, the said provision does not prevent the adoption now or at some point in the future of Shariah rulings in full on all matters, if the legislature so decides. Accordingly, it is evident that the Kuwaiti legislature, while committed to upholding the provisions of the Shariah, may introduce legislative provisions from other sources in respect of matters on which Islamic jurisprudence has not formulated a ruling.³⁵³

Contestation over Islamic interpretations of women's rights as reflected in Kuwaiti law has been a topic of prominent debate in Kuwait's National Assembly during and following the period of CEDAW ratification. In 1981, Kuwait's Crown Prince said, "the time has come to take note of the position of the Kuwaiti woman and her effective role in

³⁵³ CEDAW/C/KWT/5, p. 31.

society, and put forward the matter of the vote to study and discussion.”³⁵⁴ Sheikh Jaber attempted to push forward multiple reforms to allow women to vote in the 1990s, however, Islamist opposition prevented reforms from taking hold. In 1992, Sunni Islamists introduced conservative legislation to introduce extreme gender segregation, although the proposal did not pass.

When women eventually gained the right to vote in Kuwait in 2005, some 10 years after CEDAW ratification, the hard-won reform was met with virulent Islamist pushback. Upon announcement of the reforms, Kuwaiti women’s activist Lullala al Mulla proclaimed, “it’s about time.” International audiences lauded the reform as an end to “decades-long struggle” promising to “redefine the city-state’s political landscape.”³⁵⁵ The change was rushed through by Sheikh Jaber in one session of the national assembly under a rare “order for urgency,” and faced resistance from Islamist Assembly members, only passing with 35 votes in favor and 23 against. And, while the word “men” was removed from national elections law, an additional clause was added as a concession for Islamist assembly members requiring that “females abide by Islamic Law.” The change had slow impact as in 2008 parliamentary elections, while 27 of 275 candidates were women, none of them won. Kuwait moved to withdraw one of its reservations based on Islam to the CEDAW in 2005, stating, “The government of Kuwait informed the UN Secretary-General in 2005 of its decision to withdraw the reservation which read as follows: ‘The Government of Kuwait enters a reservation regarding Article 7(a), inasmuch as the provision contained in that

³⁵⁴ Haya Al-Mughni (2001) *Women in Kuwait: The Politics of Gender*. London: Saqi Books, p. 143.

³⁵⁵ Hassan M. Fattah (2005) “Kuwait Grants Political Rights to Its Women.” 17 May. *The New York Times*. Available at http://www.nytimes.com/2005/05/17/world/middleeast/kuwait-grants-political-rights-to-its-women.html?_r=0.

paragraph conflicts with the Kuwaiti Electoral Act, under which the right to be eligible for election and to vote is restricted to males.’

Since gaining the right to vote and run for office, a number of prominent women have gained positions and have contributed to ongoing debate on women’s rights in Kuwait. Massoma Al Mubarak, a former Kuwaiti cabinet minister, criticized Islamists’ views publicly in parliament, calling equal treatment of citizens. Aseel Awadi served in the National Assembly from 2009 until 2012 and advocated for equal treatment of all citizens and freedom of conscience, however, she was targeted by Islamists, led by Mohammed Haief, who accused her of insulting Islam and committing apostasy.³⁵⁶ Islamists are not, however, monolithic in their views on women in Kuwait: there is a split among Sunni Islamists and Muslim Brotherhood members, some of whom strongly support women’s movements in Kuwait, while Salafi-Islamists strongly oppose women’s political activity as a violation of their views grounded in Islam.³⁵⁷

CEDAW ratification in Kuwait must be understood in the broader context of politics in Kuwait. Strong conservative opposition against the achievement of so-called “equality” among genders in Kuwait is being balanced alongside significant domestic women’s rights activism in support of equal rights clauses contained in CEDAW. The country’s commitment to the treaty has been used to anchor some of these local arguments for greater equality. For example, a March 2013 Article in *Kuwait Times* discussed Kuwait’s commitment to the CEDAW revealing “a host of problems,” and identified a

³⁵⁶ Mohamed Olimat (2011) “Women and the Kuwaiti National Assembly,” *Journal of International Women’s Studies*, March. Vol. 12, No. 3, pp. 76-95.

³⁵⁷ Ibid.

number of problematic elements of the country's reservations to CEDAW based on Sharia, such as the burdens women face in the guardianship and marriage systems.³⁵⁸

In May 2017, dozens of Kuwaitis gathered in the Promenade Mall in Hawally Kuwait for a “Niqashna” debate among local human rights activists over the right of Kuwaiti women to pass nationality to their children.³⁵⁹ This series of debates were led by Kuwaitis Mohammed Nuseibah and Nezar Al-Saleh in an effort to engage local citizens in public debate on an array of social and political issues. Those not in favor argued that the extension of the right to women “could be detrimental to the concept of Kuwaiti identity.” Arguments in support used Kuwait's commitment to international law to support expanding rights to women, for example, Sara Al-Mutairi, president of the Constitutional Law Society in Kuwait University, who argued “Kuwait is among only 25 countries that do not grant this right. The state of Kuwait has signed all provisions of the CEDAW, but refused to sign the article granting women the right to extend citizenship to the children,” and argued the right should be extended to all women. Here, CEDAW commitment has helped bolster and frame certain arguments about the rights of women, in this case, regarding passing their nationality, as a right compatible with Kuwait's Islamic system, particularly in light of international law.

Overall, CEDAW's impact has been significant, albeit modest. These themes are further explored in the appendix. Importantly, CEDAW has highlighted and linked the at times unclear links between conceptions of ‘women's political rights’ and conceptualizations of Islam in Kuwait. Where Kuwait did not initially suggest that voting

³⁵⁸ Nawara Fattahova (2013) “Kuwaiti Women Face Host of Problems Despite ‘Equality,’” 12 Mar, *Kuwait Times*, <https://www.pressreader.com/kuwait/kuwait-times/20130312/282849368414465>

³⁵⁹ Athoob Al-Shuaibi (2017) “Should Kuwaiti Women be Able to Pass Nationality to their Children? - The Niqashna Debates,” March 30, *Kuwait Times*. Available at <http://news.kuwaittimes.net/website/kuwaiti-women-able-pass-nationality-children-niqashna-debates/>.

was an issue linked to Islam, the CEDAW Committee discussions helped expose the implicit link to understandings of Islam in Kuwait's political culture. CEDAW has helped contribute to overall setting an environment in which language and concepts about women's rights have been framed and injected into Kuwaiti dialogues and discussions on women.

4.3.2 The UAE and CEDAW

The UAE's engagement with CEDAW has also been extensive and has led to a detailed dialogue on Islam and women's rights at the UN. This has reflected and contributed to similar convergence in Islamic understandings with a number of concepts of 'equality' contained in CEDAW, while also revealing key areas of contestation among conservative voices in the Emirates pushing back against women's reform, particularly in areas of guardianship and marriage. The UAE ratified CEDAW a decade after Kuwait, in 2004, in the first month of Khalifa Al-Nahyan's rule after succeeding his father. Under Article 40 of the UAE's Constitution, treaty ratification decided by Royal Decree applies to all citizens and foreigners, who "enjoy, within the Union, the rights and freedoms stipulated in international charters which are in force, or in treaties and agreements to which the Union is party. They shall be subject to the equivalent obligations."³⁶⁰ There is no explicit protection for equal rights regardless of gender in the Constitution, however the Constitution guarantees under Article 25 equality in general and according to other specifications such as religion and race, saying, "All persons shall be equal before the law. No discrimination shall be practised between citizens of the Union by reason of race,

³⁶⁰ United Arab Emirates Constitution of 1971, with amendments through 2004.

nationality, religious belief or social position.”³⁶¹ The UAE was relatively early to comprehensively codify its Muslim family law in 2005 (just after CEDAW ratification, after Kuwait but long before many of its neighbors, just before Qatar (in 2006) and Bahrain (in 2009)).

4.3.2.1 Women, Islam and Law in UAE

The UAE’s 2005 Law on Personal Status requires a woman’s guardian (*wali*) to approve of marriage, and the law is absolute in contracting marriage solely between the husband and the (wife’s) *wali*, however, an accompanying memorandum stresses the importance of a wife’s consent.³⁶² UAE law includes a woman’s right “not to be prevented from completing her education” and provides for a wife’s right to work outside the home so long as she is not “disobedient” (this is slightly more lenient than Qatar’s personal status code, which explicitly references the “approval of her husband” for the wife’s right to work”) and the UAE’s explicit listing of education as a “wife’s right” is the only case with this phrasing in the GCC personal status codes.³⁶³ Unlike in Qatar, where the personal status law only applies to those subject to Hanbali law (while other Muslims and non-Muslims may apply other rules), provisions of the UAE’s personal status code apply to all UAE citizens except for non-Muslims among them who may be governed by personal status laws according to “special provisions” within their community.³⁶⁴

³⁶¹ Ibid.

³⁶² Lynn Welchman (2010) “Bahrain, Qatar, UAE: Family Law Codifications in Three Gulf States.” Pre-publication text: published in the *International Survey of Family Law* in Bill Atkin, ed. (July 2010) pp.163-178. Available at http://eprints.soas.ac.uk/10899/1/Welchman_'Bahrain,_Qatar,_UAE'_ISFL_2010.pdf.

³⁶³ Ibid.

³⁶⁴ Federal Law No. 28/2005 On Personal Status. United Arab Emirates. Official Gazette no. 439 30 November 2005.

4.3.2.2 UAE - CEDAW Committee Dialogues

Since ratification in 2004, the UAE has engaged with the CEDAW Committee surrounding two sessions and two main reports, submitted in 2008 and 2014. A third session is due in 2019. The UAE's first official report in 2008 highlighted the unique 'Islamic perspective' of the country, and discussed the special role Islam plays in informing family relations and social customs. Initial statements in the report put forward the claim that the UAE's laws conflict in some ways with the CEDAW regarding laws of marriage, inheritance and adoption, for example, but this is due to Sharia, which protects women in other (sometimes superior) ways, and cannot be changed.

The initial report from 2008 begins with expressing rigid "unchanging" aspects of Islam governing marriage and family which may conflict with CEDAW, while later reports move to open up the possibility of greater flexibility in Islam, and incorporate more and more reference to UN language and concepts of non-discrimination. The UAE's initial report began by discussing the UAE's unique "Islamic perspective" on women, saying,

Given that family relations in United Arab Emirates society are ruled by the Islamic perspective on such relations, we find that the raising of children is a joint responsibility, shared by the father and mother, and the father's responsibility is not confined to material support. For that reason, United Arab Emirates families today believe in the impact of family relations on the development of children and their need for the love of both parents in order to obviate any cause for anxiety or insecurity. They also recognize the need to emphasize the role of the father in upbringing, and the fact that it is a joint responsibility of both parents.³⁶⁵

The initial report goes on to explain its reservations to provisions about inheritance and divorce as a direct result of Sharia,

³⁶⁵ CEDAW/C/ARE/1, p. 29.

Article 2, subparagraph (f) [regarding inheritance] The United Arab Emirates views this subparagraph as containing a violation of the rules concerning inheritance laid down by the sharia and for that reason expresses a reservation concerning it and does not see any need to abide by its content.³⁶⁶

Article 16 The United Arab Emirates [regarding equality in marriage] will abide by the provisions of this article insofar as they are not in conflict with the principles of the shariah. The United Arab Emirates considers that the payment of a dower and of support after divorce is an obligation of the husband, and the husband has the right to divorce, just as the wife has her independent financial security and her full rights to her property and is not required to pay her husband's or her own expenses out of her own property. The shariah makes a woman's right to divorce conditional on a judicial decision, in a case in which she has been harmed.³⁶⁷

The laws of the State of the United Arab Emirates do not distinguish among its citizens on grounds of sex. Sometimes, in fact, women's distinctive character is respected in what amounts to positive discrimination in their favour. Moreover, despite the fact that the sharia is the general framework that governs civil transactions, women have full capacity to manage their financial affairs, including the conclusion of contracts and the administration of property. In Islam, for 14 centuries women have enjoyed a financial status that is completely independent from that of men and full legal capacity that is in no way inferior to that of men. They have the right to possess all kinds of property, whether real estate, chattels or liquid assets, exactly like men, and to dispose of what they own in the various ways established by law. They have the right to buy, sell, barter, give, bequeath, loan, borrow, share, speculate, donate, pledge, lease, etc., and their dispositions take effect by virtue of their own will, nothing therein depending on the approval of a father, spouse or brother.³⁶⁸

The first report concludes its statements related to Islam by focusing on the law of personal status and the ways in which it in fact protects, rather than discriminates, against women, saying,

Measures adopted by the United Arab Emirates The United Arab Emirates Personal Status Act includes provisions governing questions of betrothal, marriage, custody and inheritance. The sharia is the basic

³⁶⁶ Ibid, p. 18.

³⁶⁷ Ibid, p. 57.

³⁶⁸ Ibid.

source for the provisions of the Act, inasmuch as it relates to matters clearly spelled out by the religion concerning which no debate is permissible. Despite the fact that the approval of the guardian is deemed a fundamental condition for the validity of a woman's marriage, the law has established controls regulating that question and guaranteeing the woman rights: a woman may, in the marriage contract, stipulate any conditions not prohibited by law and may rescind the contract in the event of a breach of the conditions.³⁶⁹

As for the question of equality of rights and responsibilities during marriage and its dissolution, the sharia honours women and makes the man responsible for the financial support of the woman, whether his wife, daughter, mother or sister, not requiring the wife to support either herself or her family, even if she is wealthy. All the property she owns is for her alone and she is not required to provide for anyone.³⁷⁰

A follow up report in 2010 in the UAE's "Reply to List of Issues" initially echoed the same position regarding certain inflexibility in Islamic law, but soon after progressed during the same meeting to incorporate new statements suggesting Islamic understandings are more 'flexible' than had been suggested in previous meetings. Initially the follow up reply repeated initial claims about the inflexibility of Sharia, however, the report concluded with a noticeable step-change where Sharia was described as more open to interpretation.

Initially the report again expressed concern regarding the compatibility of CEDAW's concept of 'equality' with Islam, saying,

Article 15, paragraph 2, provides that States Parties shall give women equal rights to conclude contracts and to administer property and shall treat them equally in all stages of procedure in courts and tribunals. The United Arab Emirates believes that this article conflicts with the principles of the provisions of the Islamic sharia with regard to jurisdiction, testimony and the character of a legal contract under the sharia. It has therefore expressed a reservation to that paragraph of the aforementioned article and does not see the need to comply with it.³⁷¹

³⁶⁹ Ibid, p. 58.

³⁷⁰ Ibid.

³⁷¹ CEDAW/C/ARE/Q/1/Add.1, p. 4.

Article 16 provides, inter alia, that men and women shall have the same right freely to choose a spouse and to enter into marriage only with their free and full consent; the same rights and responsibilities during marriage and at its dissolution; and the same right to choose a family name. The United Arab Emirates complies with this article insofar as it does not conflict with the principles of the provisions of the Islamic sharia. The United Arab Emirates believes that a husband is obliged to pay dowry and maintenance after divorce; a husband has the right to seek a divorce; and a wife has independent financial security and full rights to her own property. A wife is under no obligation to support her husband or herself from her own funds. The Islamic sharia limits a wife's right to seek divorce, stipulating that it should be at the discretion of a judge, when she has suffered injury.³⁷²

In a later exchange on the same day UAE claimed more flexibility in Islam, suggesting certain conflicting practice with CEDAW were a matter of custom and could be gradually changed.

Ms. Popescu (CEDAW Committee) The Government had stated that it would comply with article 16 of the Convention insofar as it did not conflict with the Islamic sharia. If there was in fact no conflict between the Convention and Islamic texts, she wondered whether it would consider withdrawing its reservations.³⁷³

33. Ms. Jaising (CEDAW Committee) said that the report had stated that on matters clearly spelled out by the sharia there could be no debate. However, there were a number of Muslim organizations such as Sisters in Islam that advocated more flexible interpretations of Islamic law that would bring it into line with the provisions of the Convention. Many Islamic countries had used such interpretation to modify their laws on divorce, age of marriage, child custody and male guardianship of women. She asked if there was any internal debate in the United Arab Emirates about the interpretation of the sharia as it related to gender equality in marriage, divorce and family life.³⁷⁴

Mr. Alawadih (United Arab Emirates) said that there were many practices that were widely believed to have their origins in Islamic law but were in fact just local customs. As society developed, many of those practices were being discontinued, and many innovations were being introduced. The very presence of the delegation before the Committee was something that could hardly have

³⁷² Ibid.

³⁷³ CEDAW/C/SR.914, p. 4.

³⁷⁴ CEDAW/C/SR.915, p. 6.

been imagined a decade or two earlier. As time passed, barriers to women would continue to be removed.³⁷⁵

Ms. Al Hashimy (United Arab Emirates) said that there was indeed room for interpretation in Islamic jurisprudence, and that a middle ground could be found between adherence to Muslim tradition and compliance with international human rights standards. It was often the case in her country that what appeared to be strict interpretations of the sharia in theory were applied flexibly in practice. The United Arab Emirates was learning from the experiences of other Muslim countries in that regard.³⁷⁶

This progression in arguments moving towards a more flexible interpretation of Islam is even further cemented in 2014. Here UAE officials move from claiming reservations were based on Sharia, and could not be changed, to change their position and even suggest the intention to remove its reservations.

The State is examining ways to withdraw or restrict its reservations to the Convention by harmonizing domestic legislation and practices with the spirit of the Convention.³⁷⁷

The United Arab Emirates' reservation to article 2 (f) of the Convention is not intended to be a reservation to the elimination of discrimination. Rather, the reservation concerns a few issues that deviate from social customs, traditions and practices and violate the immutable provisions of the Islamic sharia. Nonetheless, as explained below, the State endeavours assiduously to change any cultural patterns that discriminate against women in society.³⁷⁸

These 2014 statements from the UAE also increasingly describe Islam alongside the modern concept of 'non-discrimination,' while highlighting the importance of the idea of 'positive rights' of women under Islam, saying,

Federal Law No. 20 of 2005 concerning personal status regulates family relations (marriage, divorce, custody, inheritance, etc.)... matters concerning the regulation of marriage and inheritance are

³⁷⁵ Ibid.

³⁷⁶ Ibid.

³⁷⁷ CEDAW/C/ARE/2-3, p. 9.

³⁷⁸ CEDAW/C/ARE/2-3, p. 10.

based on the Islamic sharia, which treats women without discrimination in all respects.

Under the sharia and personal status law, a woman is entitled to choose her husband and request dissolution of the marriage contract (khula). When women are prevented from marrying, the judge serves as the guardian of the woman and gives her in marriage. Generally, Emirati personal status law guarantees the rights of women based on the sharia, which treats women without discrimination....³⁷⁹

Ms. Almheiri (United Arab Emirates) said that, in line with commitments made during the second cycle of the universal periodic review, the possibility of withdrawing reservations to articles which did not contradict sharia law was currently being studied.³⁸⁰

This progression of statements demonstrates how CEDAW dialogues have helped stimulate conversation about the at times unclear lines between conceptualizations of “rights” in the UAE within marriage and the conceptualizations of “duties.” Here, there is still a lack of convergence between UN Committee members and UAE representatives regarding the concept put forward by the UAE about the ‘duties’ of men to provide maintenance for a woman, and how the implications of this might contribute to a violation of a woman’s right to equality. Still, the exchange helps stimulate conversation around the conceptualizations of rights and duties in marriage in Islam alongside commitment to ‘equality’ conclude with good faith sentiment about the possibility for interpretations of Islam in the UAE to comply more fully with CEDAW’s conceptualizations of equality. This is demonstrated by the sentiment that the UAE is open to considering withdrawing certain reservations and provide for certain protections for women.

³⁷⁹ Ibid, p. 27.

³⁸⁰ CEDAW/C/SR.1349, para. 11.

4.3.2.3 Domestic Discourses on CEDAW, Islam and Women in the UAE

The concepts of ‘equality,’ ‘non-discrimination’ and other language contained in the CEDAW related to global concepts of gender justice are gradually emerging as more prominent norms in the UAE’s local context among statements from activists, government officials, academics and in local media. This is a type of norm diffusion, albeit subtle. The growing incorporation among Emirati voices of language about equality is gradual, however, and has not been clean or linear.

The growing prominence of vocabulary of “empowerment” and “equality” have become particularly in local discourse. A March 2017 editorial by Idris Karayanni in *Al-Khaleej* highlighted the International Women’s Day by directly discussing the importance of the country’s “commitments to international law such as the UDHR and CEDAW,” claiming these international instruments provided “several safeguards to enhance the protection and empowerment of women” which is a “key indicator of progress.”³⁸¹ Professor Rana Raddaqui at American University Sharjah published a study in 2014 which received national media attention claiming that “polygamy can negatively affect women,” claiming Islamic traditions condoning this should be abolished.³⁸² There has also been growing activism among Emirati women complaining about the system of male guardianship being unfair. In a 2014 article in *The National*, where a number of women who self-identified as “devout Muslim” contested the requirement for a male guardian to provide permission to marry under the Sharia restrictions in the country’s 2005 law as an

³⁸¹ Idris Karayanni (2017) “al-yawm al-duwalī lil-mar’ah” (International Women’s Day) March. *Al Khaleej*. Available at <http://www.alkhaleej.ae/studiesandopinions/page/b36bf87d-3d8d-4570-a1a4-11f5569f0984>.

³⁸² “Polygamy can Negatively Affect Women, Study Finds” (2014) September 26. *The National*. Available at <http://www.thenational.ae/uae/polygamy-can-negatively-affect-women-study-finds>.

unfair interpretation of Islam that should not be applied in their cases (for example, as widows forced to turn to their sons for permission to remarry).³⁸³

Government statements are gradually increasingly reflecting language of “non-discrimination.” For example, a 2008 UAE ministry of State report “Women in the United Arab Emirates: A Portrait of Progress,” claims “Having made significant progress, the UAE does not intend to stagnate with regards to its women’s empowerment policies but rather to continue and develop... The UAE intends to establish a new benchmark for gender empowerment in the region” and eliminate “discrimination based on gender...in accordance with the tenets of Islam.”³⁸⁴ These excerpts reflect what one UAE human rights activist termed in an interview with me the “growing need” for the country to justify “more equal rights” under Islam.³⁸⁵

With discriminatory laws and policies still in place, the alignment with CEDAW concepts is not a clear or clean process. The same *National* article calling for equal treatment of women in marriage cited a challenge from Dr. Shakir Al Marzouqi, a prominent Emirati lawyer, saying discriminatory policies reflect devotion to Islam (and the fact that, “men know better”), clearly violating the basic concepts of equality contained in CEDAW, and Emirati laws continue in various ways to reflect this sentiment.³⁸⁶ Still, the excerpts and statements from Emiratis in this section discussing Islamic interpretations based on equality and non-discrimination on gender grounds help demonstrate how

³⁸³ Shireena Al Nowais, (2014) “Divorcees, widows concerned about receiving ‘permission’ before remarrying,” *The National*, August 6, Available at <http://www.thenational.ae/uae/courts/divorcees-widows-concerned-about-receiving-permission-before-remarrying>.

³⁸⁴ UAE Ministry of State (2008) “Women in the United Arab Emirates: A Portrait of Progress.” Available at http://www.uae-embassy.org/sites/default/files/Women_in_the_UAE_Eng.pdf.

³⁸⁵ Interview with member of the ICFUAE, in person, North Acton, London, May 24, 2016.

³⁸⁶ Shireena Al Nowais (2014) “Divorcees, widows concerned about receiving ‘permission’ before remarrying,” *The National*, August 6.

CEDAW can help capture and clarify statements increasingly reflecting certain conceptions of convergence.

4.3.3 Other GCC State Engagement with CEDAW: Oman, Bahrain, Saudi Arabia and Qatar

Kuwait and the UAE's engagement with CEDAW demonstrate growing convergence from government actors invoking concepts of "equality" and "non-discrimination." Some similar evidence of convergence is observable in the broader GCC by Saudi Arabia (ratified in 2000), Bahrain (ratified in 2000), Oman (ratified in 2006) and Qatar (ratified in 2009), although important differences between these cases persist.

In Saudi Arabia's 2008 report to the CEDAW committee, it claimed that there is no discrimination against women saying, "Generally, there is no discrimination against women in the laws of the Kingdom. ..." ³⁸⁷ adding, "The laws of the Kingdom, which derive from the Koran and Sunna, require redress for a woman if she is subject to discrimination or injustice" ³⁸⁸ These assurances from Saudi representatives incorporate the language of the CEDAW regarding protection from "discrimination" – notably, the word "discrimination" is not contained in the Saudi Constitution (or "basic law"), nor is it present in the laws of the Kingdom governing society. Similarly, in 2011 meetings between Kuwaiti representatives and the CEDAW committee, Mr. Razzooqi (a representative of Kuwait) said, "Nothing in Islam stood in the way to the achievement of equality between men and women." ³⁸⁹

³⁸⁷ CEDAW/C/SAU/2, p. 8.

³⁸⁸ Ibid, paragraph 4.

³⁸⁹ CEDAW/C/SR.1011, p. 11.

Qatar's initial CEDAW report submitted in 2011 similarly described Islam in support of gender "equality," saying,

In keeping with the Constitution and with an enlightened political vision, the State has promoted gender equality using a step-by-step approach in which account is taken of the noble purposes of Islam and of the exigencies of an open development policy. The inclusion of women as participants in and beneficiaries of development has become a matter of national priority.

... Islam rejects the idea of discrimination on the grounds of sex and endorses the principle of equality among people. Almighty God said: "O mankind! Be careful of your duty to your Lord Who created you from a single soul and from it created its mate and from them twain hath spread abroad a multitude of men and women" (Koran, Surah Al-Nisa', verse 1). So, all people are equal, without discrimination on the grounds of sex, colour language, nationality, race or economic status. This principle is affirmed in article 1 of the Qatari Constitution, which states that the sharia is the main source of law, and is echoed in numerous articles, particularly article 34, which provides that citizens have equal general rights and duties, and article 35, which states that all people are equal before the law without any distinction as to sex, origin, language or religion.³⁹⁰

Another aspect of Gulf engagement with CEDAW has been growing justification of Islamic religious practices perceived as in conflict with international law as "rare" or "small". In discussions between the CEDAW committee and Qatari representatives, Qatar responded to criticisms regarding polygamy saying such instances were permissible because of Islam, but then downplayed these practices by calling them "rare." Qatar reported,

Polygamy was permitted under sharia law but was rare in Qatar, where the law provided that a man must seek the approval of his first wife in order to take a second.³⁹¹

A discussion between Saudi representatives and the CEDAW committee also brought out arguments from a Gulf state representative that any Islamic conflicts with the

³⁹⁰ CEDAW/C/QAT/1, p. 22-23.

³⁹¹ CEDAW/ C/SR.1192, p. 7.

CEDAW were “small.” In response to UN request for clarification regarding Saudi Arabia’s broad reservation to CEDAW about Islam, Saudi Arabia responded that any conflict is a “small disparity,” saying, “The Kingdom made this reservation on the basis of its conviction that the Islamic sharia is compatible with the obligations contained in the general principles of the Convention, even if there is a small disparity with regard to some of the implementing provisions...”³⁹² Qatar’s initial 2011 CEDAW report also demonstrated a similar argument about Islam’s unequal treatment of women in inheritance law as minimal, saying

The subject of inheritance under the sharia is one of the areas where the greatest misunderstandings occur, owing to a superficial interpretation of Islamic law that suggests that the sharia discriminates against women by giving them half the inheritance that a man receives. The truth is that women receive half of what a man receives only in given circumstances that are specified in the sharia. In other circumstances, they receive an equal share.

Similarly, Bahrain’s delegation claimed in 2007 that inheritance law did not “discriminate against women,” because it only applied in “some cases,” for good reason, saying,

For example, a literal interpretation of the Shariah provision that grants a woman one-half of the inheritance of a man might be challenged on the grounds that it discriminates against women. However, the inheritance system under the Islamic Shariah is treated as an integrated system that demonstrates that Islam does not make a woman's inheritance one-half that of a man as a general rule in inheritance. Rather, this rule applies only in some cases for explicable reasons.³⁹³

CEDAW Committee discussions with these other GCC representatives (from Bahrain, Qatar and Saudi Arabia) also demonstrate progression, where initial early reports suggest concern about compatibility between rigid standards in Islam and CEDAW, and

³⁹² CEDAW/C/SAU/Q/2/Add.1 p. 4-5..

³⁹³ CEDAW/C/BHR/2, p. 32.

later reports and follow up dialogues progressed to describe Islam as increasingly “flexible” “modern” and “adaptable” to *gradual* change. In a 2011 CEDAW committee meeting with Oman, Omani representative Mr. Al-Nabhani was reported as saying that, “under Sharia law, marriage was a contract between two consenting parties. The Personal Status Code of Oman was based on sharia law and Islamic jurisprudence, adapted to modern life, and could be amended if necessary. Women had the right to marry a husband of their choice and were not forced into marriage.”³⁹⁴ Here, Islam is described as harmonious with today’s standards in international law, in another way suggesting that any conflict with the CEDAW would be minor and of little concern to those interested in women’s rights.

A related trend is visible in which GCC states increasingly suggest flexibility in Islam in willingness to consider removal of reservations about Islam to conform with CEDAW. Oman, for example, announced in a 2011 report willingness to reconsider reservations, saying,

Mr. Al-Mukhaini (Oman) said that the Convention could not be considered as incompatible with sharia law. Otherwise Oman would not have acceded thereto. There was no incompatibility between most of the provisions of the Convention and sharia law. The Government would review its reservations, including the general reservation, as it had done with the Convention on the Rights of the Child. There was no time frame for the withdrawal of reservations, but the Government would be working with the national committee to monitor implementation of the Convention to achieve that end as quickly as possible....³⁹⁵

In a 2014 follow up report Qatar expressed willingness to reconsider its reservations, after being pressed by a Committee member, who asked,

Ms. Jahan asked whether the State party would be willing to reconsider making gradual changes to or ultimately withdrawing its reservations to the Convention and examine the gender equality measures adopted in other Islamic countries.

³⁹⁴ CEDAW/C/SR.999, p. 5.

³⁹⁵ CEDAW/C/SR.998, p. 7.

After which the Qatari representative replied that the government was open to considering ‘reforms,’ saying,

Ms. Al-Easa (Qatar) said...turning to the reservations made to the Convention, she said that the Government of Qatar was willing to examine the best practices of other Islamic countries with a view to possible reforms.³⁹⁶

Qatar also followed up in this same report to claim that traditional ideas about women were more a result of “local culture” and could be expected to change gradually, saying,

It is true, however, that there are certain negative ideas in the local culture about the status and role of women. These ideas are held both by men and women. Some families view men’s and women’s roles as rigidly stereotyped, going beyond the proper construction established in the sharia. Some women help to perpetuate these stereotypes, including through the messages that they transmit to their children. It is no easy matter to change these ideas, as cultural change is a time-consuming and lengthy process. The State is trying to effect change through: long-term national strategies and plans; policies on women’s empowerment and advancement; campaigns and programmes to raise awareness of women’s rights; and initiatives inspired by Islamic culture and its tradition of honouring women...

CEDAW engagement with GCC states has also served as a space for contestation between UN states over interpretations of Islam, including among members of civil society directly reporting to the CEDAW committee. Citizens have had a limited voice in discourse surrounding GCC engagement with CEDAW at the UN in the form of “Shadow Reports” that have also contributed to dialogue at the UN contesting conceptions of Islam and women’s rights. In a 2011 Shadow Report from the Kuwait Society for Human Rights, a civic organization that was licensed in August 2004 after operating for 10 years without government approval, reported to the CEDAW Committee that the Kuwaiti Personal Status

³⁹⁶ CEDAW/C/SR.1192, p. 36.

law requires women under 25 to gain approval from her guardian, which is a religious obligation, and made recommendations to change this (requesting that Kuwait amend its personal status law “ to give any adult, sane or deflowered woman the right to marry without permission of her guardian or the judge.”)³⁹⁷

Similarly a 2007 Shadow Report prepared by an anonymous group of Saudi women criticized the government for its broad reservations about Islam, saying, “The reservations of SA on the CEDAW are mainly about 'all what controvert Islamic law', i.e. that SA will follow just what conforms to Islamic laws. This concept is very obscure and inaccurate, which was commented on by the CEDAW committee to the government.”³⁹⁸ Here citizens’ voices have contributed to further contestation in UN dialogues about the validity of arguments about Islam voiced at the United Nations.

CEDAW has been mentioned in local GCC countries’ media coverage in varied ways. In Saudi Arabia, coverage has been minimal, and government officials have often turned to the press to offer sweeping assurance regarding commitment to the convention. A Jun 2016 government sponsored Saudi English-language *Arab News* article entitled “Human rights in the KSA secure,” cites Bandar bin Mohammed al-Aiban, president of the Saudi Human Rights Commission, saying, “The kingdom is committed to all international conventions which do not conflict with the provision of Islamic law.”³⁹⁹ In Qatar, media coverage more directly claimed that efforts to combat discrimination in relation to the CEDAW were “in progress” – for example, in a 2015 article in a *al-Watan* article, reported efforts were in place for the Supreme Council for Family affairs to implement a new

³⁹⁷ Shadow Report: Saudi Women for Reform (2007) December, United Nations Office of Human Rights. Available at <http://www2.ohchr.org/english/bodies/cedaw/docs/ngos/womenreform40.pdf>. p. 1.

³⁹⁸ Ibid.

³⁹⁹ “Human Rights in the KSA Secure,” *Arab News*, 2 June 2016. Available at <http://m.arabnews.com/content/1464826764593850000/Latest%20News>.

“training course in the framework of implementation of memorandum of understanding signed between the Supreme Council for Family Affairs and the National Commission for Human Rights on February 2010, which aims to spread international conventions joined with the State of Qatar and awareness, which is the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) signed on 29 April 2009, and the Convention on the rights of persons with disabilities signed it on April 4, 2007 and ratified it on 14 April 2008.” The article noted the shared goal of the Government to work with Qatar’s National Human Rights Society alongside “effective and appropriate measures to eliminate discrimination” in Qatar.⁴⁰⁰

Over the past two decades since CEDAW ratification across the GCC states, some progress has been made in areas of women’s rights. It is difficult to prove that CEDAW ratification has directly impacted change in the GCC, but it has helped set the scene and frame debates. Notable reforms have taken place in the GCC surrounding women’s rights, many related to the growing integration of women in the labor market, seen as a response to economic change as a result of drops in oil prices.⁴⁰¹ Political gains in particular in the UAE and Qatar have been observed, and Wanda Krause argues such gains “have been largely led by the rulers and, in particular, the wives of the rulers, Sheikha Fatima bint Mubarak, wife of the late Sheikh Zayed, and Sheikha Moza bint Nasser, wife of Qatar’s Emir, Sheikh Hamad.”⁴⁰² Qatar appointed its first female cabinet minister in 2003, and in

⁴⁰⁰ Karam Ahalioa (2016) “Top Family Discusses the Rights of People with Disabilities,” *Al-Watan*. Available at <http://archive.al-watan.com/viewnews.aspx?n=45C8F102-2F1B-4F60-B327-EA285777704F&d=20130507>.

⁴⁰¹ Steffen Hertog comment, also see “Recent Gains and New Opportunities for Women’s Rights in the Gulf Arab States,” Freedom House, Available at <https://freedomhouse.org/sites/default/files/Women%27s%20Rights%20in%20the%20Middle%20East%20and%20Noth%20Africa,%20Gulf%20Edition.pdf>.

⁴⁰² Wanda Krause in David Held and Kristian Ulrichsen (eds) (2012) *The Transformation of the Gulf: Politics, Economics and the Global Order*, Oxon: Routledge. p. 92.

the same year, a female candidate won the Central Municipal Council (CMC) election for the first time in history, and a 2007 reform to the family law in Qatar promulgated by Sheikh Hamad al-Thani gave women the right to end marriages, and banned ‘temporary marriages.’⁴⁰³ Women in Oman were free to participate fully in Majlis al-Shura elections in October 2003.⁴⁰⁴ A 2008 law in Oman, Law No. 63 of 2008, stipulated that the testimonies of men and women in a court are equal. Oman is the only country to guarantee the equality of women and men in court testimony in the GCC, however, the law allows for “sharia exceptions” (my translation)⁴⁰⁵ (for example, Oman’s personal status law still stipulates that marriage contracts must be concluded with the witness of two men, and some judges since the law was enacted reportedly still request that women appear in court alongside a male guardian such as a father or husband.⁴⁰⁶)

The issue of women’s rights has perhaps garnered the most controversy in relation to the discrimination against women in Saudi Arabia. However, some progress has been achieved in diminishing some discriminatory laws. In 2013 the Saudi government sanctioned sports for girls in private schools for the first time.⁴⁰⁷ Following reforms under King Abdullah in 2011, women were able to cast their first votes for and stand in municipal elections in 2015.⁴⁰⁸ Pressure to amend the guardianship system in Saudi Arabia has received growing support reflected in a 2016 petition #Iammyownguardian, penned by

⁴⁰³ David Held and Kristian Ulrichsen (eds) (2012) *The Transformation of the Gulf: Politics, Economics and the Global Order*, Oxon: Routledge. p. 93.

⁴⁰⁴ Ibid.

⁴⁰⁵ Disabled Persons Welfare and Rehabilitation Law, Royal Decree no.63 of 2008, *Official Gazette* Muscat, 2008.

⁴⁰⁶ Rafiah al-Talei (2009) “Women’s Rights in the Middle East and North Africa,” Freedom House, Available at <http://www.refworld.org/docid/49bf7ad6c.html>.

⁴⁰⁷ “Saudi Arabia Sanctions Sports for Girls for the First Time” (2013) *CS Monitor*. 5 May. Available at <http://www.csmonitor.com/World/Middle-East/Olive-Press/2013/0505/Saudi-Arabia-sanctions-sports-for-girls-for-the-first-time>.

⁴⁰⁸ “Saudi Arabia’s Women Vote in Election for the First Time” (2015) *BBC*. 12 December. Available at <http://www.bbc.co.uk/news/world-middle-east-35075702>.

Saudi researcher Hala Aldorasi, gaining 14,682 signatures and prompting an estimated 2,500 Saudis to contact the King's office demanding change. Aldorasi told me in an interview that efforts to reform the guardianship system are gaining in support but remain an "uphill battle."⁴⁰⁹ Several Saudi clerics allegedly supported the movement agreeing that guardianship as interpreted in Saudi Arabia is "not embedded in the Qur'an" and instead is the result of the patriarchal interpretation of jurists.⁴¹⁰ The Saudi government agreed in response to "reconsider" the guardianship system and on April 17, 2017, King Salman issued a decree ordering all government agencies to provide services even if a male guardian does not provide consent "unless existing regulations require it" seen as a gesture to end informal customs denying women their rights.⁴¹¹ Commitment to international law and specifically the CEDAW was not referenced by these governments during the reform process, and was not an explicitly visible element of the politics surrounding announcement of these or other intended reforms. Any impact of CEDAW is much more subtle.

4.4 Chapter Conclusions

Important progress in expanding womens' political and social freedoms in the GCC has been made during and after the period of CEDAW ratification, but the overall impact of CEDAW in achieving full equality has been modest. However, those wishing to more deeply impact policy should note the growing framing of interpretations of Islam in the

⁴⁰⁹ Interview with Hala Aldorasi, by phone, May 2016.

⁴¹⁰ Mazin Sidahmed (2016) "Thousands of Saudis Sign Petition to End Male Guardianship of Women." *The Guardian*. 26 September. Available at <https://www.theguardian.com/world/2016/sep/26/saudi-arabia-protest-petition-end-guardianship-law-women>.

⁴¹¹ "Saudi Arabia 'Unofficial' Guardianship Rules Banned" (2017) Human Rights Watch. 9 May. Available at <https://www.hrw.org/news/2017/05/09/saudi-arabia-unofficial-guardianship-rules-banned>.

GCC around CEDAW language and concepts as an important step in a possible reform process.

While the nature of GCC engagement with the CEDAW has varied in substance, timing and character, broad trends are visible. All GCC states have increasingly discussed commitment to CEDAW with more explicit reference to principles of “non-discrimination” and “equality” when viewed in each countries’ Islamic context demonstrating a degree of conceptual convergence. Most GCC states, with the exception of Saudi Arabia, have agreed to reconsider reservations based on Islam, and a few such as Qatar and Kuwait have officially removed reservations based on Islam. Most GCC states broadened the enfranchisement of women on or around the time of ratification. Growing convergence voiced in a GCC context over concepts of “equality” and “non-discrimination” have not resulted in an overhaul of laws and policies to reflect UN definitions of equality in practice, particularly rigid red-lines based on Islam in the way of harmonizing laws and policies alongside UN ideas of equality exist in the realm of equality within marriage, inheritance, and the passing of nationality. In Saudi Arabia and, to some extent, the UAE, there is particular reticence in changing interpretations of personal status to the concept of equality as it relates to the requirement of male guardianship. This guardianship (*wilaya*) system is what Lena-Maria Moller terms an “enduring relic” of pre-modern Islamic understandings that has stood as particularly difficult to change due to patriarchal understandings and economic incentives against change.

As Ann Elizabeth Mayer observes, CEDAW ratification can help incentivize and pressure regimes with discriminatory laws to formally support the concept of gender equality, saying, “...when Arab countries elect to join the international human rights

system, they are obliged to respond to public critiques of how their domestic laws and policies fall short by international standards...“when under scrutiny by this UN body, Arab countries effectively concede that discrimination against women is wrong and resort to a variety of tactics to make their policies look respectable, often seeking to portray them as compatible with women’s international human rights, even where they are fundamentally at odds with these rights”⁴¹² This is certainly true of the GCC cases, where, as Lynn Welchman has noted, the ratification of CEDAW during the early 21st century “signals an engagement with the international system,” which has added new and different pressures on GCC states.⁴¹³ Mayer observes that “Once these governments go on the record as supporting equality for women in their statements before international bodies, it becomes harder for these same governments to justify standing by discriminatory laws...Even as they resist reforming their laws to bring them into compliance with CEDAW, the fact that these countries work so hard to portray themselves as compliant with the principles of international human rights law signals that change is afoot.”⁴¹⁴ Mayer suggests that this may hold potential for future reform, saying, “Among other things, their [Arab states’] responses to the CEDAW Committee are matters of public record, now accessible on Internet sites, where advocates of women’s rights can harvest them for future use in challenges to discriminatory laws and policies, throwing the governments’ own statements back at them and generating pressures for upgrading domestic laws to meet international standards.”⁴¹⁵

⁴¹² Ann Elizabeth Mayer (2004) “Internationalizing the Conversation on Women’s Rights: Arab Countries Face the CEDAW Committee” in Barbara Yvonne Yzbeck Haddad (eds.) *Islamic Law and the Challenges of Modernity*, AltaMira Press, p. 133.

⁴¹³ Lynn Welchman (2012) “Gulf Women and the Codification of Muslim Family Law.” In Amira El-Azhary Sonbol (ed.) *Gulf Women*. Doha: Bloomsbury Qatar Foundation, pp. 367-406, p. 405.

⁴¹⁴ Ibid, p. 133-134.

⁴¹⁵ Ibid, p. 133.

Mayer's suggestion that future reform can be facilitated by these processes is hopeful, and may help indicate potential for further reform GCC. However, progress has been modest at this stage. Despite greater exposure of discriminatory laws and practices and growing support for equality voiced by GCC authorities in UN meetings, efforts to advocate for women's equality have made minimal strides in the region and many discriminatory laws are still in place. Still, there may be reason to expect greater reform in the future facilitated by the added pressures resulting from CEDAW exposure.

In an interview I conducted in May 2016 with a CEDAW committee member, the committee member described himself as "pleased" with the increasing commitment among GCC states to withdraw reservations based on Islam, and the growing dialogue about shared goals of pursuing greater gender equality in Arab countries. "The Committee does not have an accusatory dialogue with a country...we support the idea of progress in adapting national legislation slowly over time."⁴¹⁶ The CEDAW Committee member also observed that Arab Gulf countries are growing to "interpret sharia in a more progressive way."

The excerpts highlighted in this chapter help support this claim that CEDAW meetings are helping capture support for concepts of gender "equality" and "non-discrimination" in an Islamic context is visible in GCC states' engagement with CEDAW (see the appendix for a more in-depth exploration of these themes, in particular the language of "non-discrimination" in women's rights coverage in Kuwait). CEDAW ratification certainly has not and will not, however, GCC actors are incorporating more of these modern concepts and terms over time, which, if Mayer's predictions come to fruition, helps, at the least, highlight and expose hypocrisy, and, at best, can provide local actors

⁴¹⁶ Interview with CEDAW Committee Member, May 2016, phone.

with more material in their attempts to bring their governments to account to uphold their CEDAW commitments in the future.

Chapter 5: Islam and the UN Convention on the Rights of the Child (CRC) in the GCC

The 1990 UN Convention on the Rights of the Child (CRC) has been ratified by all six GCC states. Not only is the acceptance of this Convention universal in the GCC—and thus its acceptance is higher in the GCC than any other UN human rights convention in the world—accession to the CRC across the Middle East was also relatively swift compared to the slow pace at which other UN human rights conventions gained support from the region. The majority of MENA states offered their support by providing their signature during the CRC’s introduction (a non-binding display of good faith) in the early 1990s. Most MENA states were then quick to ratify the Convention soon after, many within the first seven years of the convention’s life. This is true of the traditionally slow-to-ratify GCC countries that ratified relatively quickly during the 1990s.

GCC Ratification of CRC

Kuwait 1 Oct 1991
Bahrain 13 Feb 1992
Qatar 3 Apr 1995
Saudi Arabia 26 Jan 1996
Oman 9 Dec 1996
UAE 3 Jan 1997

The eager acceptance of the CRC in the GCC could reflect the fact that the CRC was introduced later than most other UN human rights conventions, as well as the fact that the CRC and its area of children’s rights protection was viewed by some as “softer” or less controversial.⁴¹⁷ The CRC was also introduced during the early 1990s when a number of MENA states were also in the midst of ratifying a number of other existing UN human rights conventions, causing some, perhaps, to ratify the a number of conventions as a “package deal.”⁴¹⁸

⁴¹⁷ Conversation with EU Diplomat, by phone, April 2017.

⁴¹⁸ Ibid.

The CRC, adopted at the UN on 20 November 1989 and entered into force on 2 September 1990, holds 196 parties, including all six GCC states (all UN states except the United States).⁴¹⁹ The CRC expands on preceding efforts to protect the rights of children in international law, such as the 1924 Geneva Declaration on the Rights of the Child. “Recognizing that mankind owes to the Child the best that it has to give,”⁴²⁰ the Geneva Declaration brought the need for special international norms to protect children into prominent view during this period, saying, among other principles, “The child that is hungry must be fed; the child that is sick must be nursed; the child that is backward must be helped; the delinquent child must be reclaimed; and the orphan and the waif must be sheltered and succored.”⁴²¹

The CRC builds on existing standards and principles in international law devoted to protecting the rights of children. The Convention references these existing legal sources in its preamble, saying,

Recalling that, in the Universal Declaration of Human Rights, the United Nations has proclaimed that childhood is entitled to special care and assistance.... Bearing in mind that the need to extend particular care to the child has been stated in the Geneva Declaration of the Rights of the Child of 1924 and in the Declaration of the Rights of the Child adopted by the General Assembly on 20 November 1959 and recognized in the Universal Declaration of Human Rights, in the International Covenant on Civil and Political Rights (in particular in articles 23 and 24), in the International Covenant on Economic, Social and Cultural Rights (in particular in article 10) and in the statutes and relevant instruments of specialized agencies and international organizations concerned with the welfare of children...⁴²²

⁴¹⁹ Although moves have been made in the U.S. Congress to ratify. (Reasons for possible conflict with U.S. policy include the ability for states to determine juvenile criminal rights, including the ability to hold under 18's in jail without parole).

⁴²⁰ “Geneva Declaration of the Rights of the Child, Adopted 26 September 1924,” League of Nations. Available at http://www.unicef.org/vietnam/01_-_Declaration_of_Geneva_1924.PDF.

⁴²¹ Ibid.

⁴²² Convention on the Rights of the Child (adopted 20 November 1989, entered into force 2 September 1990) 1577 UNTS 3 (CRC).

Article 1 defines the “child” by age, although allows for exceptions, stating its definition of a child as “every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier.”⁴²³ The Convention primarily recognizes the responsibility of the state to protect the child without discrimination, particularly to “ensure to the maximum extent possible the survival and development of the child.”⁴²⁴ The Convention then lists certain obligations and rights in specific, including the right for the child to bear a name from birth, to acquire a nationality, and to be known and cared for by his or her parents. Article 11 enshrines the duty of the state to “combat the illicit transfer and non-return of children abroad.”⁴²⁵ Article 28 puts forward the responsibility of the state to guarantee free primary education to all without discrimination of any kind.

The CRC also ensures certain child rights both within the family and in society more broadly. These include certain rights and freedoms, including freedom of expression, thought, and religion as inscribed in articles 2, 13 and 14,

2. States Parties shall take all appropriate measures to ensure that the child is protected against all forms of discrimination or punishment on the basis of the status, activities, expressed opinions, or beliefs of the child's parents, legal guardians, or family members.

13.1. The child shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of the child's choice.

14.1. States Parties shall respect the right of the child to freedom of thought, conscience and religion.

⁴²³ Article 1, Ibid.

⁴²⁴ Article 6, Ibid.

⁴²⁵ Article 11, Ibid.

The Convention also ensures freedom for children to choose his or her own religion, stating in Article 30,

30. In those States in which ethnic, religious or linguistic minorities or persons of indigenous origin exist, a child belonging to such a minority or who is indigenous shall not be denied the right, in community with other members of his or her group, to enjoy his or her own culture, to profess and practise his or her own religion, or to use his or her own language

The Convention also enshrines a right for the child to be protected by the state should their family environment prove unfit. There is mention of certain cultural sensitivities for the nature of these protections, including sensitivity for Islamic practices of adoption, stating in Article 20,

20.1. A child temporarily or permanently deprived of his or her family environment, or in whose own best interests cannot be allowed to remain in that environment, shall be entitled to special protection and assistance provided by the State....

20.3. 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.

5.1 Children's Rights in Islamic Law and Society

According to Save the Children, a UK based international NGO, considerable progress has been achieved in the area of children's rights in the Middle East, and yet much more work to achieve compliance with international legal standards is required. Since ratification of the CRC across MENA, many countries in the region have enacted "or propose to enact" laws to "protect children from violence, abuse, neglect or exploitation."⁴²⁶ However, the NGO claims much more progress is needed to achieve

⁴²⁶ Yara Abdul-Hamid (2008) "Child Rights Situation Analysis For Middle East and North Africa Region." Save the Children Report. August. Available at

compliance with CRC commitments, saying, “Despite initiatives at the level of countries as well as regional bodies on working for the welfare of children through strengthening existing instruments or producing new ones the situation of the rights of children in the MENA region ...child protection remains a serious issue in every country of the region.”⁴²⁷

Today, free primary education, a right listed in the CRC, is legally guaranteed to children in all MENA states with the exception of Oman. Access to education in Oman is distinctly poor. While progress has been achieved in access to education in Oman, the country has been slow to universalize free access to education for its children. In 1970, there were only three schools reported in the whole of Oman, teaching only 900 students, all boys. In that year, nearly 66% of Oman’s adults were reported as illiterate.⁴²⁸ One area of particular concern has been a reported gender gap with lower female access to education in the region – however, with the exception of Morocco, Yemen and Iraq, Save the Children reported that the “MENA region is largely on track to achieving the Millennium Development Goal of gender parity in access to primary education by 2015,” and the World Economic Foundation reported that in 2016 gender gaps in school enrolment across MENA were generally closed or close to closing.⁴²⁹

Areas of concern regarding the CRC in MENA relate to the issues of child marriage, adoption, and freedom of thought and religion. Although the CRC does not

[https://www.essex.ac.uk/armedcon/story_id/Child%20Rights%20Situation%20Analysis%20for%20Middle%20East%20and%20North%20Africa\[1\].pdf](https://www.essex.ac.uk/armedcon/story_id/Child%20Rights%20Situation%20Analysis%20for%20Middle%20East%20and%20North%20Africa[1].pdf), p. 8.

⁴²⁷ Ibid.

⁴²⁸ Muscat Daily (2013) “From Access to Success: The Story of Oman’s School Education System,” November 18. Available at <http://www.muscatdaily.com/Archive/Oman/From-access-to-success-The-story-of-Oman-s-school-education-system-2pri#ixzz3x8YrE7vc>.

⁴²⁹ Yara Abdul-Hamid, “Child Rights Situation and Analysis for Middle East and North Africa Region” (2008) Save the Children Report, August, Available at <http://resourcecentre.savethechildren.se/sites/default/files/documents/1949.pdf>, p. 9 and “Middle East and North Africa” (2016) World Economic Forum Global Gender Gap Report 2016. Available at <http://reports.weforum.org/global-gender-gap-report-2016/middle-east-and-north-africa/>.

explicitly provide a minimum age for marriage, human rights outlets often point to various related CRC provisions that effectively outlaw child marriage, including Article 24, paragraph 3, which provides that States parties should “take all effective and appropriate measures with a view to abolishing traditional practices prejudicial to the health of children.”⁴³⁰ The UN has also identified child marriage as a harmful practice which leads to the infliction of physical, mental or sexual harm or suffering, with both short- and long-term consequences, and negatively impacts on the capacity of victims to realize the full range of their rights.⁴³¹ The UN Special Rapporteur on the sale of children has claimed that child marriage may be considered as sale of children for the purposes of sexual exploitation, which violates both Optional Protocol to the CRC on the sale of children, child prostitution and child pornography and of article 35 of the CRC regarding trade unions and labor rights.⁴³²

Since universal commitment to the CRC across MENA, many states in the region have issued legal guarantees to prevent child marriage (i.e. to raise the legal age to 18+ for both sexes to legally marry). In practice, however, marriages still take place at younger ages. Compared with the broader MENA region, GCC states provide the fewest legal protections against child marriage. In Bahrain and Kuwait, girls and boys’ minimum ages

⁴³⁰ See in particular article 2 on non-discrimination, article 3 on the best interests of the child, article 12 on the right of the child to be heard in accordance with her/his age and maturity, article 19 on essential measures to be taken to protect the child from all forms of violence, article 34 on protecting children from all forms of sexual exploitation and sexual abuse, article 35 on measures to prevent the abduction of, sale of or traffic in children and article 36 on protecting the child against all other forms of exploitation which may cause harm to the child.

⁴³¹ See, for example, the concluding observations of the Committee on the Elimination of Discrimination against Women on Montenegro (CEDAW/C/MNE/CO/1), Mauritania (CRC/C/MRT/CO/2), Togo (CRC/C/TGO/CO/3-4), Zambia (CEDAW/C/ZMB/CO/5-6) and the concluding observations of the Committee against Torture on Bulgaria (CAT/C/BGR/CO/4-5).

⁴³² Report of the Special Rapporteur on the sale of children, child prostitution and child pornography (A/66/228), p. 8. See also the Supplementary Convention on the Abolition of Slavery, art. 1 (c) (i)-(iii) and (d). This was also highlighted by the Pan-African Forum against the Sexual Exploitation of Children: see UNICEF, *Early Marriage – A harmful traditional practice: A statistical exploration* (New York, 2005).

to marry differ, with girls legally able marry from ages from as young as 15 and boys from 18 in Bahrain and 17 in Kuwait. The minimum age for marriage in the UAE and Oman is 18, however, even in countries where the minimum age for marriage is set, exceptions in the law relating to a child's reaching of puberty and permissions of a court and guardian still allow children under this age to be married.⁴³³ And, in Saudi Arabia, there are no national laws providing a minimum age for marriage.⁴³⁴

Alongside specific recommendations to governments to be analyzed in the upcoming chapter, the CRC's Committee on the Rights of the Child has consistently recommended that GCC governments to engage with civil society in the monitoring and implementation of the CRC, including to enhance the political participation of youth.

Children hold a special role in Islamic society and in the Middle East. Elizabeth Warnock Fernea writes, "The idea of childhood, the place of the child, the duties of the child: these are basic and important issues in the Middle East and have been since recorded history in the area began, about 3000 B.C."⁴³⁵ The Middle East has been and largely remains a traditional patrilineal society, with the eldest male in the family considered a key link in the social and economic continuation of a family line. Fernea writes, "In the Middle East, the child is seen as the crucial generational link in the family unit, the key to its continuation..."⁴³⁶ While Fernea argues similar attitudes toward marriage and children are found among Jewish and Christian faiths, "within Islam," she argues, "they are

⁴³³ Lynn Welchman (2012) "Gulf Women and the Codification of Muslim Family Law." In Amira El-Azhary Sonbol (ed.) *Gulf Women*. Doha: Bloomsbury Qatar Foundation, pp. 367-406, p. 382.

⁴³⁴ See discussion of the minimum age of marriage in laws and the various exceptions in laws on the age of marriage across MENA in the section 'minimum age for marriage' in Lynn Welchman (2007) *Women and Muslim Family Laws in Arab States: A Comparative Overview of Textual Development and Advocacy*, Amsterdam University Press. p. 62-68.

⁴³⁵ Elizabeth Warnock Fernea (1995) *Children in the Muslim Middle East*. Austin: University of Texas Press, p.3.

⁴³⁶ Ibid.

intensified.”⁴³⁷ Fernea helps attribute the religious importance of children to the words of the Prophet citing one Hadith, which states, “When a man has children he has fulfilled half of his religion, so let him fear God for the remaining half.” Fernea argues, “Children, then, have always been valued in Middle Eastern traditions, not only for economic and political but also for religious reasons.”⁴³⁸

The issue of children’s guardianship under Islamic law has been an issue of some controversy. As Lena Marie Moller observes in her study of *wilaya*, Arab states have engaged in a unique struggle to adjust concepts of *wilaya* to modern social changes, including modern codification of Islamic family law (she suggests that contemporary Muslim guardianship laws have been “...influenced and shaped by a combination of state law, religious law, and international law, as well as sociopolitical considerations.”⁴³⁹ However, *wilaya* is “still framed as a largely gendered legal concept and a male prerogative” reflecting patriarchal interpretations of pre-modern Islamic legal understandings.⁴⁴⁰

Because of the importance of patriarchal familial lines in the Middle East, the issue of adoption is of particular concern in the region as governed by Islamic law, particularly in the most traditional states of the GCC. The Islamic *Kafala* system is an adoption-like practice under Sharia law, which does not accept formal adoption as such but offers a form of “guardianship.” According to Amira al-Azhary Sonbol, the system dates back to early law and practice in Islamic history. She writes, “Today’s laws pertaining to orphans and adoption are the accumulation of the laws and practices of Islamic society since the

⁴³⁷ Ibid.

⁴³⁸ Ibid, p. 5.

⁴³⁹ Lena Marie Moller (2015) “An Enduring Relic: family Law Reform and the Inflexibility of the Wilaya,” *American Journal of Comparative Law*, Vol. 63, No. 4, pp. 893-925.

⁴⁴⁰ Ibid.

Prophet's time. Generally, they are tied to issues of inheritance and property. But some discrepancy also is found between the laws themselves and actual social practice."⁴⁴¹ However, Sonbol argues that adoption in the Middle East before Islam was a common practice, but with the dawn of Islam adoption became less common, saying, "The family laws instituted by the Quran can be seen as stressing the nuclear family, and this may be taken as an indication that the Prophet intended to deemphasize larger groupings like tribes and clans. This in itself would discourage adoption."⁴⁴²

Although the Quran effectively forbids adoption (the Quran 33.5 says said Allah revealed: "Call them (adopted sons) By (the names of) their fathers"), it calls upon Muslims to leave their material wealth to those dependent on them including any children, (mawali) (helper, trustee) slaves, of dependents in their care."⁴⁴³ Maliki views on adoption stress the importance of blood lineage, "The loss of nasab [lineage] and its confusion leads to great personal and social immorality...it leads to economic and financial dislocation."⁴⁴⁴ The Prophet is supposed to have said, "Do not wish for other than your fathers, whosoever wishes for other than his father, it is kufr."⁴⁴⁵

Another issue of controversy relating to Islam and children's rights is the topic of a child's religious freedom, enshrined in the CRC under Article 14, which has been a clause many states in the region have objected to in formal reservations submitted upon accession. According to Ann Elizabeth Mayer, the concept of "religious freedom" is often viewed in conflict with the region's cultural values, writing "...in Middle Eastern countries, family

⁴⁴¹ Amira al-Azhary Sonbol (1995) "Adoption in Islamic Society: A Historical Survey" chapter in *Children in the Muslim Middle East*, ed. Elizabeth Warnock Fernea, University of Texas Press. p. 45.

⁴⁴² Ibid.

⁴⁴³ Ibid, p. 48.

⁴⁴⁴ Malik b. Anas cited in Sonbol (1995), p. 48.

⁴⁴⁵ Sonbol (1995), p. 51.

solidarity and paternal authority are sacrosanct, and it is assumed that children must adhere to the religion of their father. These public statements indicated their continued estrangement from the principle of freedom of religion.”⁴⁴⁶ Quranic text such as 2:256, “There is no compulsion in religion” and 18:29 “Let him who will believe and let him who will disbelieve” suggest a freedom of conscience for all individuals, however, punishment for apostasy (leaving Islam) in Quranic text is sometimes interpreted in the region to bring about harsh punishment. The issue will be discussed in greater detail in the chapter on the ICCPR, but varied interpretations of how the concept of “religious freedom” relates to children will be a topic of growing debate within the GCC countries’ CRC meetings reviewed in the section that follows.

5.2 GCC Reservations to CRC

A total of 15 states cited concern in CRC reservations about Islam, including all GCC states except Bahrain.⁴⁴⁷ The details of the concerns vary widely – from Saudi Arabia’s sweeping reservation which states, “The Government of Saudi Arabia enters reservations with respect to all such articles as are in conflict with the provisions of Islamic Law” to more specific descriptions of possible conflict with the state’s interpretation of Islam, such as Kuwait’s objection listed to Article 21, which states, “The State of Kuwait, as it adheres to the provisions of the Islamic shariah as the main source of legislation, strictly bans abandoning the Islamic religion and does not therefore approve adoption.” Bahrain is the only GCC state not to raise concern regarding Islam. The mention of Islam

⁴⁴⁶ Ann Elizabeth Mayer (2013) *Islam and Human Rights: Tradition and Politics*. 5th ed, Boulder: Westview Press. p. 171.

⁴⁴⁷ These countries are Afghanistan, Algeria, Brunei Darussalam, Iran, Iraq, Jordan, Kuwait, Maldives, Mauritania, Morocco, Qatar, Saudi Arabia, Somalia, Syria and the United Arab Emirates.

in RUDs was a topic of common concern among comments entered to the UN CRC committee by other CRC states parties, particularly from European states.

GCC Reservations to the CRC	
Mention of Concern Related to Islam	5 ⁴⁴⁸
Article 14 (Freedom of conscience and religion)	3 ⁴⁴⁹
Article 21 (Adoption)	2 ⁴⁵⁰
No Reservation	1 ⁴⁵¹

5.3 GCC-CRC Country Engagement: Country Examples

5.3.1 Saudi Arabia and the CRC

Saudi Arabia acceded to the CRC on 16 January 1996, and submitted a general reservation reminiscent of similar statements offered on accession to other core human rights conventions, stating, “[The Government of Saudi Arabia] enters reservations with respect to all such articles as are in conflict with the provisions of Islamic Law.” Although the Saudi Government acceded to the CRC relatively quickly under King Fahd (who also ratified the CEDAW in 2000 and the CAT in 1997), the Saudi government has still not ratified any additional optional protocols to the CRC related to the Involvement of Children in Armed Conflict and on the Sale of Children, Child Prostitution and Child Pornography.

⁴⁴⁸ Saudi Arabia, Kuwait, Oman, United Arab Emirates and Qatar

⁴⁴⁹ Oman, Qatar and United Arab Emirates

⁴⁵⁰ Kuwait and United Arab Emirates

⁴⁵¹ Bahrain

The Saudi Basic Law places an emphasis “promoting” the Muslim family in shaping society, saying,

Article 9:
The family is the nucleus of Saudi Society. Members of the family shall be raised in the Islamic Creed, which demands allegiance and obedience to God, to His Prophet and to the rulers, respect for and obedience to the laws, and love for and pride in the homeland and its glorious history.

Article 10:
The State shall aspire to promote family bonds and Arab-Islamic values. It shall take care of all individuals and provide the right conditions for the growth of their talents and skills.⁴⁵²

Beyond broad constitutional guarantees to support the family, there is no specific legal provision guaranteeing “child’s rights.” The Kingdom has created several state institutions committed to promoting the welfare of children, such as the National Commission for Child Welfare. The Commission is headed by the Saudi Minister of Education, which holds two bodies – a Supreme Council consisting of deputy ministers, and a Planning and Follow-up Council, composed of 13 directors to implement policy enhancing child welfare. The Councils boast progress from areas of “nationwide vaccination campaigns, the creation of public parks for children in all cities, plus a program to intensify maternity and child care in existing hospitals and extend it to the far corners of the kingdom.”⁴⁵³

The Saudi schooling system is free, and school is “a requirement for every Muslim, both male and female.”⁴⁵⁴ Schools for girls opened for the first time in 1956. A significant gender gap that existed up to the mid 1900s in access to education has since closed. King

⁴⁵² Saudi Arabia Basic Law of 1992.

⁴⁵³ John Lawton (1980) “Years of the Child,” *Saudi Aramco World*, January/February, Vol. 31, No. 1. Available at <http://archive.aramcoworld.com/issue/198001/years.of.the.child.htm>.

⁴⁵⁴ Saudi Embassy: Education. Available at <https://www.saudiembassy.net/about/country-information/education/>.

Fahd issued a royal decree in 2004 to make primary education compulsory for all children between ages 6 and 15. By 2006, 78.4% of Saudi women aged 15 and above were reported as literate, compared to 88.6% of women of the world. The literacy rate of youth aged 15-24 was estimated at relatively on par in 2006 – at 95.5% for girls and 97.7% for boys. There are now reported to be more schools for girls than for boys in the Kingdom.⁴⁵⁵

Humanium, a children's rights charity which evaluates national children's rights records, ranks Saudi Arabia 7.83/10 on its children's rights index, which is higher than the Middle East regional average.⁴⁵⁶ There remain areas of concern, however, particularly related to the unequal treatment of girls compared with boys in the country. The US State department reports that, "while the culture in Saudi Arabia greatly prizes children, studies by female doctors indicate that severe abuse and neglect of children appear to be more widespread than previously reported."⁴⁵⁷ Save the Children reports that social attitudes may "deter and often prevent" girls in particular from reporting cases of abuse.⁴⁵⁸

The practice of male guardianship in Saudi Arabia requires authority over women of a male blood relation (a *mahram*) such as her father, brother, or husband serving as a guardian (*wali*) in various aspects of her daily life, including legal matters and sometimes travel and accessing services. The CRC Committee has claimed in a report that the "persistently patriarchal socio-cultural traditions and attitudes [in Saudi Arabia] have contributed to discrimination especially towards girls and children born out of wedlock in

⁴⁵⁵ "Saudi Arabia: Children's Rights in the Special Procedures' Reports" (2013) Child Rights International Network. 7 November. Available at <https://www.crin.org/en/library/publications/saudi-arabia-childrens-rights-special-procedures-reports>.

⁴⁵⁶ "Children of Saudi Arabia: Realizing Children's Rights in Saudi Arabia." Humanium Report. Available at <http://www.humanium.org/en/middle-east-north-africa/saudi-arabia/>.

⁴⁵⁷ "Saudi Arabia: Country Reports on Human Rights Practices" (2002) Bureau of Democracy, Human Rights and Labor, U.S. Department of State, March 4. Available at <http://www.state.gov/j/drl/rls/hrrpt/2001/nea/8296.htm>.

⁴⁵⁸ Save the Children Report. Available at <http://resourcecentre.savethechildren.se/sites/default/files/documents/1949.pdf>.

particular.”⁴⁵⁹ The UN High Commissioner has condemned Saudi Arabia for violating international children’s rights standards, for example, for sentencing 17 year old high school student Ali Mohammed al-Nimr to death by beheading for alleged crimes such as illegally carrying a weapon, which violates CRC protections for the rehabilitation of child criminals and human rights prohibitions against the executions of minors.⁴⁶⁰

Saudi Arabia is one of only two MENA states (along with Yemen) that does not hold a legal minimum age for marriage. The Grand Mufti Shaikh Abdul Aziz Al Shaikh was reported in 2014 as saying there is no opposition to child marriage in Saudi Arabia or desire to set a minimum age for marriage, telling the local daily newspaper *Al Riyadh* “There is currently no intention to discuss the issue.”⁴⁶¹ In follow-up reports, the Grand Mufti doubled down on his comments defending marriage of young girls under Islamic principles, saying, “We hear a lot about the marriage of underage girls in the media, and we should know that Islamic law has not brought injustice to women.”⁴⁶² In a 2009 interview with *Al-Hayat* newspaper he later built on this point speaking of “justice” and “fairness” in child marriage, saying “It is incorrect to say that it's not permitted to marry off girls who are 15 and younger...A girl aged 10 or 12 can be married. Those who think she's too young are wrong and they are being unfair to her.”⁴⁶³

⁴⁵⁹ UN Committee on the Rights of the Child (Concluding Observations, March 2006, paragraph 28).

⁴⁶⁰ “Saudi Arabia Must Immediately Halt Execution of Children – UN Rights Experts Urge” (2015) UN Human Rights Office of the High Commissioner. 22 September. Available at <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=16487&LangID=E#sthash.tusnWOAn.dpuf>.

⁴⁶¹ Habib Toumi (2014) “Saudi Arabia Grand Mufti says no opposition to underage marriage,” *Gulf News*, 21 December, <http://gulfnews.com/news/gulf/saudi-arabia/saudi-arabia-grand-mufti-says-no-opposition-to-underage-marriage-1.1429882>. Accessed 27 Jan 2016.

⁴⁶² Andrew Brown (2009) “Feminism Saudi Style: A Senior Saudi Cleric is Outraged by Plans to Raise the Age of Consent to 15.” *The Guardian*. 19 January. Available at <http://www.theguardian.com/commentisfree/andrewbrown/2009/jan/19/religion-islam-saudi>.

⁴⁶³ “Top Saudi Cleric: OK for Young Girls to Wed” (2009) *Cnn.com*. January 17. Available at <http://edition.cnn.com/2009/WORLD/meast/01/17/saudi.child.marriage/>.

Human Rights Watch representative Christophe Wilcke claims that the society in Saudi Arabia has grown more and more open to voicing concerns over child marriage, telling *CNN* in 2009, "We've been hearing about these types of cases once every four or five months because the Saudi public is now able to express this kind of anger - especially so when girls are traded off to older men." Wilcke expressed some hope for change, while warning of the roadblocks to legal reform due to the conservative religious voices in the Kingdom, saying, "It is still the religious establishment that holds sway in the courts, and in many realms beyond the court."⁴⁶⁴

5.3.1.1 Saudi Arabia – CRC Committee Dialogues

Saudi Arabia has submitted three state reports to the CRC– the first two in 1998 and 2004, and its most recent (due in 2011) was submitted in 2014. The first two reporting cycles resulted in a series of reports and meetings between Saudi and UN representatives, all of which will be analyzed for the ways in which Islam has been discussed in relation to the CRC in the section that follows.

Upon submission of its first report to the CRC Committee on 15 October 1998, the Kingdom of Saudi Arabia put forward broad assurances of the Kingdom's "distinctive" respect for children's rights under Islamic law, saying,

Recognizing the distinctive status of children in Islam, which the nation embraces as a creed, a constitution and an integrated way of life, the Kingdom of Saudi Arabia shows considerable concern for child welfare. In this respect, Islam advocates concern for the welfare of the family, which constitutes the basic social unit that provides appropriate means conducive to a decent life and full

⁴⁶⁴ Ibid.

realization of its primordial role in nurturing and preparing children for life.⁴⁶⁵

It should be noted that, in the Kingdom of Saudi Arabia, children represent the cornerstone and the major objective of the development process. Bearing this in mind, the State has mobilized all efforts to provide opportunities for all children to enjoy their fundamental rights and has provided educational services to guarantee the appropriate upbringing and development of the child within the family and community environment.⁴⁶⁶

As evident in the above statements and repeated throughout, Saudi Arabia's report specifically attributes special protection for children under the country's system of Islamic law, claiming that Islamic legal principles actively contribute to the protection and encouragement of child development, saying,

A careful review of Islamic law clearly shows that Islam has guaranteed comprehensive rights for the child before as well as after birth. Islam makes the world of a child a beautiful world, full of love, happiness and joy. It ardently seeks to instil the love of children into adults and urges them to plan and form a family that can ensure harmonious development, respect and equality for all its members, particularly children. It also emphasizes the importance of protecting children, safeguarding their right to life and preserving a healthy environment conducive to their sound development.⁴⁶⁷

In this regard, Islam recommends the following measures: birth spacing, protection of children against infectious diseases, encouragement of breastfeeding, establishment of comprehensive systems for child-rearing based on freedom and independence, and obliging parents to cater for their full welfare and education and to inculcate in them the love of a decent life. Moreover, Islam pays particular attention to the personal hygiene and environmental health of children and to the development of their minds and bodies. Islam is concerned with the guardianship of orphans, with the welfare of children of unknown identity, though they are very few, and with the prohibition of their torture and maltreatment. It has laid down exemplary regulations for the

⁴⁶⁵ CRC/C/61/Add.2 p. 4.

⁴⁶⁶ Ibid.

⁴⁶⁷ Ibid, p. 8.

protection of pregnant mothers from torture or inhuman treatment in the event of imprisonment, and has guaranteed a decent life for delinquent and disabled children.⁴⁶⁸

The Kingdom of Saudi Arabia has derived its regulations concerning child welfare from these divinely revealed teachings of Islam which are in harmony with, and even surpass, the provisions of the Convention.”⁴⁶⁹

Saudi Arabia’s second 2004 report initially spoke of parental “duty” rather than child’s rights, but quickly moved to more directly incorporate the language of the respect for “child’s rights” in connection to Islamic perspectives on children, saying,

Parents have a duty to provide for their children’s welfare and education and to instil in them a love of a decent life. Children are valued and appreciated in Islam. Almighty God said: “Nay! I swear by this city. You are a dweller in this city. And the begetter and whom he begot”. He made them human: “O Zacchary! We bring thee tidings of a son whose name shall be John. We have given the same name to none before him”, a pleasure to behold: “O Lord! Make our wives and children the apple of our eye”, and an adornment to the world: “Wealth and children are an adornment to the life of the world”.⁴⁷⁰

It clearly follows that Islamic law guarantees human rights in general and the rights of the child in particular, especially the child’s right to care and to the consideration of his or her best interests.⁴⁷¹

In follow-up dialogues in 2006, a noticeable step-change occurred in which Saudi representative Prince Al Kabeer (a member of the royal family and wealthy businessman) suggested that the interpretation of Sharia used to allow children who reach puberty to be tried as adults and to face death penalty or corporal punishment for crimes including

⁴⁶⁸ Ibid.

⁴⁶⁹ CRC/C/61/Add.2, p. 8.

⁴⁷⁰ Ibid, p. 27.

⁴⁷¹ Ibid, p. 5.

apostasy, drug use and political rebellion in Saudi Arabia would be re-considered, in light of international law.⁴⁷²

Mr. Kotrane asked whether, under certain circumstances, an individual who had been under the age of 18 when the crime had been committed might be tried as an adult.

Prince Torki bin Mohammed bin Saud al-Kabeer (Saudi Arabia) said that a special committee of experts in sharia and international law had been established to consider whether the age of majority should be set at 18. The committee's findings would be communicated in due course.⁴⁷³

This suggestion that Saudi Arabia would re-consider the age of majority was not simply cosmetic. On 24 November 2008, Saudi Arabia's Shura Council passed a proposal to raise the age of majority (or signs of puberty, whichever comes earlier) from 15 to 18, in spite of opposition from the Islamic Affairs Committee and Judiciary and Human Rights Committees. However, the Cabinet has not passed the proposal (and their "applicability to capital punishment remains unclear"⁴⁷⁴).

The suggestion that Saudi Arabia is open to re-considering interpretations of Islam was discussed, but ultimately lost traction in a later 2014 report discussing the possibility of removing reservations to the CRC,

In order to study the recommendation of the international committee concerning the Kingdom's general reservation concerning the Convention on the Rights of the Child and to consider withdrawing or narrowing it, a committee was formed of several relevant authorities.... given the great importance the Kingdom attaches to laws and regulations complying with Islamic law, the Saudi Government reaffirms that it does not see the need to withdraw the reservation as it does not undermine the Convention or the ability of the State to meet its obligations towards the rights of the child, as detailed in this report.⁴⁷⁵

⁴⁷² Peter Hodgkinson (2016) *Capital Punishment: New Perspectives*, Oxon: Routledge, p. 67.

⁴⁷³ CRC/C/SR.1114, p. 4.

⁴⁷⁴ Ibid.

⁴⁷⁵ CRC/C/SAU/3-4, p. 7.

The 2014 report also discussed the issue of “freedom of religion” by invoking respect for the concept of “freedom” of “belief and religion” for non-Muslims, saying.

It is important to make clear here that Saudi society is homogeneous in religion and language. Article 1 of the Basic Law of Governance stipulates that: “The Kingdom of Saudi Arabia is a fully sovereign Arab Islamic State. Its religion is Islam. Its Constitution is the Holy Koran and the Sunnah of the Prophet (the Prophet’s sayings) and its language is Arabic.” In spite of that, we would like to emphasize that the State respects the right of non-Muslim residents to their religious beliefs. It does not interfere in religious beliefs and rituals within the limits of personal practice that does not violate the rights of all members of Saudi society who profess Islam as a religion and belief. In accordance with this general framework, the State and Saudi families wish to bring up their children in the doctrine of the nation, with full freedom for non-Muslim families residing in the Kingdom to bring up their children according to their beliefs and religion.⁴⁷⁶

Although earlier excerpts demonstrate a degree of convergence of Saudi statements incorporating UN concepts, this process was not linear. A rigid interpretation of the punishments discussed in the chapter on the CAT were reaffirmed in the 2014 report, which took a step back from some progression in other areas towards a flexible interpretation of Islam, to suggest laws on punishment for *qisas* and *hudud* could not be changed. This demonstrates the non-linear nature in which dialogues about Islam have ebbed and flowed,

No authority in the State has the power to modify or suspend the punishment prescribed for crimes of *qisas* (murder and assault) and crimes of *hudud* (those for which there are specified penalties in the Quran and Sunna), as these are categorically set forth in Islamic sharia and leave no leeway for interpretation.⁴⁷⁷

In a 2016 report, statements from Saudi representatives reinforced the claim that the younger age was a requirement under Sharia the state could not change (although penalties imposed on minors were “not enforced” until age 18).

⁴⁷⁶ CRC/C/SAU/3-4, p. 34.

⁴⁷⁷ Ibid, p. 6.

In answer to the Committee's question about a minimum age of 18 years at the time of the commission of an offence, and with reference to paragraph 58 of the periodic report, judicial rulings regarding whether or not a person is of age are based on certain physiological indicators the presence of which is considered to make a person competent to fulfill his or her religious obligations, dispose of financial assets and be held criminally accountable. If a child commits an offence, he or she is dealt with in accordance with the age ranges of criminal responsibility for children in Islamic sharia: before children reach the age of discrimination (7 years) they bear no criminal responsibility and face no criminal or disciplinary penalties although they are not exempt from civil liability; between the ages of 7 and 15 children face disciplinary but not criminal responsibility and they are not considered recidivist no matter how many times they are disciplined; children who have reached the age of 15 and commit a qisas or hudud offence face qisas or hudud penalties depending upon their offence although the penalty is not enforced until they reach the age of 18.⁴⁷⁸

The excerpts above all demonstrate a degree of movement among Saudi Representatives to incorporate CRC language, while also still insisting on some inflexibility of certain Islamic ideas. This provides evidence for the non-linear nature of the changes identified in this thesis.

Final statements in the recent 2016 meetings between Saudi Arabia and the CRC Committee reflect a range of claims that justify interpretations of Islam even more explicitly around the language of human rights contained in the CRC. Despite substantive dissonance with the contents of the CRC, the statements reflect an effort to demonstrate convergence between Islamic understandings of women's and children's rights alongside concepts of equality, justice, freedom and non-discrimination.

In addition to the information contained in paragraph 75 of the periodic report, it should be noted that the laws of Saudi Arabia, which are derived from Islamic sharia, enjoin complementary equality between men and women while taking account of the characteristics and features that are specific to either gender and that differentiate them from one another. In the end, justice is done and Saudi Arabia is confident that the complementarity of the relationship between the sexes is the best way to promote human rights, including the rights of women, and to prevent any discrimination against them. The laws of Saudi Arabia do not contain

⁴⁷⁸ CRC/C/SAU/Q/3-4/Add.1, p. 7.

any distinctions, exclusions or restrictions to attenuate or prevent the recognition of the human rights and freedom of women in any area.⁴⁷⁹

On the subject of the Committee's request for clarification concerning male guardianship of women and girls, Saudi Arabia would like to underline the fact that there is no male guardianship of women in respect of the rights mandated to them under Islamic sharia. Certain principles are imposed for the protection of women, principles that some persons consider to be a violation of their rights such as qawama and wilaya. If those principles are misused, women have the right to seek redress before the bodies defined in national law, chief among them the judiciary⁴⁸⁰

With reference to paragraphs 311 and 313 of the periodic report, child victims of sexual assault are treated with particular solicitude and given shelter and rehabilitation. Sexual assault of any kind is a crime under Islamic sharia and demands the severest punishment as it represents an assault on honour, which is one of the five essentials that the sharia seeks to protect. It is therefore considered to be a serious offence under the Code of Criminal Procedure, and the penalty is redoubled if the victim is a child. It is completely untrue that victims of sexual assault are themselves blamed.⁴⁸¹

5.3.1.2 Domestic Discourses on the CRC, Islam and Children in Saudi Arabia

Saudi Arabia's commitment to the CRC has been used within Saudi Arabia as leverage for activism - both by Saudi citizens calling on the Saudi government itself to live up to its own commitments, as well as in criticism from the government accusing other states of not living up to their commitment to children's rights. A November 2015 *Saudi Gazette* article reported on the growing use of personal video technology and cited Saudi Lawyer Nouf al-Yahya's mention of Saudi Arabia's commitment to the CRC as evidence for the need for greater privacy protections for children. In the article, al-Yahya says, "Posting videos showing children under the age of 10 singing or dancing in a way that reflects negatively on their guardians can fall under physical abuse and is punishable. It can

⁴⁷⁹ Ibid.

⁴⁸⁰ Ibid, p. 8.

⁴⁸¹ Ibid, p. 11.

also be considered a form of violation of child rights as per Article 36 of the Convention on the Rights of the Child to which the Kingdom is a signatory.⁴⁸² In the article, al-Yahya insinuates that the Kingdom should do more to uphold these commitments, as the report writes, “Al-Yahya noted that there is no specific body or organization in the Kingdom that handles and fights these practices.” In a 2015 article accusing Israel of the mistreatment of Palestinian children in the Saudi Gazette, Brad Parker, an attorney at NGO Defense for Children International – Palestine (DCI-P), is cited as criticizing Israel for not upholding its commitments under its ratification of the CRC. The article cites Parker, saying, Israel’s signature of the UN CRC in 1991 bind it to a series of obligation that “prohibit torture and other cruel, inhuman or degrading treatment or punishment,” Parker said.⁴⁸³

A July 2008 article in Saudi newspaper *Al Sharq Al-Awsat* highlighted progress under one of Saudi Arabia’s only government-sanctioned human rights NGO, the National Society for Human Rights, and its evaluation of Saudi progress in living up to its commitment to the CRC. In the article, the government-backed Saudi National Society for Human Rights is quoted arguing for a number of national reforms to help put Saudi law in line with its commitments to the CRC, issuing a number of recommendations to the government to improve practices, saying,

Within the context of the committee’s comment on the reference in the human right society’s study to the need for the preventative measures to include effective procedures to draw up social programs, and to the need to legally specify the deeds that constitute crimes against children, it explains: “There is a draft law under study by the Commission of Experts that is related to the protection of children. The draft law includes a collection of rulings related to the rights of children, and specifies some of the

⁴⁸² Saudi Gazette (2015) “Breach of Privacy,” 13 November. Available at <http://saudigazette.com.sa/saudi-arabia/breach-of-privacy/>.

⁴⁸³ Saudi Gazette (2015) “Israeli Interrogators’ Systematic Child Rights Abuses,” 14 November. Available at <http://saudigazette.com.sa/world/israeli-interrogators-systematic-child-rights-abuses/>.

deeds whose commitment constitutes a violation of these rights. The draft law derives the totality of its rulings from the text of the Convention on the Rights of the Child. *[This is in reference to the aforementioned age of majority reform, which ultimately passed as a proposal but has not been passed into law].*

The National Society for Human Rights calls for the establishment of a comprehensive penal law for the minors, whether with regard to punishment or procedures, in the light of the existence of a text in the Convention on Rights of the Child stipulating that “death penalty or life imprisonment without the possibility of release cannot be imposed as punishment for crimes committed by individuals who are less the 18-years old.”⁴⁸⁴

This NSHR report demonstrates the significance of the CRC in bolstering and framing reform efforts, despite the fact that the efforts failed to result in fully reformed laws. Although the impact has not been strong enough to result in fully reformed laws, it provided an important first step in significant efforts to raise the age of majority.

The Saudi national human rights NGO the Human Rights Commission has used commitments to international law as an anchor for heightened activism, for example, against child marriage. The spokesman for the government-approved Saudi National Human Rights Institution Zubair al-Harithi has openly spoken out against the practice of child marriage, saying, “The Human Rights Commission opposes child marriages in Saudi Arabia... Child marriages violate international agreements that have been signed by Saudi Arabia and should not be allowed.” (The very fact of using the term “child marriage” is significant here, adding the concept and term into local human rights language). Al Harithi has told CNN that the Human Rights Commission has been able to step in and stop at least one child marriage in the country through their services.⁴⁸⁵

⁴⁸⁴ Al Sharq Al-Awsat (2008) “Saudi Arabia Considers Amending Laws to be Compatible with Human Rights Treaties,” 28 July, Available at <http://english.aawsat.com/2008/07/article55258134/saudi-arabia-considers-amending-laws-to-be-compatible-with-human-rights-treaties>.

⁴⁸⁵ CNN (2009) “Top Saudi Cleric: OK for Young Girls to Wed.” *CNN online*. Available at <http://edition.cnn.com/2009/WORLD/meast/01/17/saudi.child.marriage/>.

5.3.2 *The UAE and the CRC*

The United Arab Emirates acceded to the CRC one year after Saudi Arabia on 3 January 1997. The UAE entered lengthy and specific reservations, expressing concern with articles 14, 17 and 21 related to possible conflict with Islamic law as well as concern over “traditional” and “cultural” compatibility. The reservations take issue, for example, with the CRC’s support for the practice of adoption, which is “not permitted” in the UAE under Islamic Law.

The government entered the following reservations to the CRC upon accession, Article 7: The United Arab Emirates is of the view that the acquisition of nationality is an internal matter and one that is regulated and whose terms and conditions are established by national legislation.

Article 14: The United Arab Emirates shall be bound by the tenor of this article to the extent that it does not conflict with the principles and provisions of Islamic law.

Article 17: While the United Arab Emirates appreciates and respects the functions assigned to the mass media by the article, it shall be bound by its provisions in the light of the requirements of domestic statutes and laws and, in accordance with the recognition accorded them in the preamble to the Convention, such a manner that the country’s traditions and cultural values are not violated.

Article 21: Since, given its commitment to the principles of Islamic law, the United Arab Emirates does not permit the system of adoption, it has reservations with respect to this article and does not deem it necessary to be bound by its provisions.

There is universal access to education in UAE for both boys and girls. However, certain types of education are reportedly “still not accessible to girls.”⁴⁸⁶ Corporal punishment is banned in schools but it is allowed in the family and used as criminal punishment, for example, whipping can be imposed for a juvenile for murder and assault, as well as Sharia-based offenses such as alcohol consumption, theft, or sexual intercourse

⁴⁸⁶ Humanium (2013) “Children of the United Arab Emirates,” 14 February. Available at <http://www.humanium.org/en/middle-east-north-africa/united-arab-emirates/>.

outside of marriage. In the UAE children as young as 7 years old may be held criminally responsible under the law.⁴⁸⁷ There is also concern over child death penalty in the UAE, as in 2011 Amnesty International reported that three individuals who were minors at the time of their accused crime were sentenced to death.⁴⁸⁸ And there is concern that child marriage is still prevalent, and, sometimes related, there are accusations of child and sexual abuse, especially for young girls who may be forced into early marriage.⁴⁸⁹

5.3.2.1 UAE- CRC Committee Dialogues

The UAE's engagement with the CRC Committee has centered around two cycles, an initial report (due 1999 submitted in 2000) and a second report (due 2004 submitted in 2012) and an additional follow-up dialogue in 2015.

The UAE's initial report to the CRC in 2001 did not explicitly speak of "human rights" of children, but instead discussed Islam's special role in the "protection" and "security" of children. The first report cites article 15 of its constitution as assurance of respect for children under the law because of the emphasis on the family in Emirati society, saying,

Article 15: The family, sustained by religion, morality and patriotism, shall constitute the cornerstone of society. The law shall guarantee the integrity of the family and shall safeguard and protect it against corruption.⁴⁹⁰

The government's initial report also provides assurances for gender equality for children, particularly in areas of education (which are separate for girls who receive

⁴⁸⁷ Ibid.

⁴⁸⁸ Amnesty International (2012) "Death Sentences and Executions 2011." 27 March. Available at <https://www.amnesty.org/en/documents/ACT50/001/2012/en/>.

⁴⁸⁹ Humanium (2013).

⁴⁹⁰ CRC/C/78/Add.2, p. 3.

childhood education in separate schools). The report emphasizes the role of Islamic religious education in girls' schooling, saying,

Activities for young girls are organized by the Girls' Clubs, which provide guidance by showing Islamic videotapes and arranging excursions, field visits, competitions, festivals, symposia, Holy Koran memorization programmes and cultural lectures.⁴⁹¹

The initial report also discussed a number of plans aimed to protect children in the country attempting, for example, to help "monitor" children's access to media to ensure respect for Islamic principles, saying,

The Parliament made recommendations concerning ways to ensure children's security in the following fields: Information: Media programmes for children, and particularly those which have an adverse impact on Islamic religious principles and time-honoured Arab traditions, should be monitored. The need to establish a children's television channel was also repeatedly emphasized⁴⁹²

In a June 2002 meeting, the CRC committee expressed the need for clarification on Sharia's influence on "customary law," particularly over the issue of rights granted to children born out of wedlock and the patriarchal family structure, saying,

Mr. Citarella [CRC Committee] noted that legislation on the family was still to a great extent influenced by customary law, in which the emphasis was on the prevalence of the father in all affairs. He also asked for further information on the situation of children born out of wedlock, given that customary law was based on Islamic Shariah law.⁴⁹³

In response to the committee's comments on the strong role of the father in the family, the Emirati representative claimed women have an "important" role in society, claiming this role was far stronger than in "many other countries."

Ms. Al-Howsani (United Arab Emirates) said that women in the United Arab Emirates had an important role to play in society under

⁴⁹¹ Ibid, p. 70.

⁴⁹² Ibid, p. 65.

⁴⁹³ CRC/C/SR.795, p. 5.

both customary law and ordinary State legislation. Women and girls in the United Arab Emirates enjoyed far more rights than in many other countries. Both men and women had roles to play within the family and how those roles were divided up was a personal matter for each family. Children born out of wedlock were not a problem because the phenomenon did not exist in the United Arab Emirates.

Ms. Al-Thani said that that was a theoretical ideal but not necessarily the case in practice. She wished to know whether such children were integrated into families or taken care of by the State, and what safeguards existed to protect their rights and those of mothers giving birth to children out of wedlock.

Ms. Al-Ameri (United Arab Emirates) said that where children were born out of wedlock, either the mother or father's family or another family took charge of the child, but the family unit had to consist of a mother and father with no children of their own. The child was granted Emirates nationality and given a passport. Children born out of wedlock and their mothers had all their rights respected. Orphans with no known parents were considered to be citizens of the State.

Later interactions in this same meeting discussed the "rights" of children to inheritance and property. Representatives of the UAE argued in these meetings that Sharia courts service the rights of children under Islam, including the right to be protected against the death penalty as a minor.

Mr. Al-Suwaidi (United Arab Emirates) said the religious courts had jurisdiction in cases of divorce, alimony and child custody, among other matters, and were regulated under the law and the Shariah. There was also a special court dealing with minors' inheritance and property rights. Procedures in civil court cases involving juveniles were regulated under the law. Juveniles first were dealt with by a social worker and then appeared before the civil court. The parents were notified and the juvenile could be released into their custody. In general, penalties were much less severe than those for adults, starting with a reprimand and becoming progressively more severe. Capital punishment for juveniles did not exist.

Mr. Citarella said he understood that Shariah courts had been vested with competence in all matters, including juvenile cases, under a 1994 Presidential Decree, and he wondered whether that order still

applied. He also asked whether Shariah courts could sentence children to prison or only to rehabilitation centres.

Mr. Al-Suwaidi (United Arab Emirates) said there had been a period when religious courts had tried other cases, but in cooperation with the relevant courts.

The committee also requested clarification to explain why girls do not go into technical and science fields, however, the Emirati representative responded with a claim that this problem did not exist.

The Chairperson said he understood that women in the Emirates tended to prefer non-science and non-technical studies. While that situation was not unique to the Emirates, he wondered whether there was a programme to encourage women to enter technical fields.

Mr. Al-Jarman (United Arab Emirates) said there was no problem in that regard.

Following this initial exchange over the UAE's first reporting cycle, the CRC produced a number of "issues of concern" in the following reporting round which opened in October 2015. Here, the CRC committee reiterated concern regarding the role of "Islamic texts" impeding certain children's rights, asking for clarification in how these texts are interpreted and implemented.

With reference to its previous concluding observations (see CRC/C/15/Add.183, para. 4), the Committee continues to observe that the State party's adoption of narrow interpretations of Islamic texts in some areas may impede the enjoyment of some rights protected under the Convention.⁴⁹⁴

In their November 2014 response, the UAE provided a number of statements regarding Islamic law's role in protecting "rights" and "freedoms" of children including the right to "non-discrimination" under Sharia,

The State expressed a reservation to article 14 of the Convention concerning freedom of thought and religion, because the article conflicts with the principles of the Islamic sharia. Freedom to profess a religion and to worship is available to all. No child in the United

⁴⁹⁴ CRC/C/ARE/CO/2, p. 2.

Arab Emirates is subject to any discrimination because of the child's religion or creed.⁴⁹⁵

The State expressed a reservation to article 21 on the right to adopt a child. Islam, which is the official religion and main source of legislation of the United Arab Emirates, does not permit the adoption method. However, this does not deny the rights of children of unknown lineage or parentage. The State provides for an appropriate role for the care and upbringing of such children and acts to provide all their needs. It has also established rules for alternative families. Children of unknown parentage obtain social assistance under the Social Security Act.⁴⁹⁶

Street children are a phenomenon in a number of countries. This phenomenon is absent in the United Arab Emirates thanks to the values of its Islamic culture. That culture has firmly entrenched the values of cohesion, solidarity, emphasis of the family, maintenance of family ties and care for children. Measures and procedures have also been adopted in this regard.⁴⁹⁷

5.3.2.2 Domestic Discourses on the CRC, Islam and Children in the UAE

In 2013, 16 years after acceding to the CRC, the UAE passed a law to protect children initially called Wudeema's law (to commemorate the passing of an eight year old girl starved and tortured to death at home), later called the Law on Child Rights.⁴⁹⁸ The law was pushed through by Shaikh Mohammed Bin Rashid Al Maktoum, Vice President and Prime Minister of the UAE, Ruler of Dubai, and passed by the Cabinet and Federal National Council. According to Mariam Al Roumi, Minister of Social Affairs, the law provides for seven basic rights of children, "in keeping with the convention on the Rights of the Child, to which the UAE became a signatory in 1996."⁴⁹⁹ The law heavily reflects

⁴⁹⁵ CRC/C/ARE/2 , p. 13.

⁴⁹⁶ Ibid.

⁴⁹⁷ Ibid, p. 55.

⁴⁹⁸ "'Wudeema's Law' Becomes Child Rights Law" (2013). *Gulf News*. December 11. Available at <http://gulfnews.com/news/uae/government/wudeema-s-law-becomes-child-rights-law-1.1266020>.

⁴⁹⁹ Ibid.

the language and concepts used in the CRC, guaranteeing a child's right to security, life, to a name, to express their views freely, to health care, to education and protection from economic and sexual exploitation. The draft law does not include guarantees on more controversial CRC issues such as freedom of religion or a right to adoption.

The UAE's commitment to the CRC has been an anchoring point in some instances for local activists to push for the government to live up to its word as state party to the children's convention to increase physical protection for children, including intervention in an unsafe family environment. Badriah Al Farsi, for example, a Programme and Research Director for local NGO the Dubai Foundation for Women and Children (DFWAC), the first government licensed non-profit shelter for women and children who are victims of domestic abuse in the UAE, spoke to local *Khaleej Times* in November 2014 to argue for increased child abuse prevention, although she suggests that her work is part of a top-down "effort" from the government to live up to its commitments to the CRC. She published a report revealing that 123 out of every 1,000 children in the UAE are exposed to "abuse or violence" in school. She is quoted in the newspaper calling on her report to serve as an "important reference for decision-makers in the field of child protection in the UAE, and will also pave the way for the first efforts towards the development of education and fight against violence and child abused programs." She added, "It also highlights the efforts of the UAE in the face of this global phenomenon in the light of the UAE's commitment to the Convention on the Rights of the Child and its quest to activate the same on the ground."⁵⁰⁰

⁵⁰⁰ "123 Children Out of Every 1,000 Exposed to Abuse in Schools: Study" (2014) *Khaleej Times*. 19 September. Available at <http://www.khaleejtimes.com/nation/general/123-children-out-of-every-1-000-exposed-to-abuse-in-schools-study>.

Again, the international convention is by no means a panacea for protecting the rights of children. It does, however, serve as one piece of a broader story in which conceptualizations of Islam and children's rights are being linked to the language in the CRC. While this is openly violated, there is, in theory, more for activists to hold onto to hold the government to account for aligning Islamic law more closely with UN concepts of child's "rights," including their right to care and their right to certain concepts of self expression such as their "freedom of belief." The government's commitments to the CRC are being brought further to light as discourse continues to develop regarding the potential for convergence between international standards and Islamic understandings of rights in the UAE context.

5.3.3 Other GCC State Engagement with the CRC

Other GCC state parties to the CRC – Kuwait (1991), Bahrain (1992), Qatar (1995) and Oman (1996) – all ratified around the same time period, and similarly all three entered extensive reservations about Sharia, with particular concern over adoption, nationality, and freedom of religion, with the exception of Bahrain, which entered no reservations. Qatar entered a reservation to "any of its [the CRC] provisions that are inconsistent with the Islamic Sharia" – however, alongside the removal of reservations to the CEDAW, Qatar's Council of Ministers partially withdrew the reservations about Islam to the CRC in January 2009 to only relate more specifically to articles 2 (related to non-discrimination) and 14 (related to freedom of thought and religion). Kuwait entered reservations to "all provisions of the Convention that are incompatible with the laws of Islamic Sharia" including Article

7 (regarding adoption) and Article 21 (regarding freedom of religion) and Oman entered reservations to Article 14 (concerning freedom of religion).

Engagement between Qatar, Kuwait, Bahrain and Oman with the CRC Committee reflect similar trends. Concern was raised in all cases about compatibility between Islam and adoption, freedom of thought and religion and the age of majority. And yet, in all four cases, there is a measurable change in the increasing framing of Islam around modern concepts of “rights” of children to certain freedoms and protections not otherwise traditionally discussed in an Islamic context.

In meetings with all GCC states, the CRC Committee raised concern regarding Islam. Kuwait’s initial 1998 report reflected a pattern in which GCC have made an effort to demonstrate compatibility between understandings of Islam and the CRC provisions, stating, “The few reservations Kuwait had with respect to conventions relating to the rights of women and children arose where there was conflict with Islamic traditions and religion, which was a very sensitive issue. Otherwise, as soon as international conventions had been signed and ratified they acquired the status of national law.”⁵⁰¹ Later, in a 2013 meeting, Kuwait’s representative assured that Sharia and the CRC were not incompatible as cultural attitudes were “changing,” saying,

Mr. Razzooqi (Kuwait) said that, although all international instruments ratified by his country were incorporated into domestic law, Kuwait must also respect the principles of sharia, which constituted a source of law. It strove to reconcile the two sources, which were not incompatible. Although polygamy was still permitted, cultural attitudes were changing, and it had therefore begun to disappear.⁵⁰²

⁵⁰¹ CRC/C/SR.489, p. 4.

⁵⁰² CRC/C/SR.1820, p. 6.

In initial meetings with Qatar in 2001, the CRC Committee asked Qatar to “Undertake all possible measures to reconcile fundamental human rights with Islamic texts.”⁵⁰³ Qatari delegates replied that Islam was reconcilable with all international commitments, Ms. Noor Abdulla Al-Aliki (Qatar) replied, “all children enjoyed the same rights in Qatar, regardless of their family situation.” Bahrain in 2002 suggested a progressive interpretation of Sharia to reconcile with the CRC claiming the minimum age for marriage would be reconsidered, saying “Mr. DERBASS (Bahrain) There was no minimum age of marriage in the Islamic Shariah, but one was soon to be established, probably at 21.”⁵⁰⁴ Efforts by Bahrain’s justice minister were indeed put forward to increase the minimum age for marriage in 2007, however, the effort was rejected by conservative Muslim forces in the country.⁵⁰⁵ A member of Bahrain’s parliament once again put forward calls to increase the minimum age for marriage to 18 in January 2016.⁵⁰⁶

All GCC states discuss care for orphans under UN concepts about protection of the rights of those without parents, although none moved to change their position banning the practice of formal adoption. In 2001 meetings, for example, the Qatari representative said,

Sharia law did not provide for adoption, and her Government did not intend to make any changes to current legislation. However, under legislation on guardianship (kafala), guardians could bequeath up to one third of their estate to a child in their care.⁵⁰⁷

Kuwait, similarly, in 1998 said that adoption could not be implemented because of Islam, saying, “On the question of adoption, it was recalled that Islamic countries did not practice adoption as such because of Islamic tradition with regard to names. Abandoned

⁵⁰³ CRC/C/15/Add.163, p. 6.

⁵⁰⁴ CRC/C/SR.769, p. 7.

⁵⁰⁵ Gulf News (2007) “Minimum Age for Marriage Must be Kept,” *Gulf News*, November 5 Available at <http://gulfnews.com/news/gulf/bahrain/minimum-marriage-age-must-be-kept-1.211119>.

⁵⁰⁶ Gulf News (2016) “Bahrain MP Calls for Rethink on Minimum Marriage Age,” 11 January. Available at <http://gulfnews.com/news/gulf/bahrain/bahrain-mp-calls-for-rethink-on-minimum-marriage-age-1.1651809>.

⁵⁰⁷ CRC/C/SR.1447, p. 9.

children or children whose parents were unknown were, after restoration to health where necessary, placed in children's homes and then fostered by families, who looked after them and from whose homes they attended school. Such children were given proper names and Kuwaiti nationality.⁵⁰⁸ Oman also highlighted various protections for orphans in an Islamic context outside of adoption, saying in an initial 2000 report,

Sponsorship of orphans under Islamic Sharia is a charitable activity based on voluntary acts of religious conviction as found in Islam. In the absence of an alternative family or other guardian, the State assumes responsibility for the orphan's affairs and good citizenship. Within this context, the State has issued a number of laws including Security Law No. 87/84 and the Retirement and Special Insurance and the Alms [Zakat] Fund, both of which secure the right of orphans to decent living.⁵⁰⁹

All GCC states developed various commitments in these meetings over time to increasingly discuss growing special protections for orphans in an Islamic context outside of the system of adoption.

Freedom of religion was also a prominent topic in all GCC engagement with the CRC Committee. In Bahrain's 2001 initial report, Bahrain's representative discussed "freedom of thought and religion" as a "freedom" guaranteed to all, alongside Bahrain's commitment to "tolerance," saying,

Although Islam is the official religion of the State, freedom of thought and of religious observance is enjoyed by all, including non-Muslims. Article 22 of the Constitution stipulates that: "Freedom of conscience shall be absolute and the State shall guarantee the inviolability of places of worship as well as freedom to engage in religious observances and to participate in religious processions and meetings in accordance with the customs observed in the country." In Bahrain, there are 13 churches for the various Christian communities. Since the Bahraini people are characterized by their tolerance, all religions enjoy legally guaranteed freedom to engage in their

⁵⁰⁸ CRC/C/SR.487, p. 7.

⁵⁰⁹ CRC/C/78/Add.1, p. 24.

observances and the State encourages children to exercise their rights in a manner consistent with their capabilities.⁵¹⁰

The statement in the CRC meeting respecting “freedom of religion” is more progressive than Bahrain’s Constitution, which does enshrine a “freedom of conscience” but does not explicitly protect freedoms outside the “customs” of the country. Article 22 of Bahrain’s constitution states, “Freedom of conscience is absolute. The State guarantees the inviolability of worship, and the freedom to perform religious rites and hold religious parades and meetings in accordance with the customs observed in the country.”⁵¹¹

About a decade after ratification of the CRC across the GCC, the Organization of the Islamic Conference adopted in Sanaa the Covenant on the Rights of the Child in Islam on 18 September 2006. The document enjoys the support of the GCC states and reflects a number of terms and concepts contained in the CRC. A degree of convergence between interpretations of Islam and UN concepts, likely facilitated by the region’s engagement with the CRC, is visible in the document. The areas of remaining contestation, such as adoption and freedom of thought and religion, are framed in the document to include vague respect for UN concepts on the topic, alongside the addition of lines about preserving these rights “in an Islamic context.”⁵¹²

The document begins reflecting the congruence between the Islamic Covenant and the CRC, saying, “Proceeding from Islamic efforts on issues of childhood, which contributed to the development of the 1989 United Nations Convention on the Rights of the Child.” It invokes similar phrasing regarding non-discrimination in the CRC, saying,

⁵¹⁰ CRC/C/11/Add.24, p. 21.

⁵¹¹ Bahrain’s Constitution of 2002 with Amendments Through 2012. Available at https://www.constituteproject.org/constitution/Bahrain_2012.pdf?lang=en.

⁵¹² Bahrain Council of Ministers Decision No. 213 of 25/8/1427.

“States parties shall guarantee equality of all children as required by law to enjoy the rights and freedoms stipulated in this Covenant regardless of sex, birth, race, religion, language, political affiliation, or any other consideration affecting the right of the child, the family, or his/her representative under the law or Sharia.”⁵¹³

Later clauses discuss the key areas identified in this chapter in which interpretations of Islam are seen as conflicting with the CRC, such as adoption and “freedom of religion,” by combining UN concepts of “rights” to protection, respect and care, but phrased alongside Islamic ideas. The document affirms, “The child of unknown descent or who is legally assimilated to this status shall have the right to guardianship and care but without adoption. He shall have a right to a name, title and nationality” and claims, “Every child capable of forming his/her own personal views, according to his/her age and maturity, shall have the right to express them freely in all matters affecting him/her either orally, in writing, or through any other lawful means in a matter not contradictory to the Sharia and ethics.” The degree to which these articles reconcile UN concepts with the Islamic perspective is unclear, as they do not provide detailed guidance on how the stated rights are protected. The attempt, however, to explicitly reconcile the CRC with Islamic perspectives is notable, and provides fodder for future debate on child’s rights concepts in Islam.

5.4 Chapter Conclusions

Engagement with the CRC across the GCC in the 1990s has contributed to debates as GCC countries have been reconciling interpretations of Islam with UN concepts of “child’s rights.” In practice, only a few formal changes have reflected these changes in

⁵¹³ OIC Covenant on the Rights of the Child in Islam (June 2005) OIC/9-IGGE/HRI/2004/Rep.Final (Sanaa Covenant).

language and ideas. The 2006 OIC Covenant on the Rights of the Child supported by all GCC states demonstrates some effort to incorporate CRC concepts of non-discrimination and children's freedom more explicitly within an Islamic context.⁵¹⁴ The removal of reservations (Qatar) and increasing efforts to increase the age of majority (UAE) and age of marriage (Bahrain) have demonstrated some increasing traction to align the region more closely to its commitments to the CRC.

The new Sunni Family Code of 2009 in Bahrain has liberalized slightly to require judges to consider "the best interests of the child," when deciding on custody, although this vague protection is not permitted to contradict certain standards such as age limits and religious affiliation. A similar protection for the "best interests of the child" is incorporated in Qatar's Family Code of 2006, which requires respect for conservative readings of Islamic law, but allow for interpretation of the judge to serve a child's best wellbeing. These minor changes are important, although their reach is limited in practice.

In 2013, a *Doha News* article Francois Crepeau, UN special rapporteur on the human rights of migrants, is quoted recommending the abolishment of the Kafala system due to Qatar's commitments to the CRC. A few years after the report and the visit of Crepeau, Qatar's consultative advisory had a recommendation approved by the cabinet to amend the Kafala system to draw more in line with human rights commitments. A number of reforms to the Kafala system have been successfully proposed in Qatar, particularly in light of conflict considering the use of the system to poorly treat migrant workers (although human rights monitors are wary of their substance).⁵¹⁵

⁵¹⁴ OIC Covenant on the Rights of the Child in Islam (June 2005) OIC/9-IGGE/HRI/2004/Rep.Final (Sanaa Covenant)

⁵¹⁵ "Qatar's Cabinet Backs Changes to 'Kafala' Labour System." (2015) *Al Araby*, 10 September. Available at <http://www.alaraby.co.uk/english/news/2015/9/10/qatars-cabinet-backs-changes-to-kafala-labour-system>.

CRC ratification has demonstrated the framing of UN concepts about the “rights” of children in an Islamic context, and this has occurred alongside some marginal reforms to draw GCC laws more in line with CRC commitments, however, they have not resulted in formal convergence over several key concepts. There has been little convergence over formally adopting 18 as an age of majority for criminal justice or marriage. Most significantly, engagement has not resulted in any substantive changes in the Islamic perspective across the GCC, which opposes adoption to align with UN efforts to promote the formal practice of adoption in an Islamic context.

The more subtle impact of the CRC in its contribution to framing interpretations of Islam across the GCC is still significant, I argue, despite the key obstacles to changes in interpretation to align with the CRC. The broader impact of the CRC across the region in framing the concepts of “rights” of children to various protections and freedoms is still significant, I argue, because of its contribution to a broader process of norm diffusion which offers greater potential for – but cannot directly cause – reforms in the region.

Also see HRW: Qatar Labour Reforms Not Moving Fast Enough.” (2015) *Al Jazeera*. 6 February. Available at <http://www.aljazeera.com/news/2015/02/hrw-qatar-labour-reforms-moving-fast-150206093621922.html>.

Chapter 6: Islam and the International Covenant on Civil and Political Rights (ICCPR) in the GCC

The International Covenant on Civil and Political Rights (ICCPR) was signed on 16 December 1966, and entered into force on 23 March 1976. It has been ratified by just two GCC states, Kuwait (acceded in 1996) and Bahrain (acceded in 2006). The majority of the GCC's refusal to embrace the ICCPR is notable, given that most UN states today have ratified it (there are 168 total state parties to the ICCPR), and that the GCC states have otherwise ratified most other UN human rights conventions.

GCC ICCPR Ratification Timeline

Kuwait – 1996

Bahrain – 2006

During the early 1960s, there were significant differences in perspectives among UN member states regarding the relative importance of so-called “negative” civil and political rights (to protect citizens from infringements by governments), as opposed to “positive” economic, social and cultural rights (to be guaranteed or provided by governments). Efforts to create a treaty concerning all of these categories split into two conventions, resulting in the International Covenant on Economic, Social and Cultural Rights (ICESCR) and the International Covenant on Civil and Political Rights (ICCPR), which opened for signature simultaneously in 1966. Together with the International Covenant on Economic, Social and Cultural Rights (ICESCR) and the Universal Declaration of Human Rights (UDHR) the ICCPR forms part of the “international bill of human rights,” and is monitored by the UN Human Rights Committee that meets in New York and Geneva, which conducts regular review sessions of reports from state parties. Many of the human rights guarantees and obligations contained in the ICCPR overlap with similar protections contained in the other human rights conventions such as the CEDAW, CAT and CRC.

The ICCPR is a more general convention, touching on a broader set of human rights topics than most other UN human rights treaties. It addresses 24 distinct civil and political rights areas: ranging from the right to life, to freedom of religion, to freedom of speech and assembly, to nondiscrimination under the law, to privacy, to rights to due legal process and fair trial. The ICCPR also enshrines a right to equal enjoyment of all civil and political rights between men and women and regardless of race, ethnicity or religion.⁵¹⁶

Despite the low ratification of the ICCPR across the GCC, the Convention has been otherwise embraced across the rest of the Middle East and North Africa region. Most Middle Eastern states ratified early on during the late 1960s and early 1970s. The few GCC states that have ratified the ICCPR did so only relatively late, in comparison to the rest of the MENA region.

ICCPR MENA Accession Timeline

Syria 21 April 1969
Tunisia 18 March 1969
Libya 15 May 1970
Iraq 25 Jan 1971
Lebanon 3 November 1972
Jordan 28 May 1975
Iran 24 June 1975
Morocco 3 May 1979
Egypt 14 Jan 1982
Kuwait 21 May 1996*
Turkey 23 September 2003
Bahrain 20 September 2006*
(* Indicates GCC state)

6.1 Civil and Political Rights in Islamic Law and Society

The ICCPR aims to protect citizens' ability to freely and fully participate in civil society and political life without infringement from governments, organizations, and other

⁵¹⁶ ICCPR, Article 3.

individuals, and without discrimination or repression. Global human rights monitors widely express concerns about violations of various areas of civil and political rights in the GCC states, where repressive regimes have consistently governed by absolute and authoritarian rule – and, without exception, done so to varying degrees by limiting freedom in the political and civic space.

Although all GCC states have developed some system of government elections, no state in the GCC is politically free or democratic. According to Freedom House, the average ‘freedom score’ in the GCC states is the worse than any world region. Most GCC states are rated ‘Not Free,’ with only Kuwait raking slightly better as ‘Partly Free’ in recent scores. In compared average Freedom House scores, the GCC fared the worst of all regions considered (the 2015 Freedom rankings from worst to best are: The GCC, the Middle East and North Africa, Eurasia, Sub Saharan Africa, Asia Pacific, Americas and Europe).⁵¹⁷ Still, while full compliance with the ICCPR is clearly lacking in GCC state parties to the covenant, the decision to ratify by Bahrain and Kuwait has stimulated important discourse about Islam and so-called “civil and political rights.”

Most importantly, GCC states’ encounters with the ICCPR have contributed to some framing of interpretations of Islam around “civil and political rights” as a broad concept and term. The idea of “civil and political rights” is “not a term in the Gulf” said a public opinion researcher in Doha, Qatar in an interview. “More often,” he said, “human rights” in the Gulf are conceived as separate from “politics,” such that “political rights”

⁵¹⁷ Bret Nelson. ‘GCC Summit: Defending the Indefensible.’ *Freedom House Blog*. 13 May 2015. Available at <https://freedomhouse.org/blog/gcc-summit-defending-indefensible>.

would not have local resonance.⁵¹⁸ In this way, the introduction of the ICCPR in the GCC can be seen as positioning an otherwise foreign vocabulary into discourse in the GCC.

6.1.1 Civil and Political Rights in Islamic Law

The intersection between Islamic law and civil and political rights is a topic of some consensus and some controversy. As civil rights often relate to the rights both of individuals and of groups, it is often related to the concept of an open “civil society.” The concept of civil society in Islamic countries, sociologist Masoud Kamali argues is “controversial.” “Civil society in the west is associated with the Enlightenment and modernization characterized by ‘individualism’ and the emergence of democratic institutions,” Kamali writes, and understanding civil society in Muslim countries “requires that we recognize Islam not only as a religion, but also as a political theory and a major source of a legitimization of political power.”⁵¹⁹ The role of Islam in legitimizing political power is important, Kamali contends, not only normatively, but also practically in the sense that the *ulama* have retained highly influential political and social positions in Muslim societies throughout history.⁵²⁰

Civil rights as affiliated with the concept of a free and open civil society has become an important issue in politics in the Islamic world. While some have argued that civil society “does not translate into Islamic terms,” Farhad Kazemi contends that the concept is applicable to Islamic understandings, particularly many of the conceptual

⁵¹⁸ Interview, Justin Gengler, SESRI Public Opinion Research Center, Qatar University, Doha in-person, September 2017.

⁵¹⁹ Masoud Kamali (2001) “Civil Society and Islam: A Sociological Perspective,” *Archives Europeennes de Sociologie*, Vol. 42, No. 3, pp. 457-482, p. 457.

⁵²⁰ Ibid.

elements of Western understandings of civil society which have “premodern roots” in Islam linked to the Islamic concepts of community (*shura*), consensus (*ijma*), the enabling of independent reasoning (*ijtihad*) and the pact between rulers and the ruled (*bay’a*).⁵²¹

Despite compelling evidence of areas of compatibility in spirit between the ICCPR and Islamic law, various specific legal areas of the ICCPR when viewed in an Islamic context have invited contest and debate among Islamic legal scholars. Areas of particular contention when viewing ICCPR in an Islamic context, such as the limits on legislation and the concepts of freedom of religion and equality between sexes contained in the ICCPR, will be analyzed in the section that follows.

6.1.2 Law and Governance in Islam

The ICCPR is based on understandings of “negative” rights, or limitations/constraints on the actions of governments, and requires that state parties guarantee these limitations under law. In the GCC, legal systems are all placed within a broad context of Islam – the GCC states all place God and Sharia as the ultimate legal authority in political life in their laws and constitutions, so, as with all areas of human rights, various aspects of civil and political rights relating to law contained in the ICCPR are often viewed in the overarching view of Islamic faith. However, the specific points of intersection between areas of civil and political rights and Islamic law generally lack clarity and precision – and there exists some notable diversity in arguments put forward by states

⁵²¹ Farhad Kazemi (2002) "Perspectives on Islam and Civil Society" in Sohail H. Hashmi (ed.) *Islamic Political Ethics: Civil Society, Pluralism and Conflict*. Princeton: Princeton University Press.

regarding Islam and civil and political rights, as will be made evident in the analysis that follows.

Bahrain and Kuwait's reservations and ICCPR reports, Islam is sometimes cited as a non-negotiable reason for being unable to change laws. The GCC states often argue that they are limited by Sharia in the extent to which they can form – or reform – law, and this argument is drawn out by their engagement with the ICCPR. Still, this reasoning does not always hold firm. While, in theory under Islam God is the ultimate arbiter of law rather than the state, Muslim majority states legislate “as required by the needs of the time,” and the degree to which these needs can influence law are a key point of debate and contestation in GCC ICCPR engagement.⁵²² Because the “needs of the time” is a broad concept, the relationship between state legislation and God in states governed by Islamic law is often blurred and sometimes moving. As Baderin explains, the legislative power of government under Islamic law “is not totally unlimited. It is theoretically proscribed by the philosophy that God is the ultimate legislator who has prescribed what is lawful and what is unlawful through revelation in the Qur'an...Islamic jurists generally consider any State legislation that makes lawful what God has prohibited in the Qur'an or prohibits what God has made lawful in the Qur'an as exceeding the limits of human legislation allowed under Islamic law.”⁵²³ Today, Muslim-majority states legislate widely across various matters of human life, and often refer to principles of *siyasah shar'iyah* (legitimate governmental policy), *darurah* (necessity), and *maslahah* (welfare), when legislating.⁵²⁴ Examples of legitimate tension between Islamic law and the international covenant, for example, could arguably be seen in Sudan's second report to the ICCPR, where the state argued that

⁵²² Baderin (2003), p. 53.

⁵²³ Ibid, p. 52.

⁵²⁴ Ibid.

incompatibility exists regarding Islam's proscriptions for the death penalty, saying, "The Sudanese parliament had decided against abolition of the death penalty. The jurisprudential argument for its continued existence was that the death penalty was mandatory for certain offences under Islamic law."⁵²⁵

The issue of compatibility between Islamic law and international law contained in the ICCPR is not as black-and-white as many consider it to be, however, and Baderin contends that any legitimate non-negotiable tension points between Islam and the ICCPR are few, and most, contestable. An understanding of the varied views of jurists and the range of justifications put forward under Islamic law can present a more nuanced understanding of the complicated implications for international human rights law, which are rarely a clear case of full and direct incompatibility.

6.1.3 Freedom of Thought and Religion in Islamic Law

The ICCPR guarantees in Article 18 "the right to freedom of thought, conscience and religion." The same concept is enshrined in Article 18 of the 1948 UDHR. Still, the word-choice in Article 18 as it relates to Islamic concerns was a key area of conflict in the early drafting of the ICCPR. Initially, efforts were made in early drafts of the document to enshrine in the ICCPR a right to *change* one's religion, but such efforts were opposed "by Muslim states in particular" such as Saudi Arabia, ostensibly as it was seen to de facto provide support to non-Muslim missionaries and proselytism, acts which constitute crimes in many Muslim states including all those in the GCC. As a compromise, the draft avoided

⁵²⁵ CCPR/C/SR.1629.

the term “change,” instead enshrining a right to “have or adopt a religion or belief of his choice.”⁵²⁶ This slight change in wording, while viewed by some as a successful compromise, did not substantively change the meaning. The Saudi Arabian representative suggested the change in wording was important, even if admittedly the concept was understood to be the same, as the “Saudi Arabian representative to the Third Committee who had proposed the deletion of the clause concerning freedom to maintain or to change one’s religion or belief, mentioned that he did recognize that freedoms to change, maintain and even renounce one’s religion or belief were implicit in the right to freedom of thought, conscience and religion.”⁵²⁷

Today the concept of “freedom of religion” is respected in many Muslim-majority countries. “Most Muslim scholars,” Baderin writes, “follow the moderate view and hold that Islamic law prohibits the compulsion of anyone in matters of faith.”⁵²⁸ There is much evidence in Islamic texts that religion should never be promoted by forced or coercion. According to the Qur’an, “there is no compulsion in religion.”⁵²⁹ The Quran also describes a peaceful, non-forceful means of spreading the word about Islam, saying, “Invite [all] to the Way of thy Lord with wisdom and beautiful preaching and argue with them In ways that are best and most gracious...”⁵³⁰ In the words of prominent Egyptian Islamic scholar Muhammed Fathi ‘Uthman, “...Although the Islamic state has a duty to promote the religion of Islam, it is not allowed to force anyone to embrace Islam...”⁵³¹

⁵²⁶ Ioana Cismas (2014) *Religious Actors and International Law*. Oxford: OUP.

⁵²⁷ UN Doc. A/C.3/SR.1026, para 26 (1960).

⁵²⁸ Baderin (2003), p. 122.

⁵²⁹ Q2:256.

⁵³⁰ QR16:125

⁵³¹ ‘Uthman, M.F. (1982) *huqūq al-insān bayna al-sharī‘ah al-islamiyyah wa al-fikr al-qānūnī al-gharbī*. Beirut: Dar al –Suruq, p. 91.

Still, the topic is not without conflict when applying concepts of freedom of religion particularly as understood as the right to *change* ones religion. The OIC Cairo Declaration ostensibly condemns compulsion in religion more in an effort to punish apostasy from Islam under Article 10, stating, “...It is prohibited to exercise any form of compulsion on man or to exploit his poverty or ignorance in order to convert him to another religion...”⁵³² Apparent tension arises when one considers apostasy from Islam, a crime punishable by death for example in Saudi Arabia, which seemingly contradicts the ICCPR’s guarantees for freedom of religion and conscience. Still, while apostasy is criminalized across the GCC calling into question complete respect for Muslims to choose their religion for themselves, this interpretation is continually debated even within the GCC.

The death penalty for apostasy comes from a reported tradition of the prophet, “anyone who changes his religion, kill him,” although many Muslim scholars have interpreted that that the death penalty should not be carried out in these cases (due to being a weakness in transmission (*isnad*) or a solitary tradition (*ahad*)).⁵³³ There have been debates among Muslim jurists as to the defensibility of Islamic death punishments for apostasy, for example such as the prominent in his time Ibrahim al-Nakha’i (d. 718 CE) and Sufyan al-Thawri (d. 884 CE), who said that Muslim apostates should not be sentenced to death but instead invited back to Islam.⁵³⁴

It is important to note that UN understandings of the concept of freedom of religion also lack clarity and precision. This is because the ICCPR also includes a statement clarifying the concept of freedom of religion to include certain “limitations” on this very

⁵³² Cairo Declaration of Human Rights in Islam, available at

<http://www.fmreview.org/sites/fmr/files/FMRdownloads/en/FMRpdfs/Human-Rights/cairo.pdf>.

⁵³³ Mashood Baderin (2003) *International Human Rights and Islamic Law*, Oxford: Oxford UP, p. 124

⁵³⁴ Also twelfth century Maliki Jurist Abu Walid al-Baji, apostasy “is a sign for which there is no *hadd* punishment.” (Baderin, p. 123).

right, stating in Article 18(3) 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.”⁵³⁵ The degree to which these “limitations” can be practically invoked, for example, by those who might interpret apostasy as morally unacceptable under Islam, leave open an area of debate and contestation, remaining vague in establishing legal standards for enforcing Article 18.⁵³⁶

6.1.4 Civil and Political Rights of Women in Islamic Law

Another area worth highlighting where arguments concerning tension between the ICCPR and Islamic law arise concerns the concept of gender equality on which several articles of the ICCPR are based. The concept of equality between sexes is referred to in various ways throughout the ICCPR, enshrined in Article 3 (“equal right of men and women to the enjoyment of all civil and political rights...”), Article 23 (“States parties...ensure equality of rights and responsibilities of spouses as to marriage, during marriage and at its dissolution...”), and Article 26 (“law shall prohibit any

⁵³⁵ International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171 (ICCPR).

⁵³⁶ US Commission on International Religious Freedom, “International Human Rights Standards: Selected Provisions on Freedom of Thought, Conscience, and Religion or Belief.” Available at <http://www.uscifr.gov/reports-briefs/human-rights-documents/international-human-rights-standards-selected-provisions>. See, for example, the below excerpt: “Limitations on the freedom to manifest a religion or belief for the purpose of protecting morals must be based on principles not deriving exclusively from a single tradition or religion.”

discrimination...on any ground...such as sex....”).⁵³⁷ These concepts are all echoed in the CEDAW, which has been much more widely ratified in the GCC than the ICCPR.

Apparent conflict between these clauses in the ICCPR enshrining equality between the sexes and Islam arises when considering Quranic text about differences between the sexes also addressed in the previous chapter on CEDAW. Because of differences between men and women enshrined in Quranic teachings, conflict inevitably arises when applying the concept of “gender equality” in civil and political space as contained in the ICCPR in an Islamic context. This is clearly symbolized in the barriers against female rulers in the dynastic traditions in the GCC. But again, views on the exact interpretations of gender in Islamic law vary significantly. Baderin claims that gender under Islam is a matter of interpretation, and must be understood in the context of the “Islamic appreciation of role differentiation within the family.”⁵³⁸ The teaching in Q2:228 that men have “a degree” above women has been debated – what is meant here by degree? Islamic scholars differ, Yusif Ali says “men have a degree (of advantage), and Muhsin Kahn says a degree (of responsibility”).⁵³⁹ Islamic family law scholar ‘Abd al ‘Ati has argued “the idea that men are superior to women and have power over them without reciprocity or qualifications stemmed from sources apparently alien to the spirit as well as the letter of the Qur’anic verses.”⁵⁴⁰

Guarantees for equality in marriage contained in Article 23 of the ICCPR are also a subject of ongoing debate among Islamic scholars considering the prohibition of Muslim women to marry a non-Muslim man, while Quran 5:5 permits Muslim men to marry

⁵³⁷ ICCPR full text available at <http://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>.

⁵³⁸ Baderin (2003), p. 135.

⁵³⁹ Baderin (2003), p. 135.

⁵⁴⁰ Hammudah, ‘Abd al ‘Ati (1977) *The Family Structure in Islam*. Indianapolis: American Trust Publications, p. 181.

“women of the people of the book” (Christians and Jews). This appears to be inherently unequal. Al-Qaradawi argues that this is a necessary practical response to the fact that Judaism and Christianity do not guarantee the wife of a different faith freedom of belief and practice, while Islam arguably does, and thus it can be argued that other religions face an international obligation to guarantee freedom of religion for a Muslim wife of a non-Muslim before Islamic law can change accordingly.⁵⁴¹

Another apparent conflict concerns the practice of polygamy, which is legal across the GCC and indeed remains legal across most of MENA (except Tunisia and Turkey). Regarding the issue of polygamy, Baderin argues that, while polygamy is sanctioned for men in Islam but women are not allowed to take multiple husbands (polyandry), and is therefore ‘unequal’ in terms of marriage rights, it is important to assert that consensus remains in Islamic law that polygamy cannot be imposed on a woman or a man and is not necessarily encouraged, it is only a “permissible act.”⁵⁴² This could be rationalized as a social protection against the questioning of paternity, as allowing a female multiple husbands would place paternity into question while allowing for polygamy ensures a clear paternal line. Polygamy is sanctioned (under conditions) under Islamic law as contained in the Quran 4:3 “...marry women of your choice, two, three, or four; but if you fear that you shall not be able to deal justly [with them] then only one...”.⁵⁴³ But it is often relatively uncommon in practice in many Muslim societies. Tunisia has even outlawed polygamy (1956) punishable by imprisonment. Baderin argues that there are ways of working within an Islamic framework to move Islamic customs of polygamy closer to standards under

⁵⁴¹ Al-Qaradawi, Yusuf (1999) *The Lawful and the Prohibited in Islam*. American Trust Publications. pp. 179-186.

⁵⁴² Baderin (2003), p. 142

⁵⁴³ Q4:3.

international law, for example, to discourage the practice with reference to other Islamic concepts, for example for reasons of welfare (*maslahah*), or to invoke the doctrine respected by most schools of Islamic law (except the Shi'ah) of “suspended repudiation” (*ta'liq al-talaq*) and “delegated repudiation” (*tafwid al-talaq*) which stipulate that the marriage becomes “repudiated if [the husband] does certain things unfavourable to the wife, which may include taking another wife...Any disadvantage of polygamy could thus be redressed by women utilizing an alternative legal right available to them within Islamic law.”⁵⁴⁴ This logic suggests that harmonizing the ICCPR with areas of perceived conflict with Islam can be better achieved by shifting focus away from questioning the basis of religious teachings, and instead focusing on human rights solutions in an Islamic context, using Islamic concepts and Quranic human rights guarantees.⁵⁴⁵ This approach could serve as a response to the more extreme pushback presented, for example, by the Iranian representative to the UN in 1984 who claimed that the UDHR was “a secular understanding of the Judaeo-Christian tradition”, which could not be implemented by Muslims without trespassing on Islamic law.⁵⁴⁶

In existing scholarly and political debate, Islam relates to issues of civil and political rights to varying degrees and in varying ways depending on interpretation. Individual freedoms, social harmony and human flourishing enshrined in the ICCPR overlap in various ways with Islamic understandings. Indeed Islamic legal scholar Mashood Baderin claims in a detailed study of Islamic law and the ICCPR that Islam is fully “compatible” with the ICCPR, and that there is a prevalence of claims otherwise that reflect a misguided understanding of Islam. According to Baderin, “the rights included in the

⁵⁴⁴ Baderin (2003), p. 142-3

⁵⁴⁵ Ibid, p. 144.

⁵⁴⁶ UN Doc A/C.3/39/Sr.65, p. 95.

ICCPR should, *prima facie*, raise no problems in the light of Islamic Law. They theoretically reflect humane ideals that are compatible with the general teachings of Islam. But, as is the case with all legal provisions, it is the interpretation of those rights that determine their scope...”⁵⁴⁷ ICCPR ratification draws out this potential harmony while also suggesting Baderin’s optimistic vision does not fully apply to the GCC cases.

6.2 GCC Reservations to the ICCPR

Given the aforementioned debate surrounding the ICCPR and Islamic law, it is useful to consider the Reservations, Understandings and Declarations submitted to the ICCPR by its two GCC state parties: Kuwait and Bahrain. Both countries mention Islam in their RUDs, and touch on concern to this regard to some similar provisions of the ICCPR, but vary to some degree in the ways in which Islam is incorporated in to these RUDs.

GCC RUDs to ICCPR

Mention of Islam	2 ⁵⁴⁸
Concerns related to article 23 (equal rights in marriage)	2 ⁵⁴⁹
Concerned related to article 3 (equal right of men and women to enjoyment of all civil and political rights present in the covenant)	2 ⁵⁵⁰
Concerns related to Article 14(7) (regarding double jeopardy), Article 18 (concerning freedom of thought and religion) and Article 9(5) (regarding unlawful arrest or detention)	1 ⁵⁵¹

⁵⁴⁷ Baderin (2003).

⁵⁴⁸ Kuwait and Bahrain

⁵⁴⁹ Kuwait and Bahrain

⁵⁵⁰ Kuwait and Bahrain

⁵⁵¹ Bahrain

Concerns related to Article 25 (b) (regarding the right to vote) and Article 2(1) (regarding non-discrimination in implementing the covenant)	1 ⁵⁵²
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In RUDs submitted upon accession in 1996, Kuwait referenced Islam directly, expressing concern regarding article 23 (concerning equal rights in marriage), stating, “Kuwait declares that the matters addressed by article 23 are governed by personal-status law, which is based on Islamic law. Where the provisions of that article conflict with Kuwaiti law, Kuwait will apply its national law...”). Bahrain in turn echoed this same concern regarding possible incompatibility with Islam in its RUDs submitted upon accession in 2006, referring to concerns about Islam’s compatibility with article 23 concerning marriage, but also expanding its statement about Islam to include articles 3 (concerning equal rights of men and women to the guarantees of the covenant) and 18 (concerning freedom of religion), saying, “The Government of the Kingdom of Bahrain interprets the Provisions of Article 3, (18) and (23) as not affecting in any way the prescriptions of the Islamic Shariah.”

The overlap in GCC RUDs citing concern about Islam’s compatibility with the ICCPR’s standards concerning marriage, as well as the more extensive Bahraini RUDs concerning Islam and other topics including freedom of religion and women’s rights, will be discussed in the country-specific analysis that follows.

6.3 GCC - ICCPR Country Engagement: Country Examples

⁵⁵² Kuwait

6.3.1 Kuwait and the ICCPR

Kuwait ratified the ICCPR in 1996 under the country's third Emir Jaber Al-Ahmad Al-Sabah (r. 1977 - 2006). Kuwait acceded to the ICCPR after considerable delay, given that the ICCPR was first introduced at the UN in 1966. Following the Iraq invasion, Kuwait experienced a degree of economic and urban growth in the 1990s, as well as a degree of political opening. Sheikh Jaber declared rule over the country under martial law for a short period in 1991, prohibiting large political gatherings and censoring the press. Following this period as demographic change and urbanization took place, the government introduced some political reforms including more voices in the political space.⁵⁵³

Contemporary Kuwait has been described as a “special case in the Gulf.”⁵⁵⁴ Citizens are seen to hold a greater degree of freedom in various areas that are more restricted in other GCC states. Kuwait has often been seen as a “harbinger of political development in the Gulf”— due to traditions of contestation against hereditary monarchical power have gone back for decades, and even –pre-date the oil economy.⁵⁵⁵ In Kuwait, vocal political opposition to the ruling establishment from Islamists and liberals is commonplace, and there has been a relatively robust culture of political debate thriving in Kuwait since the 1990s.

The Constitution of Kuwait was first created by a Constitutional Assembly in 1962 after the country gained independence from its status as a British protectorate. It was signed

⁵⁵³ Shafeeq Ghabra (2014) “Kuwait: At the Crossroads of Change or Political Stagnation,” Middle East Institute, May 20, Available at <http://www.mei.edu/content/article/kuwait-crossroads-change-or-political-stagnation>.

⁵⁵⁴ Ibid.

⁵⁵⁵ Kristian Coates Ulrichsen (2016) “Pushing the Limits: The Changing Rules of Kuwait’s Politics,” *World Politics Review*, 17 March. Available at <http://www.worldpoliticsreview.com/articles/18241/pushing-the-limits-the-changing-rules-of-kuwait-s-politics>.

into law by then Emir Abdullah Al-Salim Al-Sabah, establishing a constitutional emirate. It was later reinstated in 1992 after Sheikh Jaber's return from exile in 1991. The current constitution guarantees "Freedom of belief" under Article 35, saying, "Freedom of belief is unrestricted. The State shall protect freedom in the observance of religious rites established by custom, provided such observance does not conflict with morals or disturb public order." Other freedoms guaranteed include "Freedom of expression" (Article 36), "Freedom of opinion/thought/conscience" (Article 36), "Freedom of press" (Article 37), stating, "Freedom of the press and of publication is guaranteed, subject to the conditions and stipulations prescribed by Law."⁵⁵⁶ The Constitution was amended by Act no. 17 in 2005 where women were granted the right to vote and stand for parliamentary election.⁵⁵⁷

When Kuwait ratified the ICCPR in the 1990s, Sheikh Jaber was engaged in political bargaining following his exile – at this time he decided to restore the National Assembly in return for support from Kuwait's opposition leaders. He even led visible efforts for some unprecedented political reform, attempting to extend the right to vote to Kuwaiti women in 1999, but the proposal was rejected by conservative elements in the National Assembly (women were finally provided the right to vote in 2005). However, beyond this and some electoral redistricting in 2005, Kuwait has not amended its constitution significantly since 1962.

In this context Kuwait ratified the ICCPR in 1996 with the following reservations and declarations:

⁵⁵⁶Kuwait Constitution of 1962, reinstated in 1992.

⁵⁵⁷ The voter registration process in Kuwait is opaque even to Kuwaitis. There is a lack of clarity around how the voter registration list is compiled and maintained see "Voter Registration in the Middle East and North Africa: Select Case Studies- Kuwait" (2015) National Democratic Institute, May. Available at https://www.ndi.org/files/MENA%20Voter%20Registration_EN_Kuwait.pdf.

Interpretative declaration regarding article 2, paragraph 1, and article 3 [*application of the covenant regardless of sex, language, religion, etc and the right to remedy in the case of violation*]: Although the Government of Kuwait endorses the worthy principles embodied in these two articles as consistent with the provisions of the Kuwait Constitution in general and of its article 29 in particular, the rights to which the articles refer must be exercised within the limits set by Kuwaiti law.

Interpretative declaration regarding article 23 [*concerning freedom and equality in marriage*]: The Government of Kuwait declares that the matters addressed by article 23 are governed by personal status law, which is based on Islamic law. Where the provisions of that article conflict with Kuwaiti law, Kuwait will apply its national law.

Reservations concerning article 25 (b) [*concerning universal suffrage*]: The Government of Kuwait wishes to formulate a reservation with regard to article 25(b). The provisions of this paragraph conflict with the Kuwaiti electoral law, which restricts the right to stand and vote in elections to males. It further declares that the provisions of [article 25 (b)] shall not apply to members of the armed forces or the police.

Following Kuwait's accession and the submission of these reservations, a number of countries, including Finland, Norway and Sweden, objected to Kuwait's reservations as "too general" and in violation of the "object and purpose" of the convention. (For example, Sweden submitted "The Government of Sweden is of the view that these interpretative declarations and this reservation raise doubts as to the commitment of Kuwait to the object and purpose of the Covenant."⁵⁵⁸) And, on May 20, 2016, Kuwait partially withdrew its reservations to article 25 (b), concerning equal suffrage of men and women, after women were granted the right to vote in 2005 and first stood for elections in 2009.

6.3.1.1 Kuwait - ICCPR Committee Dialogues

⁵⁵⁸ Sweden: On Declarations and Reservations to the ICCPR available at https://treaties.un.org/Pages/Declarations.aspx?index=Sweden&lang=_en&chapter=4&treaty=325.

Following ratification, Kuwait has engaged with the ICCPR's committee on a number of occasions. This engagement has related to the country's initial report (due 1997 submitted 1998), a second report C (due 2004 submitted 2009), a third report (due and submitted 2014) and related follow up dialogue CCPR/C/KWT/CO/3 (2016).

These interactions have provided a unique space in which Kuwait's representatives have discussed conceptions of Islam and civil and political rights framed as a "human rights" issue for over a decade. Emerging regularly from this debate has been the topic of Islam as it relates to the rights of women, freedom of worship, and freedom to participate in politics freely and without discrimination. The nature and substance of dialogue concerning Islam's relevance to civil and political rights in these areas raised in these dialogues in particular will be the focus of this section.

Kuwait issued its initial report to the ICCPR in 1998, claiming the country's full support of and compliance with the treaty. Its first report applauds the ICCPR as part of broader efforts in international human rights law saying,

"The State of Kuwait has consistently endeavored to support, consolidate and advance human rights objectives in line with the positive developments in ideologies and concepts that establish and promote human rights issues as one of the higher goals of the community of civilized nations."⁵⁵⁹

The initial report claims democratic governance and full civil and political rights for the Kuwaiti people, saying, "The system of government in Kuwait is democratic, under which sovereignty resides in the people, the source of all powers."⁵⁶⁰

The ICCPR Committee responded with concern regarding Kuwait's failure to guarantee freedom of religion, a condition of Kuwait's agreement to joining the ICCPR. Kuwaiti law states that Islam is the official religion of Kuwait, but that "freedom of religion"

⁵⁵⁹ CCPR/C/120/Add.1, p. 3.

⁵⁶⁰ Ibid, p. 4.

is guaranteed to adherents of other religions (provided that no prejudice occurs against Islam), and that all citizens shall “not be discriminated under the law regardless of religion.” The ICCPR Committee challenged Kuwait that the country lacks protections for those who leave Islam. Kuwait replied defensively that “freedom of religion” is protected in the country. As evidence, Kuwaiti representatives on two occasions cited a case of a Kuwaiti citizen leaving the Islamic faith without facing “threats from others” or “legal action,” as evidence of respect for the individual’s rights, saying in one report,

Although Islam forbade a change in religion, there had been one case where a Muslim (a Mr. Kumbbar) had converted from Islam to Christianity and then back to Islam, but no legal action had been taken against him. Kuwaiti society was conservative and so few changes in attitudes to religion occurred.⁵⁶¹

And in a follow-up report,

Kuwait wishes to note the case of Robert Kambar, a Kuwaiti citizen who announced his apostasy from Islam. The case has had far-reaching domestic and international ramifications. However, the person concerned has not been subject to any threats from the State or from ordinary citizens. This incident serves as concrete evidence of the respect for the full freedom to adopt, observe and practice any form of religious worship in the State of Kuwait.⁵⁶²

In citing this case twice, Kuwait’s representatives suggest that apostasy, although most commonly seen as sinful and warranting punishment under Islamic law (deriving from Quranic verses on apostasy such as 3:90 “never will their repentance be accepted,” 9:66 “...they are in sin,” and 16:106 “they shall have a grievous chastisement...”) is interpreted liberally in Kuwait, where apostates do not face intimidation or punishment, and therefore is in compliance with the ICCPR. The evidence used was to highlight a case in which apostates have not faced harassment, rather than citing any legal protections for changing one’s religion.

⁵⁶¹ HR Committee CCPR/C/SR.1852 24 July 2000 (p. 10).

⁵⁶² CCPR/C/120/Add.1, p. 46

In practice, Kuwait's law does not explicitly criminalize apostasy, but provides a number of regulations which effectively punish those who leave Islam. For example, under Law 51 of the 1984 Personal Status law, Article 18 makes a marriage of a non-Muslim man to a Muslim woman annulled, and annuls marriages in which Muslim husbands adopt other religions than Islam during the marriage. Under Article 294, an apostate is unable to inherit from Muslim relatives.⁵⁶³ Law 19 of the 2012 "Law of National Unity" also amends the penal code to impose harsh penalties for blasphemy including imprisonment up to one year and/or a fine of 1000 dinars, which in 2012 lawmakers proposed should be punishable by death.⁵⁶⁴

When pressed by the ICCPR Committee on evidence for freedom of belief and expression more broadly, Kuwait's representatives admitted that there are indeed "limits" to freedoms of expression, referencing limits related to insulting "morality" and other vague terms, including religious concerns. "The State of Kuwait wishes to report that the right to express opinions freely is guaranteed under the Kuwaiti Constitution and legislation. Each citizen has the right to freely express his opinion verbally, in writing or through the media, provided that he does not transgress the limits of the law, attack the honour of others, offend public morals or undermine national security or safety or public order."⁵⁶⁵ Elaborating on the limitations to freedom of expression, Kuwait cited religious rationale combined with political ones, explaining a 1961 law on printing and publishing limiting expression as follows,

⁵⁶³ "Laws Criminalizing Apostasy," Library of Congress Database. Available at <https://www.loc.gov/law/help/apostasy/#kuwait>.

⁵⁶⁴ Reuters (2012) "Kuwait Close to Death Penalty Law for Blasphemy," *Reuters*, May 3, Available at <http://www.reuters.com/article/us-kuwait-blasphemy-idUSBRE8420SG20120503>.

⁵⁶⁵ CCPR/C/120/Add.1, p. 46.

Article 1 of this Law [Law No. 3 of 1961 on Printing and Publishing] stipulates that the freedom of printing, writing and publishing is guaranteed within the limits of the Law. Chapter III of this Law describes those matters which are prohibited from publication as follows: (i) Anything that may adversely prejudice the tenets of the divinity of God, or the person of the Amir; (ii) Anything that may prejudice Heads of other States or disturb peaceful relations between Kuwait and other countries; (iii) Anything that may offend public morality or denigrate the dignity or personal freedom of others; (iv) Anything that may constitute an instigation to commit crimes, or foment hate or dissention among members of the society.⁵⁶⁶

Here, concerns about Islamic religion (anything that would “adversely prejudice the tenets of the divinity of God”) are cited as a limitation on free expression, but are not the sole limit shaping speech – instead equally prominent is concern regarding any insult to the political leader (Amir) or the disturbing of peaceful domestic or international relations (a broad concept without clear specifications on what could constitute such disturbance). (Various other countries, both Muslim and non-Muslim, include laws restricting the insult of political leaders, including Azerbaijan, Lebanon, Venezuela, Poland, Turkey, and Indonesia).

More directly, a limitation and exception concerning Islam in the application of the ICCPR is even more prominent in Kuwait’s clarification concerning freedom of marriage and rights within marriage, where Kuwait claimed in its 1998 initial report that certain exceptions to the ICCPR should be allowed because of Kuwait’s commitment to Islam, saying,

The State of Kuwait recalls the declaration it made on acceding to the Covenant to the effect that the State of Kuwait shall, in case of any conflict between this article and the Kuwaiti Personal Status Code, apply the provisions of its national Code. Notwithstanding this declaration, the State of Kuwait wishes to point out, in respect of the questions of the right to marriage, the freedom to choose a spouse and the age of marriage, that all matters pertaining to marriage, divorce and other personal status questions are regulated by the

⁵⁶⁶ Ibid.

Personal Status Code, enacted by Law No. 51 of 1984. The provisions of this Code emanate from the tenets and principles of the noble Islamic Shari'a, known as one of the religious laws that have best regulated personal status matters.⁵⁶⁷

Given the dual nature of Kuwait's explanations of Islam's potential conflict with the ICCPR, at once claiming Islam to be compatible and even flexible to fit the ICCPR, at other points claiming Islam constitutes the rationale for certain limits on the treaty's application, the ICCPR committee has replied often with requests for "clarification."

The [C]ommittee has held firm in its criticisms of Kuwait's full compliance with the ICCPR in law and practice, dissatisfied with more vague claims about Islam, and has focused particularly on areas of freedom of religion and expression and women's rights....[including] elaborated concerns related to Kuwait's claims about limitations of Islamic Sharia particularly as it relates to marriage and personal status. The committee pressed by saying that clarification was needed to provide evidence that in law and practice women had equal rights in the country, expressing particular concerns over problems of repudiation, polygamy, crimes of honour, adultery and capacity to give testimony.⁵⁶⁸

The Committee then asked for clarification on Kuwait's reservations and declarations, saying, "...the Committee notes that articles 2 and 3 of the Covenant [referring to non-discrimination and equal rights of men and women] constitute core rights and overarching principles of international law that cannot be subject to 'limits set by Kuwaiti law'. Such broad and general limitations would undermine the object and purpose of the entire covenant... Kuwait must grant women effective equality in law and practice and ensure their right to non-discrimination....Polygamy should be prohibited by law....eradicate attitudes that lead to discrimination against women in all sectors of daily life."⁵⁶⁹ Mr. Lallah (UN representative) directly accused Kuwait of discriminating against women and

⁵⁶⁷ CCPR/C/120/Add.1, p. 56.

⁵⁶⁸ CCPR/C/69/L/KWT, p. 2.

⁵⁶⁹ CCP/CO/63/KWT, p. 2-3.

other minorities, claiming, “it was difficult to see how the Kuwaiti Government could be satisfied with a situation in which only 20 per cent of the population, namely men - and not women, foreigners or Bedoons - were covered by the Covenant, especially as the Kuwaiti Constitution advocated the application of human rights “in the territories within the jurisdiction of Kuwait.”⁵⁷⁰

These criticisms about rights of women and minorities often helped provoke debate about Islam and sharia law between ICCPR committee members and Kuwaiti representatives. One ICCPR committee member brought forward the argument that *other* Muslim-majority countries have been more adaptable to modern conceptions of rights, saying,

He wondered to what extent Kuwait was attempting to emulate other Muslim countries which were exploring legal interpretations that allowed the essence of shariah law to be observed while achieving greater equality for citizens in accordance with present-day needs and situations. In that connection, he welcomed Kuwait’s adoption of Law No. 51 of 1994 [this is likely an error referring to 1984 personal status law] regulating divorce and family law.⁵⁷¹

This prompted a discussion of so- called “flexibility” of Sharia law. One ICCPR committee representative claimed Islam was very flexible and evolving, and that too often Sharia is misrepresented or misunderstood, suggesting this may be the case with Kuwait concerning certain areas such as polygamy and the rights of women, claiming,

Mr. Amor (UN) There was no doubt that the Islamic shariah possessed the flexibility to contribute to social development and renewal in the human rights context. Rather than being a dogmatic instrument, it offered a doctrine that could be applied to all walks of life. Moreover, contrary to what many believed, Islam was characterized by a continual process of flux and change, providing a context for helpful interpretations of the shariah that in certain countries had let to

⁵⁷⁰ CCPR/C/SR.1852.

⁵⁷¹ Ibid, p. 2.

developments in important areas of social life. One example concerned polygamy, in regard to which Islam had actually improved women's situation, since in the pre-Islamic period they had merely existed as chattels. While it was still possible to have more than one wife, Islam placed great emphasis on their equal treatment and on the importance of not having several wives if such treatment could not be assured. Islam had also brought other improvements to women's situation; it was important to understand the historical context in each case. That said, the Committee had a duty to determine the extent to which the shariah was invoked as a pretext in Islamic States in order to impede the implementation of human rights.⁵⁷²

While this could be viewed as hostile to Kuwait, accusing it of using Islam as a "pretext," the Kuwaiti representative replied in kind claiming Islam was interpreted in a "liberal" way in Kuwait compared with other Muslim states. Further, he suggested this was open to change and further domestic discussion in light of the CCPR committee's comments, saying,

Mr. Razzooqi (Kuwait) said his delegation did not regard the questions raised as criticism, but rather as a means of helping it to improve the legislation it had created. It was true that the Covenant was part of Kuwait law, but other parts of that law were derived from Islamic jurisprudence and were designed to take into consideration the socio-economic structure of Kuwaiti society. Although generally speaking Kuwait was more liberal than other countries in interpreting Islamic jurisprudence, it would take some time to determine the specific areas in which it did not conform to the provisions of the Covenant; his Government would study the question and present its findings to the Committee in written form at a later stage.⁵⁷³

He read out an explanation of what was meant by the statement that Islam was the religion of the country, which indicated that the shariah was the principal source of legislation in Kuwait and constituted a guideline for legislators, although it did not prevent them from enacting new provisions drawn from other sources. For example, it was permissible to update the Penal Code provided that the limitations imposed by Islamic jurisprudence were respected. Such amendment would not have been possible if Islamic jurisprudence had not been one among several sources of legal theory in Kuwait; it was possible to take note of other sources dealing with matters addressed by the shariah and thus the legislator was not placed in an awkward position if empirical considerations made it impracticable to

⁵⁷² CCPR/C/SR.1852, p. 3-4.

⁵⁷³ Ibid, p. 6-7.

follow Islamic jurisprudence. The question required much study in order to determine what corrective action was required so as to apply the provisions of the Covenant fully in practice. The Kuwaiti authorities would debate the matter and then endeavour to supply the Committee with a more scholarly response.⁵⁷⁴

On top of claiming certain flexibility of Sharia law in general, Kuwaiti representatives responded to criticisms about women's rights and Islam in Kuwait with a series of statements about tradition adapting to the modern context in Kuwait. This referenced a number of controversies surrounding women saying

It was necessary to point out that the reservation relating to women's franchise had been offset by laws which promoted the equal treatment of women in other respects. The Amir's decree introducing women's voting rights and the right to stand for election had not been passed by Parliament. All the four cases submitted to the Constitutional Court to appeal against Parliament's decision had been rejected on legal formalities. Nevertheless, the Court would probably examine the merits of one currently pending case. Furthermore, when the Government failed to secure the adoption of legislation on a highly controversial subject, it was sometimes advisable to wait until the next session of Parliament before introducing another bill on the same topic. In his opinion, the Government did not want to refer the question to the Constitutional Court because it wished to avoid a constitutional conflict and political ill will. It was better not to challenge the social structure of the country, but to try to obtain women's enjoyment of that right through persuasion.⁵⁷⁵

This excerpt demonstrates how deeply interlinked interpretations of Islam are to a concrete social and political setting. The report continued,

All members of the Government supported women's political rights and were striving to achieve international standards in that respect....⁵⁷⁶

Islamic laws were open to interpretation. For example, abortion and adoption were permitted for humanitarian reasons, and attempts were made to take into account the rights of the women in question. When Iraq had invaded the country, over 200 women had become pregnant as a result of rape. The children of those who had refused abortion on

⁵⁷⁴ Ibid, p. 7.

⁵⁷⁵ Ibid.

⁵⁷⁶ Ibid, p. 8.

religious grounds had been placed in foster homes or adopted. Women had the right to follow the dictates of their conscience.⁵⁷⁷

Still, in the following reporting cycle in 2011, flexibility was less important in Kuwait's defense of Islamic sharia, and used as a hard and fast defense of policies. In a 27 October 2011 second period report, Kuwait pushed back against flexibility in Islamic law, using it as a defense for criticized law and practices in marriage, saying

Mr. Alsaana (Kuwait) Regarding the criminalization of marital rape, Islamic sharia, which was the basis of the law in Kuwait, established the rights of spouses. In the case of normal sexual relations, lack of consent by the woman did not make the sexual act a crime if the perpetrator was her husband. All normal sexual relations were viewed as legal, but a husband could be prosecuted for forcing his wife to engage in an abnormal act.⁵⁷⁸

Mr. Mutlak Almutairi (Kuwait) said that polygamy did exist in the country but was not widespread. Under sharia, polygamous men must treat all their wives equally. As an Islamic State, Kuwait did not view polygamy as discrimination against women because it was part of divine law. The women involved consented to a polygamous marriage, which indicated that they too did not consider it discriminatory.

Mr. Alsaana (Kuwait) said that homosexual relations were prohibited in Kuwait out of respect for Islamic traditions. Nevertheless, judges could decide whether to apply the law rigorously or flexibly, taking individual circumstances and character into account.

Mr. Razzooqi (Kuwait) said that Islam was not only a religion but also a way of Life. As an Islamic State, Kuwait had no choice but to follow the major tenets of Islam, but whenever possible it also sought solutions combining both sharia and the international treaties to which it was a party, as those treaties were also part of the national legal system. In any case, Islam and the Covenant both sought the equality and dignity of human beings, so there was no contradiction between the two. Owing to changes in society, polygamy was becoming less and less common in Kuwait and currently accounted for less than 9 per cent of marriages.⁵⁷⁹

⁵⁷⁷ Ibid.

⁵⁷⁸ CCPR/C/SR.2840, p. 7.

⁵⁷⁹ Ibid, p. 8.

Here Islam is labeled by Kuwait's representative as not only a religion but also a "way of life." Notably, while Islam was presented as unmovable regarding issues like marital rape, Kuwait's representatives defended polygamy not only as a religious exception due to Islamic law and teaching, but also defended the policy by claiming the practice was rare. Any 'flexibility' and 'adaptability' claimed about Islam in previous statements was also contradicted in later statements from Kuwait's officials in 2016. In 2016 Kuwait's representative instead argued that Islam provided clear standards governing social morality in the case of sexual relations outside of marriage, saying,

Kuwait is required to comply with the provisions of the Islamic sharia and its teachings aimed at upholding religion, values and morals. The Islamic sharia prohibits all persons from engaging in a sexual relationship outside marriage, with a person of the same sex, the opposite sex or an intersex person, on account of the major negative impact that authorization of such conduct would have on society, the family and the individual concerned. It may not be regarded as constituting one of the rights and freedoms that should be enjoyed by individuals because of the adverse impact of such freedom on the individual to the detriment of society and his religious beliefs and convictions, morality and conduct...

The Kuwaiti Constitution contains clear legal provisions guaranteeing personal freedom to individuals under domestic law. It guarantees equality in terms of human dignity and in terms of public rights and duties. As a result, [L]esbian, gay, bisexual, transgender and intersex persons enjoy all the rights and freedoms guaranteed by the Constitution and domestic law as members of society, regardless of their deviant conduct.⁵⁸⁰

The CCPR committee's response to these defenses about Islam can be summed up by a CCPR committee concluding report statement in 8 July 2016, which reiterates the same point voiced over the 20 years of reporting cycles that the committee required further

⁵⁸⁰ CCPR/C/KWT/Q/3/Add.1.

clarification on how certain Sharia based practices defended by Kuwait's representatives still comply with Kuwait's commitment to the ICCPR, saying,

While noting that the provisions of the Covenant are directly applicable in the domestic legal and judicial system of Kuwait, the Committee is concerned about the primacy of sharia law over conflicting or contradictory provisions of the Covenant (art. 2). 7. The State party should give full legal effect to the Covenant in its domestic legal order and ensure that domestic laws, including those based on sharia law, are interpreted and applied in ways compatible with its obligations under the Covenant. It should also raise awareness about the Covenant among judges and judicial officers.

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These interactions demonstrate the diversity and dynamism in arguments about Islam and civil and political rights drawn out by engagement between Kuwait and the ICCPR. While on the one hand arguments arose about tension and conflict between Islam and areas of civil and political rights in law and practice in Kuwait, arguments were also put forward and framed in the CCPR-Kuwait dialogues about compatibility and harmony between Islamic law and the ICCPR. Arguments were even put forward suggesting Islamic law's flexibility to adapt to new standards contained in the convention, as well as the potential to achieve greater harmony in the future. In fact, the line between areas of incompatibility and areas of harmony remained vague and indistinct, and focused particularly on issues of women's rights and the family as well as the concept of freedom of religion – without much clarity resulting on the exact lines of incompatibility despite decades of dialogue and reporting.

6.3.1.2 Domestic Discourses on the ICCPR and Islam in Kuwait

⁵⁸¹ CCPR/C/KWT/CO/3, p. 2.

While the previous section focused on direct formal engagement between Kuwait and the ICCPR and its committee, this section will now discuss some of the other areas where arguments about Islam and civil and political rights have emerged related to ratification. Because Kuwait has a limited civic space and its press system is not entirely free, local domestic press coverage and civic activism related to the ICCPR is restricted. As a result of Kuwait's accession, the Kuwaiti Association for the Basic Evaluators of Human Rights (KABEHR), a domestic NGO, was one of only few local actors to issue a 'shadow report' to the CCPR committee. The KABEHR is one few government approved civic human rights groups in Kuwait. The organization is an official government licensed NGO (No. 99/2005) "sanctioned by the ministry of social affairs and labor to reinforcement protect human rights with reference Islamic Sharia....to spread awareness of human Sharia rights...confirming that Islam is the religion of tolerance, justice, and fairness."⁵⁸² ⁵⁸³ The KABEHR submitted a shadow report in 2011 to the CCPR committee with criticisms of the Kuwaiti government (a notably bold move given that the organization is sanctioned by the government). In its shadow report the organization claimed there was marginalization of local NGOs in preparing reports to the UN human rights committees, seemingly including Kuwait's ICCPR report, saying, "Kuwaiti Association For The Basic Evaluators Of Human Rights confirms that there is unjustified marginalization for the role of civil society organizations in the field of human rights inside the state of Kuwait, especially in relation

⁵⁸² Kuwait Human Rights Society (KABEHR) "Huqūq al-insān fī al-Kuwayt" (Human Rights in Kuwait) Available at <http://humanrights.org.kw/>.

⁵⁸³ "Report of the First National Shadow for the Kuwaiti Association for the Basic Evaluations of human Rights" (2011) Available at http://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/KWT/INT_CCPR_NGO_KWT_103_9445_E.pdf, p. 3.

to process of preparing related national reports, where some civil society organizations were margined in the process of preparing government report.”⁵⁸⁴

Beyond suggesting the organization’s voice was marginalized in official state reports to the UN, the association went on to suggest some “anxiety” regarding civil and political rights in Kuwait, with a focus on issues of treatment of prisoners, writing “[KABEHR] still feels anxious towards situations of police stations and detention centers in Kuwait, especially when most of them do not comply with human standards where huge numbers are piled in small and bad ventilated rooms, and the association detected during 2010 two cases of torture...the file of police stations and detention centers needs reconsideration from ministry of interior to oppose human right violator from persons affiliated to the ministry...”⁵⁸⁵ Still, despite this criticism, the association issued a vague statement of support for the statements made by Kuwaiti representatives defending against CCPR committee accusations of unequal treatment of women and violations of their civil and political rights by making special mention of Islam, saying, “The Association, by monitoring such statistics which indicate serious violations against women, confirms that Islamic Sharia stands against violence and injustice against women.”⁵⁸⁶ This perhaps responds to debate during the previous reporting cycle between Kuwaiti representatives and the CCPR committee concerning how Sharia and issues such as polygamy and rights in marriage is accused of being in violation of the ICCPR, and here the shadow report echoes existing language and arguments put forward by the government in its interactions with the CCPR committee.

⁵⁸⁴ Ibid.

⁵⁸⁵ Ibid, p. 5.

⁵⁸⁶ Ibid, p. 13.

The NGO's submission to the CCPR provided an opportunity for local critiques against the government, but also reinforced certain arguments given initially by the regime about Islam's compatibility with ICCPR standards about women's rights. While the sincerity of the report given the association's ties with the government could be brought into question, the dual nature of arguments voiced about Sharia's compatibility with the ICCPR alongside criticisms of compliance, contribute to the broader collection of arguments and concepts about Islam and civil and political rights provoked by Kuwait's ratification of the ICCPR. The fact that a focus on Islam exists in both the shadow report and the official government reports suggests compatibility still requires defense and clarification, and there is considerable effort beyond official government representatives to depict Islam as "compatible" with international stands on civil and political rights.

Local press has had little coverage of the engagement between Kuwait's government and the ICCPR. In 2016, Kuwait News Agency reported on Kuwait submission to the ICCPR reporting cycle in 2016 and spoke to Kuwaiti ambassador to the UN Jamal Al-Ghunaim on the topic. Al-Ghunaim suggested that reporting was a mere formality, reinforcing Kuwait's good record of human rights. He told Kuwait News Agency that Kuwait has an "unwavering commitment to the issues of civil and political rights" ... saying "Kuwait has always been on the vanguard of defending these issues on the regional and global scales...."⁵⁸⁷ This signaled an effort to use commitment to the ICCPR as good publicity in local press, without focus on the areas of conflict emerging from the UN dialogues.

⁵⁸⁷ Tamer Abdulainnain (2010) "Kuwait Keen on Supporting Civil, Political Rights – Amb. Al-Ghunaim," *Kuwait News Agency (KUNA)*, June 18. Available at <http://www.kuna.net.kw/ArticleDetails.aspx?id=2507766&language=en>.

Kuwait's accession to the ICCPR in 1996 has exposed a discourse where Islam has been a key feature of discussions about civil and political rights in Kuwait. Dialogue about Islam and the ICCPR in Kuwait can be broadly characterized as citing Islam as 1) in support, generally, of concepts of civil and political rights at the UN including "freedom," "equality," and "non-discrimination," (and, often, areas of conflict are often described as being "rare" or "small," while, 2) being "flexible" and "adaptable" and, 3) at times (and even, occasionally the same time), "strict" "unmovable" particularly with the most controversial social issues of certain aspects of marriage rights and some aspects of discrimination related to gender and all mentions of issues of discrimination related to sexual orientation.

6.3.2 Bahrain and the ICCPR

This next section considers Bahrain, the only other GCC state to ratify, having done so more recently in 2006. The case presents some similarities in the style and content of reservations, but varies significantly in that Bahrain has not engaged with the committee beyond this, failing to produce the type of dialogue that manifested in the Kuwaiti case, engaging and framing arguments about Islam and civil and political rights further. This has left the dialogue about Islam and civil and political rights nascent and underdeveloped in Bahrain.

Bahrain ratified the ICCPR on 20 September 2006. The decision was made under King (formerly Emir) Hamad bin Isa al Khalifa. Hamad, succeeded, after inheriting political instability, in improving the economy. Tensions have lingered with the majority Shi'a community in Bahrain, and King Hamad attempted to ease tensions by admitting

Shi'a individuals into government positions. Human rights under the "state security law era" 1975-1999 were restricted, but when King Hamad took power human rights improved, marking a "historic period of human rights" in Bahrain.⁵⁸⁸ The civil and political rights situation in Bahrain declined by 2010, particularly with widespread accusations of torture and crackdown on local uprisings around the time of the Arab Spring in 2011.

Bahrain has had two constitutions. Its first in 1973 was written at the time of independence from Britain under then Sheikh Isa bin Salman Al Khalifa who formed a constituent Assembly to draft the constitution. It was suspended in 1975 after only one election, and Bahrain was ruled under emergency law from 1975-2002. The Constitution was then reinstated under Sheikh Isa's son Hamad in 2002, who changed the national assembly from a unicameral legislature to a bicameral one consisting of elected and appointed experts. Opposition groups including Al Wefaq, a Shia Islamist group boycotted this. Elections have been held under this constitution in 2002, 2006, 2010 and 2014. The 2002 Constitution guarantees all citizens shall "enjoy political rights" (Chapter 1(e)), and all citizens are guaranteed health care (Chapter II(8)). Chapter II(5)(b) states "the State guarantees reconciling the duties of women towards the family with their work in society, and their equality with men in political, social, cultural, and economic spheres without breaching the provisions of Islamic canon law (Shari'a)." Chapter III (18 and 19) guarantees "Article 18 [Human Dignity, Equality] People are equal in human dignity, and citizens are equal before the law in public rights and duties. There shall be no discrimination among them on the basis of sex, origin, language, religion or creed. Article 19 [Personal Freedom] a. Personal freedom is guaranteed under the law."

⁵⁸⁸ Amnesty International (2001) "Human Rights in Bahrain: A Historic Period" Available at <https://www.amnesty.org/en/library/asset/MDE11/005/2001/en/d76b504c-f84c-11dd-a0a9-2bd73ca4d38a/mde110052001en.pdf/>.

When the ICCPR was signed, Sheikh Hamad enacted a number of human rights reforms. This included the removal of the unpopular 1974 State Security Law, which allowed for detention of people for up to three years without charges being brought to them. Women were granted the right to vote and stand for election under the new 2002 constitution. Bahraini female activist Ghada Jamshir has criticised women's rights reforms in Bahrain as "artificial and marginal," saying "the government used women's rights as a decorative tool on the international level."⁵⁸⁹

When Bahrain ratified the ICCPR in 2006 it entered the following reservations, which included a claim that at least three articles needed clarification that they would not be upheld should they conflict with Sharia.

Reservation

1. The Government of the Kingdom of Bahrain interprets the Provisions of Article (3) (pertaining to equal rights of women and men), (18) (freedom of thought, conscience, and religion) and (23) (concerning rights of marriage) as not affecting in any way the prescriptions of the Islamic Shariah.
2. The Government of the Kingdom of Bahrain interprets the provisions of Article (9), Paragraph (5) (concerning rights of compensation for those unlawfully detained) as not detracting from its right to layout the basis and rules of obtaining the compensation mentioned in this Paragraph.
3. The Government of the Kingdom of Bahrain interprets Article (14) Paragraph (7) (concerning double jeopardy) as no obligation arise from it further those set out in Article (10) of the Criminal Law of Bahrain which provides: 'Legal Proceedings cannot be instated against a person who has been acquitted by Foreign Courts from offenses of which he is accused or a final judgment has been delivered against him and the said person fulfilled the punishment or the punishment has been abolished by prescription.'

As was the case with Kuwait's reservations, a number of state parties objected to the Bahrain's reservations to the ICCPR. For example, the Netherlands submitted a statement

⁵⁸⁹ Bahrain Center for Human Rights (2006) "Ghada Jamsheer: Women in Bahrain and the Struggle Against Artificial Reforms" Available at "<http://www.bahrainrights.org/en/node/936>."

that the mention of Sharia was not specific enough, saying, “The Government of the Kingdom of the Netherlands considers that with this reservation the application of the International Covenant on Civil and Political Rights is made subject to the Islamic Shariah. This makes it unclear to what extent the Kingdom of Bahrain considers itself bound by the obligations of the Covenant and therefore raises concerns as to the commitment of the Kingdom of Bahrain to the object and purpose of the Covenant.”⁵⁹⁰ Portugal echoed these concerns about the vagueness of the reservations about Islam.⁵⁹¹ These concerns about a lack of clarity, particularly related to Bahrain’s claims about Islam possibly conflicting with the ICCPR, echo concerns drawn out in Kuwait’s aforementioned interactions with the ICCPR committee for decades.

Bahrain – ICCPR Committee Dialogues

Bahrain’s first report to the CCPR committee was due 20 December 2007, but Bahrain has not submitted this and has not engaged formally with the committee since accession in 2006. It has not made any statements explaining the delay.

Perhaps provoked especially by such a clear flouting of the country’s obligations, the CCPR committee received one shadow report from local NGO in 2014. “Assessing the Human Rights Situation in Bahrain: A Shadow Report on Bahrain's Implementation of its ICCPR Obligations” was submitted by the Bahrain Center for Human Rights (BCHR) in 2014, a non-profit NGO registered formally with the government Ministry of Labor and Social Services since July 2002. The report claims the government has attempted to shut

⁵⁹⁰ International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171 (ICCPR).

⁵⁹¹ Ibid.

the organization down entirely, saying, “Despite an order by the authorities in November 2004 to close it, the BCHR is still functioning after gaining wide internal and external support for its struggle to promote human rights in Bahrain.”⁵⁹²

The BCHR’s Shadow Report is very critical of Bahrain’s government (notably much more so than Kuwait’s KABHEIR Shadow Report to the ICCPR). The report opens by explaining the political context in which King Hamad’s regime had begun to initiate reforms, but claims these reforms had lacked sincerity and that accession to the ICCPR took place without meaningful intent to improve civil and political rights and without any visible follow through. The report claims,

By 2006, however, during Bahrain’s accession to the ICCPR, many of these reforms had proven to be hollow, and political discontent began to foment once again. In 2007, security personnel once again began employing practices of torture after its absence in King Hamad’s first years as ruler. In February 2011, the ‘Arab Spring’ spread to Bahrain, and protesters took to the streets demanding political and economic reforms. The Government responded with increasingly repressive measures against its political opponents in a clear breach of its legal obligations under the ICCPR. Since then, the government has continued to infringe upon most civil and political rights.

The report focuses on areas of torture (article 7), liberty (article 9), rights of prisoners (article 10), fair trial (article 14), freedom of religion (article 18), freedom of expression (article 19), freedom of assembly (article 21) and freedom of association (article 22), and claims, “in every respect, the situation in Bahrain has deteriorated.”⁵⁹³ Notably, the Shadow Report contains no mention of Sharia law or Islam beyond a section outlining an

⁵⁹² “Assessing the Human Rights Situation in Bahrain: A Shadow Report on Bahrain’s Implementation of its ICCPR Obligations” (2014). Bahrain Center for Human Rights.

⁵⁹³ Bahrain Institute for Rights and Democracy (2014) “Assessing the Human Rights Situation in Bahrain: A Shadow Report on Bahrain’s Implementation of its ICCPR Obligations.” Available at http://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/BHR/INT_CCPR_NGO_BHR_18393_E.pdf, p. 3.

increase in state actions targeting Shi'a Muslims since 2011 as evidence as violations on freedom of religion. Issues such as rights in marriage including polygamy and equality under the law between men and women, which were a focus of Kuwait's dialogues at the CCPR committee were not mentioned in the shadow report. Instead, the report contains 15 pages of evidence on violations of the aforementioned areas of civil and political rights without mention of religion, and without mention of Bahrain's initial reservations.

Local activists have used Bahrain's commitment to the ICCPR to bolster their human rights advocacy for example in 2014 in a letter to King Hamad calling for the release of a Bahraini photojournalist, claiming his arrest was an example of the regime's intimidation and repression of the press. The letter penned by international and domestic activist individuals and groups claimed the detention of Ahmed Humaidan "directly conflict(s) with Bahrain's international commitments to the International Covenant on Civil and Political Rights (ICCPR) and to Bahrain's accepted recommendations of the country's 2012 Universal Periodic Review (UPR). We call on your government to immediately and unconditionally release and dismiss all charges against Ahmed Humaidan and to fulfill Bahrain's commitments to uphold international standards of press freedom."⁵⁹⁴ This is one of few instances where the (limited) local civic space has called on the government to uphold its commitments to the ICCPR specifically, with the partnership of international activists, although international NGOs such as Human Rights Watch have called upon the government to live up to its commitments as a party to the ICCPR regularly since the country's accession in 2006.⁵⁹⁵

⁵⁹⁴ Salam for Democracy and Human Rights. (2014) "To: The King Hamad - Kingdom of Bahrain," 29 August. Available at <http://www.salam-dhr.org/?p=387>.

⁵⁹⁵ See, for example, Human Rights Watch (2015) "Bahrain: Detained Activist's Health Worsens," 26 April. Available at <https://www.hrw.org/news/2017/04/26/bahrain-detained-activists-health-worsens>.

A ministry of foreign affairs press release in September 2016 offered one government statement, albeit tangentially, regarding its commitment to the ICCPR. In its report “MOFA Supreme Coordination Committee for Human Rights holds its 17th Meeting,” the ministry claimed 1) its intention to consult with civil society regarding human rights and 2) its intention to submit its required report to the ICCPR.⁵⁹⁶ The government has cited movement on other UN human rights treaties as publicity under a “human rights” section on its website citing as “highlights” Bahrain’s withdrawals of reservations to Article 20 of the CAT. Despite clearly aiming to use submission of reports and revision of reservations in publicity related to other UN human rights conventions, this has not, so far, motivated the regime to officially submit any report to the ICCPR.

The case of Bahrain’s accession to the ICCPR offers contrast from the Kuwait case, where the ICCPR stimulated a series of dialogues over the span of two decades regarding Islam and civil and political rights. Bahrain’s ratification offered brief arguments in the initial submission of its reservations, which, in combination with the record of Bahrain’s engagement with other UN conventions including the CRC, CAT and CEDAW, suggests dialogue would, should Bahrain engage in reporting dialogue in the future, offer similar arguments in discourse similar to that of Kuwait at the UN CCPR committee. However, the evidence also suggests that the nature of this dialogue could differ, perhaps marginally or even significantly, from Kuwait’s case as each GCC state’s engagement with the human rights committee is revealed as having the potential to take on its own substance, tone and direction. For example, while both GCC states cite concern about Islam and women’s rights and equality in marriage, Bahrain places further emphasis on issues of freedom of

⁵⁹⁶ “MOFA Supreme Coordination Committee for Human Rights holds its 17th Meeting” (2016) Kingdom of Bahrain Ministry of Foreign Affairs. 1 September. Available at <http://www.mofa.gov.bh/Default.aspx?tabid=7824&language=en-US&ItemId=6480>.

religion and political participation. In this case, the process of building this dialogue in the space of the UN human rights committee directly concerning Islam and civil and political rights was initiated, with certain perspectives on Islam introduced, but cut short, leaving these arguments underdeveloped.

6.3.3 Non-ratifiers (UAE, Qatar, Saudi Arabia, Oman)

The remaining GCC states - Saudi Arabia, Qatar, UAE and Oman - have not ratified the ICCPR. Few of these states have offered direct explanation for this rejection. The reasons for rejection do not seem to be a clear denial of any one aspect of the treaty, as most GCC states have ratified related treaties containing similar content such as the CEDAW, CRC and CAT. Instead rejection may relate to the broad nature of the convention, or could have to do with the issue of Islam, as the cases of Bahrain and Kuwait made clear that there is some perceived tension in the GCC regarding the covenant's application in an Islamic context.

In conversation I had with Doha-based academic Dr. Mehran Kamrava, Qatar's rejection of the ICCPR was described as a "non-issue," a decision of little clear political signaling, and even of "little consequence."⁵⁹⁷ Concern about Islam may play a role in this rejection. Areas of civil and political rights remain a topic of some local importance in the domestic political space in Qatar, for example, the concept of "freedom of the press" promoted in the establishment of the Doha Center for Media Freedom (f. 2007). Government statements about "civil society" in Qatar reflect dual concerns of voicing arguments about special "Islamic" identity and beliefs alongside concepts of flourishing

⁵⁹⁷ Interview with Dr. Mehran Kamrava, in person, Doha, Qatar, September 8, 2016.

and active “civil society” and “openness.” Qatar’s government website boasts that “media in Qatar advocate national, Gulf, Arabic and Islamic causes. Programming reflects the region’s Arabian and Islamic heritage and morals, and is conscientious about fostering civil society and openness.”⁵⁹⁸

One area of identifiable controversy relates to specific opposition to the concept of “freedom of religion,” as well as broader concerns about the relationship between Sharia law and conceptions of human rights at the UN. For example, some of the clearest statements in opposition to the ICCPR have come from Saudi Arabia’s ambassador to the UN Al Barudi, who issued a direct statement in opposition to Article 28 of the ICCPR (dealing with freedom of religion) during the ICCPR’s drafting in 1960, claiming that “it would raise doubts in the minds of ordinary people to whom their religion was a way of life.”⁵⁹⁹ While there have been few direct statements from the Saudi regime regarding its position on the ICCPR, the Ambassador for Saudi Arabia spoke directly on its refusal of the related International Covenant on Economic, Social and Cultural Rights (ICESCR), instituted at the same time as the ICCPR in a joint effort, that the Saudi government objected to Article 9 which guarantees the “right of everyone to social security including social insurance,” claiming that Sharia goes beyond what is deemed as “inferior” Western requirements.⁶⁰⁰

GCC opposition to the concept of “freedom of religion” could also be seen in GCC support for the 1990 Cairo Declaration on Human Rights in Islam, which was introduced decades after the ICCPR’s introduction, but closer to the period in which Bahrain and

⁵⁹⁸ Qatar E- Government – Hukoomi (online). Available at <http://portal.www.gov.qa/wps/portal/topics/Public+Services+and+Transportation/Media?highlightQuery=>.

⁵⁹⁹ UN Doc. A/C.3/15 Sr. 1025 (1960), paragraph 12.

⁶⁰⁰ Baderin (2003), p. 62.

Kuwait acceded. Ann Elizabeth Mayer argues that the Cairo Declaration borrows from article 18(2) of the ICCPR concerning freedom of religion but “involves a serious distortion of the principle,” where “prohibited coercion in religion” enshrined article 10 of the Cairo Declaration is prohibited only when it involves compulsion to convert a Muslim to another faith or atheism, not when it is used to make someone adopt Islam.⁶⁰¹ The potential conflict between the ICCPR’s concept of “freedom of religion” and interpretations of Islam in the GCC were made clear in Kuwait and Bahrain’s RUDs, but these GCC states developed different lines of argument about the possibility for this concept in Islam, suggesting this topic is not interpreted in a monolithic way across the GCC.

6.4 Chapter Conclusions

While the ICCPR is the “second most ratified [human rights] treaty in the world” it is the “least approved” in the GCC.⁶⁰² Both Kuwait and Bahrain ratified the ICCPR during periods of some political reform including some opening of the political and civic space. Both Kuwait and, to a lesser extent, Bahrain, participated in an effort to make exceptions about Islam’s possibly incompatibility with the Convention over areas ranging from religious freedom to equal rights of women, while also suggesting Islam’s harmony with international conceptions of civil and political rights in their efforts to engage with the ICCPR. In doing so, they ostensibly participated in efforts identified by Bettiza and Dionigi

⁶⁰¹ Ann Elizabeth Mayer (1994) “Universal versus Islamic Human Rights: A Clash of Cultures or Clash with a Construct,” *Michigan Journal of International Law* (1993-1994). 15, 307.

⁶⁰² Basik Cali (2013) “GCC States Selective in Ratifying Human Rights Treaties” *The Peninsula Qatar*. Available at <http://thepeninsulaqatar.com/news/qatar/300192/gcc-states-selective-in-ratifying-rights-treaties>.

to serve “not solely as active norm-takers, but also as independent norm-makers, who attempt to internationalize norms beyond their cultural and local context.”⁶⁰³

The ICCPR in the GCC offers a different case from the other treaties discussed, given the reticence to accept the convention in the region. Kuwait’s ratification and ensuing engagement contributed to a rare discourse about Islam and civil and political rights not present in the other cases. Bahrain initiated some minimal but underdeveloped discourse on the topic with its accession and controversial reservations. ICCPR engagement in the GCC states lacks the subtleties of the other cases, where engagement has progressed further and wider across the Gulf states and the other UN human rights treaties. Instead, discourse about Islam and civil and political rights in the Gulf has manifested in other, and, importantly, fewer spaces as a result of low engagement with the UN treaty. Certain terms and concepts contained in the ICCPR such as “freedom of religion” have become more and more commonplace phrases in the Gulf (enshrined in various forms in Bahrain and Kuwait) even in non-ICCPR parties (Qatar). Concepts of equality have manifested in the expansion of suffrage and the right to hold office for women across the Gulf across the 1990s and 2000s (1994 in Oman, 2002 in Bahrain, 2003 in Kuwait and Qatar, and 2015 in Saudi Arabia), however cosmetic these elections are in practice. As a result of low ratification of the ICCPR, however, there is less for local activists to engage with and “civil and political rights” as a term and a concept has not developed as much in the GCC as other concepts such as “women’s rights,” “protection from torture and inhuman punishment,” and “children’s rights” have developed. Still, given the two GCC states that have ratified, there

⁶⁰³ Bettiza and Dionigi (2015) “How do Religious Norms Diffuse? Institutional Translation and International Change in a Postsecular World Society” *European Journal of International Relations*, Vol. 21, No. 3, pp. 621–646.

is movement in the GCC towards discussing Islam and civil and political rights. In the case of Kuwait, efforts were made to depict Islam in a modern and adaptable way, introducing at times claims about flexibility in Islam. In the case of Bahrain, initial effort to depict the country's laws as generally compatible with conceptions of "civil and political rights" can be viewed at least through the act of ratification alone, and in some minimal regime statements about desiring to engage the committee further. While the ICCPR overlaps with concepts of rights contained, for example, in the CEDAW on the rights of women and the CAT with torture and treatment of prisoners, the concept of civil and political rights remains underdeveloped in the Gulf. The argument here is that the low engagement between GCC states and the ICCPR has led there to be less space in this case for discourse in the region on Islam and civil and political rights. As a result, and with the key exception of Kuwait, the ICCPR has had less of an impact in the GCC.

Chapter 7: Conclusion

Engagement with UN human rights conventions in the GCC has captured changes in understandings of human rights that are worthy of deeper attention. While ratification has had disappointing results in formal compliance in the GCC, there has been important progress in changing discourses and narratives on Islam and human rights. Growing pressure to justify practices previously justified as simply “Islamic” (and therefore unable to change) has resulted in the softening of statements from GCC officials and other voices in the GCC on a wide range of topics as a result of efforts to describe Islamic law as “compatible” with international standards.

The nature of arguments about Islam related to human rights treaty ratification provide just one piece of a broader story in which GCC states are increasingly engaged in efforts to negotiate two opposing aims – to appear “modern” and in-line with international norms, while simultaneously aiming to maintain or enhance ideas about Islam which sometimes violate international law. Such tension has resulted, in most cases, in a trend towards modernization in laws across the GCC. Still, there is a strong resistance to legal and policy change in the GCC that would liberalize laws and outlaw certain Islamic understandings such as *hadd* punishments, complementarity (rather than equality) in marriage, and rules about family rights and obligations which violate UN understandings. Even in cases where laws have been amended to incorporate more modern interpretations of Islamic law, these have not prevented widespread abuse.

This dissertation offers two main, related arguments about UN human rights treaty ratification in the GCC. The dissertation firstly critiques and contributes to the existing literature on norm diffusion. I argue that current scholarship on norm diffusion focuses too heavily on compliance and as a result ignores other key steps in the diffusion process in

which normative change is reflected in changes in language, concepts and meanings. I propose a more nuanced framework for observing and measuring norm diffusion by considering changes in language about norms as a necessary (but not sufficient) step in the norm diffusion process, which holds potential for local actors to use to embolden human rights advocacy for, though it does not guarantee, liberalizing reforms in the future.

In the empirical chapters, I explore how GCC ratification has been related to the way that GCC and UN representatives discuss Islam and human rights by framing the language used to discuss rights. This supports the claim put forward in this dissertation that GCC interaction with UN human rights law does not represent a comprehensive “failure” in norm diffusion – instead it has resulted in a degree of norm diffusion visible in changes in vocabulary and concepts used by GCC diplomats to discuss Islam and human rights in relation to their ratification of core human rights instruments. While the impact of these changes at this stage is limited and may not result in liberalization, measuring and tracking changes in discourse is still useful, I argue, to provide a more complete picture of the norm diffusion process and the impact of international law.

The analysis finds that GCC states’ regular engagement with the ICCPR, CRC, CAT and CEDAW has served as a unique space that has stimulated and framed a regular and repeated dialogue about Islam and these topical rights areas increasingly around converging concepts shared, at least in name, among UN and GCC actors, including most broadly framing debates on these areas around the idea of these four topical areas as “human rights” issues. Whereas UN human rights treaties have more often than not failed to result in improved human rights practices on the ground in a conventional understanding of successful norm diffusion, they have provoked increased communication over an

evolving and variegated dialogue about Islam and human rights in the GCC. Ratification has served as a unique space in which broad arguments about Islam and human rights have been expressed and negotiated regularly and voluntarily around an international human rights vocabulary.

7.1 The Framing Effect of International Human Rights Conventions

The framing effect of these international conventions has manifested itself differently with respect to the different GCC states and different treaties. GCC states' engagement with the CAT, for example, has related to discussion of Islamic understandings of justice and punishment as being firmly against "torture" and "cruel punishment," and yet, this has still exposed a degree of lasting contestation regarding whether or not practices such as flogging and stoning amount to cruel punishment. This has taken place even in the case of Saudi Arabia, where pressure to justify practices for Muslim *hadd* punishments such as flogging and stoning on the international stage in UN meetings has helped push Saudi representatives to denounce the practices as rare, and, eventually even un-Islamic.

It is important to note that, in the case of the CAT, the relevance of Islam to GCC understandings of just punishment did not manifest in initial RUDs. Initial statements issued by GCC states upon ratification did not initially capture significant commentary on Islam and thus did not have any initial "framing" effect on discourse about Islam and torture during this step in the ratification process. Later on in the process of diplomatic dialogues between GCC parties and the CAT Committee however, Islam became a topic of important – and at times central – concern, and a framing effect resulting in changed

language and concepts used to discuss Islam as against torture. These changes, I argue, constitute a stage of norm diffusion.

Qatar was the only country to mention Islam in initial RUDs to CAT in 2000, although Qatar later removed these reservations. The analysis of Qatar's diplomatic dialogues with the CAT Committee revealed growing anti-torture language used by Qatari representatives. Qatar's dialogues with the CAT committee discussed Islamic Sharia as wholly against the concept of "torture" - with Qatari representatives calling any such acts "an affront to human dignity, which the religion enjoins us to respect and protect."⁶⁰⁴ Rather than giving the divine some unquestioned authority over traditional conceptions of punishment, extreme punishments such as flogging and stoning conducted under Islamic justification were initially justified as being "rare," and described as being so undesirable that they were considering repealing the practice.

In the case of Saudi Arabia, although Islam was not mentioned in initial RUDs, Saudi representatives raised the issue of Sharia in later committee meetings by describing Sharia as wholly against "torture." Rather, however, than justifying *hadd* punishments such as flogging and stoning by claiming they are rare or open to repeal as was the case in Qatar's early dialogues with the CAT Committee, these practices were justified as lawful under Sharia law, but crucially, not amounting to torture as instead they could be understood as "lawful sanctions" as permitted under the language of the CAT. While the outcome of the dialogues did not lead Saudi Arabian representatives to change their defense of flogging as a just practice under Islam, it re-framed the discussion using language and concepts to make claims about Islam as being explicitly against "torture" and "cruel punishment" as terms and concepts. Oman not ratifying the CAT provides useful

⁶⁰⁴ CAT/C/58/Add.1/47

contrast to the other cases of more substantive engagement with the CAT, such as Saudi Arabia and Qatar. Omani discourses about torture and Islam are underdeveloped in comparison to the other cases where catalogues of UN dialogues with other GCC states' representatives have developed a discourse about Islam's rejection of "torture" framed around commitment to the CAT. In theory, now, local activists can turn to these discourses across the GCC to advocate for reforms to codes of punishment in the region to make practices such as flogging illegal, while arguing that such changes will not dismantle these countries' commitments to Islam. In reality, there are many roadblocks to this kind of human rights activism. The potential has opened, however, for activists to more productively expose any hypocrisy, if and when possible, in their governments' statements about Islam and punishment by leveraging the vocabulary of rights in the CAT that governments are already increasingly engaging with.

The analysis of CEDAW ratification in the GCC countries brought about a similar framing effect on discussions of Islam to incorporate the concept of "gender equality." Three GCC states codified their family laws all around the same time that they ratified CEDAW. GCC interactions with the CEDAW committee concerning Islam and gender, particularly marriage law, stimulated and captured representations of Islam as "modern" "flexible" and "adaptable," and opposed to "discrimination," regardless of the evidence brought forward by the committee to expose gender discrimination in law across the GCC. For example, Omani representatives described family law in CEDAW proceedings as "based on sharia law and Islamic jurisprudence, adapted to modern life, and could be amended if necessary."⁶⁰⁵ Saudi representatives described personal status law, which is based on Sharia, as opposed to "discrimination" saying, "The laws of the Kingdom, which

⁶⁰⁵CEDAW/C/SR.999, p. 5.

derive from the Koran and Sunna, require redress for a woman if she is subject to discrimination or injustice.”⁶⁰⁶

In GCC countries’ interactions with the CRC, Islam is similarly relevant in committee discussions. Islam is continually framed by GCC representatives as being fully in favor of the “rights of children,” and indeed integral to a child’s protection. For example, Saudi representatives claim that Islamic law as interpreted in the Kingdom comprehensively protects the “rights” of children, saying, “A careful review of Islamic law clearly shows that Islam has guaranteed comprehensive rights for the child before as well as after birth...It also emphasizes the importance of protecting children, safeguarding their right to life and preserving a healthy environment conducive to their sound development.”⁶⁰⁷ UAE meetings also framed sharia as a law aimed at preserving and promoting the rights of children, the banning of abortion was defended and framed in this language, where UAE representatives said, “Health is a primary right of the child. Consistent with the Islamic sharia, the State has promulgated a law prohibiting abortion.”⁶⁰⁸

In the case of the ICCPR, which only Kuwait and Bahrain have ratified, both cases also demonstrated some framing effect, although this was nascent, as Kuwait has ratified only recently, and Bahrain has not yet submitted regular reports. For example, Kuwaiti representatives spoke of the concept of power of people over their own rule, saying, “The system of government in Kuwait is democratic, under which sovereignty resides in the people, the source of all powers” and spoke in favor of the concept of “freedom of religion” under Islam referring directly to this term – a concept not contained in traditional Islamic understandings. In this case, I suggest such dialogues would have the potential to further

⁶⁰⁶ CEDAW/C/SAU/2, p. 8.

⁶⁰⁷ CRC/C/61/Add.2, p. 8.

⁶⁰⁸ CRC/C/ARE/2 3Nov2014, p. 35.

frame understandings of Islam as in favor of “civil and political rights” including “freedom of religion” and “non-discrimination”, if ratification increased in the region and Bahrain were to increase its engagement given its existing status as a party to the ICCPR.

In the analysis of all four treaty cases, several patterns were identified in GCC engagement with the core UN human rights conventions and their committees. All GCC states use RUDs to initially make a statement about Islam. These RUDs often serve as an initial statement making about Islam, but their substance is often vague and less important than their symbolic value. GCC states’ RUDs about Islam in these cases differ in wording and substance. They are sometimes vague and sweeping (most commonly by Saudi Arabia), but when they are more specific, they often refer primarily to concern about family and social issues, rather than issues of civil and political understandings. The GCC states’ RUDs about Islam are often subject to criticism from those who view them as vague and unclear. The RUDs tend to lack specificity about exact religious understandings, even when they reference specific articles of a convention. When they reference specific articles, they tend to relate to family law. This suggests that mentioning Islam as an “exception” to universal conceptions of human rights is important, and the substance and specifics of the mention does not matter as much as the significance of making an initial statement about Islamic exceptionalism. These RUDs reveal a tension between Gulf state desire upon initial ratification to be perceived as “modern” and compatible with international human rights efforts alongside an opposing desire to assert arguments about Islamic exceptions to UN human rights efforts.

Subsequent interactions with UN committees after ratification often refine the specificity of statements made by GCC representatives beyond initial RUDs and expand the

scope of initial statements about Islam into a wider discourse about Islam and human rights. Cases with minimal or no engagement with the committee due to late ratification or failure to report result in underdeveloped discourse where countries' representatives and local population has less of a regular and formal anchor for debate about the country's commitment to international law in the form of UN reporting, compared with cases with regular and consistent reporting over several reporting cycles. These committee dialogues tend to develop around a discrete number of concerns related to Islam and the human rights area, and expand beyond social and family issues mentioned in RUDs to broader topics including political rights.

Key areas of tension between GCC and UN understandings of human rights revealed in the analysis of these dialogues are: (a) Islam and marriage law (polygamy, equality, consent), (b) Islam and inheritance law, (c) Islam and adoption, citizenship, and guardianship (*wilaya*), (d) Islam and religious 'freedom' (particularly issue of apostasy), (e) Islam and religious (*hadd*) punishment. GCC representatives' attempts to justify certain controversial Islamic practices when pressed in UN meetings tend to coalesce around the following lines and styles of argument: 1) Conflict between Islam and UN human rights law is "rare" or "small", 2) Islam supports "equality" "modernity" and "non-discrimination", and, 3) Islam is "modern," "adaptable" and "open to interpretation." Arguably, the more these arguments about the adaptability of Islam to modern human rights concepts appear in the catalogue of UN records, the idea is that the more material is available for human rights activists to expose the hypocrisy of governments who fail to live up to these arguments when interpreting Islam at home, and, theoretically, in optimal environments, the more available for advocates to hold their government to account.

In each case, it became clear that interpretations of Islam are never divorced from the unique political and social context in which interpretations come to life in each domestic environment. When GCC diplomats in treaty review proceedings endeavored to justify some of the more controversial laws and practices in the region (such as unequal political rights of women, polygamy, *hadd* punishments, and bans on apostasy and adoption), they often (although, importantly, not always) would eventually concede that reform to re-interpret Islam to align law more closely to UN law was possible, but would make varied statements about this potential for reform due to cultural or political constraints. Arguments about Islam, law and politics were almost always revealed as interconnected and inter-subjective. There is a complex intersection of Islam, law and politics in the region that almost always makes the re-interpretation of Islam a deeply political issue.

7.2 Findings Regarding Norm Diffusion and Contributions to Constructivism and International Relations Theory

The findings demonstrate the need to focus on the ways that human rights are communicated, particularly the language and concepts invoked by states about human rights, as a key, and potentially separate, step in analyses of norm diffusion. This identifies a weakness in the norm diffusion literature on UN human rights law, where an over-emphasis on human rights compliance fails to account for a necessary feature of the norm diffusion process, which is modernization of discourse. The second claim is that UN human rights treaties contribute to a step in this norm diffusion process as Islam is continuously being framed using “modern” concepts in engagement between GCC state representatives

and UN human rights treaties. The implication of the two claims taken together is that UN human rights treaty ratification matters more than the compliance focused international law traditional literature currently accounts for, because of its impact on the framing of concepts about Islam and human rights captured and stimulated by these UN dialogues.

Interviews with GCC and UN representatives as part of this research have suggested that Islam is an important but vague and at times evolving feature of discourse about human rights and treaty ratification in these countries. The substance of exact arguments about compatibility between Islam and UN human rights law sometimes differs between GCC states, but the prominence of assertions about the primacy of GCC states' commitment to Islam alongside a desire to be perceived as respecting human rights is a key feature of engagement across all cases.

Jack Donnelly has argued that a broad global consensus has been achieved today regarding human rights. "In the contemporary world differences with respect to human rights largely concern matters of detail rather than basic norms," he writes.⁶⁰⁹ Therefore, he claims, the process of argumentation can be much more important than the substance. "Anything that even hints of imposing Western values," Donnelly writes, "is likely to be met with understandable suspicion, even resistance. *How* arguments of universalism and arguments of relativism are advanced may sometimes be as important as the substance of those arguments."⁶¹⁰ The case of GCC ratification of the CEDAW, for example, offers evidence for part of Donnelly's claims in that it reveals large areas of consensus (at least in rhetoric) over concepts of "equality" and "non-discrimination" drawn out by ratification,

⁶⁰⁹ Jack Donnelly, "Human rights and the dialogue among civilizations," Available at <https://mysite.du.edu/~jdonnell/papers/dialogue.pdf>.

⁶¹⁰ Jack Donnelly (2007) "The Relative Universality of Human Rights," *Human Rights Quarterly*, Vol. 29, No. 2, pp. 281-306.

even in cases where there was initial reticence to accept these traditionally “western” norms in an Islamic context. Still, key areas of contention remain on substance, particularly surrounding ideas about gender in marriage. The way arguments are crafted in dialogues and reporting proceedings (about flexibility in Islam, for example) can be more revealing than the substance of the arguments put forward at the UN (such as the substance of RUDs), and are worthy of deeper understanding and greater scholarly attention.

The focus on compliance in the existing scholarship leads us to overlook the dynamics of engagement playing out in cases like the GCC, where interaction with UN human rights treaties is lively but policy progress measured in liberal human rights reforms has been minimal. Such a focus fails to account for the impact on discourse. This impact on dialogue is a form of norm diffusion as a nascent ‘first-step’ in a complex process. Discourse is simply discourse – it obviously cannot directly change law and practices. It may indeed act as a cover, to allow for blatant abuse and hypocrisy without recourse, as policies and practices fail to live up to language or even worsen. However, law and practices are less likely to liberalize without a modernized discourse framing understandings of human rights. If scholars and policymakers can develop a deeper understanding of the ways that UN human rights treaty ratification can shape discourse about human rights in these cases, a clearer and more full understanding of the impact of UN human rights treaties can be achieved in the literature, with important implications for efforts in international law to become more realistic and effective.

The findings in this dissertation suggest possible implications for the GCC and wider Middle East region. GCC states’ ratification has helped stimulate conversations that broaden arguments about human rights and Islam to be framed more around an

international human rights vocabulary, which provides evidence of the special impact of the meanings attributed to “international human rights,” even where laws do not align with these standards. I wish to highlight a relevant, sometimes overlooked step in the diffusion process where some convergence of local and international language and concepts as framed through discussions around international human rights laws, even where subtle, can serve as evidence as a step in the diffusion process. It is a necessary, but not sufficient, step for norm compliance. That is, norm-aligning language and concepts used can be (and in my cases often is) divorced from norm-aligning practice. However, practices cannot substantially change without changes in language, concepts and ideas, and therefore, this thesis highlights this step in the process in my analysis of movement in the ways GCC states’ representatives have discussed human rights and Islam as a result of UN human rights law.

7.3 Implications for Future Research

If one begins to measure the impact of international law not simply in its ability to directly change policy but in its subtle impact on language and conceptualizations of human rights, there is exponentially greater potential to consider the ways in which international law can matter. There is vast potential for further inquiry in cases outside of the GCC – from cases in the Middle East and beyond – from Algeria to Djibouti, to Afghanistan and Iran to Indonesia and Malaysia. There is also potential to expand on this research by considering other traditions, belief systems and customs. Also important for future research agendas is the impact of other human rights instruments. Other treaties such as the 1966 International Covenant on Economic, Social and Cultural Rights (ICESCR) and

the 1969 Convention on the Elimination of Racial Discrimination (CERD), among others, would be important treaties to consider for future analysis on the impacts of international law on conceptualizations of human rights globally.

This thesis focused mainly on the state and diplomatic level of engagement. This is not to say that this is the only area for analysis, but it presented useful comparisons and patterns. There is great potential for future research to build off of this work to focus more on the relationship between state diplomatic changes and local domestic activism, including the ways in which treaty engagement can impact local human rights groups' activism in various political and social contexts. For example, for future research could build on the empirical findings of this thesis to consider the impact of international human rights treaties on conceptualizations of Islam among local human rights groups in Malaysia, where schedule 9 of the Constitution gives the power for states to enact and enforce Sharia, but there is a growing human rights movement aimed at promoting new ways of integrating Islamic understandings into the human rights agenda. Musawah (the Global Network for Justice and Equality in the Muslim Family, also known as Sisters in Islam) is a global network launched in 2009 in a global meeting of participants from 47 countries to advocate for its framework to integrate "Islamic teachings, universal human rights, national constitutional guarantees of equality, and the lived realities of women and men" and has gained global attention for its work to harmonize Islam and international human rights.⁶¹¹ The network calls for laws that uphold equality, fairness and justice for all Muslim men and women, as they reflect "universal norms" and are in harmony with "contemporary human

⁶¹¹ "About Us," Musawah, Available at <http://www.musawah.org/about-musawah>.

rights standards.”⁶¹² Musawah “recognises the compatibility between concepts of equality and justice in Islam and in international human rights standards, including the CEDAW Convention” and the network has worked directly with the CEDAW by submitting shadow reports to its Committee.⁶¹³ How has human rights treaty ratification framed or otherwise supported Musawah’s efforts to harmonize conceptualizations of Islam and universal human rights? Has the CEDAW contributed in particular ways to Musawah’s advocacy and potential to impact understandings of Islam? These are important questions for future scholarly inquiry.

It would be useful to consider the theoretical implications of this thesis for understanding the power of international law to frame debates and inject a vocabulary of international human rights into other contexts. Are certain world regions, cultures, economies or regime types experiencing this impact more than others? What are the diplomatic and political patterns associated with increased or decreased framing of human rights dialogues around UN concepts? These types of research questions could further illuminate a deeper understanding of the potential for further application of the findings regarding the subtle impact of international law on human rights norm diffusion identified in this thesis.

Despite the poor outlook for human rights in the GCC states, this thesis has shown that there is an underlying current of change in the language used to frame human rights discourse that indicates some hope for the future. Human rights treaty ratification continues to hold relevance in these countries. All six GCC states have ratified the 2006

⁶¹²“Musawah Framework for Action” (2009) Available at <http://www.musawah.org/sites/default/files/Musawah-Framework-AR.pdf>, p. 5.

⁶¹³ Musawah (2011) “CEDAW and Muslim Family Laws: In Search of Common Ground.” Petaling Jaya: Musawah. p. 1.

UN Convention on the Rights of Persons with Disabilities (CRPD), even while the US has declined ratification. There are proposals at the United Nations for numerous new human rights treaties. Until scholars take the subtle forms of impact identified in this thesis more seriously, efforts to invest in and expand the growing system of international human rights law will continue to be based on a simplistic vision of compliance and will, most likely, continue to disappoint. Instead, there is a more hopeful outlook to consider. The framing effect identified in this thesis demonstrates that human rights treaties matter, and their impact on language and ideas, though subtle, can have wide ranging implications.

List of Interviews

<u>Name</u>	<u>Institution</u>	<u>Location</u>	<u>Format</u>	<u>Date</u>
UAE human rights activist	Arranged by the International Commission for Freedom in the UAE (ICFUAE)	London, UK	In-person	March 2015 and follow-up in April 2015
Dr. Abdullah Babood	Qatar University, Gulf Studies Centre	Doha, Qatar	In-person	Meetings August-September, 2016
Ahmed Mansoor	Domestic Human Rights Activist (under government house arrest)	UAE	Phone	March 12, 2016
Alexis Konstantopolous	European External Action Service	Riyadh, Saudi Arabia	Skype	May 10, 2017
Anaas Almazrou	Law Student	Riyadh, Saudi Arabia	Phone	15 March, 2014
Dr. Amani al Jack	Qatar University	Doha, Qatar	In-person	1-15 September, 2016
CAT Committee Member	UN Committee Against Torture	Geneva, Switzerland	Skype	June 1, 2017
Jackob Shneider	UN Committee on the Elimination of all forms of Discrimination Against Women	Geneva, Switzerland	Phone	March 23, 2015
Dr. Courtney Freer	London School of Economics, Middle East Centre	London, UK	In-person	June 4, 2015
Drewery Dyke	Amnesty International – Middle East Bureau	Oxford, UK	In-person	13 May, 2017

Emma Hickey	European External Action Service	Brussels, Belgium	Phone	15 May, 2017
Fedja Szlobec	European External Action Service	Brussels, Belgium	Phone	15 May, 2017
Francesca Ricciardone	Solidarity Center	Doha, Qatar	In-person	7 September, 2016
Dr. Hatoon al Fasi	Arab Gulf States Institute of Washington	Washington DC, USA	E-mail	March 2017
Dr. Justin Gengler	SESRI Public Opinion Research Center	Doha, Qatar	In-person	5 September, 2016
Kristen Johnson	International Lawyer	Doha, Qatar/ Miami, FL	Phone	5 May, 2015
Kristian Coates Ulrichsen	Rice University	Houston, TX, USA	E-mail	10 September, 2015
Mariam Alkazemi	London School of Economics/ Gulf University for Science and Technology in Kuwait	London, UK/ Kuwait City, Kuwait	In-person	22 June, 2016
Lucia Manrique	European External Action Service	Riyadh, Saudi Arabia	Skype	20 May, 2017
Dr. Mehran Kamrava	Georgetown University in Qatar	Doha, Qatar	In-person	5 September, 2016
Nuha Alissa	The National Society for Human Rights, Saudi Arabia	Riyadh, Saudi Arabia	E-mail	18 April, 2017
Shazia Arshad	ICF UAE	London, UK	In-person	20 June, 2016
Dr. Pasquale Borea	Bahrain University for Women	Manama, Bahrain	Skype	4 June, 2017

Bibliography

UN Documents

CAT/C/42/Add.2

Consideration of reports submitted by states parties under article 19, Initial reports of states parties due in 1998, Saudi Arabia, Original: Arabic, 20 September 2001.

CAT C/CR/28/5

Consideration of reports submitted by states parties under article 19 of the convention, Conclusions and recommendations of the Committee Against Torture, Saudi Arabia, 29 April – 17 May 2002.

CAT/C/SR.519

Consideration of State Report, Saudi Arabia, 2002.

CAT/C/SAU/Q/2

List of issues prior to the submission of the second periodic report of Saudi Arabia, Committee Against Torture, 2 July 2009.

CAT/C/SR.1402

Summary record of the 1402nd meeting, 57th session, Committee Against Torture, Palais Wilson, Geneva, Chair: Mr. Modvig, 22 April 2016.

CAT/C/SR.1405

Consideration of reports submitted by States parties under article 19, Summary record of the 1405th meeting, 57th session, Second periodic report of Saudi Arabia, 27 April 2006.

CAT/C/58/Add.1

Consideration of reports submitted by states parties under article 19 of the convention, Initial reports of states parties due in 2000, Qatar, Committee Against Torture, 5 October 2005.

CAT/C/SR.707

Summary record of the 707th meeting, 36th session, Committee Against Torture, Initial report of Qatar, Palais des Nations, Geneva, Chairperson: Mr. Mavrommatis, 15 May 2006.

CAT/C/QAT/2

Consideration of reports submitted by states parties, Second periodic reports of States parties due in 2008, Qatar, Original: Arabic, 11 May 2011.

CAT/C/SR.1104

Summary record of the first part (public) of the 1104th meeting, 49th session, Committee Against Torture, Second periodic report of Qatar, Chairperson: Mr. Wang Xuexian, Original: French, 1 May 2012.

CAT/C/SR.1107

Summary record of the 1107th meeting, 49th session, Committee Against Torture, Chairperson: Mr. Grossman, 9 November 2012.

CAT/C/QAT/QPR/3

List of issues prior to submission of the third periodic report of Qatar, due in 2016, Committee Against Torture, 22 December 2014.

CAT/C/QAT/2/Rev.1

Consideration of the reports submitted by states parties, Second periodic reports of states parties due in 2008, Qatar, Original: Arabic, 23 March 2011.

CCPR/C/KWT/Q/3/Add.1

List of issues in relation to the third periodic report of Kuwait, CCPR Committee, Replies of Kuwait to the list of issues, 117th Session, Original: Arabic, 23 February 2016.

CCPR/C/KWT/CO/3

Concluding observations on the third periodic report of Kuwait, CCPR Committee, Human Rights Committee, 11 August 2016.

CCPR/C/SR.1852 24

Summary record of the 1852nd meeting, 69th session, Human Rights Committee, Palais Wilson, Geneva, 18 July 2000.

CCPR/C/120/Add.1

Consideration of reports submitted by states parties, Human Rights Committee, Kuwait, 3 December 1999.

CCPR/C/69/L/KWT

List of issues to be taken up in connection with the consideration of the initial report of the state of Kuwait, Human Rights Committee, 69th session, 25 April 2000.

CCPR/C/SR.2840

Consideration of reports submitted by states parties, Second periodic report of Kuwait, Summary record of the 2840th meeting, Palais Wilson, Geneva, 20 October 2011.

CCPR/CO/63/KWT

Consideration of reports submitted by states parties under Article 40, Kuwait, Human Rights Committee, 69th Session, 27 July 2000.

CCPR/C/SR.1852

Summary record of the 1852nd meeting, Human Rights Committee, 69th Session, Palais Wilson, Geneva, 24 July 2000.

CRC/C/15/Add.163

Consideration of reports submitted by states parties under article 44, Committee on the Rights of the Child, Qatar, 28th Session, 6 November 2001.

CRC/C/SR.487

Summary record of the 487th meeting, Committee on the rights of the child, 19th session, Initial report of Kuwait, Palais des Nations, Geneva, Chairperson: Miss Mason, 28 September 1998.

CEDAW/C/SAU/2

Combined initial and second periodic reports of States Parties to CEDAW, Saudi Arabia, Original: Arabia, 29 March 2007.

CEDAW/C/ARE/1

Concluding observations of the Committee on the Elimination of Discrimination against Women, 45th Session, Original: English, 5 February 2010.

CEDAW/C/ARE/Q/1/Add.1

Responses to the list of issues and questions with regard to the consideration of the initial periodic report: United Arab Emirates, 45th Session, Original: English, 5 February 2010.

CEDAW/C/SR.914

Summary record of the 914th meeting, CEDAW Committee, United Arab Emirates, Palais des Nations, Geneva, 26 January 2010.

CEDAW/C/SR.915

Summary record of the 915th meeting, CEDAW Committee, United Arab Emirates, Palais des Nations, Geneva, 45th Session, 26 January 2010.

CEDAW/C/ARE/2-3

Consideration of reports submitted by states parties, CEDAW Committee, Second and third periodic reports of States, United Arab Emirates, Original: Arabic, 3 December 2014.

CEDAW/C/SR.1349

Committee on the Elimination of Discrimination against Women, 66nd Session, Summary record of the 1349th meeting, 5 November 2015.

CEDAW/C/KWT/1-2

Consideration of reports submitted by states parties, CEDAW Committee, Combined initial and second periodic reports of states parties, Kuwait, Original: Arabic, 1 May 2003.

CEDAW/C/SR.634

Consideration of reports submitted by states parties, CEDAW Committee, Combined initial and second periodic report of Kuwait, Held at Headquarters, New York, Chairperson: Ms. Acar, Summary record of the 634th meeting, 15 January 2004.

CEDAW/C/KWT/3-4

Concluding observations of the committee, 15th session, Kuwait, 3-21 October 2011.

CEDAW/C/SR.1012

Summary record of the 1012th meeting, CEDAW Committee, Palais des Nations, Geneva, Chairperson: Ms. Pimentel, 13 October 2011.

CEDAW/C/SR.1011

Summary record of the 1011th meeting, CEDAW Committee, Palais des Nations, Geneva, 15th session, Chairperson: Ms. Pimentel, 13 October 2011.

CEDAW/C/KWT/5

Consideration of reports submitted by states parties, 5th periodic report of states parties due in 2005, Kuwait, Original: Arabic, 11 January 2016.

CRC/C/ARE/CO/2

Concluding observations, Committee on the Rights of the Child, Bahrain, 11 December 2016.

CRC/C/78/Add.1

Consideration of reports submitted by states parties, Initial reports of states parties due in 1999, Oman, 18 July 2000.

CRC/C/SR.489

Summary record of the 289th meeting, Committee on the Rights of the Child, Palais des Nations, Geneva, 29 September 1998.

CRC/C/SR.1820

Summary record of the 1920th meeting, 64th session, Committee on the Rights of the Child, 18 September 2013.

CRC/C/15/Add.163

Consideration of reports submitted by states parties, Concluding observations of the Committee on the Rights of the Child, Qatar, 28th session, 6 November 2001.

CRC/C/SR.769

Summary record of the 769th meeting, 29th session, Palais Wilson, Geneva, Chairperson: Mr. Doek, 27 January 2002.

CRC/C/61/Add.2

Consideration of reports submitted by states parties, Initial report of Saudi Arabia due in 1998, Original: Arabic, 15 October 1998.

CRC/C/136/Add.1

Consideration of reports submitted by states parties, Second periodic reports of states parties due in 2003, Saudi Arabia, 21 April 2005.

CRC/C/SR.1114

Summary record of the 114th meeting, 41st session, Palais Wilson, Geneva, Chairperson: Mr. Doek, 24 January 2006.

CRC/C/SAU/3-4

Consideration of reports submitted by states parties, Combined 3rd and 4th periodic reports of states parties, Saudi Arabia, 8 April 2015.

A/C.3/39/Sr.65

Summary records of the United Nations General Assembly 29th Session, 3rd Committee. 65th meeting 7 December 1984.

List of Statutes and Treaties

International and Regional Treaties Covenants and Declarations

Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (adopted 10 December 1984, entered into force 26 June 1987) 1465 UNTS 85 (CAT)

Convention on the Elimination of All Forms of Discrimination Against Women (adopted 18 December 1979, entered into force 3 September 1981) 1249 UNTS 13 (CEDAW)

Convention on the Rights of the Child (adopted 20 November 1989, entered into force 2 September 1990) 1577 UNTS 3 (CRC)

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

Universal Declaration of Human Rights (adopted 10 December 1948) UNGA Res 217 A(III) (UDHR)

Regional Human Rights Declarations and Charters

Arab Charter on Human Rights (adopted 22 May, 2004, entered into force 15 March 2008) League of Arab States. Rep. 893.

Cairo Declaration on Human Rights in Islam (adopted 5 Aug 1990) UNGAOR, World Conference on Human Rights, 4th Session.

GCC Human Rights Declaration for the Member States of the Cooperation Council for the Arab States of the Gulf (adopted 9 December 2014). Gulf Cooperation Council.

OIC Covenant on the Rights of the Child in Islam (June 2005) OIC/9-IGGE/HRI/2004/Rep.Final (Sanaa Covenant).

National Laws and Decrees

Bahrain

Bahrain Constitution of 2002.

Bahraini Law on the Promulgation of the Law of Family, Law no. 19 of 2009, May 2009.

Kuwait

Kuwait Constitution of 1962, reinstated in 1992.

Kuwaiti Law of Labor in the Private Sector, Law no. 6 of 2010, *Official Gazette* no.963 of 21 February 2010.

Kuwaiti Personal Status Law, Law no.51 of 1984, *Official Gazette* no. 1570 of 23 July 1984.

Kuwaiti Law on Press and Publications, Law no. 3 of 2006. *Official Gazette*.

Oman

Oman Basic Law of 1996, with amendments through 2011.

Disabled Persons Welfare and Rehabilitation Law, Royal Decree no.63 of 2008, *Official Gazette*, 2008.

Qatar

Qatar Constitution of 2003

Law Issuing the Penal Code, Law no. 11 of 2004, *Official Gazette* no.7 of 30 May 2004.

Law Promulgating the Family, Law no. 22 of 2006, *Official Gazette* no.8 of 28 August 2006.

Regarding Promulgating the Criminal Procedure Code, Law no.23 of 2004, *Official Gazette* no. 12 of 29 August 2004.

Saudi Arabia

Saudi Arabia Basic Law of 1992.

Law of Criminal Procedure, Royal Decree No. M/39 of 16 October 2001, *Official Gazette* no.3867, 3 November 2001.

UAE

United Arab Emirates Constitution of 1971, with amendments through 2004.

Law on Personal Status, Federal Law no. 28 of 2005, *Official Gazette* no.439 of 19 November 2005.

Reports and Press Items

Abdulainnain, Tamer (2010) “Kuwait Keen on Supporting Civil, Political Rights – Amb. Al-Ghunaim,” *Kuwait News Agency (KUNA)* (June 18). Available at <http://www.kuna.net.kw/ArticleDetails.aspx?id=2507766&language=en>.

Abdul-Hamid, Yara (2008) “Child Rights Situation Analysis for Middle East and North Africa Region,” *Save the Children Report* (August). Available at [https://www.essex.ac.uk/armedcon/story_id/Child%20Rights%20Situation%20Analysis%20for%20Middle%20East%20and%20North%20Africa\[1\].pdf](https://www.essex.ac.uk/armedcon/story_id/Child%20Rights%20Situation%20Analysis%20for%20Middle%20East%20and%20North%20Africa[1].pdf).

Abolish 153. About. Available at <http://abolish153.org/about/>.

Al-Anba (2007) “Al-Naqī: Al-Tashrī‘āt lā tazāl taḥmil al-kathīr min jawānib al-tamyīz dīd al-mar’ah al-Kuwaytiyyah” [Al-Naqī: Legislation Still Contains Many Aspects of Discrimination Against Kuwaiti Women] 4 August. Available at <http://www.alanba.com.kw/ar/kuwait-news/14809/04-08-2007-بتزال-التشريعات-النقي-الكلوي-تي-المرأة-ضد-التمييز-جوانب-الكثير-تحمّل>.

Al-Anba (2007) “Shabakat al-mar’ah tunāshid al-qiyādah al-siyāsiyyah radd al-ta‘dīlāt ‘alā qānūn ‘amal al-nisā’” [The Women's Network Implores the Political Leadership to Reject the Amendments to the Women’s Labor Code] 2 July. Available at <http://www.alanba.com.kw/ar/kuwait-news/13357/02-07-2007-القيادة-تنشد-المرأة-شبكة-النساء-عمل-قانون-على-التعديل-ات-رد-السياسية>.

Al-Anba (2008) “2008 ‘ām ‘ālamī li-al-mar’ah al-khalījiyyah wa-al-Kuwaytiyyāt fī al-muqaddimah” [2008 is a Women’s Year for Gulf Women, and Kuwaiti Women are at the Forefront] 21 January. Available at <http://www.alanba.com.kw/ar/kuwait-news/22183/21-01-2008-المقدمة-والكلوي-تيات-الخليجية-للمرأة-عام-2008>.

Al-Anba (2009) “Al-Khārijīyyah’ tarfuḍ wujūb manḥ al-jinsiyyah li-al-mu‘āq: haqq siyādī li-al-dawlah lā yattafiq ma‘a qānūn al-jinsiyyah” [The Ministry of Foreign Affairs Rejects

<http://www.thenational.ae/uae/courts/divorcees-widows-concerned-about-receiving-permission-before-remarrying>.

Al Sharq Al-Awsat (2008) “Saudi Arabia Considers Amending Laws to be Compatible with Human Rights Treaties,” (28 July). Available at <http://english.aawsat.com/2008/07/article55258134/saudi-arabia-considers-amending-laws-to-be-compatible-with-human-rights-treaties>.

Al-Shuaibi, Athoob (2017) “Should Kuwaiti Women be Able to Pass Nationality to their Children? - The Niqashna Debates,” *Kuwait Times* (30 March). Available at <http://news.kuwaittimes.net/website/kuwaiti-women-able-pass-nationality-children-niqashna-debates/>.

Amnesty International (2001) “Human Rights in Bahrain: A Historic Period.” Available at <https://www.amnesty.org/en/library/asset/MDE11/005/2001/en/d76b504c-f84c-11dd-a0a9-2bd73ca4d38a/mde110052001en.pdf/>.

Amnesty International (2012) “Death Sentences and Executions 2011” (27 March). Available at <https://www.amnesty.org/en/documents/ACT50/001/2012/en/>.

Anti-Defamation League (2012) “Arab Media Review,” January-June. Available at <https://www.adl.org/sites/default/files/documents/assets/pdf/anti-semitism/Arab-Media-Review-January-June-2012.pdf>.

Arab News (2014) “OIC Seeks Rights Debates Based on Islamic Values.” *Arab News*, 4 February. Available at <http://www.arabnews.com/news/520321>.

Bahrain Center for Human Rights (2006) “Ghada Jamsheer: Women in Bahrain and the Struggle Against Artificial Reforms.” Available at [“http://www.bahrainrights.org/en/node/936](http://www.bahrainrights.org/en/node/936).

Bahrain Institute for Rights and Democracy (2014) “Assessing the Human Rights Situation in Bahrain: A Shadow Report on Bahrain’s Implementation of its ICCPR Obligations.” Available at http://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/BHR/INT_CCPR_NGO_BHR_18393_E.pdf.

Saudi Gazette (2015) “Breach of Privacy,” (13 November). Available at <http://saudigazette.com.sa/saudi-arabia/breach-of-privacy/>.

Cali, Basik (2013) “GCC States Selective in Ratifying Human Rights Treaties,” *The Peninsula Qatar*. Available at <http://thepeninsulaqatar.com/news/qatar/300192/gcc-states-selective-in-ratifying-rights-treaties>.

Coogle, Adam (2016) “Recorded ‘Honor’ Killings on the Rise in Jordan,” Human Rights Watch (27 October). Available at <https://www.hrw.org/news/2016/10/27/recorded-honor-killings-rise-jordan>.

Fattah, Hassan M. (2005) “Kuwait Grants Political Rights to Its Women.” *The New York Times* (17 May). Available at http://www.nytimes.com/2005/05/17/world/middleeast/kuwait-grants-political-rights-to-its-women.html?_r=0.

Fattahova, Nawara (2013) “Kuwaiti Women Face Host of Problems Despite ‘Equality,’” *Kuwait Times* (12 March). Available at <https://www.pressreader.com/kuwait/kuwait-times/20130312/282849368414465>.

“Four Things to Know About Floggings as Punishment in Qatar,” *Doha News* (17 June) Available at <https://dohanews.co/four-things-to-know-about-flogging-as-a-punishment-in-qatar/>.

Freer, Courtney (2017) “Legal Inequalities for Women in the Middle East,” LSE Middle East Centre Blogs, Available at

<http://blogs.lse.ac.uk/mec/2017/12/14/legal-inequities-for-women-in-the-middle-east/>.

Human Rights Watch (2016) “Arab Gulf States: Attempts to Silence 140 Characters,” 1 November. Available at <https://www.hrw.org/news/2016/11/01/arab-gulf-states-attempts-silence-140-characters>.

Human Rights Watch (2015) “Bahrain: Detained Activist’s Health Worsens” Available at <https://www.hrw.org/news/2017/04/26/bahrain-detained-activists-health-worsens>.

Jamjoom, Mohammed (2009) “Top Saudi Cleric: OK for Young Girls to Wed.” *CNN online* (January 17). Available at <http://edition.cnn.com/2009/WORLD/meast/01/17/saudi.child.marriage/>.

Joint Report on Article 16, Muslim Family Law and Muslim Women’s Rights in Kuwait. 68th CEDAW Session. Musawah and the Abolish 153 Campaign. November 2017. Available at <http://www.musawah.org/sites/default/files/Kuwait%20-%20Musawah%20AbolishArticle153%20Joint%20Report%20for%2068%20CEDAW%20Session-ilovepdf-compressed.pdf>.

Karayanni, Idris (2017) “al-yawm al-duwalī lil-mar’ah” (International Women’s Day) March. *Al Khaleej*. Available at <http://www.alkhaleej.ae/studiesandopinions/page/b36bf87d-3d8d-4570-a1a4-11f5569f0984>.

Kelly, Sanja (2008) “Recent Gains and the New Opportunities for Women’s Rights in the Gulf Arab States.” *Freedom House Report*. Available at <https://freedomhouse.org/sites/default/files/Women%27s%20Rights%20in%20the%20Middle%20East%20and%20North%20Africa,%20Gulf%20Edition.pdf>.

“Kuwait: Events of 2017.” Human Rights Watch: World Report. Available at <https://www.hrw.org/world-report/2018/country-chapters/kuwait>.

Kuwait Human Rights Society (KABEHR) “Ḥuqūq al-insān fī al-Kuwayt” (Human Rights in Kuwait) Available at <http://humanrights.org.kw/>.

Kuwaiti Society for the Basic Evaluators of Human Rights (2015) Shadow Report on the Implementation of the Convention on the Elimination of All Forms of Discrimination Against Women by the State of Kuwait.

“MOFA Supreme Coordination Committee for Human Rights Holds its 17th Meeting” (2016) Kingdom of Bahrain Ministry of Foreign Affairs (1 September) Available at <http://www.mofa.gov.bh/Default.aspx?tabid=7824&language=en-US&ItemId=6480>.

Musawah (2011) “CEDAW and Muslim Family Laws: In Search of Common Ground.” Petaling Jaya: Musawah.

New York Times (1990) “Kuwait Vote Seen as Essential to Democracy,” 10 June. Available at <http://www.nytimes.com/1990/06/10/world/kuwait-vote-seen-as-essential-to-democracy.html>.

“Report of the First National Shadow for the Kuwaiti Association for the Basic Evaluations of Human Rights” (2011), Available at http://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/KWT/INT_CCPR_NGO_KWT_103_9445_E.pdf.

“Royal University for Women Conference on Women and Society” (2016), Kingdom of Bahrain (19-20 April) Conference Report. Available at <http://www.ruw.edu.bh/conference/doc/Conference%20Reports/Report%20-%20Day%20%20LAW%20Parallel%20Sessions.pdf>.

“RP Apologizes to UN for 20 Years of ‘Incompetence,’” *Saudi Gazette* (27 April) Available at

<http://www.saudigazette.com.sa/index.cfm?method=home.PrintContent&fa=regcon&action=Print&contentid=2009050537104>.

Salam for Democracy and Human Rights. (2014) “To: The King Hamad - Kingdom of Bahrain” (29 August) Available at <http://www.salam-dhr.org/?p=387>.

Sabaq News (2011) “Raif Badawi: Legal Analysis.” 14 July. Available at <https://sabq.org/Print/News/NHuno>

“Torturers of Briman Prisoner Receive Jail Terms and Lashes,” *Saudi Gazette* (13 May) Available at <http://www.saudigazette.com.sa/index.cfm?method=home.regcon&contentid=20140513204944>.

Toumi, Habib (2014) “Saudi Arabia Grand Mufti Says No Opposition to Underage Marriage,” *Gulf News* (21 December) Available at <http://gulfnews.com/news/gulf/saudi-arabia/saudi-arabia-grand-mufti-says-no-opposition-to-underage-marriage-1.1429882>.

UN Human Rights Office of the High Commissioner (2015) “Saudi Arabia Must Immediately Halt Execution of Children – UN Rights Experts Urge” (22 September) Available at <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=16487&LangID=E#sthash.tusnWOAn.dpuf>.

U.S. Commission on International Religious Freedom, “International Human Rights Standards: Selected Provisions on Freedom of Thought, Conscience, and Religion or Belief.” Available at <http://www.uscirf.gov/reports-briefs/human-rights-documents/international-human-rights-standards-selected-provisions>.

U.S. Commission on International Religious Freedom Press Release (2016) “Saudi Arabia: Release Raif Badawi” (28 July). Available at <http://www.uscirf.gov/news-room/press-releases/saudi-arabia-release-raif-badawi>.

U.S. State Department (2001) “Saudi Arabia: Country Reports on Human Rights Practices,” Bureau of Democracy, Human Rights, and Labor (23 February) Available at <http://www.state.gov/j/drl/rls/hrrpt/2000/nea/817.htm>.

World Bank Report (2009) “MENA: Gender Compendium.” Available at http://siteresources.worldbank.org/INTMENA/Resources/MENA_Gender_Compendium-2009-1.pdf.

“World Conference on Women: CEDAW a History,” Official UN Page. Available at <http://www.un.org/womenwatch/daw/cedaw/text/econvention.htm>.

“‘Wudeema’s Law’ Becomes Child Rights Law” (2013) *Gulf News* (11 December) Available at <http://gulfnews.com/news/uae/government/wudeema-s-law-becomes-child-rights-law-1.1266020>.

Yahya, Abdullah (2010) “hal al-jaldu ‘uqūba idhlāl?” (Is flogging a punishment of humiliation?). *Al Madina*. Available at <http://www.al-madina.com/article/354662/>.

Journal Articles, Books and Working Papers

Abtahi, Hiran (2005) "The Islamic Republic of Iran and the ICC," *Journal of International Criminal Justice*, July, Vol. 3, No. 3, pp. 635-648.

‘Abd al ‘Ati, Hammudah (1977) *The Family Structure in Islam*. Indianapolis: American Trust Publications.

Abdulla, Gaith (2016) "Khaleeji Identity in Contemporary Gulf Politics," *Oxford Gulf and Arabian Peninsula Studies Forum*, St. Antony's College, Oxford University, Report.

Abiad, Nisrine (2008) *Sharia, Muslim States and International Human Rights Treaty Obligations: A Comparative Study*. London: British Institute of International and Comparative Law (BIICL).

Abbott, Keohane, Moravcsik, Slaughter and Snidal, "The Concept of Legalization." In Simmons and Steinberg (2003) *International Law and International Relations*. Cambridge: Cambridge University Press, pp. 115-130.

Abu-Lughod, Lila, Fida Adely, and Frances Hasso (2009) "Overview: Engaging the Arab Human Development Report 2005 on Women." *International Journal of Middle East Studies*, Volume 41, No. 1 February, pp. 59-60.

Acharya, Amitav (2018) *Constructing Global Order: Agency and Change in World Politics*. Cambridge: Cambridge University Press.

Acharya, Amitav (2004) "How Ideas Spread: Whose Norms Matter? Norm Localization and Institutional Change in Asian Regionalism," *International Organization*, Vol. 58, No. 2, Spring, pp. 239-275.

Adler, Emanuel (2013) "Constructivism in International Relations: Sources, Contributions, and Debates" in Walter Carlsnaes, Thomas Risse and Beth Simmons (eds) *Handbook of International Relations*. London: Sage.

Afshari, Reza (1994) "An Essay on Islamic Cultural Relativism in the Discourse of Human Rights," *Human Rights Quarterly*, Vol. 16, No. 2, pp. 235-276.

Ali, Yusuf Abdullah (2000) *The Holy Qur'an*. Ware, Hertfordshire: Wordsworth Editions.

Al Dorasi, Hala (2016) "The Personal is Political: Gender Identity in the Personal Status Laws of the Arab Gulf." Arab Gulf States Institute of Washington. Available at http://www.agsiw.org/wp-content/uploads/2016/08/Aldosari_ONLINE_updated.pdf.

Al-Fahad, Abdulaziz H. (2005) "Ornamental Constitutionalism: The Saudi Basic Law of Governance." *Yale Journal of International Law*, Vol. 30, p. 377.

Al-Jarbou, Ayoub M. (2004) "Judicial Independence: Case Study of Saudi Arabia," *Arab Law Quarterly*, Vol. 19, No. 1/4.

Al Kitbi, Ebtisam (2008) "Women's Political Status in the GCC States," Carnegie Endowment for International Peace. 20 August.

Al-Mughni, Haya (2005) "From Gender Equality to Female Subjugation: The Changing Agendas of Women's Groups in Kuwait" in Haideh Moghissi (ed.) *Women and Islam: Images and Realities, Volume I*. New York: Routledge.

Al-Mughni, Haya (2005) "Kuwait" in Sameena Nazir and Leigh Tomppert (eds.) *Women's rights in the Middle East and North Africa: Citizenship and Justice*. Lanham: Rowman & Littlefield Publishers, Inc.

Al-Mughni, Haya (2010) "The Rise of Islamic Feminism in Kuwait" *Revue des mondes musulmans et de la Méditerranée* [Review of Muslim Worlds and the Mediterranean]. December. No. 128, pp. 167-182.

Al-Mughni, Haya (2001) *Women in Kuwait: The Politics of Gender*. London: Saqi Books.

Al-Mughni, Haya (1996) "Women's Organizations in Kuwait," *Middle East Report*, Spring, Vol. 26.

Al-Mdaires, Falah Abdullah (2010) *Islamic Extremism in Kuwait: From the Muslim Brotherhood to al-Qaeda and Other Islamist Political Groups*. New York: Routledge.

Al-Moqatei, Mohammed (1989) "Introducing Islamic Law in the Arab Gulf States: A Case Study of Kuwait," *Arab Law Quarterly*, No. 138, pp. 138-148.

Al-Sabah, Meshal (2013) *Gender and Politics in Kuwait: Women and Political Participation in the Gulf*. London: I.B. Tauris & Co.

Alshayeji, Abdullah (2005) "Kuwait: Beyond Women's Suffrage," *Arab Reform Bulletin*, July, Vol. 3, No. 6.

Al-Qaradawi, Yusuf (1999) *The Lawful and the Prohibited in Islam*. American Trust Publications.

Al-Rasheed, Madawi (2016) *Muted Modernists: The Struggle Over Divine Politics in Saudi Arabia*. Oxford: Oxford University Press.

An-Na'im, Abdullahi Ahmed (2001) "Human Rights in the Arab World: A Regional Perspective," *Human Rights Quarterly*, Vol. 23, pp. 701-732.

An-Na'im, Abdullahi Ahmed (2009) *Islam and the Secular State: Negotiating the Future of Shari'a*. Cambridge, MA: Harvard University Press.

Arzt, Donna (1990) "The Application of International Human Rights Law in Islamic States," *Human Rights Quarterly*, Vol. 12, pp. 202-230.

Asad, Talal (1996) "On Torture, or Cruel, Inhuman, and Degrading Treatment," *Social Research*, Vol. 63, No. 4 (Winter), pp. 1081-1109.

Baderin, Mashood (2003) *International Human Rights and Islamic Law*. Oxford: Oxford University Press.

Baderin, Mashood (2007) "Islam and the Realization of Human Rights in the Muslim World: A Reflection on Two Essential Approaches and Two Divergent Perspectives," *Muslim World Journal of Human Rights*, Vol. 4, No. 1.

Bettiza, Gregorio and Filippo Dionigi (2014) "How Do Religious Norms Diffuse? Institutional Translation and International Change in a Post-secular World Society." *European Journal of International Relations*, Vol. 21, No. 3. pp. 621-646.

Black, Ann, Hossein Esmaeili, and Nadirsyah Hosen (2014) *Modern Perspectives on Islamic Law*. Edward Elgar Publishing, pp. 222-223.

Brown, Nathan and Adel Omar Sherif (2004) "Inscribing the Islamic Shari'a in Arab Constitutional Law" in Haddad and Stowasser, *Islamic Law and the Challenges of Modernity*. Walnut Creek, CA: AltaMira Press,

Burton, Emilie Hafner (2005) "Human Rights in a Globalizing World: The Paradox of Empty Promises," *American Journal of Sociology*, Vol. 110, No. 5, March, pp. 1373-1411.

Carrillo, Arturo (2004) "Bringing International Law Home," *Columbia Human Rights Law Review*, Vol. 35, pp. 527-287

Checkel, Jeffrey (1998) "The Constructivist Turn in International Relations Theory." *World Politics*, Vol. 50, No. 2, pp. 324-348.

Checkel, Jeffrey (1997) "International Norms and Domestic Politics: Bridging the Rationalist- Constructivist Divide," *European Journal of International Relations*, Vol. 2, No. 4, pp. 473-495.

Chesler, Phyllis (2010) "Worldwide Trends in Honor Killings," *Middle East Quarterly*, Spring, pp. 3-11.

Chosky, Carol and Jamsheed Chosky (2015), "The Saudi Connection: Wahhabism and Global Jihad," *World Affairs Journal*, May/June.

CIRI Human Rights Data Project, available at <http://www.humanrightsdata.com/>.

Cismas, Ioana (2014) *Religious Actors and International Law*. Oxford: Oxford University Press.

Cooper, John (ed.) (1998) *Islam and Modernity: Muslim Intellectuals Respond*. London and New York: I. B. Tauris.

Coulson, Noel (1964) *A History of Islamic Law*. Edinburgh, Edinburgh University Press.

Dailami, Ahmed (2017) "Militancy, Monarchy and the Struggle to Desacralist Kingship in Arabia" in Faisal Devji, Zaheer Kazmi (eds) *Islam After Liberalism*. London: Hurst.

Dalacoura, Katerina (2003) *Engagement or Coercion? Weighing Western Human Rights Policies Towards Turkey, Iran and Egypt*. London: The Royal Institute of International Affairs.

Dalacoura, Katerina (2005) "Islam and Human Rights" in Smith, Rhona and Christien Van Den Anker (eds). *The Essentials of Human Rights*. London: Hodder Arnold Education, pp. 207-209.

Dalacoura, Katerina (2007) *Islam, Liberalism and Human Rights*. London: I.B. Tauris.

Darraj, Susan Muaddi (2010) *The Universal Declaration of Human Rights*. New York: Infobase Publishing.

Donnelly, Jack "Human Rights and the Dialogue Among Civilizations," Available at <https://mysite.du.edu/~jdonnell/papers/dialogue.pdf>.

Donnelly, Jack (1982) "Human Rights and Human Dignity: An Analytic Critique of Non-Western Conceptions of Human Rights," *The American Political Science Review*, Vol. 76, No. 2, 1982, pp. 303-316.

Donnelly, Jack (2000) *Realism and International Relations*. Cambridge: Cambridge University Press.

Donnelly, Jack (2007) "The Relative Universality of Human Rights," *Human Rights Quarterly*, Vol. 29, No. 2, May, pp. 281-306.

Donnelly, Jack (2013) *Universal Human Rights in Theory and in Practice*, Third Edition. Ithaca: Cornell University Press.

Dresch, Paul and James Piscatori (eds.) (2005) *Monarchies and Nations: Globalisation and Identity in the Arab States of the Gulf*. London: I.B. Tauris.

Dunn, Kevin and Iver Neumann (2016) *Undertaking Discourse Analysis for Social Research*. Ann Arbor: University of Michigan Press

Eisenstadt, Samuel (2000) "Multiple Modernities," *Daedalus*, Winter, Vol. 129, No. 1, pp. 1-29.

Farouki, Suha Taji and Basheer M. Nafi, eds. (2004) *Islamic Thought in the Twentieth Century*. London: IB Tauris, p. 233.

Fernea, Elizabeth Warnock (1995) *Children in the Muslim Middle East*. Austin: University of Texas Press.

Finnemore, Martha (1993) "International Organizations as Teachers of Norms: The United Nations Educational, Scientific and Cultural Organization and Science Policy," *International Organization*, Vol. 47, Autumn, pp. 565-97.

Finnemore, Martha (1996) *National Interests in International Society*. Ithaca: Cornell University Press.

Ghabra, Shafeeq (2014) "Kuwait: At the Crossroads of Change or Political Stagnation," Middle East Institute, 20 May.

Gheciu, Alexandra (2005) "Security Institutions as Agents of Socialization? NATO and the 'New Europe,'" *International Organization*, Vol. 59, Fall, pp. 973-1012.

Glendon, Mary Ann (2001) *A World Made New: Eleanor Roosevelt and the Universal Declaration of Human Rights*. New York: Random House.

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

Haddad, Yvonne Yazbeck and Barbara Freyer Stowasser (eds.) (2004) *Islamic Law and the Challenges of Modernity*. Lanham, MD: Altamira Press.

Hakeem, FB (2003) "Alternative Perspectives on Penalty Under Sharia: A Review Essay," *International Journal of Comparative and Applied Criminal Justice*. Vol. 27, No. 1, pp. 85-105.

Hallaq, Wael (2014) *The Impossible State: Islam, Politics and Modernity's Moral Predicament*. New York: Columbia University Press.

Hallaq, Wael (2011) *Introduction to Islamic Law*. Cambridge: Cambridge University Press.

Hashmi, Sohail H. (2002) (ed.) *Islamic Political Ethics: Civil Society, Pluralism and Conflict*. Princeton: Princeton University Press.

Haskell, John (2017) "The Religion/Secularism Debate in Human Rights Literature" in Martti Koskeniemi and Monica Garcia-Salmones Rovira (eds.) *International Law and Religion: Historical and Contemporary Perspectives*. Oxford: Oxford University Press

Hasso, Frances (2011) *Consuming Desires: Family Crisis and the State in the Middle East*. Stanford: Stanford University Press.

Hasso, Frances (2005) "Problems and Promise in Middle East and North Africa Gender Research" *Feminist Studies*, Vol. 31, no. 3, Fall, pp. 653-678.

Hathaway, Oona and Harold Koh (2009) *Foundations of International Law and Politics*. Oxford: Oxford University Press.

Held, David and Kristian Ulrichsen (eds) (2012) *The Transformation of the Gulf: Politics, Economics and the Global Order*, Abingdon: Routledge. p. 93.

Helfer, Laurence R and Anne-Marie Slaughter (1997) "Toward a Theory of Effective Supranational Adjudication," *Yale Law Journal*, Vol. 107, No 2, November, pp. 273-391.

Hertog, Seffen (2017) "A Quest for Significance: Gulf Oil Monarchies' International 'Soft Power' Strategies and their Local Urban Dimensions" Working Paper, Available at http://eprints.lse.ac.uk/69883/1/Hertog_42_2017.pdf.

Hodgkinson, Peter (2016) *Capital Punishment: New Perspectives*. Abingdon: Routledge.

Hopf, Ted (1998) "The Promise of Constructivism in International Relations Theory," *International Security*, Summer, Vol. 23, No. 1, pp. 171-200.

Humanium (2013) "Children of the United Arab Emirates," 14 February. Available at <http://www.humanium.org/en/middle-east-north-africa/united-arab-emirates/>.

Kamali, Masoud (2001) "Civil Society and Islam: A Sociological Perspective," *Archives Europeennes de Sociologie*, Vol. 42, No. 3, pp. 457-482.

Ghabra, Shafeeq (1997) "Kuwait and the Dynamics of Socio-Economic Change," *The Middle East Journal*. Vol. 51, pp. 368-369.

Gilardi, Fabrizio "Transnational Diffusion: Norms, Ideas, and Policies," published in Walter Carlsnaes, Thomas Risse and Beth Simmons (eds) (2012), *Handbook of International Relations*, Thousand Oaks, CA: SAGE Publications, pp. 453-477.

Gonzales, Alessandra (2013) *Islamic Feminism in Kuwait: The Politics and Paradoxes*. New York: Palgrave Macmillan.

Johnson, Alastair Ian (2007) *Social States: China in International Institutions, 1980-2000*. Princeton: Princeton University Press.

Jones, Oliver and Clayton Utz (2007) "Jones v. Ministry of Interior of Kingdom of Saudi Arabia: An Exercise in Interpretation," *Singapore Yearbook of International Law*, Vol. 11, pp. 163-175.

Kazemi, Farouh (2002) "Perspectives on Islam and Civil Society" in Sohail H. Hashmi (ed.) *Islamic Political Ethics: Civil Society, Pluralism and Conflict*. Princeton: Princeton University Press.

Khalili, Laleh and Jillian Schwedler (2010) *Policing and Prisons in the Middle East: Formations of Coercion*. New York: Columbia University Press.

Khadduri, Majid (1978) "Marriage in Islamic Law: Modernist Viewpoints," *The American Journal of Comparative Law*, Vol. 26, No. 2, pp. 214-216.

Khan, Muhammad Muhsin (1997) *The Translation of the Meanings of Sahih Al-Bukhari Arabic-English, Volume 8*. Riyadh: Darussalam Publishers.

Koh, Chiu Yee, Kellynn Wee, Charmian Goh and Brenda Yeoh (2017) "Cultural Mediation Through Vernacularization: Framing Rights Claims Through the Day-off Campaign for Migrant Domestic Workers in Singapore," *International Migration*, Vol. 55, No. 3, pp. 89-104.

Koh, Harold H. (2007) "Is There a 'New' New Haven School of International Law?" *Yale Journal of International Law*, Vol. 32, No. 2, pp. 559-573.

Koh, Harold H. and Michael Doyle (2013) "The Case for International Law," *Foreign Affairs*, Vol. 92, No. 6, pp. 162-165.

Krause, Wanda (2012) "Gender and Participation in the Arab Gulf" in David Held and Kristian Ulrichsen (eds.) *The Transformation of the Gulf: Politics Economics and the Global Order*. New York: Routledge.

Lambert, Yves (1999) "Religion in Modernity as a New Axial Age: Secularization or New Religious Forms?" *Sociology of Religion*, Vol. 60, No. 3, pp. 303-333.

Lawton, John (1980) "Years of the Child," *Saudi Aramco World*, January/February, Vol. 31, No. 1.

Levitt, Peggy and Sally Merry (2009) "Vernacularization on the Ground: Local Uses of Global Women's Rights in Peru, China, India and the United States," *Global Networks*, Vol. 9, No. 4, pp. 441-461.

Littman, David (1999) "Universal Human Rights and 'Human Rights in Islam,'" *Midstream* (New York), February/March.

Lutz, Ellen and Kathryn Sikkink (2000) "International Human Rights Law and Practice in Latin America," *International Organization*, Volume 53, Issue 03, June, pp. 633-659.

Maktabi, Rania (2016) "Female Citizenship and Family Law in Kuwait and Qatar: Globalization and Pressures for Reform in Two Rentier States," *Nidaba*, Vol. 1, No.1, pp. 20-34.

Maktabi, Rania (2015) "Reluctant Feminists? Islamist MPs in Kuwaiti Parliamentary Documents After 2005," Conference Paper, presented at BRISMES Conference London, 24-26 June 2015.

Masud, Muhammad Khalid, Armando Salvatore and Martin van Bruinessen (eds) (2009) *Islam and Modernity: Key Issues and Debates*. Edinburgh: Edinburgh University Press. Available at https://pmr.uchicago.edu/sites/pmr.uchicago.edu/files/uploads/Salvatore_The%20ReformProjectintheEmergingPublicSpheresModernity.pdf.

Mathewson Denny, Frederick (2004) "Muslim Ethical Trajectories in the Contemporary World" in William Schweiker (ed) *Religious Ethics*. Oxford: Blackwell Publishers.

Mayer, Ann Elizabeth (2004) “Internationalizing the Conversation on Women’s Rights: Arab Countries Face the CEDAW Committee” in Barbara Yvonne Yzbeck Haddad and Barbara Freyer Stowasser (eds.) *Islamic Law and the Challenges of Modernity*. New York: Altamira Press.

Mayer, Ann Elizabeth (2013) *Islam and Human Rights: Tradition and Politics, 5th Edition*. Boulder: Westview Press.

Mayer, Ann Elizabeth (1994) “Universal versus Islamic Human Rights: A Clash of Cultures or Clash with a Construct,” *Michigan Journal of International Law*, Vol. 15, No. 307.

McCrudden, Christopher (2008) “Human Dignity and Judicial Interpretation of Human Rights,” *European Journal of International Law*, Vol. 19, No. 4, pp. 655-724.

Mearsheimer, John (2006) “Structural Realism,” in Tim Dunne, Mija Kurki, and Steve Smith (eds.) *International Relations Theories: Discipline and Diversity*. Oxford: Oxford University Press.

Merry, Sally Engle (2016) “Human Rights Monitoring, State Compliance, and the Problem of Information,” pp. 32-52 in Heinz Klug and Sally Engle Merry (eds.) *The New Legal Realism, Vol. II: Studying Law Globally*. Cambridge: Cambridge University Press, pp. 32-52.

Merry, Sally Engle (2016) *The New Legal Realism, Vol II: Studying Law Globally* (Co-edited with Heinz Klug). Cambridge: Cambridge University Press.

Miller, Gail (2005) “Defining Torture.” Floersheimer Center for Constitutional Democracy, Benjamin N. Cardozo School of Law, Available at <https://cardozo.yu.edu/sites/default/files/Defining%20Torture.pdf>.

Moghissi, Haideh ed. (2005) *Women and Islam: Images and Realities*. Volume 1. Abingdon: Taylor & Francis.

Möller, Lena-Maria (2016) “Struggling for Modern Family Law” in Ed. Nadima Yassari (ed.) *Changing God’s Law: The Dynamics of Middle Eastern Family Law*. Abingdon: Routledge.

Möller, Lena-Maria (2016) “An Enduring Relic: Family Law Reform and the Inflexibility of Wilāya,” *American Journal of Comparative Law*, Vol. 63, No. 4, pp. 893-925.

Moors, Annelies (1999) “Debating Islamic Family Law: Legal Texts and Social Practices” in Margaret Meriwether and Judith Tucker (eds.) *A Social History of Gender in the Modern Muslim Middle East*. Boulder: Westview Press, pp. 141-175.

“Musawah Framework for Action” (2009) Available at <http://www.musawah.org/sites/default/files/Musawah-Framework-AR.pdf>.

Neumayer, Eric (2005) “Do International Human Rights Treaties Improve Respect for Human Rights?” *The Journal of Conflict Resolution*, Vol. 49, No. 6, December, pp. 925-953.

Olimat, Mohamed (2011) “Women and the Kuwaiti National Assembly,” *Journal of International Women’s Studies*, March. Vol. 12, No. 3, pp. 76-95.

Park, Susan (2006) “Theorizing Norm Diffusion within International Organizations,” *International Politics*, Vol. 43, No. 3, July 2006, pp. 342-361.

Posner, Eric (2014) *The Twilight of Human Rights Law*. Oxford: Oxford University Press.

Price, Daniel (2002) “Islam and Human Rights: A Case of Deceptive First Appearances,” *Journal for the Scientific Study of Religion*, Vol. 41, No. 2, June, pp. 213-225.

Rahman, Fazlur (1966) "The Impact of Modernity on Islam," *Islamic Studies*, Vol. 5, No. 2 (June), pp. 113-128.

Rehman, Javaid (2007) "The Sharia, Islamic Family Laws and International Human Rights Law: Examining the Theory and Practice of Polygamy and Talaq." *International Journal of Law, Policy and the Family*. Vol. 21, pp. 108-127.

Reus-Smit, Christian (2005) "Constructivism" in Scott Burchill, Andrew Linklater, Richard Devetak, Jack Donnelly, Matthew Paterson, Christian Reus-Smit and Jacqui True. *Theories of International Relations*, Third edition. Basingstoke: Palgrave Macmillan.

Reza, Sadiq (2007) "Torture and Islamic Law," *Chicago Journal of International Law*, Vol. 8, No. 1, pp. 21-41.

Rishmawi, Mervat (2005) "The Revised Arab Charter on Human Rights: A Step Forward?" *Human Rights Law Review*, Vol. 5 No. 2, pp. 361-376.

Roy, Olivier (1994) *The Failure of Political Islam*. Cambridge: Harvard University Press.

Said, Abdul Aziz (1979) "Precept and Practice of Human Rights in Islam," *Universal Human Rights [Human Rights Quarterly]*, Vol. 1, No. 1, pp. 63-80.

Said, Abdul Aziz (1979) "Pursuing Human Dignity," *Society*, Vol. 15, No. 34-8.

Schmidt, Vivien (2008) "Discursive Institutionalism: The Explanatory Power of Ideas and Discourse," *Annual Review of Political Science*, Vol. 11, June, pp. 303-326.

Schmidt, Vivien (2010) "Taking Ideas and Discourse Seriously: Explaining Change Through Discursive Institutionalism as the Fourth 'New Institutionalism,'" *European Political Science Review*, Vol. 2, No. 1, pp. 1-25.

Seikaly, May, Rahil Roodsaz and Corine van Egten (eds) (2014) "The Situation of Women in the Gulf States," Directorate-General for Internal Policies: Policy Department, Citizens' Right and Constitutional Affairs.

Selbik, Kjetil (2011) "Elite Rivalry in a Semi-Democracy: The Kuwaiti Press Scene," *Middle Eastern Studies*, Vol. 47, No. 3, pp. 477-496.

Shalaby, Marwa (2015) "Women's Political Representation in Kuwait: An Untold Story." Rice University. Baker Institute for Public Policy.

Shultziner, Doron and Mary Ann Tetreault (2011) "Paradoxes of Democratic Progress in Kuwait: The Case of the Kuwaiti Women's Rights Movement," *Muslim World Journal of Human Rights*, Vol. 7, No, 2, pp. 1-25.

Sikkink, Kathryn (2017) *Evidence for Hope: Making Human Rights Work in the 21st Century*. Princeton: Princeton University Press.

Simmons, Beth and Richard Steinberg (2003) *International Law and International Relations*. Cambridge: Cambridge University Press.

Simmons, Beth (2009) *Mobilizing for Human Rights*. Cambridge: Cambridge University Press.

Simmons, Beth and Zachary Elkins (2005) "On Waves, Clusters and Diffusion: A Conceptual Framework," *Annals of the American Academy of Political and Social Science*, Vol. 598, pp. 33-51.

Snyder, Jack (ed.) (2011) *Religion and International Relations Theory*. New York: Columbia University Press, pp. 1-23.

Sonbol, Amira al-Azhary (1995) "Adoption in Islamic Society: A Historical Survey" chapter in Elizabeth Warnick Fernea (ed.) *Children in the Muslim Middle East*. Austin: University of Texas Press.

Sonbol, Amira al-Azhary (ed.) (2012) *Gulf Women*. Doha, Qatar: Bloomsbury Publishing.

Sprinz, Detlef and Yael Wolinsky (eds.) (2002) "Cases, Numbers, Models: International Relations Research Methods," Available at [http://www.sscnet.ucla.edu/polisci/faculty/trachtenberg/syllabi_lists/harvard/moravcsik%20\(sprinz%20wolinsky\).pdf](http://www.sscnet.ucla.edu/polisci/faculty/trachtenberg/syllabi_lists/harvard/moravcsik%20(sprinz%20wolinsky).pdf).

Steiner, Henry and Philip Alston (2000) *International Human Rights in Context, Law and Politics Morals*, Second Edition, Oxford: Oxford University Press.

Stenslie, Stig (2011) *Regime Stability in Saudi Arabia: The Challenge of Succession*. London and New York: Routledge.

Ssenyonjo, Manisuli (2012) "Jihad Re-examined: Islamic Law and International Law," *Santa Clara Journal of International Law*, Vol. 10, No. 1, pp. 1-33.

Taylor, Stephanie (2001) in Margaret Wetherell, Stephanie Taylor and Simeon J. Yates (2001) *Discourse as Data: A Guide for Analysis*. Sage Books.

Tellenbach, Silvia (2014) "Islamic Criminal Law" in Markus Dubber and Tatjana Hornle (eds.) *The Oxford Handbook of Islamic Criminal Law*. Oxford: Oxford University Press.

Tibi, Bassam (2009) *Islam's Predicament with Modernity: Religious Reform and Cultural Change*. Abingdon: Routledge.

Tucker, Judith (2008) *Women, Family and Gender in Islamic Law*. Cambridge: Cambridge University Press.

Ulrichsen, Kristian Coates (2016) “Pushing the Limits: The Changing Rules of Kuwait’s Politics,” *World Politics Review*, 17 March.

‘Uthman, M.F. (1982) *huqūq al-insān bayna al-sharī’a’ h al-islamiyyah wa al-fīkr al-qānūnī al-gharbī* (Human Rights Between the Islamic Sharia and Western Legal Thought). Beirut: Dar al –Shuruq.

Venkatraman, Bharathi Anandhi (1995) “Islamic States and the United Nations Convention on the Elimination of All Forms of Discrimination Against Women: Are the Shari’a and the Convention Compatible?” *The American University Law Review*, Vol 44. No. 5.

Vincent, R. J. (1986) *Human Rights and International Relations*. Cambridge: Cambridge University Press.

Wadud, Amina (1999) *Qur’an and Women*. 2nd edition. Oxford: Oxford University Press.

Weber, Max (1905) *The Protestant Ethic and the Spirit of Capitalism*. CreateSpace Independent Publishing Platform.

Welchman, Lynn (2010) “Bahrain, Qatar, UAE: Family Law Codifications in Three Gulf States.” Pre-publication text: published in the *International Survey of Family Law* pp.163-178. Available at http://eprints.soas.ac.uk/10899/1/Welchman_'Bahrain,_Qatar,_UAE'_ISFL_2010.pdf.

Welchman, Lynn (2012) “Gulf Women and the Codification of Muslim Family Law.” In Amira El-Azhary Sonbol (ed.) *Gulf Women*. Doha: Bloomsbury Qatar Foundation, pp. 367-406.

Welchman, Lynn (2005) “Human Rights” in Suad Joseph (ed.), *Encyclopedia of Women and Islamic Cultures Vol. II: Family, Law and Politics*, Leiden: Brill, pp. 265-268.

Welchman, Lynn (2012) “Musawah, CEDAW, and Muslim Family Laws in the 21st Century,” in Anver Emon, Mark Ellis and Benjamin Glahn (eds.) *Islamic Law and International Human Rights Law*. Oxford: Oxford University Press.

Welchman, Lynn (2011) “Muslim Family Laws and Women’s Consent to Marriage: Does the Law Mean What it Says,” *Journal of the Center for the Critical Analysis of Social Difference at Columbia University*, Vol. 1, pp. 63-79.

Welchman, Lynn (2007) *Women and Muslim Family Laws in Arab States: A Comparative Development of Textual Development and Advocacy*. Amsterdam University Press.

Wendt, Alexander (2000) *Social Theory of International Politics*. Cambridge: Cambridge University Press.

Wheeler, Deborah (2006) *The Internet in the Middle East: Global Expectations and Local Imaginations in Kuwait*. New York: SUNY Press.

Zubaida, Sami (2005) “Islam and Secularization,” *Asian Journal of Social Science*, Vol. 33, No. 3, pp. 438-448.

Zubaida, Sami (2004) *Law and Power in the Islamic World*. New York: I.B. Tauris.

Appendix: CEDAW and the Language of Gender “Discrimination” in Kuwait – The Case of Women’s Rights Reporting in *Al-Anba*

Chapter 4, section 3 of this thesis identified the ways in which ideas about Islam and women's rights have been discussed in relation to Kuwait's commitment to the CEDAW. The chapter on CEDAW traced the use of UN concepts of respect for 'non-discrimination' and gender 'equality' in Kuwait's discussions in UN meetings. This section now applies a correlationist perspective to argue that Kuwait's ratification of CEDAW in 1994 and broader engagement with the UN CEDAW Committee since ratification seems to be related to the increased use of global women's rights language in the local press reporting in Kuwait. This is evidence of vernacularization and localization as global human rights language has been connecting with language employed to shape specific debates on Islam and women's rights in Kuwait. In illustrating how CEDAW and associated women's rights language is being incorporated in domestic press coverage of policies affecting women in Kuwait, this appendix further develops the observations in the thesis about global human rights norm diffusion in the context of UN human rights treaty commitment in the GCC states.

Since Kuwait ratified CEDAW in 1994 some progress enhancing women's rights has been achieved, suggesting the treaty may at least be correlated with reforms. This has been evident most prominently in three areas: reforms granting women the right to vote and stand in parliamentary and local elections in 2005 and the election of the first female candidates to the National Assembly in 2009; reforms to enhance women's autonomy from male authority, most prominently reflected in the 2009 amendment to the passport law allowing women to obtain passports without spouse consent; and the growth of reform initiatives to enhance women's rights, such as the Abolish 153 campaign to end discriminatory laws governing honor crimes. Despite considerable opposition, there is an

active women's rights movement in Kuwait, with various reform efforts supported by Islamists and liberal human rights activists alike. I argue that this recent history of women's rights activism in Kuwait has been marked by the increased use of the term 'discrimination against women' in human rights discourse since ratification of CEDAW, and suggest that this may be related to the influence of the CEDAW. While not the only factor, CEDAW is part of this overall framing process: this is indicated by the increased incorporation of the terminology of 'non-discrimination' alongside the growing discussion of CEDAW in the context of women's rights reporting in Kuwaiti press.

The use of CEDAW and its language in Kuwaiti human rights discourse is illustrated by demonstrating the increased use of the phrase 'discrimination against women' [*al-tamyīz ḍidd al-mar'ah*] alongside the growing use of direct references to the CEDAW in *Al-Anba*, a prominent, conservative and pro-government Kuwaiti Arabic-language newspaper. This is observed primarily since 2006, a period of greater press freedom in Kuwait, and as such this time period is the focus of analysis for this appendix. This newspaper in particular was selected because of its conservative slant; in this newspaper, the adoption of global women's rights vocabulary was not the norm previously and women's rights coverage has been less prominent than in some more liberal newspapers. References to the CEDAW as well as use of the terminology of preventing 'discrimination' against women have together gained prominence in articles in *Al-Anba* over time, suggesting CEDAW has contributed at least in some ways to the spread of the terminology in vernacular in Kuwait on human rights. The articles identified indicate several key issue areas specific to the Kuwaiti context in which CEDAW and the concept of non-discrimination have been particularly relevant: the rights of women (and their children)

who marry non-Kuwaitis (including the bidun community), women's rights in the family (as they relate to custody and divorce and legal autonomy from fathers and husbands), women's labor rights (including regulations governing the hours in which women can work and the positions they can hold), and women's political representation. Reports in *Al-Anba* conveying ideas supportive of CEDAW principles around these issue areas sometimes discuss CEDAW directly and sometimes indirectly, and occasionally discuss respect for CEDAW with the caveat of needing to ensure compatibility with Islam, framing CEDAW concepts of non-discrimination as they fit within a particular legal and social context and as they relate to particular issues in Kuwait.

Growing direct mentions of CEDAW and the concept of non-discrimination as they relate to these issues in *Al-Anba* articles suggest that CEDAW has increasingly become an important tool in local press for discussion about women's rights in Kuwait. This indicates that CEDAW should be further explored for its impact on national human rights discourses, the possibilities of which are discussed in the concluding section. Avenues for further research and possible methodologies to apply are discussed in the final section of the appendix.

Reforms and local activism in the context of CEDAW

This section discusses several aspects of the relevant history of the women's rights movement in Kuwait—including the extension of the right to vote to women, the resultant partial withdrawal of Kuwait's reservation to CEDAW, and other women's rights progress—as illustrative of broader changes in the integration of global human rights norms

related to CEDAW ratification in Kuwait. Ratification has been part of this story; it is both reflective of normative change occurring in Kuwait as well as a factor in the broader integration of global women's rights norms in Kuwait. Below, the changes in the period before and after ratification will be briefly outlined and then the nature of press reporting on women's rights since 2006 is discussed.

As introduced in Chapter 3, women's rights advocacy in Kuwait long predates CEDAW ratification. In the early 1960s a number of women's societies formed in Kuwait, including the Arab Women Development Society (AWDS) and the Women's Cultural and Social Society (WCSS) (and affiliated group Nadi al-Fatat (Girls' Club)), under the umbrella of the Kuwaiti Women's Union.⁶¹⁴ The AWDS was more liberal and advocated particularly for women's political rights. Nouria Al-Sadani, the AWDS president, was the first to submit a complaint to the National Assembly demanding the right to vote in 1971, but faced resistance, and the AWDS was eventually shut down.⁶¹⁵

CEDAW ratification took place at the beginning of a gradual period of political and social change in Kuwait. As Kuwait's Amir Jaber was balancing the growth of Islamist groups in Kuwait, he ratified CEDAW by Amiri decree in 1994. During this year the Federation of Kuwaiti Women's Association (FKWA) formed, a group with a Sunni

⁶¹⁴ While the WCSS tended to support women's roles primarily within the home and work mainly in the charitable sector, the AWDS gradually became more liberal and activist in its stance advocating, for example, for women to have increased civil and political rights. See discussion of these women's organizations in Doron Shultziner and Mary Ann Tetreault (2011) "Paradoxes of Democratic Progress in Kuwait: The Case of the Kuwaiti Women's Rights Movement," *Muslim World Journal of Human Rights*, Vol. 7, No. 2, pp. 1-25 and Haya al-Mughni (2005) "From Gender Equality to Female Subjugation: The Changing Agendas of Women's Groups in Kuwait" in Haideh Moghissi (ed.) *Women and Islam: Images and Realities, Volume 1*. New York: Routledge.

⁶¹⁵ Doron Shultziner and Mary Ann Tetreault (2011) "Paradoxes of Democratic Progress in Kuwait: The Case of the Kuwaiti Women's Rights Movement," *Muslim World Journal of Human Rights*, Vol. 7, No. 2, pp. 1-25.

Islamist slant with the wife of the then Crown Prince as its president.⁶¹⁶ The Amir then attempted to grant women the right to vote and stand for office by decree in 1999, but this was overturned by conservative and Islamist forces in the National Assembly. In 2004, the government licensed the Kuwait Society for Human Rights (KSHR) which had been acting independently for ten years. Then, six years after the Amir's initial attempt to grant female suffrage, women were granted the right to vote in 2005 by a National Assembly vote of 25-23.

After this period of change, women were eligible and stood as candidates for election, but progress was slow – women did not win in the next two parliamentary elections, the first in April 2006 and the next in May 2006. The WCSS campaigned to encourage women to vote, framing this as a “right,” with posters reading “For your voice to rise...Use your right (*haqq*): Get involved, vote, participate in the 2006 elections.”⁶¹⁷ Despite women turning out to vote and initiatives promoting women's right to vote and stand for elections, only later in May 2009 were the first four women elected to parliament, and a number of women have been elected since in elections in 2012, 2013 and 2016.⁶¹⁸ In 2009 a landmark reform to the passport law was enacted to allow women to gain passports without the consent of their husbands.⁶¹⁹

The ratification of CEDAW could be seen as correlated with reforms enhancing women's rights since ratification, for example, the right to vote and run for office to women in 2005 as well the 2009 reform to the passport law. The question remains as to

⁶¹⁶ Meshal Al-Sabah (2013) *Gender and Politics in Kuwait: Women and Political Participation in the Gulf*. London: I.B. Tauris & Co.

⁶¹⁷ “Kuwaiti Women's 1st Election Day.” Exhibition: Global Fund for Women. Available at <http://exhibitions.globalfundforwomen.org/exhibitions/women-power-and-politics/voting/kuwaiti-women>.

⁶¹⁸ Marwa Shalaby (2015) “Women's Political Representation in Kuwait: An Untold Story.” Rice University. Report. Baker Institute for Public Policy.

⁶¹⁹ Reform to Article 15 of Kuwaiti Law on Passports, Law No. 11 of 1962. Official Gazette.

how significant CEDAW was to these changes, and whether or not it could lead to more extensive reforms, as many areas of discrimination against women remain in Kuwait. For example, Kuwaiti women married to non-Kuwaitis, unlike Kuwaiti men, cannot pass citizenship to their children or spouses, the law doesn't prohibit domestic violence or marital rape, restricts certain hours and roles that women can work, and Article 153 of the Kuwaiti penal code provides minimal punishment for men who commit honour crimes.⁶²⁰ Advocates continue to call for reforms to prevent discrimination against women across these areas.

The momentous passage of women's suffrage in Kuwait in the years following CEDAW ratification could be more clearly attributed to domestic political dynamics in Kuwait than directly to international factors such as the CEDAW, although the CEDAW is one factor among many contributing to framing and supporting both government and grassroots reform efforts. Despite some grassroots movement and the recognition of the KSHR, the women's suffrage bill seemed to have passed 2005 due to the concerted efforts in the government to advance a top-down change. Doron Shultziner and Mary Ann Tetreault argue that the Amir was motivated to pass the bill in 2006 to "avoid another humiliating defeat in parliament." They suggest that the Amir succeeded thanks to concerted efforts including the government promotion of the bill on national television, lobbying in parliament, and advocacy from elites such as Mohammad al-Sager, head of the Foreign Affairs Committee, supported by global liberal advocates, and even alleged

⁶²⁰ Human Rights Watch (2017) "Kuwait." Available at <https://www.hrw.org/world-report/2017/country-chapters/kuwait>.

payouts for government employees who supported the cause.⁶²¹ Shultziner and Tetreault also attribute the victory to the government's efforts alongside the activism of a relatively small number of Kuwaiti middle- and upper-class women, supported by personal motivation, international support and transformative contextual events.⁶²² Here, CEDAW is part of this larger picture, perhaps providing language and framing for international and domestic movements, without clearly serving as the direct causal link to women's suffrage.

Women's rights movements including the suffrage movement also incited resistance and backlash in Kuwait where a welfare state funded by oil and patriarchal and tribal social structure helped bolster the strength of the idea of a traditional family structure. As Tetreault and Shultziner claim, "Arguments for women's political rights couched in the language of human rights were often seen as threatening and resulted in more opposition than support by Kuwaiti women: conservative women also organized to curtail suffragist campaigns, for example, by collecting hundreds of signatures on petitions opposing women's suffrage."⁶²³ In this context women's rights efforts succeeded when they appealed not to international sentiments but to nationalist sentiment that tied the idea of women's rights with the idea of a bright future for Kuwait, attacking opponents as being anti-progress. As argued by Haya al-Mughni, Islamist women and men became key to the success of women's rights movements, where Islamist women played a formative role in interpreting women's rights in Kuwait, often partnering with liberal women activists, engaging in the process of reinterpreting Islamic sources through the concept of *ijtihad*.⁶²⁴

⁶²¹ Doron Shultziner and Mary Ann Tetreault (2011) "Paradoxes of Democratic Progress in Kuwait: The Case of the Kuwaiti Women's Rights Movement." *Muslim World Journal of Human Rights*, Vol. 7, No. 2, pp. 1-25, p. 3.

⁶²² Ibid.

⁶²³ Ibid, p. 6.

⁶²⁴ Haya al-Mughni (2010) "The Rise of Islamic Feminism in Kuwait" *Revue des mondes musulmans et de la Méditerranée* [Review of Muslim Worlds and the Mediterranean], December. No. 128, pp. 167-182.

In 2005 the *hizb al-ummah* Islamist group in Kuwait declared support for women's political participation, weakening the authority of religious opposition.⁶²⁵ The Islamist group the Islamic Constitutional Movement in Kuwait announced support for women's right to vote, but not for women to run for office, citing the need for gradual change.⁶²⁶ Some Islamists seemingly pushed for improving women's legal status in Kuwait as part of their support for the position of the marginalized *bidun* population. These Salafi supporters of women's rights have been labeled "reluctant feminists," who support the idea of certain patriarchal norms such as male dominance over the family and the home, but as a result of their larger interests have supported a broad swath of initiatives leading to strengthened female citizenship rights and even expanding labor rights for women.⁶²⁷

CEDAW remains clearly a piece of the picture. Kuwait's human rights organizations refer to the country's commitment to CEDAW as part of their advocacy. These domestic advocacy groups have participated directly in CEDAW's monitoring by submitting shadow reports directly to the CEDAW Committee alongside a number of international human rights advocacy organizations and networks (such as Musawah, the International Disability Alliance, and Human Rights Watch) to supplement the government's 2010 and 2015 CEDAW reports. The Kuwait Society for Human Rights (KSHR) noted in its 2011 Shadow Report a number of areas of law which required reform to comply with Kuwait's CEDAW commitments, for example, arguing that "Article 29 of Kuwaiti Constitution states 'All people are equal in human dignity, and in public rights and

⁶²⁵ Haila Al-Mekaimi (2008) "Kuwaiti Women's Tepid Political Awakening," *Arab Insight*, Vol. 2, No. 1, pp. 53-59.

⁶²⁶ Haya al-Mughni (2010) "The Rise of Islamic Feminism in Kuwait," *Revue des mondes musulmans et de la Méditerranée* [Review of Muslim Worlds and the Mediterranean], December. No. 128, pp. 167-182.

⁶²⁷ Rania Maktabi (2016) "Female Citizenship and Family Law in Kuwait and Qatar: Globalization and Pressures for Reform in Two Rentier States." *Nidaba*, Vol. 1, No. 1, pp. 20-34, p. 25 and (2015) "Reluctant Feminists? Islamist MPs in Kuwaiti Parliamentary Documents After 2005," Conference Paper, presented at BRISMES Conference London, 24-26 June 2015.

duties, without distinction as to race, origin, language or religion.’ But, the Kuwaiti Penal Code does not include any article to criminalize and punish those [who] practice discrimination based on gender.”⁶²⁸ The Kuwait Society for the Basic Evaluators of Human Rights (KABEHR) used its shadow report in 2015 to urge the government to “necessarily publicise” the CEDAW report and its comments to “improve the public awareness of CEDAW” to help advance women’s rights in Kuwait.⁶²⁹ In this way, CEDAW has been a specific tool that local and international human rights groups use to promote women’s rights agendas in Kuwait, at times directly engaging with the Convention through shadow reporting to call for government reform and action.

This section has demonstrated that CEDAW is a part of a broader story of domestic change in Kuwait. The question remaining to be explored is the degree to which CEDAW has been a factor linked to these changes. I will now argue that the enhancement of women’s rights in Kuwait, partial though it has been, has also been supported by the increased framing of women’s rights issues as a fight against “discrimination” alongside the increased relevance of CEDAW across both conservative and liberal voices in Kuwait. This is demonstrated in analysis of a prominent Kuwaiti newspaper in the section that follows.

The terminology of ‘discrimination’ and reference to CEDAW in Al-Anba women’s rights reporting

⁶²⁸ Kuwait Society for Human Rights (2011) “Shadow Report of the Kuwait Society for Human Rights,” p. 1.

⁶²⁹ Kuwaiti Society for the Basic Evaluators of Human Rights (2015) “Shadow Report on the Implementation of the Convention on the Elimination of All Forms of Discrimination Against Women by the State of Kuwait,” p. 8.

The terminology of preventing ‘discrimination’ (*tamyīz*) as it relates to the rights of women is just one formulation of language used in contemporary women’s rights advocacy in Kuwait (other formulations include terminology of *musawah*, equality or of *haqq*, rights). However, I argue that the concept and terminology of non-discrimination as it relates to gender is gaining in prominence in Kuwait’s press reporting on women’s rights, which may be correlated with the ratification of CEDAW and related global human rights activism. The terminology of non-discrimination is increasingly used by government officials, Islamists, and liberal activists alike in Kuwait in the context of women’s rights activism. It is used in Kuwait to discuss women’s rights as a general concept embedded in related discourses on “rights” and “equality”, and also has particular usage in the press coverage most prominently related to women’s political participation, equal rights in marriage, and the elimination of other discriminatory areas of law such as that of the labor law and in criminal law.

I illustrate that the use of the term ‘discrimination’ (*tamyīz*) as it relates to the rights of women in these areas has been increasing in *Al-Anba* articles particularly in the period between 2006 and 2010, and also suggest that this has been explicitly linked to the CEDAW as illustrated by an increase in articles directly mentioning CEDAW. Importantly, the articles analyzed where an increase in this terminology is observed were published after Kuwait’s National Assembly approved a new press and publication law in 2006.⁶³⁰ The new law “responded to civil society pressures” for increased freedom of the press, easing restrictions on licenses and preventing the government from what previously were simple avenues for shutting down media, ending a “de facto monopoly” of the government on the

⁶³⁰ Kuwaiti Law on Press and Publications, Law No. 3 of 2006. Official Gazette.

private dailies in Kuwait.⁶³¹ After the 2006 changes to the law, Arabic language dailies grew in number, reshaping the media landscape in Kuwait and, arguably, expanding the political space for more robust reporting on human rights in Kuwait by way of ensuring greater freedom of the press.

Al-Anba was specifically selected as one of the widely read Arabic language daily newspapers in Kuwait, and also selected for its moderate, slightly conservative and pro-government stance. It was selected to help illustrate change among the more conservative voices in Kuwait not to exclude other perspectives and papers that would also be useful for consideration (see section on ‘future research.’) In 2006, *Al-Anba* was “one of the most widely read newspaper(s) in Kuwait” and was labeled in 2012 as one of Kuwait’s “top three” newspapers.⁶³² Other widely read daily newspapers in Kuwait are *Al-Qabas*, *Al-Watan*, *Al-Siyassah* and *al-Rai al-Am*, as well as a number of weekly and periodical magazines and newspapers.⁶³³ *Al-Anba* was launched in 1976, and is owned by Khalid al-Marzouq, an elite businessman. The articles in the newspaper range from more neutral reporting on news and events, to interview-based profiles of individuals and organisations, to op-ed style opinion pieces on political and social issues. *Al-Anba* is sometimes described as “conservative” and somewhat “pro-government.”⁶³⁴ Other top Arabic dailies such as *Al-Qabas* and *Al-Siyassah* have a more liberal stance, and often cover the activities of liberal

⁶³¹ Kjetil Selvik (2011) “Elite Rivalry in a Semi-Democracy: The Kuwaiti Press Scene,” *Middle Eastern Studies*, Vol. 47, No. 3, pp. 477-496, p. 477.

⁶³² Deborah Wheeler (2006) *The Internet in the Middle East: Global Expectations and Local Imaginations in Kuwait*. New York: SUNY Press, p. 80 and Anti-Defamation League (2012) “Arab Media Review,” January-June, Available at <https://www.adl.org/sites/default/files/documents/assets/pdf/anti-semitism/Arab-Media-Review-January-June-2012.pdf>, p.48.

⁶³³ Ibid.

⁶³⁴ Kjetil Selvik (2011), p. 482 and New York Times (1990) “Kuwait Vote Seen as Essential to Democracy,” 10 June. Available at <http://www.nytimes.com/1990/06/10/world/kuwait-vote-seen-as-essential-to-democracy.html>.

women's groups, while Islamist women's activities are covered more extensively in *Al-Anba* and *Al-Watan*.⁶³⁵

I searched *Al-Anba*'s online archive of newspaper reports for articles containing the terminology of discrimination (*tamyīz*) addressing the rights of women, and identified an increase in number of articles using this language in relation to women's rights in Kuwait since 2006. I then searched these articles for whether or not they directly mention CEDAW itself, observing an increase in these articles directly discussing CEDAW as well. Not all articles were supportive of CEDAW and its principles. These articles were also analyzed for their topics and angle, to gauge how CEDAW and the vocabulary of non-discrimination are used in the context of this reporting.

The findings firstly reveal a clear increase in the usage of the phrase *al-tamyīz* or close variations) in *Al-Anba* articles supportive of reforms to advance women's rights particularly between the period of 2006-2010 to advocate for reforms in Kuwait. In 2006, no articles were identified using the terminology of discrimination in reporting on women's issues, and in 2007 two articles were identified that used this term. The first, a July 2007 report on a group of former female candidates for the national assembly calling on government to reconsider the labor law in the private sector to stop discrimination on the hours and roles (*tamyīz*) in which women can work, and the second was an article reporting research from by a legal firm indicating the nature of gender discriminatory laws across a number of legal areas in Kuwait.⁶³⁶ In 2008, the number increased - five articles used the

⁶³⁵ Haya Al-Mughni (2005) "Kuwait" in Sameena Nazir and Leigh Tomppert (eds.) *Women's Rights in the Middle East and North Africa: Citizenship and Justice*. Lanham: Rowman & Littlefield Publishers, Inc, p. 138.

⁶³⁶ *Al-Anba* (2007) "Shabakat al-mar'ah tunāshid al-qiyādah al-siyāsiyyah radd al-ta'dīlāt 'alā qānūn 'amal al-nisā'" [The Women's Network Implores the Political Leadership to Reject the Amendments to the Women's Labor Code] 2 July. Available at <http://www.alanba.com.kw/ar/kuwait-news/13357/02-07-2007-المرأة-تشبك-المنساء-عمل-قانون-على-اتالت-عدي-رد-السياسية-القيادة-تناشد>

term in discussing women's issues. Most of these 2008 articles similarly mention discrimination in articles calling for reform to law, prominently around women's rights in the family and women's political representation, although one simply mentions the discrimination in a report that praises the government for upholding the rights of women and praises it for preventing discrimination.⁶³⁷ By 2009, 18 articles discussed discrimination against women, some praising the government, for example, for its commitment to CEDAW by fighting discrimination in the reform to the 2009 passport law, but more calling for reform to prevent and eliminate discrimination against women. For example, an October 2009 article continued discussion on the importance of reforming labor law to remove restrictions on the hours and roles in which women can work to counter discrimination against women, reflecting ongoing debates in this time surrounding reforms to the private sector labor law in Kuwait framed as an issue of 'discrimination'.⁶³⁸ This increase in the use of the term suggests that as a term itself, "discrimination" is increasingly used in reporting in the paper as a framing for articles calling for greater rights and freedoms for women.

The second grouping of findings indicates that the CEDAW itself is also increasingly mentioned in *Al-Anba* articles. This increase in discussion of CEDAW in the paper occurred only after the growing incorporation of the terminology of non-

and *Al-Anba* (2007) "Al-Naqī: Al-Tashrī'āt lā tazāl taḥmil al-kathīr min jawānib al-tamyīz didd al-mar'ah al-Kuwaytiyyah" [Al-Naqi: Legislation Still Contains Many Aspects of Discrimination Against Kuwaiti Women] 4 August. Available at <http://www.alanba.com.kw/ar/kuwait-news/14809/04-08-2007> -النقي-الكويتي-المرأة-ضد-التمييز-جوانب-الكثير-تحت-حمل-تزال-التشريعات

⁶³⁷ *Al-Anba* (2008) "2008 'ām 'ālamī li-al-mar'ah al-khalijīyyah wa-al-Kuwaytiyyāt fī al-muqaddimah" [2008 is a Women's Year for Gulf Women, and Kuwaiti Women are at the Forefront] 21 January. Available at <http://www.alanba.com.kw/ar/kuwait-news/22183/21-01-2008> -عام-عالمي-للمرأة-عالمي-للكويتيات-مقدمة

⁶³⁸ *Al-Anba* (2009) "Ta'dīlāt ghurfat al-tijārah 'alā qānūn al-'amal fī al-qitā' al-ahlī tataḍamman mulāḥazāt 'alā 16 māddah min al-qānūn" [The Chamber of Commerce's Amendments to the Private Sector Labor Code Contain Remarks on 16 Articles of the Code] 5 October. Available at <http://www.alanba.com.kw/ar/kuwait-news/parliament/69410/05-10-2009> -تتضمن-الاهلي-القطاع-العمل-قانون-على-التجارة-غرفة-تعدلات-ملحظات

discrimination observed more generally in reporting on women's issues, indicating that increasing use of this terminology of CEDAW in local vernacular is correlated with growing significance of the CEDAW, but that this process is gradual and related to the importance of broader vernacularization of language of non-discrimination in Kuwait as it relates to women's rights issues. Only one July 2007 *Al-Anba* article mentioned CEDAW, as discussed above, reporting on activists calling on the government to reform the code because it is discriminatory, and also because it violates Kuwait's own commitment to the CEDAW.⁶³⁹ CEDAW was only directly mentioned in *Al-Anba* next in 2009, in an article discussing the rights of citizenship particularly of the disabled including disabled women, loosely connecting the issue to Kuwait's broader obligations under international law, including the ICESR, the ICCPR, the CERD and the CEDAW.⁶⁴⁰ By 2010, the number of articles mentioning CEDAW increased to eight. Several of these eight articles mention the CEDAW in neutral articles reporting on Kuwait's commitments, and yet several of these 2010 articles praise the government for upholding commitments to the Convention, and at least two mention CEDAW as part of broader reporting on calls for domestic reform to improve women's political representation and reform personal status, criminal law and other areas of law discriminating against women including upholding the rights of the bidun community. As an example of using CEDAW in calls for reform, an October 2010 article discusses lawyer Najla Al-Naqi's call for a law to help protect against sexual

⁶³⁹ *Al-Anba* (2007) "Shabakat al-mar'ah tunāshid al-qiyādah al-siyāsiyyah radd al-ta'dīlāt 'alā qānūn 'amal al-nisā'" [The Women's Network Implores the Political Leadership to Reject the Amendments to the Women's Labor Code] 2 July. Available at <http://www.alanba.com.kw/ar/kuwait-news/13357/02-07-2007> -المرأة شبكات - عمل حقان ون - على - التعتديلات ردد - السيسياسية القياادة نأشد

⁶⁴⁰ *Al-Anba* (2009) "'Al-Khārijīyyah' tarfuḍ wujūb manḥ al-jinsiyyah li-al-mu'āq: haqq siyādī li-al-dawlah lā yattafiq ma'a qānūn al-jinsiyyah" [The Ministry of Foreign Affairs Rejects Obligation to Grant Citizenship to the Disabled: A Sovereign Right of the State Inconsistent with Nationality Law] 26 July. Available at <http://www.alanba.com.kw/ar/kuwait-news/58641/26-07-2009> -الخراجية - الرفض - وجوب - الجنسية لمنح - حق السيادة للدولة لا يتفق مع القانون الجنسية - حق

harassment in universities, claiming several laws and practices in Kuwait violate Kuwait's commitments to the CEDAW.⁶⁴¹

Notably, however, there are exceptions in which the concept of non-discrimination as a global norm and as enshrined in the CEDAW has also been discussed in *Al-Anba* in a negative light in articles criticizing the United Nations and the Convention. For example, in a June 2011 article reporting on the meeting of the Women's Committee of the League of Islamic Scholars of the GCC states, a professor Amina Al-Jaber is quoted as criticizing the CEDAW and the broader United Nations organizations as being harmful to Islam and contrary to Sharia.⁶⁴²

Implications and ideas for further research

On the basis of the evidence in this appendix exploring reporting in *Al-Anba*, women's rights discussions in Kuwait sometimes incorporate a global women's rights language, which, among many factors, is supported by the country's commitment as party to CEDAW. While CEDAW is not necessarily changing language directly, it must be understood as part of a broader set of factors shaping social and political discourse in Kuwait, which may, potentially, open the door for future legal and policy reform.

This section's analysis of articles in *Al-Anba* mentioning CEDAW and language of 'non-discrimination' helps illustrate how global norms of preventing discrimination against

⁶⁴¹ *Al-Anba* (2010) "Al-Naqī: Nuṭālib bi-sann qānūn li-al-taḥarrush al-jinsī wa-tawḥīd nisab ba'd al-kulliyyāt al-'ilmiyyah" [Al-Naqi: We Call for a Law Against Sexual Harassment and for Gender Parity at Some Academic Institutions] 29 October. Available at <http://www.alanba.com.kw/ar/kuwait-news/146707/29-10-2010>
 العلمية-الكلية-ات-ب-عض-ن-س-ب-و-ت-و-ح-ي-د-ال-ج-ن-س-ي-ل-ل-ت-ح-ر-ش-ق-ان-ون-ب-س-ن-ط-ال-ب-ال-ن-ق-ي-2010

⁶⁴² *Al-Anba* (2011) "Al-Jābir: 'Sīdāw' tata'āraḍ ma'a al-Sharī'ah wa-qiyaḥihā wa-mabādi'ihā al-samḥah" [Al-Jaber: The CEDAW Treaty is Contrary to Sharia and its Benevolent Values and Principles] 6 June. Available at <http://www.alanba.com.kw/ar/kuwait-news/201899/06-06-2011>
 س-ي-دا-و-ات-فا-ق-ي-ة-ال-ج-اب-ر-2011-06-06
 ال-س-م-ح-ة-و-م-ب-اد-ي-ه-ا-و-ق-ي-م-ه-ا-ال-ش-ر-ي-ة-ت-ت-ع-ار-ض

women are localized and vernacularized in local press coverage sometimes, but not always, around the discussion of the treaty itself. A new area of debate has emerged since 2015 with the Abolish 153 campaign to reform Kuwait's penal code that provides only minor sentences for women who kill female kin for committing adultery, or 'honor crimes' (the campaign also aims to advocate for the abolition of similar laws across the GCC and Arab world).⁶⁴³ The Abolish 153 campaign, founded by a number of Kuwaiti activists and scholars, has been successful in gaining international and domestic support, including some support from members of Kuwait's National Assembly since 2016.⁶⁴⁴ The campaign has framed its advocacy partially around the CEDAW and the language of abolishing a 'discriminatory law,' suggesting CEDAW's possible role in framing these debates is important, but the law has not yet been overturned.

Future research to build on this should consider these questions across longer time periods, in other newspapers. Research should consider other Arabic daily newspapers with different political slants and readerships, such as more liberal papers including *Al-Qabas* and *Al-Rai Al-Am*. Other media (including social media, TV, radio, magazines and other channels) would also be useful to analyze to broaden the findings across a range of CEDAW concepts to understand the extent to which they may be becoming adopted in local debates, including the ways in which they may be prompting resistance.

Given the findings in this section on the nature of women's rights discussions in *Al-Anba*, it would be useful to trace how local advocacy efforts have galvanized CEDAW and international women's rights norms to frame their domestic human rights advocacy around specific issues and topics of law and policy, and how these may apply differently

⁶⁴³ See information on the Abolish 153 campaign at www.abolish153.org.

⁶⁴⁴ Ibid.

depending on the topic. For example, it seems clear that efforts to pursue ‘non-discrimination’ may take on a different tone from efforts framed around concepts of ‘equality.’ There are also specific issues as they relate to CEDAW norms in the Islamic legal system (as discussed in Chapter 4 of the thesis). It would be useful for future research to consider these specific areas in the legal system and how advocates might frame arguments about women’s rights that adapt international human rights concepts to uniquely fit in local understandings of Islam and human rights.

It would be useful to consider the ways in which *discrimination* as a concept across various UN human rights conventions including the CRC, CERD and the CRPD is applied in local human rights discourse on the rights beyond the term’s relevance to debates on the rights of women. Non-discrimination is also used in Kuwait to discuss a range of other rights areas, such as the rights of racial and national minorities and the rights of children and the disabled. Preliminary scoping of more recent articles in 2016 and 2017 in *Al-Anba* suggests that the treaty still maintains at least some continued relevance in local press coverage on women’s issues. Further research could consider these trends up to present day across the various areas discussed above, and could explore the links between the language used in women’s rights reporting and trends in domestic politics. Although its direct impact on any legal and policy change is difficult to measure, as this discussion indicates, CEDAW is certainly a piece of the landscape worthy of further scholarly analysis in Kuwait and across the wider GCC.

Al-Anba Articles Reviewed for Appendix

Date	Title	Link	Report content regarding CEDAW and/or discrimination
2/7/2007	«شبكة المرأة» تناشد القيادة السياسية رد التعديلات على قانون عمل النساء	http://www.alanba.com.kw/ar/kuwait-news/13357/02-07-2007 -تتشدد المرأة-شبكة-تتشدد-عمل-قانون-على-التعديلات-رد-السياسية-القيادة-النساء	Call for legal reform (critical of new amendment to the labor law as discriminatory); Call for reforms to fulfill CEDAW commitments
4/8/2007	النقي: التشريعات لا تزال تحمل الكثير من جوانب التمييز ضد المرأة الكويتية	http://www.alanba.com.kw/ar/kuwait-news/14809/04-08-2007 -تزال-التشريعات-النقي-تحمّل-الكثير-من-جوانب-التمييز-ضد-المرأة-الكويتية	Call for legal reforms (in general)
9/1/2008	ولف: 22% من الطلاب الكويتيين يؤيدون وصول المرأة إلى مجلس الأمة	http://www.alanba.com.kw/ar/kuwait-news/education/21625/09-01-2008 -الطلاب-ولف-22%-من-الكويتيين-يؤيدون-وصول-المرأة-إلى-مجلس-الأمة	Reporting on a local women's network
21/1/2008	2008 عام عالمي للمرأة الخليجية والكويتيات في المقدمة	http://www.alanba.com.kw/ar/kuwait-news/22183/21-01-2008 -للمرأة-عام-عالمي-2008-الخليجية-والكويتيات-في-المقدمة	Praising government (for upholding women's rights to non-discrimination)
27/10/2008	فايزة الخرافي: دور المرأة العربية يضيق وإبداعها يختنق عندما يتغلب القهر على العدل والعصية على العقل	http://www.alanba.com.kw/ar/kuwait-news/36654/27-10-2008 -المرأة-دور-المرأة-الخرافي-فايزة-دور-المرأة-العربية-يضيّق-إبداعها-يختنق-عندما-يتغلب-القهر-على-العدل-والعصية-على-العقل	Call for legal reform (to prevent violence against women and increasing women in power as necessary to fight discrimination)
27/10/2008	«صوت الكويت»: إطلاق حملة تحت شعار «الحرية مسؤولية» ونستنكر قرار عدم دستورية توزيع الصبيح والحمود	http://www.alanba.com.kw/ar/kuwait-news/36655/27-10-2008 -حملة-إطلاق-«صوت-الكويت»-إطلاق-حملة-تحت-شعار-«الحرية-مسؤولية»-ونستنكر-قرار-عدم-دستورية-توزيع-الصبيح-والحمود	Call for policy reform (rights and freedoms of women)
3/11/2008	نساء الكويت يحذرن	http://www.alanba.com.kw/kottab/amina-alali/37037/03-11-2008 -يحذرن-النساء-الكويتيات-نساء	Call for social change (violence against women)
4/5/2009	الفيلي لـ «الأنباء»: يجوز تعديل الدستور بشرط عدم المساس بضمانات الحرية وجوهر النظام الأميري وصلاحيات صاحب السمو	http://www.alanba.com.kw/ar/kuwait-news/48977/04-05-2009 -يجوز-الانباء-ل-الفيلي-ل-«الأنباء»: -يجوز-تعديل-الدستور-بشرط-عدم-المساس-بضمانات-الحرية-وجوهر-النظام-الأميري-وصلاحيات-صاحب-السمو	Questioning 'equality' of a parliamentary quota system for women as 'positive discrimination'
10/5/2009	الغانم: الدستور والشرع أنصفا المرأة ومن دونها لن نبني كويت الغد والمستقبل	http://www.alanba.com.kw/ar/kuwait-news/49613/10-05-2009 -والشرع-الدستور-والغانم-أنصفا-المرأة-ومن-دونها-لن-نبني-كويت-الغد-والمستقبل	Call for legal reform (employment law/policy)
13/5/2009	المويزري لناخبات الـ 4: إذا لم تحسن الاختيار فلا تطلبن من الحكومة إنصافاً	http://www.alanba.com.kw/ar/kuwait-news/49901/13-05-2009 -إذا-لم-تحسن-الاختيار-فلا-تطلبن-من-الحكومة-إنصافاً	Call for legal and policy reform (to prevent discrimination)
22/2/2009	المرأة كمان وكمان	http://www.alanba.com.kw/kottab/mekhled-alshammari/44110/22-02-2009 -وكمان-المرأة-كمان-وكمان	Call for social change
29/5/2009	حفل الاستقبال الذي أقامته نييلة القندي احتفاءً بوصول 4 نساء لعضوية مجلس الأمة	http://www.alanba.com.kw/ar/kuwait-news/51561/29-05-2009 -الذي-الاستقبال-الذي-أقامته-نييلة-القندي-احتفاءً-بوصول-4-نساء-لعضوية-مجلس-الأمة	Call for legal reforms (report on women in parliament, their commitment to

			fighting discrimination)
31/5/2009	وماذا بعد؟	http://www.alanba.com.kw/kottab/emad-bahbahani/51686/31-05-2009 ب ع د - و م ا ذ ا	Report on women's representation in parliament
31/5/2009	أو أحضروا لنا شعباً من اليابان!	http://www.alanba.com.kw/kottab/sami-alnisf/51698/31-05-2009 ش ع ب ا ل ن ا - ا ح ض ر و ا - و - 2009-05-31 ال ي ا ب ا ن	Call for general reforms (enforce the constitution and prevent discrimination)
22/6/2009	العنزي: معاناة المرأة في الجهراء مستمرة مادامت الحلول غائبة	http://www.alanba.com.kw/ar/kuwait-news/54040/22-06-2009 ال م ر ا ة - م ع ا ن ا ة - ال ع ن ز ي - 2009-06-22 ال ح ل و ل - ال ج ه ر ا ة	Call for general reforms (report on women's symposium, finding areas of discrimination in Kuwait)
4/7/2009	مواطنات متزوجات من غير كويتيبن ناشدن نواب الأمة والمسؤولين بالدولة حل مشكلة عدم تخصيص بيوت لهن	http://www.alanba.com.kw/ar/kuwait-news/55439/04-07-2009 - غ ي ر - م ت ز و ج ا ت - م و ا ط ن ا ت - 2009-07-04 د ب ا ل د و ل ة - و ا ل م س و و ل ي ن - ال ا م ة - ن و ا ب - ي ن ا ش د ن - ل ك و ي ت ي ن ل ه ن - ب ي و ت - ت خ ص ي ص - ع د م - م ش ك ل ة - ح ل	Call for general reform (on need to prevent discrimination of widows and wives of non-citizens in Kuwait)
26/7/2009	«الخارجية» ترفض وجوب منح الجنسية للمعاق: حق سيادي للدولة ولا يتفق مع قانون الجنسية	http://www.alanba.com.kw/ar/kuwait-news/58641/26-07-2009 و ج و ب - ت ر ف ض - ال خ ا ر ج ي ة - 2009-07-26 ي ت ف ق - و ل - ال د و ل ة - س ي ا د ي - ح ق - ل ل م ع ا ق - ال ج ن س ي ة - م ن ح - ال ج ن س ي ة - ق ا ن و ن	Obligations of Kuwait to conventions including CEDAW (also CRPD and others)
20/8/2009	المجلس أقرّ توصيات معالجة قضية المسرحين تمهيداً لصدورها بقرار من مجلس الوزراء ووافق على قانون العمل بمداولته الأولى	http://www.alanba.com.kw/ar/kuwait-news/62756/20-08-2009 - ت و ص ي ا ت - ا ق ر - ال م ج ل س - 2009-08-20 ب ق ر ا ر - ل ل ص د و ر ه - ال م س ر ح ي ن - ت م ه ي د ا - ق ض ي ة - ل ج م ع ا - ب م د ا و ل ت ه - ال ع م ل - ق ا ن و ن - ع ل ي - و و ا ف ق - ال و ز ر ا ة - م ج ل س ال ا و ل ي	Coverage of debate on legal reform
4/10/2009	معصومة لـ «الأنباء»: أتخفظ على التمييز الإيجابي الكبير للمرأة ضد الرجل بإعطائها راتباً إذا جلست في البيت	http://www.alanba.com.kw/ar/kuwait-news/69143/04-10-2009 - ال ا ن ب ا ء - ل - م ع ص و م ة - 2009-10-04 ل ل م ر ا ة - ال ك ب ي ر - ال ا ي ج ا ب ي - ال ت م ي ز - ع ل ي - ا ت - ح ف ظ ال ب ي ت - ج ل س ت - ا ذ ا - م ر ا ت ب ا - ا ب ا ع ط ا ء ه - ال ر ج ل - ض د	Critical of 'positive discrimination' against women
5/10/2009	تعديلات غرفة التجارة على قانون العمل في القطاع الأهلي تتضمن ملاحظات على 16 مادة من القانون	http://www.alanba.com.kw/ar/kuwait-news/parliament/69410/05-10-2009 - ت ع د ي ل ا ت - 2009-10-05 ال ا ه ل ي - ال ق ط ا ع - ال ع م ل - ق ا ن و ن - ع ل ي - ال ت ج ا ر ة - غ ر ف ة ال ق ا ن و ن - م ا د ة - ع ل ي - م ل ا ح ظ ا ت - ت ت ض م ن	Call for legal reform (change to law enforcing specific hours for women to work as discrimination)
7/10/2009	الناشف لـ «الأنباء»: «العمل الدولية» لا تمنع في استمرار نظام الكفيل بالكويت شرط وجود جهة تكفل العامل وحقوقه	http://www.alanba.com.kw/ar/kuwait-news/69711/07-10-2009 - ال ع م ل - ال ا ن ب ا ء - ل - ال ن ا ش ف - 2009-10-07 د ب ا ل ك و ي ت - ال ك ف ي ل - ن ظ ا م - ا س ت م ر ا ر - ت م ا ن ع - ال د و ل ي ة و ح ق و ق ه - ال ع ا م ل - ت ك ف ل - ج ه ة - و ج و د - ش ر ط	Call for legal reform (report on progress in labor law, but still some need for further protections against discrimination)
21/10/2009	«الأنباء» تنشر مقترح خطة التنمية الخمسية للكويت 2010/2009	http://www.alanba.com.kw/ar/kuwait-news/72205/21-10-2009 - م ق ت ر ح - ت ن ش ر - ال ا ن ب ا ء - 2009-10-21 ل ل ك و ي ت - ال خ م س ي ة - ال ت ن م ي ة - خ ط ة	Neutral reporting on a human rights workshop
30/10/2009	مشاريع الإسكان وثقافة التمييز ضد المرأة	http://www.alanba.com.kw/kottab/hanan-alkhalaf/73934/30-10-2009 - ال ا س ك ا ن - م ش ا ر ي ع - 2009-10-30 ال م ر ا ة - ض د - ال ت م ي ز - و ث ق ا ف ة	Opinion piece on the need to prevent discrimination in Kuwait, need for female legislators
13/11/2009	احتفال «صوت الكويت»	http://www.alanba.com.kw/ar/kuwait-	Report on the need to

	بالذكرى السابعة والأربعين لصدور الدستور	صوت-احتفال-2009-11-13/76622/news/parliament لصدور-والاربعة-ين-السابعة-بالذكرى-الكويت الدستور	enforce constitutional guarantees against discrimination, protect women
25/11/2009	معصومة: لجنة المرأة أقرت معاملة أبناء الكويتية المتزوجة بغير كويتي معاملة الكويتيين	http://www.alanba.com.kw/ar/kuwait- news/parliament/78548/25-11-2009 لجنة-معصومة-2009-11-25/78548/news/parliament بغير-المتزوجة-الكويتية-ابناء-معاملة-أقرت-المرأة الكويتية-ين-معاملة-كويتي	Positive reporting on legal progress (legislators working to protect Kuwaiti women married to non- Kuwaitis, to prevent discrimination)
17/9/2010	النساء ينتجن نصف الغذاء في العالم	http://www.alanba.com.kw/ar/economy- news/137396/17-09-2010 نصف-ين-تجن-النساء-2010-09-17/137396/news/economy الغذاء	Neutral, general reporting on CEDAW
24/9/2010	الرزوقي: الكويت ملتزمة بتوصيات «حقوق الإنسان» ما لم تتعارض مع الشريعة والدستور	http://www.alanba.com.kw/ar/kuwait- news/official/138993/24-09-2010 الرزوقي-2010-09-24/138993/news/official الانسان-حقوق-بتوصيات-ملتزمة-الكويت والدستور-الشريعة-تعارض-ما	Report on the national plan of action for equality in line with the CEDAW
5/10/2010	بذرة الشر	http://www.alanba.com.kw/kottab/nasser- bahbahani/141254/05-10-2010 الشر-بذرة-2010-10-05/141254/kottab/nasser- bahbahani	Report on widespread ratification of CEDAW, and yet ongoing violence against women
29/10/2010	النقي: نطالب بسن قانون للتحرش الجنسي وتوحيد نسب بعض الكليات العلمية	http://www.alanba.com.kw/ar/kuwait- news/146707/29-10-2010 نقي-2010-10-29/146707/news/kuwait بسن-نطالب-النقي-2010-10-29/146707/news/kuwait بعض-نسب-وتوحيد-النقي-2010-10-29/146707/news/kuwait النقي-2010-10-29/146707/news/kuwait	Uses CEDAW commitment to emphasize need for a law on sexual harassment to protect women
5/11/2010	الهجري: الكويت لن تتخذ جهداً لتعزيز حقوق الإنسان والدفاع عنها في المحافل الدولية	http://www.alanba.com.kw/ar/kuwait- news/official/148341/05-11-2010 الهجري-2010-11-05/148341/news/official الكويت-الهجري-2010-11-05/148341/news/official الدفاع-عنها-في-المحافل-الدولية-الهجري-2010-11-05/148341/news/official	Supportive of government, praises ratification of CEDAW
23/11/2010	ورشة عمل «اتفاقية القضاء على أشكال التمييز ضد المرأة» 23 و 24 الجاري	http://www.alanba.com.kw/ar/kuwait- news/151994/23-11-2010 اتفاقية-عمل-ورشة-2010-11-23/151994/news/kuwait العمل-ورشة-2010-11-23/151994/news/kuwait اتفاقية-عمل-ورشة-2010-11-23/151994/news/kuwait	Report on Kuwait Society for Human Rights and its work with CEDAW
24/11/2010	البغلي: دور المرأة شهد تطوراً في المجتمع وبعض المجالات بحاجة لمعالجة أشكال التمييز ضدها	http://www.alanba.com.kw/ar/kuwait- news/152051/24-11-2010 البغلي-2010-11-24/152051/news/kuwait دور-المرأة-شهد-تطوراً-في-المجتمع-وبعض-المجالات-بحاجة-لمعالجة-أشكال-التمييز-ضدها-البغلي-2010-11-24/152051/news/kuwait	Report on government's commitment to CEDAW
2/12/2010	بحكم قضائي.. الأردنية «فلحا» أصبحت «ملاك»	http://www.alanba.com.kw/ar/world- news/154056/02-12-2010 بحكم-قضائي-الأردنية-2010-12-02/154056/news/world الأردنية-بحكم-قضائي-2010-12-02/154056/news/world الأردنية-بحكم-قضائي-2010-12-02/154056/news/world	Report on reference to international law in court case on parental rights
23/11/2011	الأمير: الاستثمار في الشباب هو الأشمل والأفضل والأطول أمداً وربحاً	http://www.alanba.com.kw/ar/kuwait- news/official/244636/23-11-2011 الأمير-2011-11-23/244636/news/official الاستثمار-في-الشباب-هو-الأشمل-والأفضل-والأطول-أمداً-وربحاً-الأمير-2011-11-23/244636/news/official	Report on government affirming its commitment to CEDAW
24/11/2011	الدمي: نستغرب تجاهل خبراء حقوق الإنسان بالأمم المتحدة لحقوقنا الدينية والثقافية والاجتماعية	http://www.alanba.com.kw/ar/kuwait- news/244896/24-11-2011 الدمي-2011-11-24/244896/news/kuwait نستغرب-تجاهل-خبراء-حقوق-الإنسان-بالأمم-المتحدة-لحقوقنا-الدينية-والثقافية-والاجتماعية-الدمي-2011-11-24/244896/news/kuwait	Report critical of CEDAW, those who see it as violating religious rights