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The Saudi Elephant In The Room

The Appointment of Saudi Arabia to the
Commission on the Status of Women 2018-2022

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Summary

Saudi Arabia was among the thirteen states elected to the UN Commission on the Status of Women in April of 2017. The Commission on the Status of Women is the leading women's rights promoting and protecting body of the world, whereas the state of Saudi Arabia is infamous for conducting systematic discrimination towards women. The conflicting natures of a state where women's rights are restricted to the extent that they are considered legal minors, and the main women's rights body of the world, was naturally remarkable. The Commission on the Status of Women works towards improving the lives of women globally, most importantly by creating treaty law and encouraging states to commit to realizing women's human rights. One significant challenge to the global promotion of women's rights is the notion of cultural relativism. Rather than striving for universalism, cultural relativists risk excluding certain women from international women's rights based on their cultural context. The main international legal document concerning women's rights is the Convention on the Elimination of All forms of Discrimination against Women (CEDAW) from 1979. Saudi Arabia ratified CEDAW in 2000, with the reservation that Shari'ah is to be favoured in the case of conflict between CEDAW and Islamic norms. Saudi Arabia is a wealthy oil country with a fascinating history, where the royal Saud family also practically constitutes the government. Since 2016, and particularly since the appointment in 2017, Saudi Arabia has made remarkable positive changes towards the promotion of women's rights, e.g. lifting the ban on women driving. Saudi Arabia's presence on the CSW might have a negative international impact due to the state's strong economy and political influence. However, Saudi Arabia has a strong focus on boosting the economy for the future, where the dependence on oil will need to decrease. The economic incitements to promote women's rights within the CSW as well as on the domestic level, e.g. more women working, are significant. Therefore, optimistically, the possible negative impact of the appointment will become outweighed by the possible positive impact.

Sammanfattning

Saudiarabien var bland de tretton stater som i april 2017 blev invalda till FN:s Kvinnokommission. Kvinnokommissionen utgör världens viktigaste politiska organ när det kommer till beskyddandet och främjandet av kvinnors rättigheter. Samtidigt är Saudiarabien en stat ökad för sin systematiska diskriminering av kvinnor. Kontrasten mellan ett land där kvinnors rättigheter är kraftigt begränsade, inte minst genom förmynderi, och världens främsta organ för främjandet av kvinnors mänskliga rättigheter, var naturligtvis anmärkningsvärd. Kvinnokommissionen arbetar för ett globalt förbättrande av kvinnors liv, främst genom att formulera och verka för genomdrivandet av internationella fördrag och uppmuntra stater att förverkliga kvinnors rättigheter. Ett särskilt hinder för främjandet av kvinnors globala rättigheter är kulturrelativism. Istället för att sträva efter att alla världens kvinnor ska skyddas av samma internationella rätt, menar kulturrelativister att hänsyn ska tas till kulturellt sammanhang.

Kvinnokonventionen från 1979 utgör världens främsta internationella rättsliga dokument rörande kvinnors rättigheter. Saudiarabien ratificerade Kvinnokonventionen år 2000 med reservation för att Islamisk rätt ska ges företräde över Kvinnokommissionen om konflikt skulle uppstå dem mellan. Saudiarabien är en förmögen oljestat med en spännande historia och ett statsskick där kungafamiljen Saud i praktiken även utgör regeringen. Sedan 2016, och särskilt sedan tillsättningen 2017, har Saudiarabien genomfört uppseendeväckande positiva förändringar för kvinnors rättigheter, ex. borttagandet av förbudet för kvinnor att köra bil. Det finns en risk att Saudiarabien, med anledning av sin starka ekonomi och politiska inflytande, kommer att påverka Kvinnokommissionen negativt. Samtidigt fokuserar landet på att säkra sin starka ekonomi även i en kommande framtid med ett Saudiarabien mindre beroende av oljan. Åtgärder som främjar kvinnors rättigheter, såsom minskade hinder att arbeta, bidrar också positivt till landets ekonomi. Förhoppningsvis kommer därför de eventuellt negativa effekterna från tillsättningen överträffas av de eventuellt positiva effekterna.

Abbreviations

BDPfA	Beijing Declaration and Platform for Action
CAT	Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
CEDAW	Convention on the Elimination of all Forms of Discrimination against Women
CSW	Commission on the Status of Women
DEDAW	Declaration on the Elimination of Discrimination against Women
ECOSOC	Economic and Social Council
ICCPR	International Covenant on Civil and Political Rights
HRC	Human Rights Council
OHCHR	Office of the High Commissioner for Human Rights
UDHR	Universal Declaration of Human Rights
UIDHR	Universal Islamic Declaration of Human Rights
VCLT	Vienna Convention on the Law of Treaties

1 Introduction

“Electing Saudi Arabia to protect women’s rights is like making an arsonist into the town fire chief.”

- Hillel Neuer, Executive Director of UN Watch

1.1 Background

In April 2017, the 54 member states of the UN Economic and Social Council, ECOSOC, by secret ballot elected Saudi Arabia and twelve other states to the UN Commission on the Status of Women, CSW, for the period of 2018-2022. The CSW is the main women’s rights protecting body in the world, while Saudi Arabia is a state known and criticized for systematically discriminating towards women. Saudi Arabia ranked 141 out of 144 in the World Economic Forum’s Global Gender Gap Report 2016 and was in place 138 in this year’s report.¹ The clash between a country where women are legal minors throughout their entire lives, and the world’s main body for empowering women and promoting gender rights, caused the media to produce a large amount of articles addressing the appointment. The 47 votes in favour, while being enough for Saudi Arabia to be appointed, was the lowest among all of these thirteen new member states. The people of the states who might have voted in favour of Saudi Arabia demanded to know how their state representatives had voted and questioned their governments. Refusal by world leaders to reveal their vote, all the while referring to the secrecy of the ballot, was considered as indication of a vote in favour. The government of Sweden, that claims to exercise a feminist foreign policy, refused to reveal their vote. The prime minister of Belgium however, did admit the representative of Belgium had voted in favour of Saudi Arabia and issued an apology for this, saying he would change the vote if he could.

¹ World Economic Forum’s Global Gender Gap Report 2016 and 2017, both available at <https://www.weforum.org/reports>.

The general outrage from the media and human rights organizations was naturally based on the contradiction of having one of the worst oppressors of women's rights on the UN body guarding women's rights. This might reflect a view that the appointment of Saudi Arabia could actually damage the progress for women's rights being made through the work of the Commission, simultaneously meaning the work of the CSW is indeed important and effective. It could also reflect the view that UN human rights bodies are exclusive groups into which membership is to be granted when states have reached a certain level on the spectrum of ensuring human rights. With that view, the appointment of Saudi Arabia merely proves all international legal bodies to be acts of charade and not in reality rights promoting at all. What we do know, however, is that human rights violators are indeed on the Human Rights Council (HRC) and states having ratified the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) still conduct torture. This means the idea that ideal behaviour should finally grant you a place on UN human rights bodies, does not reflect reality.

Saudi Arabia is a fascinating country with a complex history and a rather unique constellation of government. The Saud royal family is represented in all layers of the government. The state of Saudi Arabia is founded on one powerful family in particular, its history intertwined with a specific part of Islam aimed at keeping the people to the purest of paths to the religion. The entire foundation of the Saudi state has its roots in Wahhabism, which to this day is the framework of all legislation and social conduct. Women's rights in Saudi Arabia are very limited, with the male guardianship system constituting the most significant barrier. The idea of women's rights as universal, and the idea of women's rights as dependent on cultural context, are not easy to combine. While the legal framework of the UN to protect women's rights presupposes women as individuals, the Saudi view on the protection of women's rights is within the context of family. The clash arises between the idea of someone having a right because they are human, and of someone having a right because they are part of a religious or social group. One fundamental aspect of Western international

women's rights is that they are human rights, e.g. the same as men's rights. Within the Islamic law practiced in Saudi Arabia, women's rights do not necessarily have to be the same rights as those of men. Because the history of the UN and international human rights legal documents stems from a Western tradition and point of view, part of the controversy with the appointment of Saudi Arabia has to do with Western and non-Western legal traditions and values coming together. The view on human rights particularly varies throughout the world, because of aspects such as the individual vs the collective, the individual vs the family, and protection being focused on the rights of the individual vs on the right to privacy of the family.

Conversations on women's rights in different parts of the world often turns into discussions on the subject of culture. Cultural relativists claims the problem with the international legal framework for women's rights is that it is a Western framework, and that the ambition to bring all women everywhere to the same minimum global standard level of human rights means disregarding the diversity of the world and undermining the authority of any state different from the Western. These are of course highly complicated and delicate matters. However, the reasons Saudi Arabia is falling short of offering female inhabitants even nearly the same rights as male ones, are seemingly found in the country's choice of combining religion with governance. Speaking of culture when the conversation should be on the subject of religion is, it seems, a common phenomenon. However difficult the notion of culture is to define and limit, it can be said that in the case of Saudi Arabia, it is within the culture to base its laws on Islam. While ratifying the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) in 2000 and by that acknowledging the treaty as effective law in the state, Saudi Arabia made strong reservations that makes Islamic law superordinate to CEDAW to the Saudi state. Within the Western, and therefore Christian, legal tradition, religious values have been indirectly included in legal norms over a long period of time. In Saudi Arabia, Islamic law is instead used as a source of legal norms in itself, not reformed into domestic legislation but directly

turned into modern laws. This unique aspect adds to the diversion between the UN's Western secular view on law and the Saudi Arabian view on religion and law as being inseparable things.

Considering the possible impact the appointment of Saudi Arabia can have on the CSW, Hillel Neuer has said it is not clear what “concrete impact” the appointment of Saudi Arabia will have in the near future, considering the broad mandate of the Commission.² In another interview, Neuer said: “Sadly, the United Nations does not follow its own principles. For example the Human Rights Council, countries are supposed to be elected according to their record on human rights. The reality we know, we've found access to Saudi documents that were published by Wikileaks, where the Saudi ambassador wrote a letter to the Russian ambassador saying ‘Let's make a reciprocal agreement of support’.”³ This issue of trading votes has also been pointed out in relation to the UK.⁴ Neuer went on to say that “petrol dollars are trumping principles and are trumping human rights” and that while the CSW “doesn't necessarily have an immediate impact”, the UN by electing Saudi Arabia to the CSW sent a message to Saudi women in particular and that Saudi women activist considered the UN to have “betrayed (them) by putting their oppressor in a position of power and influence when it comes to women's rights”.

UN Women has a clear economic focus, where female participation in society and the economic growth of society are two positive sides to the promotion of women's rights. Over the months that have passed since the election, several positive changes have been made in Saudi Arabia to promote women's rights. The driving ban being lifted from June 2018 is presumably the most important one, but the Crown Prince Mohammad bin Salman has made other changes as well towards money generating social activities that will mean the inclusion of women, e.g. the re-opening of

² Zillman, Claire, *'It's absurd': How Saudi Arabia ended up on the UN Women's Rights Commission*, 25 April 2017, available at <http://fortune.com/2017/04/25/un-womens-rights-saudi-arabia/>, visited on 2017-12-05.

³ Interview with Hillel Neuer for i24 News, available at <https://www.youtube.com/watch?v=ua-gxBApC-k>, visited on 2017-11-05.

⁴ Whitaker, Brian, *UN chooses Saudi Arabia to champion women's rights*, 24 April 2017, available at <http://al-bab.com/blog/2017/04/un-chooses-saudi-arabia-champion-womens-rights>.

cinemas and allowing women to attend sports events. The economic aspect of women's rights is undeniable, particularly in the future non-oil era of Saudi Arabia.

1.2 Purpose

The purpose of this paper is to evaluate what the effects of the appointment of Saudi Arabia to the CSW might be over the period of 2018-2022, on the international level, i.e. the CSW and women's global rights and on the national level, i.e. Saudi women's rights. Producing this paper prior to the mandate period of 2018-2022, it could provide a base of information that might enable a wider perspective on this issue than the one solely focusing on the possible negative effects.

1.3 Research questions

- What international impact will the appointment of Saudi Arabia to the Commission on the Status of Women for 2018-2022 have, on the Commission and on women's global rights?
- What domestic impact will the appointment of Saudi Arabia to the Commission on the Status of Women for 2018-2022 have on the rights of Saudi women?

1.4 Method, material and theory

Considering the novelty of this paper topic, the election having occurred less than a year ago, the material dealing with this particular situation is sparse. In order to answer my research questions, I have instead used the material available on the subjects of international gender rights, the nation of Saudi Arabia, the Commission on the Status of Women and culture and

religion separately, after which I have tried to find conclusions to be drawn that are relevant to the issue of the appointment. This topic needs to be approached with a sense of care, since it so easily becomes polarised and derailed from the issues at hand. My point of view has been that naturally there are no easy answers because these are not easy questions. Approaching this topic in the first place, the aim was to collect as many different angles to the problem as possible. In order to create a fair starting point, with as few poorly nuanced positions as possible on each particular topic, I have aimed at reaching to their core by searching for well-founded material, reflective of more than one point of view, both by Western and non-Western writers.

Because international law in itself, not at least women's rights, is highly political and because the Commission in itself is a political body, it has been impossible as well as undesirable to avoid politics in this paper. It is also a paper on religion's influence on law, and the ambiguous notion of culture, which has led me to use not only legal sources but also sociological and anthropological material. Since the focus of my research has been on the impact of women, and the clash between culture and women, the West and the non-West, I have brought in some aspects from the feminist and postcolonial theories and the legal cultural theory. In order to achieve as much terminological accuracy as possible, I have used the Arabic spelling of certain words rather than the English, e.g. Shari'ah.

1.5 Limitations

Due to the scope of the paper and my ambition to go into some depth, I have had to make certain limitations. This includes not going too much into detail as to what countries voted in favour of Saudi Arabia, or why, considering that speculation about situations of trading votes with economic motives goes beyond my intention with this paper and does not contribute to my research questions. Saudi Arabia has been elected to the CSW, and so I will instead look into what has happened since and what might happen in the near future. Concerning the issue of gender rights and Islamic law, I have

limited this part of my paper to consider the specific Saudi situation and not gender and Islam as a whole, since that is too broad and complex and, again, does not contribute to answering my research questions. Nor will I generalize this particular topic to being about women's rights in Muslim Arab countries vs in the West. My paper is on Saudi Arabia and this state's own take on religion, gender and human rights, in relation to the CSW.

1.6 Literature review

The topic of Saudi Arabia in the CSW is new and there has not yet been anything scientifically written about it. There are many articles from general media and a few blog posts. The research on the CSW, Saudi Arabia, gender rights, religion and culture separately is of course extensive.

1.7 Disposition

Following this introductory chapter, the legal and theoretical framework will be set out in chapter 2. Chapter 3 goes more into detail on the Commission on the Status of Women, followed by a case study on Saudi Arabia in chapter 4. Next, chapter 5 constitutes the paper's analysis and lastly there is a brief conclusion in chapter 6.

2 Women's rights in international law

2.1 Introduction

To evaluate what different forms of impact there might be from the election of Saudi Arabia onto the UN Commission on the Status of Women, it is necessary first to set out the legal framework. The CSW works towards promoting women's human rights globally and exists within, as well as is part in creating, the international legal framework concerning women's rights. To understand the role of the CSW it is important first to have an overview of the legal context surrounding it. This chapter aims to give an overview of the relevant historical background to women's rights and of the legal instruments, as well as a basic understanding of certain challenges there might be to the promotion of women's rights.

2.2 History of women's human rights

The history of women's rights is a part of the still relatively young history of human rights. The rights of women have only quite recently become generally perceived simply as human rights within the international law framework. The following describes the main milestones relevant in international law from the 1940's leading up to the legal framework of women's rights as of today, starting with a brief overview of the categorisation of women's rights.

2.2.1 Categorisation of rights

When categorising the rights of women, the legislator sends a message about what women, and their rights, should be in society.⁵ There are three main categories of rights.

2.2.1.1 Protective rights

Protective rights, specifically for women, assume the position that women, because of their physical disadvantage, inevitably need protecting and that they, together with the law, need to accept this fact and behave accordingly.⁶ Implying that women are a subordinate group, these provisions apply only to women. An example of such a protective right is the limitation of night work for women in the ILO's Convention Concerning Night Work of Women Employed in Industry. This sort of legislation is, while acknowledging the possible differences between women and men, at risk at cementing a self-fulfilling myth of belittling women.⁷

2.2.1.2 Corrective rights

Corrective rights, as do protective rights, identify women as a group.⁸ As opposed to the exclusionary character of protective rights, corrective rights want to include women by "removing a previous bar to activity"⁹. They aim to achieve an alteration in society, an improvement of the lives of women, "without making overt comparisons to the situation of men"¹⁰. Examples of rights of this type is trafficking conventions.¹¹

⁵ Kaufman Hevener, Natalie, *An Analysis of Gender Based Treaty Law: Contemporary Developments in Historical Perspective*, pp. 70-88, Human Rights Quarterly vol. 8, no. 1, Feb. 1986, p. 71.

⁶ Ibid.

⁷ Charlesworth, Hilary C. & Chinkin, Christine, *The Boundaries of International Law: A Feminist Analysis*, Melland Schill Studies in International Law, Juris Publishing, New York, Manchester University Press, Manchester 2000, p. 213.

⁸ Kaufman Hevener 1986, p. 72.

⁹ Ibid.

¹⁰ Ibid.

¹¹ Charlesworth & Chinkin 2000, p. 213.

2.2.1.3 Non-discriminatory rights

Non-discriminatory provisions rejects the idea of women as a separate group and so they apply to men as well as to women.¹² These sex-neutral rights aim to achieve equal treatment between the genders, and end both discrimination and special treatment towards women. The overwhelmingly non-discriminatory character of most of CEDAW's provisions is reflected by the goal of achieving gender equality.¹³

Next is an overview of the history of women's rights leading up to CEDAW and other important legal documents.

2.2.2 UN Universal Declaration of Human Rights

The history of women's rights derive from the history of the rights of men, in the sense of males, not humans. This is an important aspect to keep in mind when studying women's rights evolution over the twentieth century.

Human rights were recognized after the Second World War, with the creation of the United Nations and its Charter¹⁴. The Preamble to the Charter of the United Nations, signed in 1945, refers to "the equal rights of men and women". In Article 1 (3), sex is listed as a discrimination ground. The Commission on the Status of Women was established in 1946 and will be referred to later on in this chapter and further detailed in the next chapter. The UN Universal Declaration of Human Rights (UDHR) was adopted by the General Assembly in 1948. In its Article 2, it states sex as one of the grounds upon discrimination from the Declaration is not permitted. UDHR was created as a gender-neutral text that was "innovative and even radical because women in many UN Member States, still, lacked basic civil and political rights"¹⁵. However, only including women through choice of wording and as a discrimination category, proved not to be enough to promote women's rights.¹⁶

¹² Kaufman Hevener 1986, p. 72.

¹³ Ibid, p. 79.

¹⁴ United Nations Charter. 59 Stat. 1031; TS 993. Entered into force 24 October 1945.

¹⁵ Kouvo, Sari, *Making Just Rights? Mainstreaming Women's Human Rights and a Gender Perspective*, Iustus Förlag, Uppsala 2004, p. 97.

¹⁶ Kuovo 2004, p. 97.

2.2.3 DEDAW

The UN Declaration on the Elimination of Discrimination against Women, DEDAW¹⁷, was adopted by the General Assembly in 1967, after having been presented by the CSW. The differentiation compared to the UDHR was that it particularly pointed to the specific discrimination towards women. Article 1 states that “[d]iscrimination against women, denying or limiting as it does their equality of rights with men, is fundamentally unjust and constitutes an offence against human dignity.” In being a declaration, however, this legal document did not mean anything in terms of binding the Member States but rather worked as a statement of intent. Something more was still needed to try to promote women’s rights in international law.

2.2.4 CEDAW

The main global legal document on women’s rights is the Convention on the Elimination of All Forms of Discrimination against Women, CEDAW.

2.2.4.1 Brief history

The CSW started working towards a convention in 1974 and requested that the Secretary-General encourage the governments of UN Member States, non-governmental organisations and “specialized agencies” to provide their opinions.¹⁸ In 1979, the Convention on the Elimination of All Forms of Discrimination against Women was adopted by the General Assembly. UDHR being the “international bill of rights”, CEDAW was to be the “international bill of women’s rights”. Article 1 states that “discrimination against women” means “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

¹⁷ A/RES/22/2263, *Declaration on the Elimination of Discrimination against Women* (7 November 1967).

¹⁸ Kuovo 2004, p. 107.

or any other field”. Something that particularly sets CEDAW apart from other international law treaties, is its take on the public vs the private.¹⁹ Comparing Article 16 of CEDAW to the same article in the UDHR, the view on family and individualism is different. According to the former, “[s]tate 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”. The latter formulates that “[t]he family is the neutral and fundamental group unit of society and is entitled to protection by society and the State.” However, simply setting out the way to promote gender rights as putting a stop to discrimination, CEDAW ignored the root of the discrimination problem: the inferior level of economic, social and political power both privately and publicly.²⁰ Discrimination can, and should be, considered a symptom of a patriarchal society, not as the very problem that upholds it.

2.2.4.2 The CEDAW Committee

In 1982, the UN Committee on the Elimination of Discrimination against Women was established in order to form an expert body to watch over the implementation of CEDAW. CEDAW states the main way of doing this is considering State reports. Any further means of supervising are not included for the Committee. The form and functions of the Committee are found in CEDAW Part V Articles 17-22. Article 21 (1) states that the Committee “shall, through the Economic and Social Council, report annually to the General Assembly of the United Nations on its activities and may make suggestions and general recommendations based on the examination of reports and information received from the States Parties”. Reports are then to be transmitted to the CSW for its information. This procedure enables the CSW to identify patterns of discrimination and to make proposals of

¹⁹ Charlesworth & Chinkin 2000, p. 217.

²⁰ Ibid, p. 229.

change.²¹ The Committee's members are nominated and elected, by secret ballot, by State Parties to CEDAW. These members should, according to Article 17 (1) be "twenty-three experts of high moral standing and competence in the field covered by the Convention". Consideration is also to be given to "the representation of the different forms of civilization as well as the principal legal systems". The members serve four-year terms and have been mostly female.²² Despite the demand members be independent, not representing or following instructions of their governments, there have been members to the Committee who are also in the government.²³

In 1997, a process of preparing General Recommendations was outlined.²⁴ This would consist of a general discussion during an open meeting, turning into a draft general recommendation, which would then be discussed in the working group, leading to a revised draft that could then be adopted by the Committee. As of last year, 2016, the Committee had adopted 34 general recommendations.

2.2.4.3 Reservations to CEDAW

Of all the UN human rights treaties, CEDAW is one of the most ratified.²⁵ Unfortunately, it also has the greatest number of reservations. CEDAW is open to reservations in order to encourage its ratification, meaning that states can tailor the convention to its particular needs. However, this "you can lead a horse to water but you cannot make it drink" sort of reasoning, might lead states away from the universal character of women's human rights.²⁶ The Vienna Convention on the Law of Treaties states in its Article 19 (c) that reservations must not be "incompatible with the object and

²¹ Farrior, Stephanie, *United Nations Commission on the Status of Women* (2008), Oxford Encyclopaedia of Human Rights, Vol. 5, 2009, p. 12.

²² Byrnes, Andrew, *The Committee on the Elimination of Discrimination against Women*, pp. 27-61 in *Women's Human Rights: CEDAW in International, Regional and National Law*, ed. Hellum, Anne & Aasen, Henriette Sinding, Cambridge University Press, Cambridge, 2013, p. 28-29.

²³ *Ibid*, p. 29.

²⁴ A/52/38/Rev.1, United Nations Report of the Committee on the Elimination of Discrimination against Women (12 August 1997), part II chapter VI A para. 480.

²⁵ Kuovo 2004, p. 107.

²⁶ Mullally, Siobhán, *Gender, Culture and Human Rights: Reclaiming Universalism*, Hart Publishing, Oxford & Portland, Oregon 2006, p. 111.

purpose of the treaty”. The same is pointed out in CEDAW Article 28 (2). In the case of states with strong reservations on the grounds of Islamic law, the Committee has tried to highlight examples of the Muslim countries that have ratified CEDAW with less, or even no, reservations.²⁷ However, concerned with the number of reservations made to CEDAW, the Committee in 1987, through a General Recommendation to the UN, proposed that the status of women under Islamic laws be studied in order for the Committee to properly supervise implementation.²⁸ This was met with accusations of “cultural imperialism”, “attacks on Islam” and the recommendation was not accepted. A little over a decade later, Saudi Arabia would ratify CEDAW with reservations that would favour Islamic law.

2.2.4.3.1 Reservations made by Saudi Arabia

Saudi Arabia ratified CEDAW on 7 September 2000 with the following general reservations:

“1. 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.

2. The Kingdom does not consider itself bound by paragraph 2 of article 9 of the Convention and paragraph 1 of article 29 of the Convention.”²⁹

Article 9 (2) states: “State Parties shall grant women equal rights with men with respect to the nationality of their children.” Article 29 (1) states: “Any dispute between two or more States Parties concerning the interpretation or application of the present Convention which is not settled by negotiation shall, at the request of one of them, be submitted to arbitration. If within six

²⁷ Byrnes 2013, p. 57.

²⁸ Svensson, Jonas, *Women's Human Rights and Islam: A Study of Three Attempts at Accommodation*, Lund Studies in History of Religions, Volume 12, Religionshistoriska avdelningen, Lunds Universitet, KFS, Lund 2000, pp. 56-57.

²⁹ CEDAW/SP/2006/2, *Declarations, reservations, objections and notifications of withdrawal of reservations relating to the Convention on the Elimination of All Forms of Discrimination against Women* (23 June 2006), p. 26.

months from the date of the request for arbitration the parties are unable to agree on the organization of the arbitration, any one of those parties may refer the dispute to the International Court of Justice by request in conformity with the Statute of the Court.”

A number of states (Austria, Denmark, Finland, France, Germany, Ireland, The Netherlands, Norway, Portugal, Spain, Sweden and the United Kingdom) had objections to these reservations.

The second reservation was found to be incompatible with the object and purpose of CEDAW by Austria, Finland, France, Netherlands, Norway and Spain. Denmark, Germany, Ireland and Portugal objected on the basis that this reservation was contrary to the essence of CEDAW.

Austria, Denmark, Finland, France, Ireland, Norway, Portugal, Spain and the United Kingdom objected to the first reservation by pointing out that it had an unclear, unlimited scope as to what provisions it would apply to and to what extent. . “Furthermore...” Finland stated, “...reservations are subject to the general principle of treaty interpretation according to which a party may not invoke the provisions of its domestic law as justification for a failure to perform its treaty obligations.”³⁰ France voiced a fear for this reservation leading to all of the provisions of CEDAW becoming completely ineffective. Germany, the Netherlands and Sweden objected to the first reservation, raising doubts as to Saudi Arabia’s commitment to CEDAW. The Netherlands also feared the reservation might contribute to the undermining of the basis of international treaty law as a whole.

In the majority of Muslim states, legal discrimination towards women is limited to the family sphere, whereas in Saudi Arabia the discrimination cover most public spheres as well, e.g. education, employment and general societal participation.³¹ This means that reservations made on the basis of avoiding conflicts with Saudi Arabia’s

³⁰ 8 October 2002.

³¹ Yahyaoui Krivenko, Ekaterina, *Women, Islam and International Law: Within the Context of the Convention on the Elimination of All Forms of Discrimination Against Women*, Martinus Nijhoff Publishers, Leiden 2009, pp. 167-168.

Islamic law affects Saudi women more than a similar reservation would affect women of any other Muslim state. There are reasons to agree with the point of view that “[r]ather than ratify with reservations that effectively nullify its obligations under the treaty, a state should elect not to become party to a treaty in the first place.”³²

2.2.4.4 Implementation of CEDAW

Enforcement is a main issue of any part of international law. One suggested weak point, affecting the particular implementation force of the CSW, is its relatively weak language compared to other conventions and the magnitude of reservations.³³ For example, where states are obliged to take “all appropriate measures”, it leaves a lot of interpreting up to them as to what that extends to.³⁴ Another problem is the lack of sufficient means of monitoring compliance within CEDAW, consisting only of Article 18, which states that “[s]tate Parties undertake to submit to the Secretary-General of the United Nations, for consideration by the Committee, a report on the legislative, judicial, administrative or other measures which they have adopted to give effect to the provisions of the present Convention and on the progress made in this respect: (a) Within one year after the entry into force for the State concerned; (b) Thereafter at least every four years and further whenever the Committee so requests.”

2.2.5 The Vienna Conference

In 1993, the Second World Conference on Human Rights was held in Vienna, ending with the adoption of the Vienna Declaration and Programme of Action³⁵. This was an important event in the history of women’s rights because of its focus on women’s rights as human rights and the universality

³² Mayer, Ann Elizabeth, *Cultural Particularism as a Bar to Women’s Rights: Reflections on the Middle Eastern Experience*, pp. 176-188 in *Women’s Rights, Human Rights: International Feminist Perspectives*, Routledge, New York 1995, p. 178.

³³ Charlesworth & Chinkin 2000, p. 220.

³⁴ Ibid.

³⁵ A/CONF.157/23, Vienna Declaration and Programme of Action, (25 June 1993).

of women's rights. Women from grassroots organizations, human rights activists and women in government joint together in order to share information and discuss strategies.³⁶

2.2.5.1 Women's rights are human rights

The view on women's rights in the Vienna Programme is mainly focused on the implementation of women's human rights, for example in part I para 18 which states that “[t]he human rights of women and of the girl-child are an inalienable, integral and indivisible part of universal human rights. The full and equal participation of women in political, civil, economic, social and cultural life, at the national, regional and international levels, and the eradication of all forms of discrimination on grounds of sex are priority objectives of the international community. [...] The human rights of women should form an integral part of the United Nations human rights activities, including the promotion of all human rights instruments relating to women. The World Conference on Human Rights urges Governments, institutions, intergovernmental and non-governmental organizations to intensify their efforts for the protection and promotion of human rights of women and the girl-child.” Moving away from viewing women's rights as a sub-group to men's human rights, the Vienna Programme re-enforced the notion of women's rights being human rights.

2.2.5.2 Universality of rights

The universality of human rights was stated in in the Vienna Programme part I para 5: “All human rights are universal, indivisible and interdependent and interrelated. The international community must treat human rights globally in a fair and equal manner, on the same footing, and with the same emphasis. While the significance of national and regional particularities and various historical, cultural and religious backgrounds must be borne in

³⁶ Suarez Toro, Maria, *Popularizing Women's Human Rights at the Local Level: A Grassroots Methodology for Setting the International Agenda*, pp. 189-194 in *Women's Rights, Human Rights: International Feminist Perspectives*, eds. Peters, Julie & Wolper, Andrea, Routledge, New York 1995, p. 189.

mind, it is the duty of States, regardless of their political, economic and cultural systems, to promote and protect all human rights and fundamental freedoms.” However, at the conference the Saudi foreign minister, while admitting the principles and objectives of human rights are of a universal nature, pointed out the necessity of a considerate application of these rights as to historical, cultural, religious and legal diversity among societies.³⁷

The Vienna Programme later goes on to state, in part II para 37, that “[t]he equal status of women and the human rights of women should be integrated into the mainstream of United Nations system-wide activity.” The process of mainstreaming women’s rights was further embraced at the Fourth World Conference on Women in 1995.

2.2.6 The Beijing Declaration and Platform for Action

The Fourth World Conference on Women was held in Beijing in 1995, resulting in adoption of the Beijing Declaration and Platform for Action, BDPfA³⁸.

2.2.6.1 Gender mainstreaming

BDPfA speaks of “mainstreaming” in order to promote equality, for example in para 221, which states that “[t]he human rights of all women and the girl child must form an integral part of United Nations human rights activities. Intensified efforts are needed to integrate the equal status and the human rights of all women and girls into the mainstream of United Nations system-wide activities and to address these issues regularly and systematically throughout relevant bodies and mechanisms.” Para 229 states that “[i]n addressing the enjoyment of human rights, Governments and other actors should promote an active and visible policy of mainstreaming a

³⁷ Mayer, Ann Elizabeth, *Islam and Human Rights: Tradition and Politics*, 5th edition, Westview Press, Boulder, Colorado 2013, p. 11.

³⁸ A/CONF.177/20/Rev.1, Beijing Declaration and the Platform for Action, Fourth World Conference on Women (4-15 September 1995).

gender perspective in all policies and programmes so that, before decisions are taken, an analysis is made of the effects on women and men, respectively.” This way of integrating the gender perspective “requires countries to investigate the underlying bases of women’s subordination, public, private, structural, or systematic.”³⁹

The term “gender mainstreaming” was defined in 1997 by the Economic and Social Council, ECOSOC, as “the process of assessing the implications for women and men of any planned action, including legislation, policies or programmes, in all areas and at all levels. It is a strategy for making women's as well as men's concerns and experiences an integral dimension of the design, implementation, monitoring and evaluation of policies and programmes in all political, economic and societal spheres so that women and men benefit equally and inequality is not perpetuated. The ultimate goal is to achieve gender equality.”⁴⁰ Rather than separate actions targeting women specifically, gender mainstreaming is built on the theory of the structural inequality can only be rattled through centralization of these actions.⁴¹ However, a declaration is still soft law and recommends rather than binds states, and lacks any remedies hard law has when being breached – on the other hand, soft law is “much easier to negotiate” than hard law.⁴² According to Charlesworth “[t]he documents are so long (...), windy, repetitive, ambiguous, and contradictory that they are quite daunting and give little practical guidance on implementation.”⁴³ CEDAW is what legally mandates the process of mainstreaming within countries, which is the only way it will reach full effect.⁴⁴ Governments are urged to “[r]atify and accede to and ensure implementation of the

³⁹ Charlesworth, Hilary, *Women as Sherpas: Are Global Summits Useful for Women?*, *Feminist Studies* 22:3, Autumn 1996, p. 545.

⁴⁰ ECOSOC A/52/3, Report of the Economic and Social Council for 1997: Gender Mainstreaming (18 September 1997), Chapter IV, Part I, A.

⁴¹ UN, Office of the Special Advisor on Gender Issues and Advancement of Women, *The Development of the Gender Mainstreaming Strategy*, updated August 2001, [<http://www.un.org/womenwatch/osagi/pdf/factsheet3.pdf>], cited 19 October 2017.

⁴² Charlesworth, *Women as Sherpas: Are Global Summits Useful for Women?*, p. 539.

⁴³ *Ibid*, p. 544.

⁴⁴ UN Millennium Project 2005. *Taking Action: Achieving Gender Equality and Empowering Women*. Task Force on Education and Gender Equality. Grown, Caren; Gupta, Geeta Rao (Coordinator); Kes, Aslihan. Earthscan, London 2005, p. 139.

Convention on the Elimination of All Forms of Discrimination against Women so that universal ratification of the Convention can be achieved by the year 2000”, according to the BDPfA Chapter IV I para. 230 (b), i.e. discouraging reservations.

The BDPfA provided a sort of catalyst function towards a milestone in the women’s rights system – a complaints procedure for breaches of the CEDAW.⁴⁵ This had been preceded by the Vienna Declaration and Programme of Action, part II para 40, and would lead to the creation of the Optional Protocol to CEDAW.

2.2.7 The Optional Protocol

A draft ‘Optional Protocol’ was made by independent experts to the Committee in Maastricht in 1994.⁴⁶ After the draft had been debated and developed by a Commission working group for four years the Optional Protocol to CEDAW was sent to ECOSOC, debated in the General Assembly and was finally adopted in 1999.⁴⁷ Article 2 of the Optional Protocol gives the Committee mandate to hear complaints from “individuals or groups of individuals, under the jurisdiction of the State Party, claiming to be victims of a violation of any of the rights set forth in the Convention by that State Party.” However, the draft was broader and included not only individuals, groups or organisations affected by a violation but also individuals, groups or organisations “with a sufficient interest”, which would have targeted discrimination on a systematic level as well as the individual level.⁴⁸ Instead of states being obliged to sort out the violation, the final text settled on the following being formulated in Article 7 (4): “The State Party shall give due consideration to the views of the Committee, together with its recommendations, if any, and shall submit to the

⁴⁵ Charlesworth, *Women as Sherpas: Are Global Summits Useful for Women?*, p. 545.

⁴⁶ Byrnes, Andrew & Connors, Jane, *Enforcing the Human Rights of Women: A Complaints Procedure for the Women’s Convention?*, 21 *Brooklyn Journal of International Law* 679 (1995-1996).

⁴⁷ A/RES/54/4, *Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women* (15 October 1999).

⁴⁸ Charlesworth & Chinkin 2000, p. 245.

Committee, within six months, a written response, including information on any action taken in the light of the views and recommendations of the Committee.” The Optional Protocol “strengthens national mechanisms for ensuring women’s full enjoyment of their rights by providing a path to relief for individual grievances and by improving understanding of the obligations imposed by the convention”⁴⁹. The Optional Protocol does allow the Committee to inquire without a specific complaint, as stated in Article 8 (1). Moreover, according to Article 9, the State may be invited to (1) include in the national report any measures taken to an Article 8 inquiry and/or (2) inform the Committee of measures taken, if the State exceeds the time frame of six months set out in Article 8 (4). This, however, is subject to the possibility for states of “opting out” by declaring it does not recognize the competence of the Committee provided for in articles 8 and 9, formulated in Article 10. Saudi Arabia has not ratified the Optional Protocol.

2.3 Promotion of women’s rights in international law

Apart from the actual enforcement of international law, human rights bodies work towards the general promotion of human rights in different ways. In relation to the question of how women’s international and national rights might be affected by the appointment of Saudi Arabia, the following is a brief overview of the ways of promotion of women’s rights.

2.3.1 The CSW

The CSW, being the leading global women’s rights political body, works towards promoting women’s rights in different ways, both within itself and in relation to outside actors.

⁴⁹ UN Millennium Project 2005. *Taking Action: Achieving Gender Equality and Empowering Women*. Task Force on Education and Gender Equality. Grown, Caren; Gupta, Geeta Rao (Coordinator); Kes, Aslihan. Earthscan, London 2005, p. 144.

2.3.1.1 Multi-Year Programmes of Work

Since 1987, the CSW has created Multi-Year Programmes of Work, “containing priority themes for discussion and action at its annual sessions”⁵⁰. Starting 2006 there is also an annual review theme, in order to evaluate implementation of conclusions agreed upon from previous sessions. The priority theme for 2017 is “Women’s economic empowerment in the changing world of work”. These programmes set out the over-arching goals of the CSW in working to promote women’s rights in reality.

2.3.1.2 NGO participation

International level women’s rights advocacy is only effective when based on the real experiences of women and reflect the struggles of local and national women’s rights organizations.⁵¹ The actual, practical, real-life promotion of women’s rights is, again, due to implementation, which is the crucial aspect of all international human rights law. Because the legal framework and policy framework of women’s rights are without sanctions, holding national leaders accountable for the commitments they have made is an important effort of NGOs. The majority of the “real gains” in the promotion of women’s lives are indeed due to grassroots work.⁵² NGOs therefore play an important role towards furthering the work of the CSW. Together with the CSW and the CEDAW Committee, NGOs create the foundation to the promotion of women’s rights.

There are many challenges to the promotion of women’s rights, some of which are particularly relevant in relation to the appointment of Saudi Arabia to the CSW.

2.3.2 Challenges to promoting women’ rights

The core of global women’s rights is that they are supposed to be universal, protective of all women of the world. However, this very universality is

⁵⁰ UN Women website, <http://www.unwomen.org/en/csw#multiyear>.

⁵¹ Suarez Toro 1995, p. 189.

⁵² Suarez Toro 1995, p. 190.

mirrored in the notion of cultural sensitivity, meaning the promotion of women's rights need to be adapted to the cultural surroundings of women. The term "culture" seems to have a variety of meanings and relate to different societal issues depending on the context at hand. One way of looking at culture, is that it only exists until education replaces it.⁵³ Because the implementation of human rights cannot be forced but rather gently pushed upon states, it is the culture of rights in the receiving states that is changed.⁵⁴ Culturalism in itself can initiate traditionalism, which can lead to the regression of human rights.⁵⁵ Women is the one group in society that has had its human rights most gravely violated in the name of culture, largely because the historical identification of women as belonging to the "private" sphere has kept them away from the public.⁵⁶

2.3.2.1 Cultural relativism

For the past thirty years, the idea of cultural relativism has been strongly present in the context of international relations, perhaps because of liberal cultural sensitivity along with the feeling of civilisations clashing.⁵⁷ Whatever the reasons might be, "appeals to cultural relativism have grown in intensity and frequency as the scope of the international human rights regime grows wider."⁵⁸ Cultural relativism means that particular cultural norms take charge over the international human rights norms, if there happens to be a conflict. Through CEDAW, among other main legal documents, "the human rights process seeks to replace cultural practices that are discriminatory with other cultural practices rooted in modern ideas of gender equality [...] This effort sometimes demonizes culture as it seeks to save individuals from its oppressive effects."⁵⁹ The main issue with cultural

⁵³ Engle Merry, Sally, *Human Rights and Gender Violence: Translating International Law into Local Justice*, The University of Chicago Press, London 2006, p. 15.

⁵⁴ Ibid, p. 16.

⁵⁵ Booth, Ken, *Three Tyrannies*, pp. 31-70 in *Human Rights in Global Politics*, eds. Dunne, T. & Wheeler N., Cambridge University Press, Cambridge 1999, p. 39.

⁵⁶ Rao, Arati, *The Politics of Gender and Culture*, pp. 167-175 in *International Human Rights Discourse*, in *Women's Rights, Human Rights: International Feminist Perspectives*, eds. Peters, Julie & Wolper, Andrea, Routledge, New York, 1995, p. 169.

⁵⁷ Booth 1999, p. 53.

⁵⁸ Charlesworth & Chinkin 2000, p. 222.

⁵⁹ Engle Merry 2006, p. 12.

relativism is the denial of individual rights granted to members of a, e.g., religious community.⁶⁰ Contrasting cultural relativism is Western essentialism.

2.3.2.2 Western essentialism

Because international human rights are based on Western ideas, cultural relativists conclude that international norms should not be used in any other culture than the Western.⁶¹ This also means that international human rights are not actually universal, but Western. Interestingly enough, both the cultural relativists and the feminist scholars seemingly view each other's standpoints as "based on individualistic and particular moral philosophies which serve to exclude the perspectives of 'others' [and] founded on liberal notions of the self and on liberal prioritization of civil and political rights"⁶². However, a critical aspect of comparing the two views of critique can be said to be that the feminist critique approaches the entirety of human rights, challenging the spheres of private and public, whereas the cultural critique focuses on the "private sphere" of international law where it considers women's rights still to be found.⁶³

2.3.2.3 Case law

Because the discussion on culture and human rights can become abstract, a few legal cases might concretize this issue.

2.3.2.3.1 Lovelace v. Canada

*Lovelace v. Canada*⁶⁴ is the case of the native Canadian woman Sandra Lovelace, who after marrying a non-member of her tribe, the Maliseet Indian tribe, no longer had the right to live on her former reservation. After

⁶⁰ Afkhami, Mahnaz, *Cultural Relativism and Women's Human Rights*, pp. 479-486 in *Women and International Human Rights Law*, Vol. 2, eds. Askin, Kelly D. & Koenig, Doreen M., Transnational Publishers, Inc., New York 2000, p. 485.

⁶¹ Bunting, Annie, *Theorizing Women's Cultural Diversity in Feminist International Human Rights Strategies*, pp. 6-22 in *Journal of Law and Society*, Vol. 20, No. 1, *Feminist Theory and Legal Strategy*, Spring 1993, p. 8.

⁶² *Ibid*, p. 10.

⁶³ Charlesworth & Chinkin 2000, p. 225.

⁶⁴ Communication no. 24/1977 (30 July 1981), UN Doc. CCPR/C/OP/1 at 83 (1984).

divorcing her husband, Sandra wished to move back. Because she had married outside of the tribe, she was considered by the group to have lost her tribe identity. If she had been a man, this would not have been the case. The Human Rights Committee reached the decision that this breached Article 27 of the International Covenant on Civil and Political Rights, ICCPR, which states that “persons belonging to (ethnic, religious or linguistic) minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language”, since Lovelace was still part of such a minority. However, it supported the former community of Sandra in its cultural determination of her social identity, based on her marriage.

2.3.2.3.2 Mohd. Ahmed Khan v. Shah Bano Begum

In this case⁶⁵, Shah Bano Begum who was an Indian Muslim woman who divorced her husband from forty years, wanted to claim the Indian Code of Criminal Procedure maintenance payments as opposed to the lower ones derived from Muslim personal status law. Although the Supreme Court of India supported her claim, the government was later persuaded to reverse the decision after protests from the conservative Muslim community, with an act called “Muslim Women (Protection of Rights on Divorce) Act 1986”. Not only was Shah Bano Begum disadvantaged because she was a woman of a minority group, but also because she wished to go against that minority community.⁶⁶

2.3.2.4 Islamic particularism?

The culturally motivated resistance to the promotion of women’s rights is, as has been established, sometimes religious, e.g. Saudi Arabia’s reservations to CEDAW. The surrounding objections to these reservations, as well as the appointment to the CSW, is also based on a general understanding that resistance based on religion does not easily yield. The

⁶⁵ 3 SCR 844: AIR 1985 SC.945: 1985 Cr Lj 875: 1985 (2) SCC 556.

⁶⁶ Charlesworth & Chinkin 2000, p. 224.

issue with Saudi Arabia's discrimination of women is both cultural and religious, if any real distinction between the two can even be made. However, in defending its discriminatory legislation and customs Saudi Arabia does point to its commitment to Islamic law. When Western universalists condemn gender oppression in other regions, e.g. the Middle East, it is seen by cultural relativists as reflecting "an insensitive, ethnocentric approach to rights issues, which is linked to cultural imperialism"⁶⁷. In 1986, some state parties to CEDAW expressed concern to the UN Secretary-General about reservations made to CEDAW on Islamic grounds and requested a survey, which after criticism from Muslim states did not happen.⁶⁸ In the clash of women's rights and culture, in this case culture consisting of religious legal traditions, the UN tolerated the latter at the expense of the former. All the while, Article 5 (a) of CEDAW points out that State Parties shall take all appropriate measures "to modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women".

Islamists have suggested that the whole idea of universality of rights is a Western invention in order for the West to exercise its cultural imperialism onto Muslim countries.⁶⁹ Ignoring the fact that not many decades ago there was significant Western cultural and religious resistance towards feminism, and partly still is today, enables cultural relativists to believe the Western culture, simply by nature, to be able of change.⁷⁰ This is in stark contrast with the correlating view on non-Western, Muslim cultures, which cultural relativists "presume are frozen in time somewhere in the

⁶⁷ Mayer, Ann Elizabeth, *Cultural Particularism As a Bar to Women's Rights: Reflections on the Middle Eastern Experience*, pp. 176-188 in *Women's Rights, Human Rights: International Feminist Perspectives*, eds. Peters, Julie & Wolpers, Andrea, Routledge, New York 1995, p. 176.

⁶⁸ Ibid, p.178.

⁶⁹ Afkhami, Mahnaz, *Gender Apartheid, Cultural Relativism, and Women's Human Rights in Muslim Societies*, pp. 234-245 in *Women, Gender, and Human Rights: A Global Perspective*, ed. Agosin, Marjorie, Rutgers University Press, New Brunswick, NJ, 2001, p. 240.

⁷⁰ Mayer 1995, p. 183.

darkness of the Middle Ages”, which in itself goes against the character of aspiration within international human rights law.⁷¹

2.4 Conclusion

The history of women’s rights has been one of marginalization and a need of constant re-enforcement of the fact that women’s rights are human rights. Women’s need of protection against discrimination due to patriarchal structures of society, was for a long time misinterpreted as women needing to be treated as a sub-group to men. The general notion is now that gender discrimination is battled most effectively if they are all presumed to have the same rights in the position of being humans. Agreeing women’s rights are human rights, the issue of the universality of these rights is still left open to conflict with cultural relativism and Islamic particularism, seeing as to how poorly CEDAW has been ratified. The actual promotion to really implement women’s rights still faces many barriers, not least challenges related to overarching global conflicts of the West and the non-West, secularism and religion and different legal traditions and political positions in the UN.

⁷¹ Mayer 1995, p. 183.

3 The Commission on the Status of Women

This chapter goes more into detail of the main women's rights body of the world, with a brief historic overview followed by its mandate and ending with its current situation and ambitions for the future, in order to answer the question concerning the international impact of the appointment of Saudi Arabia to the CSW 2018-2022.

3.1 Brief history of the CSW

The UN Charter Article 1 (2) sets out the purposes of the UN to be developing “friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples”, and Article 1 (3) goes on to talk about the promotion and encouragement of respect for human rights without distinction as to race, sex, language or religion. Article 55 goes on to point out the principle of equal rights and (c) the promotion of universal respect for human rights without distinction as to the discrimination grounds mentioned above. In order to implement these purposes of the UN, ECOSOC created the UN Commission on Human Rights in 1946. Its mandate included to prevent discrimination on the basis of sex. As a subsidiary organ to the Commission on Human Rights, the Sub-Commission on the Status of Women was established by ECOSOC in its second session, also in 1946.⁷² This way of organising by the UN, to separate women's rights from human rights, has been accused of “allowing” women's rights to be treated as “lesser” rights by the mainstream human rights bodies.⁷³

⁷² ECOSOC Resolution 11(II) (21 July 1946).

⁷³ Stamatopoulou, Elissavet, *Women's Rights and the United Nations*, pp. 36-48 in *Women's Rights, Human Rights: International Feminist Perspectives*, eds. Peters, Julie & Wolper, Andrea, Routledge, London 1995, p. 45.

3.1.1 Early years of the CSW

The Sub-Commission on the Status of Women was created to give the Commission on Human Rights “special advice on problems relating to the status of women”. In 1947, in its second session, the Sub-Commission on the Status of Women requested to be a functional commission on its own, reporting to ECOSOC.⁷⁴ That same year the membership number was moved up from nine to fifteen. In early 21st century it would be 45. The CSW is a political body. The members are appointed by their governments. They are then to be elected to four-year terms by ECOSOC. As with the Committee, there is a set distribution geographically as to achieve representation from across the globe. As opposed to the Committee, members are not independent experts but representatives of the governments. Also with these members, they have mostly been women.

3.1.2 1975-1985: “Women’s Decade”

During the early 1970s the CSW shifted focus from the traditional rights-based, to put more focus on women’s participation on the economic and social level, as well as targeting peace and self-determination, focusing more on developing countries.⁷⁵ In 1975, the UN Decade for Women launched at the First World Conference on Women, held in Mexico. Two decades later, these both approaches would be combined in the BDPfA.⁷⁶

3.1.3 Beijing follow-up

After the 1995 Beijing World Conference on Women, the commitments made were to be followed up by the CSW over five-year periods.

⁷⁴ Kouvo 2004, p. 251.

⁷⁵ Farrior 2008, p. 2.

⁷⁶ Ibid.

3.1.3.1 Beijing+5

At the 23rd special session⁷⁷ of the General Assembly in 2000, “Women 2000: gender equality, development and peace for the twenty-first century”, that also was the scene of the Beijing+5 review, the CSW on the Status of Women acted as a the Ad-hoc Preparatory Committee. The session gave states the opportunity to share experiences and consider obstacles in the implementation of BDPfA. This review showed remaining problems. As a response a resolution was made on Further Actions and Initiatives to Implement the Beijing Declaration and Platform of Action⁷⁸. Member States agreed to “assess regularly further implementation of the Beijing Platform for Action with a view to bringing together all parties involved in 2005 to assess progress and consider new initiatives, as appropriate, ten years after the adoption of the Beijing Platform for Action”.

3.1.3.2 Ten-year review

In 2005, the CSW had the ten-year review at its 49th session, and members recommitted to the BDPfA. Member States again agreed to work towards further implementation. The review by the Commission was focused on domestic implementation and what of the areas of the BDPfa were most urgent to look to.

3.1.3.3 Fifteen-year review

The fifteen-year review took place in 2010 at the 54th session⁷⁹ of the CSW. Again Member States shares experiences and committed to overcome remaining obstacles.

⁷⁷ Five-year Review of the implementation of the Beijing Declaration and Platform for Action (Beijing + 5) held in the General Assembly (5-9 June 2000), available at <http://www.un.org/womenwatch/daw/followup/beijing+5.htm>.

⁷⁸ A/RES/S- 23/3, *Further actions and initiatives to implement the Beijing Declaration and Platform for Action*, (16 November 2000).

⁷⁹ E/CN.6/2010/11, Report of the fifty-fourth session (13 March and 14 October 2009 and 1-12 March 2010).

3.2 Aims, mandate and functions

Being a political body of the UN, consisting of as many as 45 member states at a time, the work of the CSW is characterized by political delicacy and subtle change over long periods of time.

3.2.1 Aims of the CSW

The ultimate goal of the CSW is naturally to achieve gender equality in the field of human rights, including all fields of society; political, economical, social and educational rights. In 1947, at its first session, the CSW declared Guideline Principles in order to achieve results in its work for women's rights. It stated the ambition to elevate the status of women without distinction as to "nationality, race, language, or religion to equality to men in all fields of human enterprise; and to eliminate all discrimination against women in statutory law, legal maxims or rules or in interpretations of customary law."⁸⁰

3.2.2 Mandate of the CSW

In 1987, ECOSOC decided to expand the mandate of the CSW "to include the functions of promoting the objectives of equality, development and peace, monitoring the implementation of measures for the advancement of women, and reviewing and appraising progress made at the national, subregional, regional, sectoral and global levels"⁸¹.

After Beijing in 1995, the UN General Assembly mandated the CSW, as mentioned above, to make follow-up reviews of the Beijing Conference. The CSW is not authorized to take any action or empowered to focus on the situation in a particular country or to undertake an investigation.

⁸⁰ E/281/Rev.1, United Nations Commission on the Status of Women. Report to ECOSOC of the first session of the Commission on the Status of Women (25 February 1947).

⁸¹ ECOSOC Resolution 1987/22 (26 May 1987).

The mandate of CSW as a political body made up of a wide range of member states is limited to influential power of promoting women's rights politically and legally, in the soft law making way that is human rights law.

3.2.3 Functions of the CSW

Means of achieving the aims of the CSW include to create treaties, studies, organising seminars, making recommendations to ECOSOC, and being the main organisation to follow up the UN World Conferences on Women.

3.2.3.1 Legal functions

An important function of the CSW is the initiative to treaties. The CSW drafted the Convention on the Political Rights of Women (1952), the Convention on the Nationality of Married Women (1957) and the Convention on Consent to Marriage, Minimum Age for Marriage, and Registration of Marriages (1962), all three having having lead to changes in domestic law, although lacking any enforcement mechanism.⁸² In the creation of the Universal Declaration of Human Rights in 1948 and the two covenants, ICESCR and ICCPR, in 1966, members of the CSW contributed to the Commission on Human Rights, the former HRC, including equal rights provisions.⁸³

3.2.3.2 Communication process

There is a confidential complaint procedure in order to identify global patterns in women's rights. This was established following a number of resolutions of the ECOSOC.⁸⁴ Complaints are sent to the Commission's Secretariat from individuals and organisations, to be summarised and sent to

⁸² Farrior 2008, p. 10.

⁸³ Ibid, p. 8.

⁸⁴ ECOSOC Resolutions 76 (V) (5 August 1947), 304 I (XI) (14 and 17 July 1950), 1983/27 (26 May 1983), 1992/19 (30 July 1992), 1993/11 (27 July 1993), 2009/16 (28 July 2009) and ECOSOC Decision 2002/235 (24 July 2002).

the concerned Governments for comment. A working group of five CSW members from all five geographical regions then meets in closed session at each yearly session of the CSW. Its function is to consider communications, along with any government replies to these communications, and then bring to the CSW's attention those communications that "appear to reveal a consistent pattern of reliably attested injustice and discriminatory practices against women". After this, the Working Group prepares a report for the CSW that "will indicate the categories in which communications are most frequently submitted to the Commission". The CSW will consider the report in a closed meeting and report to ECOSOC along with recommendations for action by the Council on the "emerging trends and patterns of communications".

3.3 The current status of the CSW

The election of Saudi Arabia to the CSW is a recent event, the effects of which are still to be discovered in the future. This is an overview of the CSW of today and the context in which it finds itself. The historic, and current, marginalization of women's rights within the field of human rights is also reflected in its economic position within the UN. Joelle Tanguy, director of the Strategic Partnership Division of UN Women since last year, has a clear economic perspective on women's rights.

3.3.1 UN Women and Joelle Tanguy

The UN General Assembly created UN Women in 2010 as the United Nations Entity for Gender Equality and the Empowerment of Women, serving as the Secretariat of the Commission on the Status of Women. As of September 2016, Joelle Tanguy is the director of the strategic partnerships division of UN Women. Previously she has been the Under-Secretary-General at the International Red Cross and Red Crescent Federation, Managing Director at the GAVI Alliance and Executive Director of Doctors

Without Borders. UN Women has said, “Saudi Arabia’s interest in occupying one of the Commission’s seats allocated to the Asia Pacific region is an indication that the country wants to play an active role in the work of this important body”.⁸⁵

3.3.1.1 Economic focus

At GAVIA Tanguy was the engineer behind the first major refinancing effort, enabling the immunisation of more than 250 million children against lethal diseases and preventing more than 4 million premature deaths. She has a strong focus towards reaching equality goals by economical means. At the founding of UN Women, the annual budget goal was set at \$500 million. Joelle Tanguy said in an interview in March 2017 that “[t]he goal is to make this the century of gender equality.”, however core and noncore funding together reached a little more than \$300 million.⁸⁶ She went on to speak of the importance of mobilizing all UN agencies in the promotion of gender equality. In a speech later on in March 2017, Tanguy addressed the issue of women’s rights in Saudi Arabia.⁸⁷ She pointed out that women’s rights are not seen, as they were 20 years ago, through the lens of human rights. Today, the world understands the importance of economic empowerment of women to achieve successful business as well as development. Focusing on the economics of women’s rights, Tanguy provided the audience with statistic evidence of women’s gender equality as a money generating phenomena. She went on to speak of the 2030 Agenda for Sustainable Development.

⁸⁵ Zillman, *‘It’s absurd’*.

⁸⁶ Interview with Joelle Tanguy by Lieberman, Amy, *Q&A: Joelle Tanguy of UN Women talks priorities, protests and funding struggles*, Devex International Development, 8 March 2017, available at <https://www.devex.com/news/q-a-joelle-tanguy-of-un-women-talks-priorities-protests-and-funding-struggles-89783>.

⁸⁷ Speech by Joelle Tanguy: *Empowering Women in the changing world of work in Saudi Arabia and worldwide*, 21 March 2017, UN Women, <http://www.unwomen.org/en/news/stories/2017/3/speech-joelle-tanguy-alwaleed-philanthropies-conference>

3.3.1.2 The 2030 Agenda for Sustainable Development

In September 2015, more than 150 world leaders met at a historic UN Sustainable Development Summit and adopted a resolution of the 2030 Agenda for Sustainable Development, containing 17 Sustainable Development Goals (SDGs).⁸⁸ These goals came into force on 1 January 2016. Ranging from issues of poverty and climate change to inequality etc., these goals call for action by every member state regardless of financial means, while lacking any legal binding force. Governments are expected to initiate achievement of the goals and to hold the main responsibility for follow-up and review of the implementation progress. Number 5 of these goals is gender equality, however all goals “have key indicators related to women and girls as their full engagement is a condition to successful economic and social development.”⁸⁹

3.3.1.2.1 The Saudi Vision 2030

The Saudi Vision 2030⁹⁰ mentions the word “women” 6 times in its 84 pages long document. It states that Saudi Arabia is committed to “building a better country, fulfilling our dream of prosperity and unlocking the talent, potential, and dedication of our young men and women”. It goes on with ambitions of “investing in education and training so that our young men and women are equipped for the jobs of the future”. It also states that the Saudi economy “will provide opportunities for everyone - men and women, young and old - so they may contribute to the best of their abilities”. The Saudi Vision 2030 further affirms that “Saudi women are [a] great asset” and that the aim is to “increase women’s participation in the workforce from 22% to 30%”. This involves expecting companies “to observe their social responsibilities and contribute to creating a sustainable economy, including by creating the stimulating opportunities for young men and women that can help them build their professional careers”. It is pointed out that Saudi

⁸⁸ A/RES/70/1, *Transforming Our World: The 2030 Agenda for Sustainable Development* (25 September 2015).

⁸⁹ Speech by Joelle Tanguy.

⁹⁰ Saudi Vision 2030, available at http://vision2030.gov.sa/sites/default/files/report/Saudi_Vision2030_EN_0.pdf.

women constitute half of the country's university graduates and pledges to "continue to develop their talents, invest in their productive capabilities and enable them to strengthen their future and contribute to the development of our society and economy".⁹¹

In light of the background of the CSW, the current focus of UN Women and Saudi Arabia's take on the Vision 2030, next is an overview of the events surrounding ECOSOC's election of new members to the CSW for 2018-2022.

3.4 The appointment of Saudi Arabia

The theme of the sixty-first session of CSW, taking place 13-24 March 2017, was "Women's Economic Empowerment in the Changing World of Work". In April 2017, the UN ECOSOC elected Saudi Arabia to the CSW by secret ballot.⁹² The four-year term begins at the first meeting of the Commission's sixty-third session in 2018 and ends at the close of the sixty-sixth session in 2022. The other twelve states elected are Algeria, Comoros, Congo, Ghana, Kenya, Iraq, Japan, Republic of Korea, Turkmenistan, Ecuador, Haiti and Nicaragua. In the group of Asian and Pacific states, there were five vacancies and five nominees, meaning there was no competition. If, however, any nominee receives less than a majority of votes among the 54 members of the ECOSOC, the nominee can be rejected. The United States insisted on a vote.⁹³ Out of ECOSOC's 54 member states, 47 voted in favour of Saudi Arabia. While this was enough, it was also the lowest score among the elected states, no other receiving less than 52 votes. There being only seven states in total having abstained from voting, at least three of the ten EU countries that are currently members of ECOSOC voted in favour of Saudi Arabia. These countries are Belgium, Czech Republic, Estonia,

⁹¹ Saudi Vision 2030, p. 37.

⁹² ECOSOC/6824, 19 April 2017, *Launching 2017 Coordination Segment, Economic and Social Council Adopts 10 Decisions, Elects Subsidiary Body Members amid Debate on NGO Participation*, available at <https://www.un.org/press/en/2017/ecosoc6824.doc.htm>.

⁹³ Whitaker, Brian, *UN chooses Saudi Arabia to champion women's rights*, 24 April 2017, available at <http://al-bab.com/blog/2017/04/un-chooses-saudi-arabia-champion-womens-rights>, visited on 2017-11-30.

France, Germany, Ireland, Italy, Spain, Sweden and the United Kingdom. Norway is also a current member of the ECOSOC. Belgian Prime Minister Charles Michel issued a statement of “regret” for having voted in favour of Saudi Arabia and said: “If we could redo it, the government would have advocated that there is no support (for Saudi Arabia), there is no ambiguity about that. I gave instructions so that in the future the political assessment of this type of file takes place at the highest level”.⁹⁴ Commenting on this, executive director of UN Watch Hillel Neuer said: “Human rights activists everywhere ought to accept this rare apology, provided that it is matched with a real commitment to ending the UN’s routine elevation of gross human rights abusers to influential human rights bodies, which only empowers the regimes, not the victims.”⁹⁵ Neuer also strongly insinuated that the appointment of Saudi Arabia was money-motivated due to the country’s oil wealth, giving it great political powers. He has also pointed to the secret agreements between Saudi Arabia and Russia, and Saudi Arabia and the UK, concerning its place on the Human Rights Council.

Looking at the other twelve countries elected to the CSW at the same time as Saudi Arabia it is obvious that the idea that states first must have reached a certain level of human rights in their country before being granted membership to human rights bodies is faulty. However, there is a difference between being able to grant limited human rights to women due to poverty and a lack of possibilities to develop a society, and choosing to deny women their rights despite the financial and development means being in place. The outrage over the appointment of Saudi Arabia might lie in a frustration due to the fact a country that is so rich and modern, with every economic possibility to stop discriminating towards women, nonetheless chooses to only to continue but to be possibly worse than any other country. This view insinuates that other countries where women lack the legal rights of men are at least trying their best, despite being poor and “unevolved”,

⁹⁴ UN Watch, *Belgium’s Shame: PM “sorry” for helping get Saudi Arabia on UN women’s rights panel; scandal exposed by UN Watch*, available at <https://www.unwatch.org/belgium-sorry-helped-elect-saudi-arabia-u-n-womens-rights-commission/>, visited on 2017-11-30.

⁹⁵ Ibid.

and therefore cannot be blamed for still being in the overwhelming chains of religion and culture. Undeniably, this uncovers the idea that what keeps non-Western states to reach the level of sophistication of Western states, is money, development and modernisation. This reasoning is in line with the proven view that culture exists only with “the others”. Saudi Arabia fascinates and frustrates the West in that it is wealthy and modern but still refuses simply to let go of their “Muslim” discrimination against women and become a fully worthy Westernized state.

Considering the collective disapproval and outrage of many countries to the reservations made upon Saudi Arabia’s ratification of CEDAW, it is peculiar that out of the seven of those countries, that were members of ECOSOC at the time of the vote, at least three did in fact vote in favour of Saudi Arabia. Those objecting and at the same time possibly in favour-voting countries are France, Germany, Ireland, Norway, Spain, Sweden and the UK.

3.5 Conclusion

The CSW is an interesting and complex political body of the UN, representing the highest protection of women’s rights available in the world. However, both its mandate and the influence of its separate member states are limited. At the time of the election of Saudi Arabia, the consensus among the media and human rights organizations was that this was a disrespectful betrayal towards women everywhere and to women in Saudi Arabia in particular. The conflict of the worst patriarchy of the world and the main women’s rights protector of the world was undeniable, and the reactions showed the views on the UN are both it being a meaningless farce and at the same time being important and influential enough to destroy something significant by the inclusion of Saudi Arabia.

Next chapter is a case study on Saudi Arabia, with the necessary information enabling a better understanding of what the impact of the appointment might be.

4 Saudi Arabia case study

Saudi Arabia is infamous for restricting women's lives with referral to Islamic law. In the Basic Law of Governance, the Saudi Constitution adopted in 1992, the first article states that the constitution of the kingdom is made up of the Holy Qur'an and traditions (the Sunnah) and that the Saudi legal system is based on Shari'ah. Therefore, in order to understand Saudi Arabia, this case study will begin with an overview of Shari'ah and the close historic relationship between Saudi Arabia and its religion, followed by the economic and cultural aspects of today. Saudi Arabia is a country with fascinating historical, social, religious, cultural, legal and political aspects and, due to the scope of this paper, this is an overview of the most important aspects.

4.1 Shari'ah

Considering Saudi Arabia made a reservation to CEDAW based on Islamic law it is necessary to have a basic understanding of Shari'ah and its place in Saudi Arabia, in order to appreciate this country's relationship to religion and women's rights.

4.1.1 Brief history of Shari'ah

Shari'ah means "a way to the watering-place or a path apparently to seek felicity and salvation" which means it is a path to religion, mentioned once in the Qur'an.⁹⁶ A major concern of Shari'ah is the one of justice, and specifically of protecting the five values of life, religion, property, intellect and family. Sources of Shari'ah are the Qur'an and the Sunnah.⁹⁷ Because Shari'ah is part of Islam, the concept of justice is part of believers' faith as

⁹⁶ Kamali, Mohammad Hashim, *Shari'ah Law: An Introduction*, Oneworld Publications, Oxford 2008, p. 2.

⁹⁷ Ibid, p. 19.

well as of the regulatory justice.⁹⁸ Islamic jurisprudence is called fiqh and is the only legal standard of Saudi Arabia, whereas almost all other Muslim states base their commercial and criminal codes on French, British and Russian law.⁹⁹ The particular direction of Islam practised in Saudi Arabia is Wahhabism, which dates back to the very founding of the country.

4.1.1.1 Wahhabism and the origion of Saudi Arabia

Muhammad ibn Abd al-Wahhab (1703-1792) was the founder of Wahhabism, a reformation of Islam, aimed to purify the religion.¹⁰⁰ The initial means to achieve this were through propaganda, the destruction of holy places and tombstones, and the murder of a woman.¹⁰¹ Her stoning, for the crime of “fornication”, spurred on the existing opposition towards Wahhabism, and Ibn Abd al-Wahhab was sent into exile. Muhammad ibn Saud, the local emir of al-Dir’iyya where Ibn Abd al-Wahhab settled, along with his wife and two brothers, were supporters of Wahhabism.¹⁰² The two formed an alliance of military and religious support, and Ibn Abd al-Wahhab stayed in al-Dir’iyya after Ibn Saud had agreed to lift the tax on the people living there. Not only had this been against Shari’ah, but its removal also won the support of Ibn Saud among the people. In 1774, the Oath of Dhiriyya was made between these two men and cemented by marriages between the families that continue to this day.¹⁰³ This was the start of the Islamic legitimation for the House of Saud.¹⁰⁴ Their combined rule, as one religious and one political leader, ended in 1819 when al-Dir’iyya was invaded by the Ottoman Empire.¹⁰⁵ Although the majority of the Saudi

⁹⁸ Kamali 2008, p. 30.

⁹⁹ Schwartz Stephen, *Shari’ah in Saudi Arabia, Today and Tomorrow*, pp. 19-40 in *Radical Islam’s Rules: The Worldwide Spread of Extreme Shari’ah Law*, ed. Marshall, Paul, Rowman & Littlefield Publishers Inc. Oxford 2005, p. 20.

¹⁰⁰ Vassiliev, Alexei, *The History of Saudi Arabia*, Saqi Books, London 1998, pp. 75-76.

¹⁰¹ Ibid, p. 81.

¹⁰² Ibid, p. 82.

¹⁰³ Pool, David, *Saudi Arabia: Between Tradition and Modernity* (updated and amended by Burnell and Randall), pp. 441-451 in *Politics in the Developing World*, eds. Burnell, Peter & Randall, Vicky, pp. 441-451, Oxford University Press, New York 2008, pp. 441-442.

¹⁰⁴ Pool 2008, p. 442.

¹⁰⁵ Vogel, Frank E., *Islamic Law and Legal System: Studies of Saudi Arabia*, Brill, Leiden 2000, p. xv.

population are not Wahhabi today, this part of Islam holds the monopoly on the kingdom's religious life and controls the legal and educational institutions, supported by the monarchy.¹⁰⁶

4.1.1.1.1 Women in Wahhabism

As for the Wahhabi view on women, the thoughts of imam Abdul-Aziz bin Baz (1910-1999) are still relevant to today's Wahhabis.¹⁰⁷ According to him, the fact that one woman cannot act as witness in court is due to the weak memory of women, his fatwa against women driving issued to prevent "depravity", and his fatwa on obligatory full body covering because it is, simply, "obligatory upon women".¹⁰⁸ General mixing of the sexes, in fact women at all leaving the house, was banned through another fatwa by bin Baz, along with the prohibition of females teaching male children as that suggestion according to him was "inspired by Satan".¹⁰⁹

4.1.2 Human rights in Islam

Islam, being a religion, generally focuses more on the collective and human relations and justice concerning these relations and the good of the family, rather than on the specific rights of individuals.¹¹⁰ Overall, where Western jurisprudence speaks of rights, Islamic law speaks of rights and obligations, but with a wording focusing on obligations which has led to conclusions in the Orientalist discourse that Islam in fact provides no rights.¹¹¹ There is, however, the Universal Islamic Declaration of Human Rights.

4.1.2.1 Universal Islamic Declaration of Human Rights

Article 26 of the Basic Ordinance of Governance states that human rights are protected by the state in accordance with Shari'ah. In 1981, under the

¹⁰⁶ Schwartz 2005, p. 34.

¹⁰⁷ Ibid, p. 33.

¹⁰⁸ Ibid.

¹⁰⁹ Ibid, p. 34.

¹¹⁰ Kamali 2008, pp. 201-202.

¹¹¹ Ibid, p. 202.

support from the private London-based organisation the Islamic Council, connected to the Muslim World League with headquarter in Saudi Arabia, representatives from a number of countries, including Saudi Arabia, prepared the Universal Islamic Declaration of Human Rights, UIDHR.¹¹² It differs from the Universal Declaration of Human Rights in the way it is formulated concerning men and women.¹¹³ As opposed to clearly stating equality between men and women, it leaves out the rights of women in a very subtle way, e.g. the English version of Article 19.a reads as “[e]very person is entitled to marry, to found a family, and to bring up children in conformity with his religion, tradition and culture.” The words “person” and “his” shows a reluctance to a clear statement of gender equality within the UIDHR. The article goes on to say that “[e]very spouse is entitled to such rights and privileges and carries such obligations as are stipulated by the Law.” The rights are not said to be equal, but to conform with “the Law”, i.e. Shari’ah.¹¹⁴ The UIDHR lacks any provision for the rights of unmarried women, or of men, what so ever. This should indicate the creators of the UIDHR wanting to highlight the fact that women are not to be without male supervision at any point in life, as well as not wanting to highlight all the rights of men that indirectly lead to human rights violations towards their wives, e.g. domestic violence and marital rape.¹¹⁵

4.1.3 Religion or culture?

Because Shari’ah is not only part of Islam but also of the legal structure of Muslim countries such as Saudi Arabia, a differentiation between its religious and cultural character is not easily made. Cultural sensitivity within the context of human rights might have to mean religious sensitivity in relation to states that use Shari’ah, since there perhaps is no real difference between religion and culture. This is difficult to understand to most Western and secular jurists, because in our societies the distinction

¹¹² Mayer 2013, p. 30.

¹¹³ Ibid, p. 107.

¹¹⁴ Ibid, p. 108.

¹¹⁵ Ibid, p. 110.

between what is legal and what is private is somewhat stricter, and because religion is portrayed as a matter of the heart and the very intimate aspects of being an individual – not something to so strongly colour an entire society. However, not speculating as to what extent Western and non-Western people respectively relate to their religious lives, the laws of Christianity have been intertwined with European legal systems and standards from so long ago that they make up “natural” parts of Western society rather than still constituting a separate web of rules. Therefore, religious values are inevitably part of the Western legal traditions as well, meaning Western religious culture has influenced the existing women’s rights of the UN. However, international women’s rights are secular in character.

4.1.3.1 Secularism

The separation of church and state is historically a European and Christian concept, leading to the general view of secularism as difficult to implement outside of that particular geographic and religious context.¹¹⁶ As opposed to the secularist view of the role of religion being weakened with the course of time, the influence of Islam has actually grown stronger over the last century.¹¹⁷ In the scenario that Shari’ah will not be abolished in favour of secularism and thereby enable the full applicability of international human rights treaties, the option left to secure human rights within states with Islamic law is to find the human rights protection within that law.¹¹⁸

4.2 The Saudi state

In 1932, Abd al-Aziz ibn Abd al-Rahman Al Saud, more commonly referred to as Ibn Saud, declared the region of Arabia the Kingdom of Saudi Arabia after 30 years of military struggles starting with the capture of Riyadh in

¹¹⁶ Kamali 2008, p. 263.

¹¹⁷ Ibid, p. 263.

¹¹⁸ Peters, Ruud, *(In)compatibility of Religion and Human Rights: The Case of Islam*, pp. 75-96 in *Human Rights and the Impact of Religion*, eds. Van Der Ven, Johannes A. & Ziebertz, Hans-Georg, Vol. 3, Brill, Leiden & Boston 2013, pp. 93-95.

1902.¹¹⁹ What follows is a brief overview of the key points in recent history and of modern day Saudi Arabia.

4.2.1 The oil

Since economic aspects are evidently important in relation to the improvement of women's rights, it is of course interesting to mention the extraordinary source of Saudi Arabia's wealth, which is oil. Saudi Arabia began its exploitation of oil in 1938 and the increasing revenues from oil enabled the reinforcement of the Saud family's authority and the establishment of a state bureaucracy during the 1950s.¹²⁰ Since the 1970s, oil revenues have provided 70-90 % of the governments revenues.¹²¹ The oil crisis and the price of oil going down in the 1980s greatly decreased Saudi Arabia's oil revenues, and following the Gulf War (1990-1991) and its consequence of economic costs to the Saudi state lead to a petition for political reform.¹²² Journalist, businessmen and academics asked for e.g. equality, extended freedom of press and improved lives of women.

4.2.1.1 Oil money and women's rights

On 6 November 1990, a group of forty women protested the existing convention against women driving, by driving in a convoy through the streets of Riyadh (after which the government prohibited female demonstrations).¹²³ As a response, the government turned the prohibition against female driving into a law completely forbidding it. Over the following two decades, the population of Saudi Arabia increased by more than 50 %, straining the economy.¹²⁴ Economics would continue to be an issue for Saudi Arabia as this rich nation moved into today's perspective of

¹¹⁹ Al-Rasheed, Madawi, *A history of Saudi Arabia*, Cambridge University Press, Cambridge 2002, pp. 39-49.

¹²⁰ Pool 2008, pp. 441, 443.

¹²¹ Ibid, p. 445.

¹²² van Eijk, Esther, *Sharia and national law in Saudi Arabia*, pp. 139-180 in *Sharia incorporated: A comparative overview of the legal systems of twelve Muslim countries in past and present*, ed. Jan Michiel Otto, Leiden University Press, 2010, pp. 150-151.

¹²³ Mayer 1995, p. 180.

¹²⁴ van Eijk 2010, p. 153.

having to move away from the dependence on oil, and money become a clear incitement to loosen the restrictions on women's lives.

4.2.2 Modern day Saudi Arabia

As opposed to nearly all other Muslim countries, Saudi Arabia was never colonized by the West, which means Western law has never, throughout history, reached into the core of the legal system of Saudi Arabia.¹²⁵

Following 9/11, efforts increased among Saudis towards petitions calling for reforms of the government in order to promote democracy and human rights.¹²⁶ However, the resistance of the Saudi state to yield to such propositions were to be overwhelmingly demonstrated through the shutting down of demonstrations and protests in 2011 during the Arab Spring. The royal family Al Sa'ud constitutes the state, and its partner in ruling for 250 years, the Ahl Al-Shaykh, who are descendants of Ibn Abd al-Wahhab, are not possible to distinguish from religious, educational and legal institutions.¹²⁷ Wahhabi militia terrorizes both public and private spaces in Saudi Arabia under the title "The League for the Encouragement of Virtue and Prevention of Vice".¹²⁸ The Saud extended family from the time of their founder is numerous, with an estimate of ten thousand males, all holding government stipends.¹²⁹ Above describes the context in which to look at the situation of Saudi women.

4.3 Women in Saudi Arabia

The women of Saudi Arabia face many difficulties that are presumably impossible for anyone else fully to comprehend. This is an as accurate overview of Saudi women's legal situation as possible considering.

¹²⁵ Vogel 2000, p. xiv.

¹²⁶ Mayer 2013, pp. 41-42.

¹²⁷ Schwartz 2005, p. 24.

¹²⁸ Schwartz 2005, p. 25.

¹²⁹ Pool 2008, p. 444.

4.3.1 The male guardianship system

The main issue with gender rights in Saudi Arabia is the male guardianship system.¹³⁰ It is based on “the most restrictive interpretation of an ambiguous Quranic verse”, challenged by Saudi professors as well as religious scholars.¹³¹ Saudi women are not considered of legal age, as men are, since they through their entire lives are obligated to have a male legal guardian. Although not prescribed by law, this is accepted throughout society.¹³² It limits women’s legal capacity and powers concerning marital status, inheritance, property ownership, child custody and the choice of education, employment and where to live. This is, because of all the legal implications it brings with it, the gravest human rights violation affecting women in Saudi Arabia. Women are unable to move around in society, choose whom to marry, enrol to education, attend certain public events or travel without the validation of their guardian. There are even men who take advantage of their given authority over the dependant in question by extorting money from her by allowing her to work, travel etc. only if she pays the guardian money.¹³³

Saudi Arabia, with the guardianship system in place, does not recognize women’s full legal capacity. Although a woman as of 2013 can obtain a national ID card without the consent of her guardian, and from 2014 no longer needs a male relative to verify her identity in the interaction with the courts, realisation of female legal capacity is still haltering. It was only in 2001 that women could have personal ID cards at all.¹³⁴ Before that, women were simply registered under the family card of their guardian. Today, women face difficulties both applying for the ID cards and appearing in court without their guardians. Proving her identity can be difficult without access to the family card, or her passport, which are held by the

¹³⁰ Human Rights Watch report, *Boxed In – Women and Saudi Arabia’s Male Guardianship System*, released on July 16 2016, available at <https://www.hrw.org/report/2016/07/16/boxed/women-and-saudi-arabias-male-guardianship-system>, p. 1.

¹³¹ Ibid, p. 5.

¹³² Ibid, p. 15.

¹³³ Ibid, p 2.

¹³⁴ Ibid, p. 58.

guardian. In addition, ID cards naturally require bare faces, meaning guardians who do not approve of this, indirectly can forbid the picture being taken and court officers may deny women's access to courts if they do not want to see their uncovered ID cards.¹³⁵ They may also demand women to bring a male relative, even though the Ministry of Justice announced in 2015 that disciplinary actions will be taken against court officials who fails to comply with the 2014 decision.¹³⁶

The existence of the guardianship system, whatever specific improvements the government makes towards women's rights, is what keeps Saudi Arabia in breach of CEDAW Article 15 (2), obligating states to "accord to women, in civil matters, a legal capacity identical to that of men and the same opportunities to exercise that opportunity". While pressing the importance of progress, celebrating each improvement and every step towards gender equality, a woman interviewed by the Human Rights Watch said, "I don't believe we can change this in small steps. It is what is happening right now. We need a very brave call from the government to remove this [guardianship] and make it equal."¹³⁷

Even though there are no legal barriers for women to vote or run for elections, the male guardianship system create practical obstacles for women in terms of proving they live in their voting district, since their names normally are not listed along with the men's in the paperwork.¹³⁸ Women can also be required to present the family card, which is often kept by the guardian, even though women are now able to have their own ID cards. By a decree issued by the government in 2016, council meetings have to be gender segregated, and so female councillors can only participate via video link.¹³⁹

As long as women cannot travel abroad or study abroad without permission, women cannot take advantage of the possibilities that

¹³⁵ *Boxed In – Women and Saudi Arabia's Male Guardianship System*, p. 61.

¹³⁶ Toumi, Habib, *Saudi Arabia judges told to accept women's IDs*, Gulf News, 17 February 2014, available at <http://gulfnews.com/news/gulf/saudi-arabia/saudi-arabia-judges-told-to-accept-women-s-ids-1.1291894>, visited on 2017-11-30.

¹³⁷ *Boxed In – Women and Saudi Arabia's Male Guardianship System*, p. 3.

¹³⁸ *Ibid*, p. 3.

¹³⁹ *Ibid*, p. 3-4.

education should create. As long as there is no penalty for employers who require guardian permission for women to work, despite the government not requiring it, and the government requiring employers to separate men and women in the workplace which creates an obstacle for the employer, women cannot fully enjoy the employment freedoms set out on paper. Other significant as well as symbolic changes has however been made only over the second half of 2017.

4.3.2 The lift of the driving ban

On 26 September 2017, Saudi Arabia announced that King Salman had issued a royal decree ordering to reform the ban on women driving.¹⁴⁰ From June 2018, women will be able to drive in Saudi Arabia. A woman who wants a driving license can have one without the permission of her guardian and she does not need to bring the guardian in the car when driving. Causing a medial stir all over the world, many congratulating Saudi Arabia to this historical milestone, it also rose questions about the intentions behind the removal of the ban. According to Alwaleed bin Talal, an influential Saudi prince and women's rights advocate, the average Saudi family spends \$1,000 every month on private drivers and taxis due to the fact that women are not allowed to drive (and public transport not being an alternative).¹⁴¹ Last year he also tweeted "Stop the debate: Time for women to drive".¹⁴² Whatever the reasons, women being allowed to drive is undeniably a step in the right direction for women's rights in Saudi Arabia.

¹⁴⁰ Human Rights Watch, *Saudi Arabia: As Women's Driving Ban Ends, Provide Parity*, 27 September 2017, available at <https://www.hrw.org/news/2017/09/27/saudi-arabia-womens-driving-ban-ends-provide-parity>, visited on 2017-12-10.

¹⁴¹ *Let Women Drive, says Saudi Prince*, 1 December 2016, Al Jazeera News & Agencies, available at <http://www.aljazeera.com/news/2016/11/alwaleed-bin-talal-time-women-drive-161130153834646.html>.

¹⁴² Twitter post by Prince Alwaleed bin Talal, 29 November 2016, available at https://twitter.com/Alwaleed_Talal/status/803672332485017600.

4.3.3 Concerts, sports events and cinemas

At the 87th anniversary of the foundation of Saudi Arabia, celebrations with various concerts and performances at the King Fahd International Stadium in Riyadh on 23 September this year were, for the first time ever, accessible to women.¹⁴³ While concerts have generally been limited in Saudi Arabia due to morality laws on clothing and gender segregation, music events are part of the social reform of Vision 2030. By-passing the gender segregation issue in order to enable women to enjoy music events, Saudi Arabia had its first concert open only to women on 29 November this year.¹⁴⁴ Naturally, the singer also was female. On 14 December, however, a concert with an American hip hop artist was held open to men only, which sparked annoyance from women wanting to attend as well as from conservatives criticizing it because of the questionable morality of the performer's past.¹⁴⁵

From early 2018, women will have permission to attend three of the country's largest and most important sports stadiums.¹⁴⁶ Cinemas will also be returning to Saudi Arabia next year and be open to both genders, after having been completely banned since early 1980s when the Saudi state made legislation stricter as a reaction to the Islamic revolution in 1979.¹⁴⁷

4.4 Commitments of Saudi Arabia

All Middle Eastern states have made reforms in order to improve the status of women, apart from Saudi Arabia.¹⁴⁸ Having, however incompletely,

¹⁴³ Kalin, Stephen, *National Celebrations open Saudi Sports Stadium to Women for First Time*, 23 September 2017, Reuters, available at <https://www.reuters.com/article/us-saudi-nationalday-women/national-celebrations-open-saudi-sports-stadium-to-women-for-first-time-idUSKCN1BY0KY>.

¹⁴⁴ Al-Shareef, Solafa, *Balqees Fathi Shines at Saudi Arabia's first Female-Only Concert*, 1 December 2017, available at <http://www.arabnews.com/node/1201721/saudi-arabia>.

¹⁴⁵ Sini, Rozina, *Nelly Will Perform Men-Only Concert in Saudi Arabia*, 22 November 2017, available at <http://www.bbc.com/news/blogs-trending-42079077>.

¹⁴⁶ Bach, Natasha, *Saudi Arabia Will Finally Let Women Attend Some Sporting Events*, 30 October 2017, available at <http://fortune.com/2017/10/30/saudi-arabia-women-allowed-sports-stadiums/>.

¹⁴⁷ Paul, Katie, *Saudi Arabia Lifts Cinema Ban, Directors and Movie Chains Rejoice*, 11 December 2017, Reuters, available at <https://www.reuters.com/article/us-saudi-film/saudi-arabia-lifts-cinema-ban-directors-and-movie-chains-rejoice-idUSKBN1E50N1>.

¹⁴⁸ Mayer 2013, p. 101.

ratified CEDAW, Saudi Arabia is obligated to issue state reports on the measures taken towards the promotion of women's rights.

4.4.1 CEDAW report 2008

The latest CEDAW State Reports issued by Saudi Arabia and which has been translated from Arabic is the Combined initial and second periodic reports¹⁴⁹, examined at the CEDAW 40th Session, held at the United Nations Office at Geneva in 2008. There is also the combined third and fourth report issued in 2016, unfortunately to my knowledge only available in Arabic. The report from 2008 begins with explaining that there are certain fundamental features that sets Saudi Arabia apart from other countries. Apart from its central geographical position, occupying ca 80 % of the Arabian Peninsula, Saudi Arabia is described as “the cradle of the Islamic message and the direction to which all Muslims throughout the world turn in prayer, due to the fact that God created His Sacred House (the Kaaba) at Makkah al-Mukarrama and the Mosque of the Prophet at Madinah al-Munawwara”. It goes on to say that Saudi Arabia has adopted the Holy Koran as its constitution. As to the legislative framework, the Combined initial and second periodic reports states that all laws and regulations derive from the Holy Koran and the Sunna of Muhammad, which contain “unequivocal rulings in favour of non-discrimination between men and women, desiring that women enjoy the same rights and duties on a basis of equality”. It also refers to the Basic Law of Governance, the royal decree issued by King Fahd in 1992, and claims that Article 26, that stipulates state protection of human rights in accordance with Shari’ah, prohibits discrimination against women. The report goes on to point out that the Saudi state always has “devoted attention to the social and economic aspects of the family in general and of women in particular, in the belief that women have a special role to play in the destiny of peoples and that no nation can have a

¹⁴⁹ CEDAW/C/SAU/2, *Consideration of reports submitted by States Parties under article 18 of the Convention on the Elimination of All Forms of Discrimination against Women Combined initial and second periodic reports of States Parties*, Saudi Arabia (29 March 2007).

radiant future without the conscious involvement of mothers”. Commenting on the ratification of CEDAW, the report states that there generally is no discrimination against women in the laws of the Kingdom, but that CEDAW is taken into consideration in the framing of new laws and in the amendment of existing laws.

4.4.1.1 Measures taken by Saudi Arabia

According to the reports, the most important measures the Saudi state has taken since CEDAW came into effect is, among many, a change in the traditional view of women in society by an increased awareness of women’s role in the country’s development. In addition, primary education has been made compulsory for both genders between the ages of six and 15, and there has been an increase in employment opportunities for women and the establishment of a higher national committee specialized in women’s affairs.

4.4.1.2 Response from the Committee

The Committee on the Elimination of Discrimination against Women commented¹⁵⁰ on the combined initial and second periodic report of Saudi Arabia at its 815th and 816th meetings on 17 January 2008. It particularly congratulated Saudi Arabia on the higher national committee specialized in women’s affairs and the process of drafting new legislation on the implementation of women’s rights. The Committee then went on to express its concern about the general reservation made upon ratification, due to its width making it contrary to the object and purpose of the Convention, urging Saudi Arabia to consider withdrawal, since the Saudi delegation assured the Committee there is no substantial contradiction between the Convention and Islamic Shari’ah. It also expressed concern that, although the Convention is part of domestic law, there is a lack of awareness of the Convention. The Committee also called Saudi Arabia to understand the principle of equality as equal rights between men and women, rather than

¹⁵⁰ CEDAW/C/SAU/CO/2, *Concluding comments of the Committee on the Elimination of Discrimination against Women* (14 January-1 February 2008).

similar rights and complementarities. It urged Saudi Arabia immediately to abolish the practice of male guardianship. As to the promotion of women's rights in accordance with BDPfA and Beijing+5, the Committee encouraged Saudi Arabia to develop a national action plan with a strategy. Furthermore, the Committee encouraged Saudi Arabia to take measures to increase the number of women participating in elected decision-making bodies and to ensure equal access to all fields of education and on all levels, since the Committee pointed out the rate of illiterate women, indicating discrimination within the education system. The Committee requested, for the next report, more data and analysis on the situation of Saudi women and the impact results of measures taken when implementing CEDAW. Also, the Committee encouraged Saudi Arabia to ratify the Optional Protocol, which has not happened as of November 2017.

4.4.2 CEDAW report 2016

The combined reports from 2016 have not been translated into English on the website of the Office of the High Commissioner for Human Rights, OHCHR, and it is not included at all on the list of States Latest Reports on the UN website.¹⁵¹ This is therefore, with apologies in advance for any essential errors, my own translation from Arabic to English of Saudi Arabia's combined third and fourth reports to the Committee.

The report mentions the Vision 2030 for Saudi Arabia and “the empowerment of women, the promotion of participation in political and public life, freedom of association and support, and the right to participate in cultural and recreational activities”. In order to achieve “the ambitious goals of Vision 2030 Saudi Arabia” a decision was issued.¹⁵² Also, interim

¹⁵¹ CEDAW combined state reports 2008 Saudi Arabia, available at <http://www.un.org/womenwatch/daw/cedaw/reports.htm#s> and CEDAW combined state reports 2016 Saudi Arabia, available at http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CEDAW%2fC%2fSAU%2f3-4&Lang=en, visited on 2017-12-01.

¹⁵² Decision No. (362) dated 1/7 / 1426H corresponding to 7/6/2016, approving the National Transition Program on Level of 24 government agencies based on the economic and development sectors in the first year of the program.

targets to year 2020 has a special strategy linked to it. The first phase of the initiatives to achieve these goals and objectives was launched in 2016, to be followed by annual stages. The strategy includes recognizing challenges and evaluating performance in order to build efficiency and sustainability in the work of the government, by using innovative methods and national follow-ups. Again, it was pointed out that Saudi Arabia's Shari'ah based systems use the principle of complementary gender equality, rather than simply plain equality. This takes into account the characteristics of both men and women, whilst achieving justice in the end. The report goes on to say that "many legislative and other measures have been taken to empower women and to promote and protect their rights". One important aspect is that women have the right to vote and run for office on equal terms with men. It goes on to say that the Ninth National Development Plan 2009-2014 has resulted in the achievement of a number of goals for women, such as the empowerment of women to participate in achieving development goals, enhancing its status and influence in the family and society, addressing the phenomenon of domestic violence, developing women's contribution to economic activity, making quantitative and qualitative progress in the education of Saudi girls and working towards eliminating female illiteracy. The 10th Development Plan includes goals such as developing support services and facilities to enable women to fulfil their economic and social role, increasing employment opportunities, achieving more targeted care to improve women's health and providing women with excellent access to administrative provisions in government agencies and universities. The aim is to raise the level of household economies by activating the productive role of women and with the help of entrepreneurs "overcome traditional handicaps". Furthermore, the report states that awareness of the importance of the protection of women is spread within the word of Islam, pointing to the texts that express the rights of women must be not only protected but also respected and honoured. This takes into account the limits of the male guardianship and the full compatibility between the Islamic law and the human nature. As to the upbringing of the family, achieving the best interests of the child is, according to the report, to achieve justice.

Addressing the male guardianship system, the report points out that it is viewed by the Committee and other human rights mechanisms and organizations to be a derogation from women's rights. However, they go on, male guardianship in fact represent principles that promote human rights in general. The male guardianship means that men are required to take care of the needs of women, including spending money on them. In no way, it goes on, does it imply or construe any domination or exclusion by men over women. The abuse of the male guardianship, to control women or violate their rights, remains in the context of individual wrong doings.

There are no statutory provisions that prevent women from voting or running for election. Women have been included to the Shura Council, the highest advisory body of the king. (30 women were appointed to it in 2013 by then-king Abdullah.¹⁵³ In 2015, for the first time in the history of Saudi Arabia, women were allowed to participate in municipal council elections, marking an important victory.¹⁵⁴) Saudi Arabia's systems allow Saudi women to represent their government at the regional and international levels through their work. The number of Saudi women working in diplomatic posts 81 was diplomatic in 2014, while there were no female diplomats in 2008. The number of female enrolments in postgraduate programs and training programs in 2014 was 108, in 2008 the number was 34. The number of female enrolments in education generally has also gone up since the last issued report. The report notes that the educational system is based on equality between men and women, but has put more attention towards women in order to increase female enrolment and success by aiming to eliminating means of discrimination. The progress in education has contributed to a higher rate of women in the labor force. However, the results are not as good as Saudi Arabia had hoped, with a much higher rate of unemployment among women than among men.

The Kingdom of Saudi Arabia reaffirmed that Islamic Shari'ah is the main reference to personalized personal issues, which organize the relationship within the family, concluding the combined reports.

¹⁵³ *Boxed In – Women and Saudi Arabia's Male Guardianship System*, p. 2.

¹⁵⁴ *Ibid.*

The economic incitements to improve women's right to work in Saudi Arabia should however be significant, since women represent only around 20 % of the country's work force despite earning half of higher education.¹⁵⁵ Despite falling short of the preferred standards of women's rights, Saudi Arabia has achieved important changes. The individual behind the most recent social reforms is Crown Prince Mohammad bin Salman.

4.5 Mohammed bin Salman

Crown Prince Mohammed bin Salman, son of King Salman, was the one who unveiled the Saudi Vision 2030 plans in 2016. While royal decrees can only be issued by the King, bin Salman has been working towards the social reforms of concerts and cinemas over the second half of 2017. He has great ambitions to reform Saudi Arabia economically and socially, saying: "What happened in the last 30 years is not Saudi Arabia"¹⁵⁶.

4.6 Conclusion

Saudi Arabia has undeniably made changes over the last decade to improve women's rights. However, as long as the male guardianship system is in place, the effects of these reforms are deterred or blocked.¹⁵⁷ Saudi Arabia is a complex and secretive country, with strong international political powers due to its oil generated wealth. It is difficult so say to what extent women's rights promoting changes are being made with the intention to improve the lives of Saudi women, to improve the rest of the world's idea of Saudi Arabia or to improve the economy. What can be established, however, is that improvements indeed have been made since the election to the CSW, and that there might be a correlation between them and the appointment.

¹⁵⁵ World Economic Forum's Global Gender Gap Report 2016, Saudi Arabia, available at <http://reports.weforum.org/global-gender-gap-report-2016/economies/#economy=SAU>.

¹⁵⁶ Chulov, Martin, *I will return Saudi Arabia to moderate Islam, says crown prince*, 24 October, The Guardian, available at <https://www.theguardian.com/world/2017/oct/24/i-will-return-saudi-arabia-moderate-islam-crown-prince>.

¹⁵⁷ *Boxed In – Women and Saudi Arabia's Male Guardianship System*, p. 3.

5 Analysis

Above chapters together provide the combined information on the separate issues of women's rights, the CSW, culture, religion and Saudi Arabia, in order for this analysis to answer the research questions set out in the beginning of this paper. This analysis chapter will be evaluating this combined information and aim to make well-founded speculations.

Considering the research questions of this paper reach into the future, in asking what impact the Saudi Arabia appointment might have over the next four years on the CSW and on the lives of Saudi women in both a near and far perspective, this analysis cannot provide any clear answers. It instead consists of the conclusions that, in my opinion, are possible to draw from the information at hand.

5.1 International impact

On the international level, the impact of the appointment of Saudi Arabia could affect the CSW, its members and by extension the outcome of the work of the CSW, i.e. international law concerning women's rights.

5.1.1 The CSW

Apart from the important function of creating international law concerning women's rights, the work of the CSW has no direct effect exceeding a symbolic impact and the setting of political standards of women's rights. CEDAW ratifications weighed down by reservations of the type Saudi Arabia made, reflect the flexible and tolerant attitude towards women's rights and the low status it still has globally and in the context of human rights.

Prior to the mandate period of 2018-2022, it is of course impossible to say how the state will use its place on the CSW. The influence of member states is limited to yearly contributing to determine the agreed conclusions from CSW sessions and to vote on possible resolutions from the yearly session. However, it is an undeniable fact that Saudi Arabia is an economically robust state with strong political connections to the West. While the dependency on oil will have to decrease, it is still a significant power factor of Saudi Arabia, upholding its strong position in the world.

What should be expected from the UN and of the CSW over these next four years is to put an increased pressure onto the Saudi state to honour their commitment to CEDAW and to earn their place on the CSW, in order to lessen the burdens of Saudi women under the guardianship system.

5.1.1.1 Other member states

As well as questioning Saudi Arabia's seat on the HRC based on the controversial influence of "petrol dollars", it is reasonable to do the same with this newfound position on the CSW. As long as this remarkably wealthy country remains a main oil exporter, the risk of other member states being affected due to financial reasons cannot be disregarded. There might be a risk of Saudi Arabia affecting other member states towards slowing down CSW's work towards promoting women's rights, possibly by holding the same position as towards CEDAW and the Optional Protocol, i.e. clinging to old Islamic norms covered up by culture as a poor defence of gender discrimination.

States are members of the CSW to learn, educate and elaborate on women's rights issues. Many countries with lacking rights of women are not as well equipped as a wealthy state such as Saudi Arabia to work towards such improvement other than slowly and steadily. In countries where e.g. education for all children is still a luxury of the future, structures of discrimination girls and restricting women to remain at home with the family are not as surprising. These countries, lacking economic resources and real political powers, probably also lack the power to influence other

member states of the CSW negatively in the sense of spreading their low standard of women's rights. The case of Saudi Arabia is, however, unique.

The world is indeed dependent on oil and there is a risk that over these upcoming years Saudi Arabia will be on the CSW, other members of the CSW will adapt their voting in order to keep their economic relationships to Saudi Arabia intact.

5.1.1.2 Economics

One major focus of the UN Women as of today is the economic empowerment of women. The fact a nation where as many of society's adults viable for work as possible are actually working will experience economic growth has been well established.

Last year's Saudi Vision 2030, put forward by Crown Prince Mohammad bin Salman who is also behind recent social reforms, contains a central goal of maintaining the strong Saudi economy in the future. This will inevitably mean improving women's rights by enabling their studying, working and moving about in society. With its population growing and oil prices going down, Saudi Arabia will eventually have to grant to women their basic human rights, meaning it might have less reason to stifle the CSW process promoting women's rights. The economic focus of the CSW together with the undeniable fact Saudi oil is not a self-renewing pot of wealth which urges Saudi Arabia to find new ways of promoting the economy, areas where gender discrimination hinders economic growth will most likely eventually be lessened or completely eliminated. Due to strong religious and traditional forces and the obligations of Shari'ah, this will, however, take time.

The population of Saudi Arabia, grown custom to a tax-free society because of their rich nation, will not likely settle for a lower standard of life. As social life develops, and strengthens the economy, the absurdity of keeping women indoors and out of society will most likely become increasingly more obvious to all Saudis. The need for economic growth will eventually make the government of Saudi Arabia find ways to accommodate

the idea of universal international standards of women's rights within the context of their cultural complexity.

5.1.1.3 Women's global rights

Having a seat on the CSW over the next four years will probably mean heightened attention on Saudi Arabia in all issues concerning women's rights. The fact that Saudi Arabia was elected to the CSW while still relating to CEDAW with the same reservations due to Islamic law, insinuates that states can pick and choose from such an important treaty and still be able to ratify it. This is in spite of the overwhelming grounds to object as well as the fact that so many states did just that.

Women's rights are still at constant risk of being ridiculed and marginalized within international law. The fact that both CEDAW ratifications and its reservations are so many, cements the idea that women's rights are at the mercy of the good intent of states. When these states are extreme patriarchies, the UN will seemingly accept anything they can get, even if that means seriously challenging the very foundation of treaty law as a whole. To commit to improving women's rights through a legal document created from secular law, while keeping the right to deny women those rights if they come into conflict with religious law, should not be possible.

If the confusion as to human rights, religion and culture would have been clearer to the CSW, and to the field of international law in general, the UN would perhaps have been less forgiving and less flexible in dealing with resistance to commitment to promoting women's rights. The foundation of the legality of human rights are that they need to be universal, because if they are not they are not actually human but something else, perhaps male rights or Western secular women's rights. No cultural sensitivity should be permitted to relativize women's rights, since that goes against the very core of the idea of human rights. However, in the realization of women's rights there is no room for any kind of idealism if the "wrong" way in fact does lead to the "right" things happening.

5.2 Domestic impact

The second research question of this paper is what the impact of the appointment of Saudi Arabia will be on the domestic level, i.e. on women in Saudi Arabia.

5.2.1 Saudi Arabia's women

In attempting to answer this, the following is an evaluation partly of the main obstacles of Saudi women's rights and partly of the political and economic incitements of the Saudi government's likeliness to improve Saudi women's rights.

5.2.1.1 Cultural relativism

The discussion on the conflict between the universal promotion of international women's rights and the importance of cultural sensitivity will most likely not reach any final solution in the near future. Neither is "culture" easily defined. In the case of Saudi Arabia, its history and culture is not separable to its religion of Islam. The entire foundation of the Saudi state is intertwined with the Muslim faith, and more particularly the orthodox direction of Wahhabism, to the extent that modern Saudi Arabia is inseparable to the strict legal and social norms derived therefrom. This of course means that any secular point of view regarding the rights of women in non-secular settings is not appropriate. However, Saudi delegations has affirmed there is no contradiction between Shari'ah and women's rights. What is hindering Saudi women from enjoying their full human rights under CEDAW is therefore not Islam or Shari'ah per se. The male guardianship system, while not being prescribed by religion, is so strongly embedded in the Saudi society that the removal of it can seem as difficult to achieve as if it had indeed been from religion. Whether this custom should be described as being part of Saudi tradition, as a rest from the patriarchal structures of history, or as part of Saudi culture, it cannot be said to simply be derived

from the fact Saudi Arabia is a Muslim country. That exoticizing way of generalising this “non-Western” religion, to grant it greater powers than it in itself can possibly contain, is threatening to distract from the specific responsibilities of Saudi Arabia. While the world is outraged over the way Saudi women are treated as second class citizens, cultural relativism perhaps made it possible for Saudi Arabia to ratify CEDAW in spite of obviously being in breach of Article 15, and to be appointed to the CSW despite completely consciously remaining a notorious women’s rights violator. However traditionally bound the systematic gender discrimination in Saudi Arabia might be, the resistance towards abolishing harmful traditions cannot be explained neither by religion nor by tradition. If anything, the social norms created by the Saud family, and by extension the Saudi government, that protect the existence of traditions harmful to women, e.g. the male guardianship system, might possibly unfold to be part of Saudi culture. In any case, cultural relativism must not slow down the process towards abolishing the male guardianship system. If Saudi Arabia is on a long overdue yet serious path towards liberating women so that they can enjoy their full rights, the male guardianship system needs to be removed before access to work and education and the right to the freedom of movement can be fully realized. There is reason to believe, due to strong economic incitements and in spite of strong conservative forces, that by the end of the term of 2018-2022 Saudi Arabia will be closer to abolishing the male guardianship system than it is today. In the context of religion, culture and traditions it is however difficult to speculate as to the future due to the dignity and importance of these aspects to the lives of those concerned.

5.2.1.2 Economic incitements

The positive changes that have been made by Saudi Arabia recently towards the improvement of Saudi women’s rights are likely, to a great extent, motivated by the prospect of economic growth. These social reforms have also been putting positive global attention on Saudi Arabia. Considering earlier efforts of Saudi women to further change have been met by even stricter legislation, the desire in itself of the female Saudi population to be

granted their full human rights will not be enough to achieve profound change. The conservative Saudi forces are seemingly very strong. However, the previous tendency of Saudi Arabia to favour social reforms in times of need of economic growth, real change can indeed be expected to be made in the near future. The fact Saudi Arabia eventually needs to become less dependent on oil will most likely be impossible to disregard by the rich and powerful, however traditional and resistant to change. There might be backlashes to these efforts of Mohammad bin Salman to modernize and boost the economy, as there have been before. The politics of a state made up of the same people that constitute the royal family, is naturally very complex. There are conservative forces as well as modernisers, as with most countries.

Again, what is undeniably certain is that the full human rights of Saudi women cannot be realized prior to the male guardianship system having been abolished. Whether the appointment of Saudi Arabia to the CSW will eventually enable that to happen, is difficult to say, however there is reason to believe it is at least not less likely than had Saudi Arabia not been elected to the CSW. As Joelle Tanguy and the UN Women has put a strong focus on the economic participation of women in society as a mean of improving women's rights, future improvements of the legal possibilities of Saudi women will be made from the perspective of economic growth.

However, lifting bans that have been discriminating women does not necessarily mean the social, religious and cultural barriers will be removed as easily. Women of Saudi Arabia actually participating in society on the same terms as men and being able to make decisions about education and employment is essential for the laws to be efficient. Young women not being able to plan their lives as to what and where to study, nullifies any increase of the number of girls in schools. Divorced women changing their guardian from their elderly fathers to their young sons, barely of legal age, is of course nothing but humiliating. Along with the male guardianship system, gender separatism is the main barrier to gender equality, threatening to stifle women's access to the new social life of Saudi Arabia.

6 Conclusion

At the beginning of this process, I set out to try to broaden the perspective on the appointment of Saudi Arabia to the CSW. Instead of simply stating the controversy and making grim predictions to the future, I hoped to be able to provide a bigger picture. In doing so, I wanted to underline the fact that however controversial the appointment might be, there are no sure answers to the questions of how it will affect the CSW or women's rights in general, and Saudi women's rights in particular. I have, to the best of my ability, tried to gather the necessary knowledge, present it in an understandable way and evaluate it in order to draw somewhat logical conclusions. Because the topic is new, I have done so without reference to any similar work, however, I hope to have included as well as excluded appropriate aspects of these complicated issues. My take away, having finished this paper, is that however unyielding the forces of history, there is no telling what the powers of change can do for the future of women's rights. Social change seems, however, dependant on economic incitements.

Working on this paper has meant aiming to look at both sides of the story with every aspect of the issue. The discussion on human rights, and perhaps particularly the human rights of women, can easily turn into a sense of "one" disciplining "the other". For international women's rights to achieve real universality, it needs to include women living under religious as well as secular norms. For international women's rights to remain protective of all these women, however, it needs to resist ill attempts at culturally relativizing the rights of certain women to the extent they are in fact excluded. International law sometimes seems, simultaneously, robust but fragile, influential but pointless. The notion of women's rights will, however universal the legal frameworks expect them to be, exist within the context of the history, religion, culture and politics of every specific region of the world.

The CSW will keep working with states in its flexible fashion. Saudi Arabia is changing. The lack of freedom and human rights for women

in Saudi Arabia stems from a complex history of religious conflicts and the creation of a state where there is no real distinction between the royals and the government. However controversial the appointment of Saudi Arabia to the CSW might be, I do believe the possible improvements of the rights of Saudi women will outweigh any risk of undermining the work of the CSW as a whole. The appointment should not be viewed as a reward, because that would obviously have been undeserved and constitute a provocation of Saudi women living their oppressed lives under the Saudi government. It should instead be considered a chance to achieve real change, to commit fully to the realization of women's human rights.

I recently spoke to the friend of a friend who has a female relative living in Saudi Arabia. Regarding the appointment, she had said most women will not dare to take advantage of the absence of the driving ban out of fear of social repercussions. Hopefully the fact that Saudi Arabia will have been on the CSW for half a year at the time for women being allowed to drive, will mean the political pressure on Saudi Arabia to follow up legal changes in practice will at least be stronger than had Saudi Arabia not been appointed.

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