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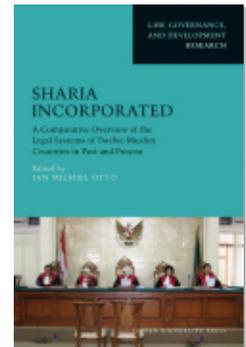
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Sharia and national law in Saudi Arabia

*Esther van Eijk*¹

Abstract

Saudi Arabia is an absolute monarchy, ruled by the House of Saud. It is the cradle of Islam and home to the two holy cities Mecca and Medina. The first article of the Basic Ordinance (1992) states that the Holy Qur'an and the Sunna (traditions) of the Prophet Muhammad are the constitution of the kingdom and that Islamic shari'a is the basis of its legal system. The discovery of oil in the 1930s rapidly changed the country and forced the government to adapt and reform, but at the same time it wanted to hold onto its Islamic character and heritage. This created a split that until today the Saudi government struggles to repair – how best to find a balance between adhering to its Islamic principles *vis-à-vis* calls for progress and political and legal reform? The king has made cautious steps toward reform, notably by restructuring the judiciary in 2007, which is still being put into full effect, and by a 2009 cabinet reshuffle with appointments of moderate ministers, including a female deputy minister of education, and new leadership for the justice sector. This chapter provides a select overview of the role of shari'a in the legal system of Saudi Arabia, both historically and in the present. It should be noted here that Saudi Arabia is a closed and complex country, which makes it difficult to gain access to extensive and recent data about the legal system and the Saudi society at large.²

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Saudi Arabia comprises about 80 per cent of the Arabian peninsula. The kingdom has a population of well over 28 million people, including at least 5.5 million foreign nationals. About 90 per cent of the Saudis are of Arab ethnicity, the rest being Afro-Asian. Traditionally, Saudi Arabia is a tribal, nomadic society. Following the discovery of oil in 1930s, especially over the last fifty years, it has become more urbanised. The migrant workers come from all over the world, with most from South and Southeast Asia, and neighbouring Arab countries. According to statistics, all Saudis are Muslim, of which 90 per cent are Sunni Muslim and around 10 percent are Shi'ite. The official language of Saudi Arabia is Arabic.

(Source: Bartleby 2010)

4.1 The period until 1920

The political-religious Saud-Wahhab alliance

In the centuries before the arrival of Islam, rival tribes, both nomadic and sedentary, dominated the Arabian peninsula, which is predominantly desert and mountainous terrain, with a few important oasis settlements.³ Caravan routes passed through the more sedentary areas in the North and along the coastal areas, including the Hijaz, the region on the Western coast of Arabia, with Mecca as its main commercial centre. Besides being a prominent trading centre, Mecca housed the Ka'ba sanctuary, a site of pilgrimage since pre-Islamic times.⁴ The Hijaz was – literally – the place of birth of Islam: the Prophet Muhammad was born in Mecca around 570 AD, and in 622 he migrated to Yathrib (later Medina),⁵ where he died in 632.

Shortly after Muhammad's death, the Islamic faith rapidly expanded as Muslims conquered the rest of Arabia and far beyond. Its political centre, however, quickly moved from the Arabian peninsula to Damascus in 656, and later to Baghdad in 750. It was not until the sixteenth century, when the Ottomans⁶ managed to seize control over some parts of the Hijaz, that the Arab tribes were forced to submit to foreign power (Cleveland 2000: 43). Turkish garrisons were stationed in Mecca, Medina, Jeddah, and other cities. However, the power of the Ottoman empire was limited, with local tribal leaders and rulers governing in this region with a great deal of autonomy.

Ibn Saud and Al-Wahhab

In the eighteenth century the situation changed when the political and religious alliance between the religious scholar and jurist Muhammad ibn Abd al-Wahhab (1703-1793) and Muhammad ibn Saud (died in

1765) gradually gained ground on the peninsula. Muhammad ibn Saud was the ruler (*amir*) of Dir'iyya, a city north of Riyadh, situated in the Najd, the central region of the peninsula. Supported by the puritan movement of Shaykh Ibn Abd al-Wahhab, he conquered large parts of the Arabian peninsula starting in 1744. Ibn Abd al-Wahhab, also from the Najd area, advised Ibn Saud on questions regarding religion, law, and political affairs. Both men shared the goal of establishing a new state 'derived from a divine contract based on the Shari'a. The state, thus, formed an integral part of religion which was not separate from politics, nor politics from morals' (Kechichian 1986: 55).

The ideas of Ibn Abd al-Wahhab formed the ideological basis of the Saudi kingdom. He sought to return to the time of the Islamic forefathers (*salaf*), a return to pure Islam.⁷ To accomplish this, he advocated the abolition of all innovations that had polluted Islam over the course of the centuries. He strongly opposed animist practices, Shi'a and Sufi practices such as visits to shrines and tombs, and other customs and rituals so common in eighteenth century Arabia. He emphasised the monolithic character of Islam and the oneness of God. In his view, customary law and indigenous customs contradicting shari'a had to be firmly suppressed (Vogel 2000: xvi). Ibn Abd al-Wahhab based his ideas on the works of the Salafi tradition within Islam, particularly as propounded by two legal scholars, namely Ahmad ibn Hanbal (780-855), founder of the Hanbali school of law, and Ahmad ibn Taymiyya (1263-1328), one of the most prominent scholars of that school.

The Hanbali doctrine traditionally distinguished itself from other Sunni schools of law by its strict adherence to the holy sources. Hanbali scholars emphasised a strict dependence on the Qur'an and the Sunna (teachings and traditions of the Prophet Muhammad) as sources of law and, unlike other schools of law, minimised resort to consensus (*ijma'*) and analogical reasoning (*qiyas*) as methods for imparting legal findings. Not only did Ibn Taymiyya seek to revive Ibn Hanbal's stringent reliance on the revealed texts in his time, his teachings were also influential in the relationship between religious and political authority, manifested in the cooperation of Muhammad ibn Saud and Ibn Abd al-Wahhab and their successors all the way up until today. Ibn Taymiyya believed that the ruler and the '*ulama* (religious scholars) should work closely together. The legitimacy of the ruler depended on his adherence to shari'a; the ruler himself is also subject to the sacred law and, therefore, at least in theory, placed on an equal footing with his subjects. The '*ulama*, for their part, have the obligation to advise the ruler and both should collaborate to uphold the shari'a (Vogel 2000: 202-204).

After Muhammad ibn Saud's death in 1765 his son and subsequent successors extended the rule of the House of Saud on the peninsula. In

1803, the governor (*sharif*) of Mecca was defeated and the Saudi-Wahhabist alliance conquered the Hijaz. Between 1803 and 1814, other territories were conquered by the Saudis. Their rule now stretched far beyond the Hijaz and the Najd towards the eastern coast of the peninsula. To administer the newly gained territories, governors and judges were appointed to cities and villages, representing the rulers from Dir'iyya and to implement the basic principles of Islam, including the collection of religious tax (*zakat*) (Kechichian 1986: 56). Disputes were adjudicated by the local ruler or by a single judge (a *qadi*), appointed by the ruler, who himself would be the only instance for appeal against the *qadi's* decision, and responsible for the implementation of a *qadi's* ruling.

The Ottomans were alarmed by the Saudi expansion, and, thus, the Ottoman sultan in Istanbul, Mahmud II, ordered his Egyptian viceroy Muhammad Ali Pasha to suppress this rebellion on the Arabian peninsula. In 1811, Muhammad Ali's son Ibrahim led the campaign in Arabia, and Mecca and Medina soon fell into Ottoman hands again. Seven years later, after a two-year siege, Dir'iyya was also conquered. The Ottoman occupation, however, did not last long: in 1824 Muhammad ibn Saud's grandson Turki ibn Abdullah (1755-1834) obtained hegemony over the Arabian peninsula and made Riyadh the new capital city.

Prince Abdulaziz al-Saud: Founder of the Saudi nation-state

After the death of his successor and son Faisal in 1865, the Saudi regime suffered from internal strife and civil war. This situation lasted until the first decades of the twentieth century, when the Saudi prince Abdulaziz al-Saud, commonly referred to as Ibn Saud (1880-1953), was able to reunite the various tribes of the Arabian peninsula under Saudi rule. In 1902, he defeated the rival Al-Rashid clan and in the subsequent years he conquered Najd, and in 1925 the Hijaz.

The expansion of what is today the Saudi kingdom is often merely ascribed to the eighteenth century Wahhab-Saud alliance, but the role of Abdulaziz al-Saud should not be underestimated. Like his forefather Muhammad ibn Saud, he was above all an astute ruler who was able to successfully play out different tribes against each other and increase his power base by forming smart alliances, for example with the British (Kostiner 1993: 6), as will be evident in the following section.

4.2 The period from 1920 until 1965

The formation of the unified Kingdom of Saudi Arabia

After the First World War, the Middle East changed drastically. The Ottoman Empire collapsed and new states under British and French mandates now neighboured Saudi Arabia. Abdulaziz faced the difficult task of maintaining the support of both the more cosmopolitan Hijaz and his own conservative Wahhabist followers in Najd. He also had to convince the Islamic world that his Wahhabist rule would not endanger the holy cities of Mecca and Medina or the tradition of the *hajj* (the annual pilgrimage), whilst on the other hand ensuring that the new nation-state paid respect to the rules of the new international world order (Vogel 2000: 281-282).

On 8 January 1926, Abdulaziz was crowned king (*malik*) of the Hijaz, adding this title to his existing position as ‘Sultan of Najd and its Dependencies’. The new king declared that shari‘a was the law of the land and that all four Sunni schools of law deserved respect (Vogel 2000: 89). In the same year, he promulgated a ‘constitution’ for the Hijaz (‘the Basic Directives of the Kingdom of Hijaz’), which declared the Hijaz to be a ‘consultative Islamic State’. The Basic Directives allowed for the formation of a Consultative Council (*majlis al-shura*) and a Council of Deputies (*majlis al-wukala*)⁸ to be involved in state policy making, respectively as representative and administrative bodies (Al-Fahad 2005: 379-380). The Consultative Council was instructed to develop a new judicial organisation for the Hijaz.⁹

When Abdulaziz conquered the Hijaz in 1925, he found a judicial organisation influenced by the Ottomans. The Hanafi school was the official rite of the Ottoman Empire and had, therefore, been established in the Hijaz, although most of the Hijazis followed the Shafi‘i school. The Ottomans had implemented a system of shari‘a courts, the panels of which were comprised of one Hanafi chief judge and three assistant judges, one from each school of law (Vogel: 88). In 1927, the king issued a decree stating that the rules of the Ottoman laws would remain effective up and until they were replaced by new rules. Many ‘*ulama*, however, resisted this decision. At a conference held in Mecca that same year, they issued a legal opinion (*fatwa*) in which they demanded the immediate cancellation of any man-made [Ottoman] laws applicable in the Hijaz and contended that only shari‘a provisions ought to be applied (Al-Jarbou 2007: 200-201).

Regardless of the reluctant attitude of the ‘*ulama* towards state-interference in ‘their’ domain, Abdulaziz adopted a framework for the courts of the Hijaz in 1927. It was a more elaborate judicial organisation with multiple-judge courts, which were, most importantly, summary and

general shari'a courts, and instances of appeal (Vogel 2000: 89). This legal system initially only applied to the Hijaz, but between 1957 and 1960 the system was implemented in the rest of the country. Vogel explains that '[i]n this way Abd al-'Aziz was able to introduce new institutions, gain experience with them, and allow his conservative Najdī 'ulamā' a chance to become familiar with them' before the actual transition took place (ibid: 283).

In Najd, the Wahhabi homeland, a different judicial system had continued to exist until the unification in the late 1950s. Traditionally, the ruler appointed single judges to the major towns, who worked closely with the local governor (*amir*). A judge was only involved after the attempts of the governor to resolve a conflict amicably had failed. The governor would then refer cases to the judge for a ruling according to shari'a, and, after judgement, the case would be submitted to the governor for enforcement if the losing party did not willingly accept the outcome. Appeals were only possible through complaint to the local ruler, who would often refer cases to the senior 'ulama (Vogel 2000: 88)

In the early 1920s all Sunni schools of law resonated in the Arabian peninsula. In Najd, the Hanbali school of law prevailed, whereas in the Hijaz, the Shafi'i and the Hanafi schools of law were both predominant.¹⁰ In 1927, Abdulaziz suggested that a law code based on rulings of all Sunni schools of law be introduced, but he faced strong resistance from the Hanbali religious scholars. In the same year, all Hijazi shari'a judges were ordered to apply the Hanbali *fiqh* (Islamic jurisprudence). Only when this school of law could not provide an answer to a particular question could one refer to the Hanafi, Shafi'i, or Maliki schools of law (Schacht 1982: 87).

The Saudi kingdom promoted itself as the cradle of Islam and, as such, the guardian of the Holy Sites. Likewise, the Saudi legal system claimed an age-old, untainted continuity, without interference from Western rulers. This claim appeared to be justified to a certain extent. Saudi Arabia, after all, had adopted little to no Western legislation, with one exception being the Ottoman Code of Commerce of 1850. The Code, based on the 1807 French Commercial Code, was stripped of all references to interest and implemented in the Hijaz in 1931 in adjusted form.¹¹ The 'ulama, however, resisted the implementation of this man-made law and the shari'a courts refused to apply it (Vogel 2000: 285).

In 1932, the Najd region and the Hijaz were joined together and the current kingdom of Saudi Arabia as a modern nation-state came into existence. Abdulaziz concentrated on consolidating his rule and establishing central authority in the kingdom. He proved to be a masterful tribal politician:

[a]s astute as he was brave, he proved to be a fair and judicious ruler whose piety, dignity, and accessibility won him the allegiance of his subjects [...] ruling less as an absolute monarch than as a first among equals (Cleveland 2000: 227).

The alliance between Ibn Abd al-Wahhab and Muhammad ibn Saud from the eighteenth century in fact continued: the political and economic authority was vested in Abdulaziz and his governors; the religious and, due to the primacy of shari'a, the legal authority was in the hands of the *'ulama*, in particular the descendants of Shaykh Ibn Abd al-Wahhab.¹² The *'ulama* were responsible for Islamic education and the interpretation of shari'a, and they remained qualified, as specialists on the Word of God, to give the ruler advice (*fatwa*) on any relevant topic.

Discovery of oil: Impetus for state-building and modernisation

In 1938, oil was discovered on the peninsula, which had long been a poor region. The young Saudi kingdom thereby obtained a stable source of income and after the Second World War the country rapidly changed into a prosperous nation. In several areas, new legislation was promulgated to keep up with the economic developments and to advance the transformation of Saudi Arabia into a modern nation-state.

According to the Wahhabi doctrine, based on Ibn Taymiyya's theory, rulers were competent to promulgate necessary legislation for government policy (*siyasa shar'iyya*), provided it was complementary to and not in contradiction with shari'a and served public interest. In modernising Saudi Arabia this legislation was often termed 'royal decree' (*marsum*) or 'ordinance' (*nizam*). It should be noted here that the term *nizam* (ordinance or regulation) is used deliberately as distinct from the term *qanun* (law), and is a term commonly used to refer to codified man-made law; many Saudi *'ulama* consider it to be a Western concept and alien to Islamic shari'a. In addition, the term 'regulatory authority' is used in lieu of 'legislative authority' because the latter term can only be used to refer to God, the only legislature (Al-Jarbou 2004: 14 n. 31). This is important to bear in mind when looking at the effects of the new regulations on the judicial structure. From the 1930s onwards, many specialised tribunals or 'committees' to adjudicate matters in certain areas, such as labour law and commercial law, were created to apply the new regulations, under the supervision of a particular ministry. The Tariffs Committee (1953); the Committee for Commercial Paper Disputes (1963); and the Committee for the Settlement of Labour Disputes (1969) are just a few examples. The king was forced to create these special tribunals because the *'ulama* opposed the new man-made legislation and the shari'a judges refused to apply it (Vogel 2000: 286).

The most important new judicial institution – an administrative court called the ‘Board of Grievances’ – was created in 1955. This Board heard and investigated complaints filed by Saudi citizens against government officials and agencies; it directly reported to and advised the king, who should take the final decision on the complaint. Initially, the Board was also authorised to investigate complaints against shari’a court judges (Al-Jarbou 2004: 25).¹³

King Abdulaziz died in 1953 and left behind a united kingdom with a central government, a set of administrative legislation, and a remodelled judicial system. The Saudi royal family firmly held onto its power: Abdulaziz was succeeded in rule by his sons Saud (1953-1964), Faisal (1964-1975), Khalid (1975-1982), Fahd (1982-2005), and Abdullah (2005-present).

Unlike his father, King Saud was not a competent head of state. His extravagant lifestyle led the kingdom to the brink of bankruptcy. His reign coincided with the emergence of the secular pan-Arab nationalism of the Egyptian president Gamal Abd al-Nasser (1956-1970). Nasser challenged the Islamic Saudi kingdom by calling for a socialist revolution that would shake the ‘feudal’ monarchy (Niblock 2006: 58). The royal family felt threatened and isolated by Nasser’s success, and countered by starting a worldwide campaign to spread Wahhabi Islam. In 1962, for example, the Saud family founded the Muslim World League in Mecca to promote ‘Islamic unity’ and to further advocate the Wahhabist version of Islam (Kepel 2004: 52). According to the Saud family, the export of Islam is a holy duty: Saudi Arabia is, after all, the birthplace of Islam and remains the guardian of the holy cities. In the 1950s and 1960s, thousands of Egyptian Muslim Brothers fled to Saudi Arabia, where they were offered political asylum. They played an influential role in the rise of radical Islamist thought among a segment of the Saudi population, which became even more evident in the 1970s (ibid: 51).

In November 1953, a month before his death, the then King Abdulaziz had ordered the establishment of a Council of Ministers. However, it took King Saud until 1958 to promulgate a regulation for the Council of Ministers, laying down the regulatory authority of the government. It granted the council authority to formulate policies related to domestic, foreign, financial, economic, and all public affairs. The regulation determined that an ordinance (*nizam*) could only be proclaimed by royal decree when it had been approved by the Council of Ministers, and would only become effective after it had been published in the official government gazette. The *‘ulama* had no formal role in this legislative process, but they were usually consulted in order to ensure that a *nizam* was in accordance with shari’a (Vogel 2000: 289).

As of 1957, King Saud embarked on implementing the abovementioned unification of the judiciary throughout the entire kingdom. Three years later both systems were united under the 'Presidency of the Judiciary' located in Riyadh. With some amendments, the Hijazi system was now applicable to the entire kingdom. The 'Presidency of the Judiciary' remained responsible for many religious and legal matters, such as the issuance of *fatwas*, supervision of religious education, and appointment of persons in important religious positions, until it ceased to exist in 1975 (Vogel 2000: 91-93).

In 1964, on the family's initiative, King Saud was replaced by Crown Prince Faisal, who proved himself to be a more capable statesman and politician than his predecessor.

4.3 The period from 1965 until 1985

Struggle for Islamic authority

King Faisal introduced a series of far-reaching reforms, in areas such as finance, education, health care and, last but not least, the legal system. From 1970 to 1975 the national court system was further developed and formalised in the Judiciary Regulation of 1975. The 'Presidency of the Judiciary' ceased to exist; its tasks were assigned to new institutions, among which were: the Supreme Judicial Council, the Council of Senior 'Ulama, and the Ministry of Justice (established in 1970) (Vogel 2000: 92-93, 108). From then on, the courts fell under the administrative competence of the Ministry of Justice. The shari'a judges, however, had long since been very independent and were suspicious of any state interference. Until today, the government has been unable to completely subdue the shari'a scholars' and judges' suspicion and sometimes bold opposition to the state regulations, as will be discussed below.

The Judiciary Regulation (1975) granted general jurisdiction to the shari'a courts to adjudicate in all civil and criminal disputes except in the areas of law where the specialised committees were competent. The law provided a new set-up for the judicial organisation and introduced the Supreme Judicial Council. This council, operating under the direct authority of the king, formed the top of the judicial pyramid, with appellate courts in Riyadh and Mecca, and larger and smaller courts spread all over the country. The specialised committees, however, fell outside the formal judicial system; they fell within the scope of the executive branch. The Supreme Judicial Council was granted judicial, administrative, and regulatory authority. Besides its supervisory role over the shari'a courts, the Council could establish general principles and precedents that had to be followed by the courts. Moreover, the Council

could give opinions about issues upon request of the king, the Council of Ministers, or the Minister of Justice (Al-Jarbou 2004: 21 n. 77).

In 1971, King Faisal set up the Council of Senior ‘Ulama with the primary task of providing advice to the king and his government. The council has played a crucial role in the development of government policy since that time (Jerichow 1998: 68).

King Faisal instigated the oil embargo in 1973 in reaction to Western support for Israel during the 1973 Yom Kippur War against Egypt and Syria. Oil prices quadrupled as a result of this embargo. Faisal used the abundant oil revenues to finance a broad modernisation programme. He generously invested in education. He founded religious and secular universities, and thousands of Saudis went abroad to study, especially to the United States. Consequently, a new highly-educated elite emerged, bringing with them a great deal of knowledge and expertise from abroad. Members of the extensive royal family, however, retained the important governmental positions, although some commoners were successful in gaining access to the political arena.¹⁴ Save some exceptions, most Saudis outside the royal family had to be satisfied with civil service positions, albeit with generous compensation and status. Several new ministries, such as the Ministries of Commerce and of Industry and Electricity were created to administer the bursting economic and commercial development (Niblock 2006: 48-49).

The House of Saud: The legitimate rulers?

Alongside this modernisation, Saudi Arabia retained its position as the guardian of Islam, with the Saud family as righteous rulers based on the Qur’an and shari’a. King Faisal claimed that a constitution was unnecessary because ‘Sa’udi Arabia [...] has the Quran, which is the oldest and most efficient constitution in the world’ (Cleveland 2000: 445). Whereas Faisal still made efforts to modernise the country, many ‘*ulama* frequently opposed these changes. In 1960, for instance, he suggested that public education for girls be introduced, but he faced heavy resistance from the ‘*ulama* establishment. He eventually succeeded, but only because he allowed the ‘*ulama* a supervisory role. This enabled the ‘*ulama* to have a significant influence on the content of the curricula and to ensure the separation of sexes in the classrooms. On a more general note, the ‘*ulama* also maintained public order in society with the help of the religious police, officially called the ‘Committee for the Promotion of Virtue and the Prevention of Vice’. This religious police guaranteed – and still guarantees – the enforcement of Islamic rules of conduct in the public domain, such as dress codes and the closing of restaurants and shops during prayer time, segregation between the sexes, and the non-propagation of religious beliefs by non-Muslims. As

such, the Saudi *'ulama* retained an important and influential role in the state in return for their support to the royal family as 'legitimate Islamic rulers' (Cleveland 2000: 446).

King Faisal was murdered by one of his nephews in 1975; he was succeeded by his brother Khalid. King Khalid was an inexperienced ruler and delegated much of his power to Crown Prince Fahd. In the 1970s Saudi Arabia soared to great heights. Modernisation in the areas of education and health care improved the lives of many Saudis. This, however, could not ward off the emergence of young radical Islamists. On 20 November 1979, five hundred dissidents led by Juhayman al-Utaybi attacked the Holy Mosque in Mecca. Al-Utaybi claimed that the Saudi family had lost all their legitimacy as a result of widespread corruption, their decadent behaviour, and their imitation of the West. These accusations were similar to those raised successfully by Khomeini against the *shah* of Iran the very same year. The attack was also aimed at the Saudi *'ulama*, who in the eyes of Al-Utaybi let themselves be used for political purposes by the Saudi family. The authorities were completely surprised by the attack. Two weeks later, on 5 December 1979, the assailants were finally overpowered and later executed. A *fatwa* from the Council of Senior 'Ulama later justified the use of violence by the authorities (Kechichian 1986: 60).

The Saudi regime eyed the success of the Iranian revolution led by the Shi'ite leader Ayatollah Khomeini with suspicion. Again large sums of money were invested to spread Wahhabi Islam, this time as a counterweight against the Shi'ite revolution. The Saudi regime contributed millions to the building of thousands of mosques, Islamic centres, and schools all over the world (Ottaway 2004).¹⁵

In June 1982, King Khalid died of a heart attack; he was succeeded by his brother Fahd who later added the title 'Custodian of the Two Holy Mosques' to his name.¹⁶

4.4 The period from 1985 until the present

A religious-political balancing act – Tensions and reforms

In August 1990, Iraq invaded neighbouring Kuwait. King Fahd, with the support of the Council of Senior 'Ulama, gave permission to the stationing of foreign, mostly American, troops on Saudi territory as part of the military operation 'Desert Storm' in order to liberate Kuwait (Cleveland 2000: 465). Large expenses as a result of the First Gulf War (1990-1991) and a sharp decline in oil revenues following the drop in oil prices in the 1980s had a detrimental impact on the Saudi economy. Social services could no longer be financed and employment opportunities declined. The deteriorating economic situation and the

permanent presence of American troops led to a growing dissatisfaction among the population. Vogel writes:

With the Gulf War, pressure [...] mounted perhaps because Saudis were dismayed to observe that the king and a few of his family made, all alone, the stupendous decision to invite non-Muslim, non-Arab powers into the kingdom to wage war on a sister Arab country (2000: 295).

In 1990, a group of businessmen, academics, and journalists submitted a petition for political reform. They asked for the creation of a new consultative council, equality among all citizens, more freedom of the press, and an improvement in the position of women. Later that year, on the 6th of November, forty women drove in a convoy of cars through the streets of Riyadh in protest against the existing convention that prohibited women from driving cars. This protest, however, had the opposite effect: the government not only punished the women involved, but it also proclaimed a formal law forbidding women to drive cars.

On the other side of the social spectrum, traditionalists called for stricter observance of shari'a and a greater role for the *'ulama* in decision-making processes. More radical Islamists, often young Saudis from an urban middle-class background, claimed that the regime failed to observe Islamic tenets. They blamed the government for being corrupt and incompetent, worsened by the increasing Western influence and Saudi dependence on the West (Cleveland 2000: 477-478).

The 1992 Basic Ordinance of the Kingdom of Saudi Arabia

Faced with domestic pressure for change, King Fahd felt compelled to introduce political reforms. On 1 March 1992 he promulgated the 'Basic Ordinance of the Kingdom of Saudi Arabia', the 'Ordinance of the Consultative Council', and the 'Ordinance of the Provinces'.¹⁷ Together, these three laws formed the first 'codified' constitutional framework for Saudi Arabia.¹⁸ In an interview three weeks after the introduction of the Basic Ordinance, King Fahd clearly stated that it was not Saudi Arabia's intention to transform the country with these ordinances into a Western democracy:

The democratic system that is dominant in the world is not a suitable system for the people of our region. Our peoples' make-up and unique qualities are different from those of the rest of the world. We cannot import the methods used by people in other countries and apply them to our people. We have our Islamic system, which is based on consultation (*shura*) and the

openness between the ruler and his subjects before whom he is fully responsible.¹⁹

Article 1 of the Basic Ordinance declares that the Qur'an and the Sunna are the constitution of the country. Al-Fahad, a Saudi lawyer, noted that the Basic Ordinance reflects '[t]he codification of the *status quo* of essentially unbridled executive power' with the Qur'an and the Sunna 'as the only substantial constraint on executive power' (2005: 385-386). The Ordinance appears to separate the executive, regulatory, and judicial authorities (Art. 44), but the same article concludes by declaring that the king 'shall be the final resort of these authorities' (Tarazi 1993: 264).

Nonetheless, the Basic Ordinance met the petitioners' demand for a new consultative council (*majlis al-shura*), replacing the one that was established in 1926. The 1992 Consultative Council was entitled to lay down regulations and bylaws to meet the public interest, in accordance with the principles of the Islamic shari'a. The Council originally consisted of sixty members, all appointed by the king, for a period of four years. Membership of the Council has increased several times: first in 1997 and later in 2005, bringing today's total number of members to 150. Seated in the Council are *'ulama*, academics, businessmen, and diplomats, mostly men who have been educated at universities abroad. In November 2003, the competence of the Council was somewhat expanded; the Council is now permitted to initiate legislation without prior approval from the king. The Council's influence over legislation and policy has steadily increased, as its legislative proposals have been invariably adopted by the King, and they have, on more than one occasion, taken a bold stand against government efforts to impose taxes and fees (Al-Fahad 2005: 392).

Violence and political challenges

King Fahd's attempts to introduce reforms were, however, unsuccessful in quietening the voices of either the Islamists or reform-minded liberals. Young Islamists in particular insisted that the Saudi monarchy should enforce the Islamic norms more strictly. In the 1990s radical Islamists attacked foreign targets within Saudi Arabia. In June 1996, for example, a truck bomb near an American military compound near Dhahran killed nineteen persons and wounded hundreds of people. The government reaction forced radical Islamists to move to other countries, such as Sudan and Afghanistan. The most famous example was the militant political dissident Osama Bin Laden, who was stripped of his Saudi nationality (Al-Rasheed 2007: 114).

The news that fifteen out of the nineteen terrorists of the 11 September 2001 attacks in the United States were Saudi Arabia nationals shocked many in the West as well as at home. Under pressure from the West, King Fahd openly started a war on terrorism and declared that terrorism is prohibited within Islam. Muslim terrorism, however, also continued to hit Saudi Arabia itself. In May 2003, a series of coordinated suicide attacks were carried out on Western residential compounds in Riyadh, killing 35 and wounding another 194 persons. Since then, the number of clashes between security forces and armed militants, as well as attacks on Western targets and oil companies, have increased in frequency and magnitude (Al-Rasheed 2007: 135-136).

In addition to violence and political tensions, the kingdom has also been faced in the last decades with enormous debts, trade deficits, and a massive population growth. Indeed, the population has increased by more than fifty per cent in the last twenty years. While previously the state had been able to use oil revenues to invest in social services, the costs were now becoming too high. The existing gap between rich and poor also continued to grow, and the unemployment rate among Saudi nationals, especially among the younger generation, skyrocketed, with reported estimates as high as 20 to 30 per cent (Raphaeli 2003: 22-23). These enormous unemployment figures were of particular concern given that there were – and still are today – approximately six million migrant workers in Saudi Arabia. The government announced measures to reduce unemployment, for example by making it compulsory for employers to employ Saudi nationals for certain positions (*ibid.*).²⁰

In the early 2000s, several demonstrations and other public actions calling for political reform were organised. The authorities usually ended the demonstrations prematurely by arresting the participants. From the year 2000 onwards, Saudi citizens, individually and collectively, began to more frequently express their discontent by way of another tool for participation provided for by the Basic Ordinance law of 1992, namely the right to petition the king or the crown prince on any particular issue of citizen concern (Art. 43). In January 2003, for example, a significant number of Saudi elite submitted a petition called 'A Vision for the Present and Future of the Homeland' to the then Crown Prince Abdullah. The petitioners called for an independent and reformed judiciary, the creation of human rights institutions, improvement of the rights of women, and a popular election of the Consultative Council (Al-Fahad 2005: 392-393). By March 2004, however, several petitioners, political activists and lawyers were arrested and put in prison. Three intellectuals were sentenced to between six and nine years' imprisonment for incitement to sedition, and for disobedience to the ruler.

The petitioners' demands for political participation were partially met. In October 2003, local elections were announced for one-half of

the seats in the municipal councils, the other half reserved for appointment by the government. The elections were held in the spring of 2005, resulting in a success for conservative candidates, who were backed by the *'ulama*.²¹ The influential *'ulama* obstructed the participation of women in the elections by both banning them from running for election and also preventing them from voting in the actual elections. Various highly placed officials, however, expressed the opinion that, if it were up to them, women should be able to participate in the next elections. The president of the election committee explained in interviews later that the reason for refusing women to vote was that there was insufficient time to make the necessary arrangements to enable them to participate in the elections.²²

King Abdullah: A cautious reformer

Crown Prince Abdullah, King Fahd's half-brother, owing to the king's bad health, had been the actual ruler of the Saudi monarchy since 1995. When on 1 August 2005 King Fahd finally died, Abdullah formally succeeded him as king.²³ Immediately he pardoned the above-mentioned petitioners of 2004, who were released from prison (Amnesty International 2009b: 14). This confirmed his image as the driving force behind the reforms of the last decade. In 2003, for example, he had founded the 'King Abdul Aziz Centre for National Dialogue', an institute tasked with the organisation of national conferences at which religious leaders of the different Muslim sects, academics, and other prominent opinion leaders could discuss various contemporary topics. Within its first two years of operation, the institute organised five national dialogue sessions, where the conferees openly discussed issues related to reform in education, religious pluralism, the role of women in a modern Islamic state, and political participation of citizens. The government-sponsored debates did not turn out to be as fruitful as probably hoped for by many Saudis and were instead seen as being a 'public-relations exercise envisaged to absorb public frustration and anger' (Al-Rasheed 2007: 15).

In line with its reform policies, the government authorised the establishment of two Saudi human rights organisations, in 2004 and 2005, respectively: 1) the National Society for Human Rights (NSHR), a government-funded organisation; and 2) the Human Rights Commission (HRC), an official governmental body. The NSHR has been modestly active in pursuing reports and complaints about human rights abuses, submitting, for instance in 2007, a critical report to the government on prison conditions.²⁴ According to Amnesty International, both organisations 'have contributed to raising the visibility of human rights within Saudi Arabia and have assisted the government in preparing its reports

on human rights to international treaty monitoring bodies' (Amnesty International 2009b: 11).

Earlier, in 2000, the government had enacted a regulation on Shari'a Procedure, applicable to proceedings before all Saudi courts, not just the shari'a courts. A year later, two other regulations were issued, namely the Criminal Procedure Regulation and the Legal Practice Regulation. The 2001 Regulation on Criminal Procedure stipulates that no punishment may be inflicted except for crimes prohibited by shari'a principles and Saudi national regulations. It contains provisions concerning preliminary detention and rules and procedures of evidence. The law also guarantees the right to seek assistance of a lawyer and includes a prohibition on torture, mental coercion, and arbitrary arrest. Responsibility for the investigation and prosecution of alleged crimes was vested in the Bureau of Investigation and Prosecution (Al-Hejailan 2002: 276-277).

Although the Saudi government has been praised for taking the abovementioned steps, which can be considered as steps towards the rule of law, critics do not have high hopes for any significant progress on the human rights situation on the ground. International human rights organisations such as Amnesty International and Human Rights Watch continue to criticise Saudi Arabia's poor human rights record. The list of accusations is long: human rights violations linked to the war on terror; discrimination against foreign workers and Shi'ite minorities; discrimination against women; violation of the freedom of religion and the freedom of expression; unfair trial standards; and the imposition and execution of corporal punishments in violation of international legal standards.

This being said, in December 2005, Saudi Arabia became a fully-fledged member of the World Trade Organisation (WTO), and with this came obligations, expectations and promises of judicial reform. Consequently, two years later, on 2 October 2007, King Abdullah issued two royal decrees announcing reform of the judiciary, a new Judiciary Regulation and a new Board of Grievances Regulation. The regulation on the judiciary, still being fully put into place at the time of writing, announced among others the establishment of a Supreme Court and separate tribunals for personal status, criminal, labour, and commercial cases. In accordance with the reforms, the Supreme Court is to take over the judicial functions of the Supreme Judicial Council. The new Board of Grievances Regulation provides for a further elaboration of the organisation of the Board, including the creation of an Administrative Judicial Council and a Supreme Administrative Court. The new judicial system was to be implemented during a transition period of two to three years (Ansary 2008), supported by a separate budget of 1.87 billion U.S. Dollars allocated for the upgrade of judicial facilities and the provision of training for judges.

In February 2009, King Abdullah issued a number of additional royal decrees that amounted to a reshuffling of the major judicial, religious, and other authorities. Among those appointed were: several moderate ministers, including a new Minister of Justice, a first female deputy Minister, for Education, new chairmen to the Consultative Council, the Council of Senior ‘Ulama, the Supreme Judicial Council, the Board of Grievances, and the ‘Committee for the Promotion of Virtue and the Prevention of Vice’.²⁵

■ 4.5 Constitutional law

According to Article 1 of the Basic Ordinance of the kingdom of Saudi Arabia (1992):

The Kingdom of Saudi Arabia is a sovereign Arab Islamic state with Islam as its religion; God’s Book and the Sunnah of His Prophet, God’s prayers and peace be upon him, are its constitution, Arabic is its language and Riyadh is its capital.²⁶

The Qur’an and the Sunna have the highest authority and all legislation is subordinate to them, including the Basic Ordinance itself (Art. 7).

The Ordinance consolidates the vast authority of the king, his wide range of functions and privileges, and declares that succession of the king is restricted to the male descendants of the founding king, Abdulaziz al-Saud, but that the king has the authority to choose and relieve his apparent heir (Art. 5).²⁷ According to Article 44, the legislative, executive, and judicial powers of government are separate, but the king is not subject to this separation of powers. The king is ‘their final authority’ and, therefore, a constitutional court is considered unnecessary (Al-Fahad 2005: 385). As the legislative authority and in accordance with Article 67 of the Ordinance, the king can promulgate regulations (*nizams*) where shari’a does not provide a direct answer to certain legal questions, but where regulation is nevertheless necessary, such as in commercial matters. This regulatory authority corresponds to Ibn Taymiyya’s theory on Islamic leadership: rulers are allowed to issue regulations necessary for government policy (*siyasa shar’iyya*), provided the legislation serves the public good and that it only complements, and certainly does not contradict, shari’a.

The king of Saudi Arabia is also the chairman of the Council of Ministers and the Prime Minister, and as such he is the head of the executive branch of government. He appoints and relieves his ministers and other high-ranking civil servants by royal decree (Arts 56-58). Decisions taken by the Council of Ministers have to be ratified by the

king. He oversees the implementation of shari'a and the general policies of the state (Art. 55). The king appoints and dismisses judges upon recommendation of the Supreme Judicial Council, and he acts as the highest instance of appeal and has the power to pardon (Art.s 50 and 52).

The Consultative Council (*majlis al-shura*), re-established in 1992, confers with and advises the Council of Ministers (Art. 68). It advises on government policy and may submit regulations and bylaws to meet the public interest or to remove what is bad in the affairs of the state, in accordance with the basic principles of the Islamic shari'a (Art. 67). However, the Consultative Council has limited authority and does exert little direct influence on the decision making. Al-Fahad notes that '[l]egislation adopted by the Council is conceived as mere advice that the sovereign is at liberty to accept or disregard' (2005: 388). Schwartz is of the opinion that the creation of the Consultative Council was merely a 'cosmetic reform' (2005: 38).

Sources of law

The Islamic shari'a is the prevailing law in Saudi Arabia; the sacred law is the foundation of the legal system. As such, the Qur'an and the Sunna are the main sources of law. Judges and other legal scholars (*'ulama*), as the lawful interpreters of the two holy sources, apply the Islamic shari'a in rendering a judgement or advice (*fatwa*) on individual cases brought before them. Because shari'a in Saudi Arabia is not codified in statutes or codes, the traditionally trained judges and scholars, therefore, resort to Hanbali *fiqh*-books in particular in their administration of justice.

It is often claimed that Saudi law is nothing but Islamic shari'a. However, supplemented by government-issued regulations concerning labour, commerce, companies, and so forth, the law is more encompassing than at first glance. Also, one cannot rule out the importance of tribal values and customs in Saudi society, like in most Middle Eastern societies. Esmaili writes: 'Tribal law or custom is significant in Saudi Arabia in relation to the country's political and governmental structure as well as private and personal law areas' (2009: 18). Yet, Islamic shari'a is no doubt the main feature of the Saudi legal system,

In addition to the shari'a and specialised courts, Saudi Arabia's legal system structurally includes a form of court-recognised mediation offered by Islamic scholars who provide advice (*muftis*). The *mufti*²⁸ has an important role to play in providing Islamic legal interpretation. When a person wants to know which shari'a principles and rules are applicable in a specific situation, he or she can turn to a *mufti* for advice (a *fatwa*). A court trial can be avoided when two parties agree to bring their dispute to a *mufti* they both respect. Opinions of these religious

scholars are often considered as authoritative as a ruling of a judge. In fact, when parties, after obtaining a *fatwa*, still decide to refer their case to a judge in the courts, the judge may well attribute legal value to the *fatwa*. Amicable settlement is the preferred solution for any dispute, either with or without interference of a judge. According to Vogel, over 90 per cent of all civil cases that are submitted to the court are resolved by reconciliation or settlement, thereby 'obviating the judge's ruling altogether' (2000: 120).

Fatwas are also issued by the Council of Senior 'Ulama, established in 1971.²⁹ Next to this official institution, King Fahd appointed the conservative and opinionated Shaykh Abdulaziz ibn Baz (died 1999) as the Grand Mufti of Saudi Arabia in 1993.³⁰ His opinions often deviated from the prevailing consensus of the religious establishment, particularly on marriage-related matters.³¹ The courts consider legal actions based on such *fatwas* to be valid, even if they contradict the courts' own standard rules (Vogel 2000: 8). Yamani writes that *fatwas* issued by influential government-employed 'ulama have 'a near-legislative effect' and that 'ordinary *qadis* (judges) [are] unwilling to contradict a formal *fatwa*' (2009: 140). The king, for his part, often reinforces these *fatwas* by requesting the courts to observe and comply with the judgment or advice rendered by either the Council or the Grand Mufti (Vogel 2000: 116).

Another source of law for legal judgements is administrative regulations (*nizams*) that have been legitimised through the abovementioned principle of *siyasa shar'iyya*. These regulations have a clear subordinate status as compared to the *fiqh*, even though the 'ulama are usually extensively consulted and often enjoy a veto power in the drafting process.³² Thus, the main reference for a judge remains the Islamic jurisprudence: 'Fiqh continues to govern the bulk of cases, covering personal status, civil contract, tort, property, agency, and nearly all crimes apart from those that specifically enforce the *nizāms*.' (Vogel 2000: 175).

Judiciary

Article 48 of the Basic Ordinance determines that 'the courts will apply the rules of the Islamic Shari'ah in the cases brought before them, in accordance with what is indicated in the Book, the Sunnah, and the ordinances decreed by the Ruler which do not contradict the Book or the Sunnah.'³³ Article 46 bolsters the authority of judges in its assertion that the judiciary is independent.

The Basic Ordinance confirms the existence of two judicial branches – the general shari'a courts and the Board of Grievances – but is silent on the specialised committee courts. The shari'a courts are granted general jurisdiction, unless these disputes or crimes fall under the

jurisdiction of the Board.³⁴ The special committees created to implement the *nizams* fall outside the judicial branch; they are *ad hoc* administrative entities falling within the executive branch. The *'ulama* have often opposed the creation of these special committees and have frequently called for the incorporation of these jurisdictions into the shari'a courts. However, since the shari'a courts have clearly demonstrated they do not want to apply the *nizams*, the government has until present not considered unification a viable option (Vogel 2000: 176). Not only do the courts disregard the regulations *per se*, they also pay no attention to, and certainly do not respect, the jurisdiction of the committees created to apply these regulations. Indeed, shari'a judges often hear cases outside their competence as they are reluctant to dismiss a case on grounds that it falls within the jurisdiction of a specialised committee (Al-Jarbou 2007: 226).

As mentioned earlier, in October 2007, judicial reforms were announced by King Abdullah (see 4.4). These reforms had been expected since Saudi Arabia joined the World Trade Organisation in 2005. At the time of writing, it cannot yet be indicated when the judicial reforms will be fully implemented and what the impact and consequences will be on the judicial organisation. Questions that still remain are, for example: What will happen to the specialised committees? Will they still exist, albeit in a stripped-down form? If so, will they continue to function in parallel to the new tribunals? Or, alternatively, will they be abolished all together?

Shari'a courts

According to the new Judiciary Regulation (2007), there will be three levels of shari'a courts all operating under the supervision of the Supreme Judicial Council, in ascending order: first instance courts, followed by appellate courts, and finally the new Supreme Court. Since the new system is not yet fully operational, the current system will be described below, with reference to some important changes foreseen in the new judicial organisation.

At present, there are three levels of shari'a courts, all of them falling under the responsibility of the Ministry of Justice, in ascending order: two types of first instance courts (the summary courts and the general courts), followed by appellate courts, and finally the Supreme Judicial Council.

In a summary court, a single judge is competent to rule in both civil and criminal cases. He is, however, not competent to judge in civil cases where the penalty would exceed a certain amount of money (for example in cases of compensation for physical injury) or in criminal cases that involve possible sentences of amputation, execution, or

stoning (Judiciary Regulation (1975), Art.s 24-26). Cases that cannot be adjudicated by a summary court are heard by a general court. Criminal cases that could result in a sentence of amputation, execution, or stoning to death are judged by panels of three judges (Judiciary Regulation (1975), Art. 23). According to Article 20 of the new Regulation (2007), all criminal cases will – in principle – be judged by panels of three judges.

Appeals may be made to the appellate courts in Mecca or Riyadh, where – in principle – three-judge panels adjudicate cases.³⁵ An appeals court may reverse a decision, amend it, order a retrial, or send the case back with instructions on how the lower court should proceed. The appellate courts' primary concern is to establish whether or not a decision is in compliance with shari'a (Al-Ghadyan 1998: 239-240). In principle, appeals are not admissible against a decision of an appellate court, but many cases – and always those involving the death penalty or amputation sentences – are currently referred to the Supreme Judicial Council for review (Judiciary Regulation (1975), Art. 8).

It is anticipated that this judicial function of the Council will be transferred to the Supreme Court (in formation) (Judiciary Regulation (2007), Art. 11). The king, however, retains his placement at the top of the judicial pyramid in that before an execution of a death penalty, stoning, or amputation can be carried out, the punishment has to be ratified by the king (Basic Ordinance, Art. 50; Regulation on Criminal Procedure (2001), Art. 220).

According to the most recent Judiciary Regulation (2007), a new first instance court system will be established, creating separate tribunals for general, criminal, personal status, commercial, and labour cases (Art. 9). These tribunals will replace the current first instance courts – the summary and general courts. The shari'a courts will, thus, lose their general jurisdiction to hear all cases. The new system seems to resemble modern modern judicial systems of countries like Egypt and Morocco more than the classical Islamic legal system, where a single judge pronounced judgment without appeal, apart from recourse to the ruler.

Another fundamental difference in the new court structure and planned operation is that each province will have at least one appellate court (Art. 15). As the system is currently set up, each appellate court has a criminal chamber, a personal status chamber, and a chamber for 'other' cases (Judiciary Regulation (1975), Art. 10). Once the new judicial system is operational, though, each appellate court will also have a chamber for commercial cases and a distinct chamber for labour cases (Judiciary Regulation (2007), Art. 16). This appeals system corresponds with the new first instance courts system. Jurisdiction over cases that are now heard by the various special committees, for instance in the field of commercial and labour law, will be transferred to the new first

instance and appellate courts (Ansary 2008). Once full implementation of the judicial reforms of 2007 takes effect, the Supreme Court will be the highest authority in the outlined judicial organisation, and will also be comprised of specialised chambers headed by three- or five-judge panels, depending on whether the case may result in imposition of the death penalty or other severe punishments (Judiciary Regulation (2007), Art. 10; Ansary 2008).

Board of Grievances

The Board of Grievances constitutes the second judicial branch of the Saudi system. Due to its strong *fiqh* credentials, the Board is largely respected by the *‘ulama* (Vogel 2000: 232). This independent organ, which reports directly to the king, functions as an administrative tribunal, hearing complaints against the government. Next to its function in administrative law, it is – currently – also competent to hear commercial cases and criminal cases involving, for example, forgery and bribery.

At present, the Board operates as the court of appeal for decisions of some of the specialised committees, and it has the authority to enforce foreign judgments and arbitration decisions (Board of Grievances Regulation (1982), Art. 8). Until recently, the appeal function of the Board was not clearly defined and, therefore, ambiguous as to how it operated in practice (Tarazi 1993: 266).³⁶ Once the new Regulation, issued in 2007, is implemented, it is hoped that this situation will change, providing more clarity on this point.

The new Board of Grievances Regulation (2007) will entail the transfer of the Board's commercial and criminal jurisdiction to the general court system, where the new first instance and appellate courts will take over these competences. The new Regulation also announces the creation of an Administrative Judicial Council and a Supreme Administrative Court.³⁷ In the new judicial system, the Board will continue to hear administrative disputes involving government agencies (Art. 13).

Judges and lawyers

According to classical Islamic doctrine, a judge (*qadi*) has a religious duty to settle a dispute brought before him: in each individual case he is allowed to use independent interpretation (*ijtihad*) in order to find the most desirable solution. He may disregard previous judgments, either his own or those of other judges, in this process.

A single judge in Saudi Arabia has great discretionary authority in adjudicating cases: 'he is empowered to exercise his personal Islamic understanding and interpretation without recourse to previous decisions relating to similar cases' (Yamani 2008: 139). Yamani further explains

that, because of the absence of a system of judicial precedent, diverging judgements of otherwise apparently identical cases are the result of 'differences in interpretation and legal orientations of the judges, and geographical variations between the different politically unified regions in the Kingdom' (ibid: 140).

Only graduates of the shari'a colleges can be appointed judges at the shari'a courts and on the Board of Grievances.³⁸ The traditional shari'a training, with a focus on Hanbali *fiqh*, is provided by several Islamic universities in the kingdom. Because the shari'a colleges have always taken a passive attitude towards teaching the *nizams* enacted by the government, new law departments were recently established. But, graduates from these latter colleges cannot be appointed as shari'a judges. The members of the specialised committees which apply the *nizams* are usually appointed by a minister, for example the Minister of Commerce. Because they are part of the executive branch, they do not enjoy judicial immunity and independence. They are often professional experts appointed by the ministries and regarded as civil servants, not experts in Islamic law (Al-Jarbou 2007: 224).

In the past, lawyers were considered unnecessary, especially because of the active role judges have in the resolution of cases, as compared to other legal systems. Saudi judges wished to directly deal with the accused, since '[t]he truth is brought to light through [the accused], because he is more aware of himself than is any other' (Vogel 2000: 161, quoting a Saudi judge). It was reported that sometimes judges considered lawyers to be an obstacle to truth-finding and a hindrance to reconciliation between the litigants (Commission on Human Rights 2003: 10-11). Moreover, it has often been argued that even though a defendant is not defended by a lawyer, the shari'a itself offers the necessary protection; judges are, after all, morally obliged to find the truth.

Despite these objections, a professional class of lawyers has emerged in Saudi Arabia. There are two sorts of lawyers active at present, namely lawyers admitted to the shari'a courts and appearing on behalf of clients in some civil cases and experts in the field of commercial law, who are very commonly seen appearing in the specialised committees (Vogel 2000: 161). In family matters in particular, individuals are, however, still almost always represented by a (male) family member, in accordance with local traditions.

4.6 Personal status and family law

The Saudi personal and family law is not codified or compiled in a law code.³⁹ All cases concerning marriage, divorce, inheritance, and the status of children fall under the general jurisdiction of the shari'a courts. For the most part judges of these courts resort to the Hanbali *fiqh* books when adjudicating a case; they can, however, also consult books from the other schools of law.

Marriage and divorce

Although the Hanbali school of law is generally considered the most conservative of the schools of law, this does not hold true for the stipulations concerning the contract of marriage, as for any type of contract. In contrast to the other schools, classical Hanbali *fiqh* gives considerable leeway towards validating and enforcing stipulations that modify the normal marital rights and duties between husband and wife, in particular stipulations that safeguard the wife's position (Coulson 1964: 190).

Marriage in Islamic law is a contract of exchange between a man and a woman, concluded in the presence of two witnesses. A bride and groom have the right to include stipulations in their marriage contract. Non-compliance with a stipulation constitutes a ground for pursuing dissolution of the marriage in court. For example, a clause can be included in the contract that provides that when the man marries a second wife, the first wife has the right to initiate divorce proceedings. In such a case, it is possible that the husband has granted the wife his right of repudiation (*talaaq*); she can then repudiate herself because the husband broke the marriage contract.

When a marriage is concluded without such stipulations, the women's possibilities to obtain a divorce are limited. A woman can ask her husband to divorce her in exchange for waiver of her financial rights (divorce by mutual consent, or *khul'*), namely return of any dower and other remaining financial rights. A woman can seek judicial divorce (*tafriq*) when harm (*darar*) is inflicted upon her by her husband, which is interpreted as any harmful conduct of the husband (physical or mental) that makes conjugal life between the couple impossible. For example, if the husband does not fulfil his obligation to support his wife; if he is not capable of conjugal relations due to a physical or mental handicap; or if he is absent for a long period of time.

In practice, however, it is very difficult for a woman to obtain judicial divorce in Saudi Arabia. She has to prove that harm was inflicted upon her by her husband, quite a challenge in the closed patriarchal Saudi society. Moreover, in the event of divorce, the mother will lose her right to care for her children, specifically her son(s) from the age of seven and

her daughter(s) from the age of nine, after which time physical custody is automatically transferred to the father⁴⁰ (Human Rights Watch 2008: 31).

Men, on the other hand, are in a far better position to end a marriage. Husbands are granted the unilateral right to repudiate their wives (*talaq*), without reason or legal justification; *talaq* divorce is effective immediately. After an irrevocable repudiation, the repudiated wife can claim the full dower (if a portion of it remained unpaid) and maintenance during a period of waiting following the repudiation (four months and ten days).

Related fatwas on marriage

Some startling *fatwas* on family law topics, issued by members of the established *'ulama*, are worth mentioning here. In April 2005, the Grand Mufti Abdulaziz al-Shaykh stated that forced marriages are against shari'a and that persons who are guilty of this offence must be punished with imprisonment. In his opinion, forced marriages were the reason why the divorce rate in the country continued to rise, a topic that has increasingly gained public attention (as has the issue of early marriages). Media reports suggest that 50 per cent of marriages end in divorce, with rates as high as an estimated 62 per cent in the western region.⁴¹ In July 2008, the chairman of the Committee for Family Affairs of the Consultative Council, Dr Talal Bakri, said the Council is considering implementing a law to halt the rising divorce rates, in particular to curb the practice of husbands arbitrarily divorcing their wives. Yet, the same Grand Mufti was quoted in the Saudi media last year as having said that ten or twelve-year-old girls are marriageable (Human Rights Council 2009: 15). It should be noted here that this statement is all the more problematic given that there is no law in Saudi Arabia that sets a minimum age of marriage for males or females.

In 2006, a *fatwa*, issued by the international Islamic Fiqh Academy⁴², stirred public debate about so-called 'ambulant (*misyar*) marriages', both inside and beyond the kingdom. The main feature of a *misyar* marriage is that spouses agree the wife will continue to live with her parents, thus freeing the husband of his obligation to provide marital domicile for her. It may not come as a surprise to learn that *misyar* marriages are often concluded by polygamous men. Women's rights groups oppose these marriage practices because the wife waives her rights to maintenance and housing, whereas the man's exemption from his responsibilities towards his wife are not replaced by any other contractual consideration or reciprocal duties. In 1996, however, the then Grand Mufti Abdulaziz ibn Baz had already issued a *fatwa* in which he attributed Islamic legality to ambulant marriage practices, provided that

the marriage meets the main prerequisites (i.e. presence of the bride's guardian and two witnesses) and the contract is concluded on mutually agreed upon and binding conditions.⁴³

Again, this shows the importance of a *fatwa*, which in this case is, according to Arabi, 'a straightforward endorsement of the Muslim polygamous legal tradition', aiding 'Saudi citizens in the search for solutions to their modern sexual and emotional dilemmas, solutions that would be in line with their faith and its legal strictures' (2001: 166). It should be noted here that this 'solution' is not only adopted by men, but also by Saudi women who might prefer being married, so they enjoy a more 'respectable' social status and might have more freedom to pursue their own interests in life, such as studying or working.

Yamani says in a study written exclusively on this topic that the increase in wealth of many Saudis, due to oil revenues, has led to an increase of the practice of polygamy, especially among the educated, urban Hijazi elite (2008: 215). However, the Saudi government has also played a significant role in promoting polygamy. Yamani contends that the promotion of polygamy in Saudi Arabia is part of a public policy programme promoting the return to Islamic values, in reaction to post-revolutionary, pro-polygamy Iranian practices. Iran's reinstatement of Islamic values and traditions induced Saudi *'ulama* to accept novelties such as *misyar* marriages as legally valid (ibid: 47-48).⁴⁴ In 2001 the Grand Mufti Abdulaziz al-Shaykh called upon all Saudi women to accept the concept of polygamy as part of the 'Islamic package', further noting that polygamy is a necessity in 'the national fight against the time bomb [...], the growing epidemic of spinsterhood' (ibid: 52).

Inheritance

Islamic shari'a is the only applicable law pertaining to Saudi Muslims in matters of inheritance and bequests. The Islamic inheritance system is based on tribal customary law of pre-Islamic Arabia, which was modified by the Qur'an in considerable detail (Coulson 1964: 15). The Qur'an guarantees fixed portions of the deceased's estate to so-called 'Qur'anic heirs'.⁴⁵ Generally speaking, female heirs are entitled to half of the share of male heirs. After the Qur'anic heirs have received their shares, the residue of the estate will be divided among the agnatic⁴⁶ heirs of the deceased. Finally, a Saudi Muslim can dispose a maximum of one-third of his property by bequest to non-Qur'anic heirs (Haberbeck 2010: 29).

4.7 Criminal law

The Regulation on Criminal Procedure (2001) governs criminal proceedings and secures and protects the rights of the accused. It is the country's first criminal procedure law and contains provisions borrowed from Egyptian and French law (Ansary 2008). Substantive criminal law, however, remains uncoded; as in family law, judges commonly apply the Hanbali *fiqh*.

Criminal law comprises three categories, namely *hudud* (fixed Qur'anic punishments for specific crimes), *qisas* (retaliation, as in 'an eye for an eye'), and *ta'zir* (discretionary punishment of the judge). The rules of evidence and penalties for *hudud* crimes are laid down in the Qur'an and the Sunna. There are strict requirements for establishing proof for a conviction of a *hadd* offence. For example, if the accused revokes his confession, alleging that he was forced into confession, the case must be dropped. The case can then be tried as a *ta'zir* case, and the accused, if found guilty, will then be given a discretionary sentence instead of the severe *hadd* penalty. Because of the stringent requirements for *hadd* convictions, most cases are tried as *ta'zir* cases (Vogel 2000: 244-247). Unlike in many other Islamic countries, punishments like death by stoning, amputation, and flogging are actually executed; in the case of death penalty or amputation this requires the approval of the king (see 4.5).

The *qisas* claim is technically a civil claim in cases involving murder or the infliction of bodily harm, which may be prosecuted by the victim or the victim's heir. The penalties that may be claimed for a *qisas* crime include retaliation in kind or compensation (*diyya*, i.e. blood money). As for the penalties for *ta'zir* offences, the judge has great discretionary power, since there is no substantive penal legislation. The most common *ta'zir* punishment is lashing. Vogel mentions that public humiliation, cuffing, imprisonment, and fines – although the latter is debated – are other possible *ta'zir* penalties. The death penalty, however, can also be inflicted as a *ta'zir* punishment for crimes such as sorcery and propagandising for heresy (Vogel 2000: 248-249).

Nowadays, many *ta'zir* offences are defined by national regulations (*nizams*), including offences of bribery, counterfeiting, drug abuse, trafficking, and crimes committed by officials. These offences are tried before the specialised committees; penalties for such crimes typically include imprisonment and fines (ibid: 232).

The king may exercise his discretion to pronounce a sentence 'in cases where the offender's guilt is beyond doubt and public interest demands execution (normally, when the crime is heinous); or when the offender, usually because he is a confirmed recidivist, can only be prevented by death from further harming society' (Vogel 2000: 250).

These sentences are decreed without any formal trial, although often legitimised by the leading *'ulama*.

Besides the traditional *fiqh*, the opinions of the Council of Senior *'Ulama* constitute legal sources on certain matters of criminal law. The *'ulama*, for instance, issued a *fatwa* on 18 February 1987, that states that drug dealers are to be sentenced to death:

With regard to the narcotic smugglers, the punishment will be the death sentence as a result of his evil work by bringing a great deal of corruption and deterioration to the country. The smuggler and the person who receives narcotics from abroad will be punished in the same way (Jerichow 1998: 74).

The king and the Ministry of Interior have requested that the courts follow this *fatwa*. The Council of Senior *'Ulama* also decided that a person should be sentenced to death when he is found guilty of having perpetrated a terrorist act (ibid: 75).

■ 4.8 Commercial law

Business or commerce is another area which in Saudi Arabia is extensively regulated by shari'a. Basic principles of shari'a oppose various forms of interest (*riba*) and of uncertainty in contracts (*gharar*). Saudi commercial law remains at its root Hanbali *fiqh*; jurisdiction in commercial matters rests with the Board of Grievances, whose judges are chiefly or entirely shari'a-trained.⁴⁷ Still, with regard to any modern institution of commercial law, such as commercial paper, companies with artificial personality and limited liability, intellectual property, and securities, Saudi law stems entirely from modern regulations,⁴⁸ which are often administered by specialised committees.

For foreign investors, uncertainties surrounding the content of Saudi commercial law, especially as to its fundamental shari'a component, causes various problems and insecurities. This situation is, of course, highly disadvantageous for the Saudi economy. Yet, to date, the government has not been able to find a suitable solution for this problem in the face of the unwillingness of the *'ulama* and shari'a judges to cede control over an area where historically shari'a has held sway.

Saudi Arabia is a huge market for Islamic financial products, and some of the biggest Islamic banks are Saudi banks. It does not, however, actively encourage a separate Islamic banking sector. To allow some banks to call themselves 'Islamic' would indicate that the others are not, an unacceptable situation in a state that upholds shari'a as its basic law (Vogel & Hayes 1998: 12). According to Vogel, Saudi Arabia's

attitude towards Islamic banking seems to be relenting, since it has authorised a number of banks to operate on Islamic principles without including the descriptor 'Islamic' in their names, and, conversely, allowed conventional banks to also open 'windows' for Islamic products and services. Some government-owned corporations have even begun issuing *sukuk* (Islamic bonds), something that would traditionally not have been permissible as bonds typically involve interest-based constructions.⁴⁹

The religious alms tax (*zakat*) laid down in the Qur'an is enforced by the state on Saudi citizens with regard to several forms of personal wealth such as on livestock, personal and financial properties, as well as, and perhaps more importantly, ownership shares in companies.⁵⁰ *Zakat* on company wealth is calculated and paid by each company on behalf of its Saudi shareholders. Companies also pay income tax with respect to the proportion of their non-Saudi ownership.⁵¹

In 1999, a Supreme Economic Council was established, charged with introducing and overseeing economic reform in the kingdom. Attached to this Council is an Advisory Commission that has a mandate to review economic policies and laws upon government request. It is also authorised to propose legislation and to make policy recommendations (Al-Fahad 2005: 392). In preparation of its membership of the World Trade Organisation, achieved in 2005, Saudi Arabia has further updated and extended its commercial law regulations.⁵²

4.9 International treaty obligations and human rights

The Basic Ordinance addresses the protection of human rights in a general manner. Article 26 stipulates: 'The state protects human rights in accordance with the Islamic Shari'ah.'⁵³ This formulation allows the Saudi government extensive freedom of interpretation and does not safeguard compliance with internationally recognised criteria, even more so because shari'a is uncodified and open to different interpretations.

In 1948 Saudi Arabia was one of the few countries that abstained from voting on the Universal Declaration of Human Rights (UDHR).⁵⁴ Saudi Arabia particularly objected to the article concerning freedom of religion and advocated that the safeguard provided by shari'a with regard to human rights has priority over any safeguards for human rights that the UDHR could offer. Saudi Arabia invoked the same arguments in the 1970s, again refusing to sign other important human rights treaties, such as the ICCPR. More recently, however, the government has affirmed its intention to accede to this convention.⁵⁵

Convention Against Torture

On 23 July 1979, Saudi Arabia ratified the Convention Against Torture (CAT). The ratification, however, was accompanied by two significant reservations. The first reservation stated that Saudi Arabia does not recognise the jurisdiction of the CAT Committee with regard to investigation into alleged practices of systematic torture. Secondly, Saudi Arabia refused to refer cases to the International Court of Justice if disputes were to arise out of interpretation of the convention, when said disputes could not be resolved through other negotiation and arbitration channels. Evidently, Saudi Arabia does not wish to open itself up to interference or investigation by foreigners and/or international agencies.

In 2002, the Committee Against Torture commented on the national report submitted by Saudi Arabia. The Committee expressed its concern about the sentencing and execution of corporal punishments, discrimination against foreigners, and the unbridled powers of the religious police. The representative of Saudi Arabia replied to this with the following statement:

Corporal punishment was intended as a deterrent: under Shariah law, it should not be administered if there was any doubt about the guilt of the individual or the evidence in the case. The aim was not to punish but to rehabilitate and to protect society. [...] The Koran set out specific sanctions such as amputation, flogging (whipping) and stoning for certain crimes. Those sanctions could neither be abrogated nor amended since they emanated from God.

Another member of the Saudi delegation further remarked during the 2002 session that: 'The Committee [...] presumed to impugn 1,400-year-old religious beliefs in Saudi Arabia. It was not within the Committee's mandate to do so.' At the time of writing, Saudi Arabia had still to submit its second and third periodic reports for Committee consideration, due in 2002 and 2006, respectively.⁵⁶

Convention on Discrimination Against Women

On 7 July 2000 Saudi Arabia ratified the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), but here too, it made two critical reservations to the convention. The first reservation states that Saudi Arabia is under no obligation to observe the convention when any term of the convention is considered to be in contradiction with the norms of shari'a. The second reservation asserts that the kingdom is not to be bound by Articles 9(1) and 29(1),

which means in practical effect that Saudi Arabia does not grant men and women equal rights with regard to the nationality of their children (a child automatically receives the nationality of the father) and that the country is not prepared to refer cases involving a dispute on interpretation of the Convention to the International Court of Justice. Because the first reservation makes *de facto* every treaty obligation subordinate to the Saudi interpretation of shari'a, several European countries made formal objections to the reservations. They questioned Saudi Arabia's commitment to the object and purpose of the Convention and asserted, moreover, that its reservation contributes to undermining the foundation of international treaty law.

The CEDAW Committee examined Saudi Arabia's initial and second periodic report in January 2008. A recurring topic in the discussion between the Committee and the national delegation was the concept of male guardianship over women. The Committee noted with concern that 'the concept of male guardianship over women (*mehrem*), although it may not be legally prescribed, seems to be widely accepted; it severely limits women's exercise of their rights under the Convention [...]'. The Committee further opined in its concluding observations that:

[the concept of male guardianship] contributes to the prevalence of a patriarchal ideology with stereotypes and the persistence of deep-rooted cultural norms, customs and traditions that discriminate against women and constitute serious obstacles to their enjoyment of their human rights.

Human rights violations

Despite Saudi Arabia's international human rights obligations, the actual human rights situation has remained worrisome on a variety of levels. Political parties and syndicates are prohibited, and the Saudi media are under heavy censorship. Human rights activists and peaceful critics of the government are routinely arrested, many remaining in prison for lengthy time periods without limitation. Moreover, their chances of getting a fair trial are slim.

Corporal punishments, including death by public beheading, hanging or stoning, have been administered regularly; foreign nationals, mostly migrant workers, have been especially vulnerable. Suspects have been convicted for murder, rape, homosexuality, apostasy, sorcery, drug-related charges, and other offences. The number of executions in 2007 increased considerably as compared to previous years. In that year at least 158 persons were executed, compared to the 39 persons executed in 2006, and in 2008 at least 102 persons were put to death (Amnesty International 2009).

Especially, women's behaviour in public is closely monitored and improper behaviour can have severe consequences. In 2007, a court case caused considerable commotion, both inside and outside Saudi Arabia; a rape victim was sentenced upon appeal to 200 lashes and six months imprisonment. The married woman had travelled in a car with an unrelated man when they were attacked by a group of seven men who raped her and her male acquaintance. They were both sentenced for the crime of 'illegal mingling' (*khalwa*).⁵⁷ A month after the verdict, however, King Abdullah pardoned the woman. Commenting on the pardon, the then Minister of Justice, Abdullah bin Muhammad al-Shaykh, stated that the king did not question the court's decision, but that he had acted in the interest of the people.⁵⁸

Women face various forms of discrimination; they are barred from voting, driving, and travelling without permission of their male guardian. In addition, Saudi women are severely limited in their ability to exercise their legal capacity in matters pertaining to marriage, divorce, child custody, and property control. In April 2008, Human Rights Watch published a report highlighting the many human rights abuses resulting from male guardianship policies.⁵⁹

Saudi Arabia is known for being a gender-segregated society: women and men are segregated in schools, universities, health care, and at work. This segregation limits women's educational and employment opportunities. While legally women have the right to choose their own education, open a business, perform financial transactions, and inherit without a male guardian's approval, the reality is that they face major obstacles. For instance, women cannot obtain a professional licence to practice as a lawyer, architect, or accountant (Yamani 2008: 152).⁶⁰ Nevertheless, there are also some signs of a trend toward more equality – select female entrepreneurs have set up their own businesses; a few women have been elected into chambers of commerce; and, in February 2009 for the first time in history, a woman was appointed Deputy Minister of Education for Girls.

The country also restricts the freedom of religions other than Sunni Islam. Shi'ites have been particular targets of slander campaigns and violence – also at the hands of state actors. In recent years, they have been severely restricted in their religious practices, and there are reported cases of forced conversions of Shi'ites to Sunni Wahhabism. This pertains not only to Saudi Shi'ites, but also to Asian (Islamic) migrant workers.⁶¹

Apart from the abovementioned human rights violations that have often been justified by reference to 'the shari'a', it must be noted that in recent years, thousands of people have been arrested and detained in the name of security and counter-terrorism. The trials which have apparently begun in spring 2009, are so shrouded in secrecy that it is

impossible to follow their progress or know to what extent the accused are able to enjoy a fair trial (Amnesty International 2009b: 5).

Finally, human rights organisations such as Amnesty International have repeatedly been denied access to the country, despite promises on behalf of the government in the media. In response to the accusations of human rights violations, the Saudi regime has continued to stress the special Islamic character of the country, which in their view requires a different social and political order as a result of its special religious position and tradition (Halliday 2003: 138).

■ 4.10 Conclusion

Saudi Arabia not only has a unique legal system, compared to Western systems, but also compared to other Muslim countries. The Saudi model is perhaps closest to the classical form of shari'a adherence and application which developed after the establishment of Islam on the Arabian peninsula in the early seventh century. Today, fourteen centuries later, uncodified shari'a is still the mainstay of the national legal system. The Basic Ordinance of the Kingdom (1992) in its first article stipulates that 'God's Book and the Sunna of the Prophet' are the Saudi constitution.

Saudi Arabia is an absolute monarchy, ruled by the House of Saud. The country is in fact governed by some one hundred princes, all of whom are descendants of King Abdulaziz al-Saud (died 1953). They occupy key positions, including ministerial posts, military, diplomatic, and governor posts in the provinces.

While the revealed law has always been – and remains – the general law of the land, the government also issues important 'regulations'. However, Islamic jurisprudence remains the first point of reference in cases concerning personal status, crime, civil contracts, property, etc. Judges have resorted primarily to the Qur'an, the Sunna, and *fiqh*-books in their quest for justice. A judge – like all religious scholars – must be competent to interpret the Qur'an and the Sunna in rendering a judgment or advice. He enjoys great discretionary power and is not bound by doctrine of precedent. Religious scholars are also permitted to give their opinions on the application of shari'a by giving legal advice (*fatwa*). *Fatwas* are of legal importance in Saudi Arabia and judges take them into consideration.

To understand the present law and governance situation of Saudi Arabia, we need to go back into the country's history, its key alliance between political and religious leadership, and the genesis of the Wahhabi ideology of the state.

The eighteenth century alliance between the chieftain, Muhammad ibn Saud and the religious scholar, Muhammad ibn Abd al-Wahhab, both from Najd, was the initial impetus for the formation of the state of Saudi Arabia. Ibn Saud won the loyalty of several tribes and united them into a powerful force; he was greatly aided in this endeavour by the religious teachings of Ibn Abd al-Wahhab. Followers of the Wahhabi sect sought to return to the early days of Islam through strict adherence to the letter and spirit of the Qur'an and the Sunna. Backed by the Wahhabi movement, the house of Saud conquered large parts of the peninsula and the Wahhabi doctrine became the ideological foundation of the future state.

The Saud hegemony was firmly established in 1926 when Abdulaziz Al-Saud was crowned king of the Hijaz, the region around Mecca and Medina. In 1932, the Najd and the Hijaz were united into the current kingdom of Saudi Arabia.

The traditional Najd had a judicial system where a single judge applied the rules of Hanbali *fiqh* under supervision of the local ruler. The cosmopolitan Hijaz, where the Shafi'i and the Hanafi schools of law were predominant, had a more modern judicial organisation, which was developed under Ottoman rule. It took until 1960 before a single, unified system of shari'a courts applicable to the entire country could be implemented. The powerful conservative *'ulama*, especially those from Najd, have remained resistant to state interference in religious affairs, and therewith also in legal affairs. This is why Abdulaziz and his successors had to proceed with great caution in centralising and reforming the legal system.

The use of discretionary power by Saudi kings has been particularly important for the enactment of necessary regulations in the commercial sector following the discovery of massive oil reserves in 1938. Technically, under classical shari'a, rulers have the authority to promulgate regulations for government policy (*siyasa shar'iyya*), provided they are complementary to, and not in contradiction with, shari'a and they serve the public interest. Nevertheless, the *'ulama* have also remained reluctant towards the abovementioned regulations, issued by the state to govern, in particular, commercial and labour affairs. As the *'ulama* opposed the regulations and the shari'a judges refused to apply them, the king was forced to create committees in specialised areas to apply the new regulations. Together with the Board of Grievances, (1955) an administrative court which is competent to hear complaints from citizens against the government, in addition to commercial and some specified criminal cases, these committees have in fact become a second branch of the judicial system, even though they are regarded formally as part of the executive.

From 1970 to 1975, the unified court system was further developed. The Judiciary Regulation (1975) granted general jurisdiction to the shari'a courts to decide in all civil and criminal disputes, except in the areas of law where the specialised committees were competent. A Supreme Judicial Council, under the direct authority of the king, took its place at the top of the judicial pyramid, with appellate courts in Riyadh and Mecca, and larger and smaller courts spread all over the country.

Meanwhile the *'ulama's* position, as advisors on government policies, was further institutionalised in 1971 with the establishment of the Council of Senior 'Ulama. This council has since successfully curbed several reform efforts made by the government and liberal Saudis, for instance in relation to the improvement of the position of women.

Improved living standards for Saudis, due to the abundant oil revenues in the 1970s, were unable to ward off dissident voices that turned against the state, claiming that the Saudis had lost their legitimacy as righteous rulers because of the extravagant lifestyles of some of its princes, corruption, and their alliance with the West. Internal uprisings coincided with the Iranian revolution led by Ayatollah Khomeini in 1979. The Saudi regime eyed the Shi'ite revolution with suspicion and responded in part by intensifying Wahhabi missionary work abroad. After all, Saudi Arabia was the cradle of Islam and the guardian of the two holy places: Mecca and Medina.

In the following decade, the royal family was confronted with another challenge, namely the financial and political consequences of the First Gulf War (1990-1991) and the temporarily decreased oil revenues. Reliance on U.S. political and military support, and the lack of political participation prompted growing criticism within society. From the 1990s onwards, several groups, including reform-minded liberals, but also radical Muslims, submitted petitions to the king asking for political reform.

Under domestic and international pressure, King Fahd implemented several constitutional reforms in 1992. He promulgated the Basic Ordinance of the Kingdom, which stipulates that 'God's Book and the Sunna of the Prophet' are of the highest authority and all legislation is subordinate to it.

Another demand of the petitioners met by King Fahd was the establishment of a new, partly elected, Consultative Council. The council was created in 1992 and now counts 150 members of different social strata, who are empowered to lay down regulations in the public interest and in accordance with shari'a. For the time being, however, the Council has little actual power and it cannot yet be seen as a fully-fledged parliamentary body.

The modest reforms of the government did not silence the voices of the opposition. Young Islamists have committed bloody attacks against foreign targets since the 1990s, and various radicals were banned from the country, including Osama Bin Laden. The government has also had to contend with the fact that the vast majority of the 11 September terrorist attackers (fifteen of the nineteen) were Saudi nationals. Despite the government openly declaring war against terrorism, radical Muslims continue to carry out attacks against Western targets and other 'infidels' – on Saudi soil as well as in occupied Iraq.

Meanwhile, the process of legal reform continued. Since the late 1990s, several new laws were promulgated, including, for example, the Regulation on Criminal Procedure (2001) and the Legal Practice Regulation (2001), both of which aim to regulate criminal proceedings and better safeguarding the procedural rights of the accused. While the 1975 judicial organisation is still in operation, substantial reforms were announced in autumn 2007. The 2007 Judiciary Regulation establishes a Supreme Court and new first instance and appellate courts comprising special chambers for personal status, criminal, labour, and commercial law matters. Once fully functional, the Supreme Court is to take over the judicial functions of the Supreme Judicial Council. A new Board of Grievances Regulation, also promulgated in 2007, announces the establishment of an Administrative Judicial Council and administrative courts of appeal. As of the time of writing, it cannot yet be indicated what the outcome of the announced reforms will be. For now, duality in the Saudi legal system seems to remain a typical feature.

Although the legal reforms have been welcomed by international organisations and human rights groups, the criticism on the human rights situation in Saudi Arabia has not died down. In particular, the following issues have generated vehement criticism both domestically and abroad: the extremely disadvantaged position of women; discrimination against religious minorities and foreigners; a lack of religious freedom and freedom of expression; torture in prisons; intimidation by the religious police; the execution of cruel corporal punishments, such as beheading, stoning, hanging, amputation, and lashing; and increasing frequency of the use of the death sentence; in 2008 at least 102 persons were executed.

The current King Abdullah, like many leaders, seems to be walking a thin line between reform-minded liberals, conservatives, international pressure, civil society groups, and the *'ulama*. He has carefully opened channels for more political participation. Given that he has to reckon with the conservative *'ulama* and traditional forces within his own family, it is anticipated that Saudi Arabia will, in moving forward – within the realm of Islam – do so at a slow pace.

Notes

- 1 Esther van Eijk is a PhD Candidate at Leiden University in the Netherlands. This study is based on a study first published in Dutch (Barends & van Eijk 2006). The original study, translated into English by A. Saab, has been extensively revised by Esther van Eijk, who assumes full responsibility for the content of this work. The author wishes to thank Prof. Frank Vogel for his many valuable comments and suggestions on earlier drafts of this study. Thanks are also due to Prof. Baudouin Dupret, Prof. Jan Michiel Otto, and Dr. Nadia Sonneveld for their editorial comments.
- 2 This chapter is for the most part based on secondary sources of information. The scope of the study requested did not allow for a comprehensive analysis or field-based research on the topic.
- 3 It must be noted here that in the South-Western part of the peninsula early dynasties did exist; the Kingdom of Saba (or 'Sheba') in present-day Yemen is the best known example (930 BC–115 BC).
- 4 The Ka'ba is the focal point of Islam. Muslims pray in the direction of the Ka'ba in Mecca, and the shrine is one of the most important sites of the yearly pilgrimage (*hajj*). In pre-Islamic times, the Ka'ba served as a temple for the numerous gods who were worshipped by the Arab Bedouins (Cleveland 2000: 7).
- 5 This event, the *hijra* (emigration), marks the beginning of the Islamic calendar.
- 6 The Ottoman Empire conquered large parts of the Arab world in the sixteenth century: Damascus in 1516, Cairo in 1517, Algiers in 1520, Baghdad in 1534, Tripoli in 1551, and Tunis in 1574.
- 7 Wahhabis are, thus, also called puritans or Salafis.
- 8 In 1953, the Council of Deputies was replaced by the less powerful Council of Ministers (Al-Fahad 2005: 380).
- 9 This Hijazi Council remained in existence until 1992, when it was replaced by a new Consultative Council, but had little actual power (Vogel 2000: 282-283).
- 10 Followers of the fourth Sunni school of law, the Malikis, could also be found on the peninsula. Accordingly, Maliki rules can still be found in the current legal systems of Kuwait, Bahrain, and the United Arab Emirates.
- 11 See Schacht 1982: 87. A new commercial court with jurisdiction over the Hijaz region had been established in 1926. It was abolished in 1955 because of the imminent national process of unification of the legal system (Vogel 2000: 302). Al-Jarbou writes that the commercial court in Jeddah was abolished because of the influence of the traditionalists (*'ulama*) (Al-Jarbou 2007: 219).
- 12 The descendants of Ibn Abd al-Wahhab (or Ash-Shaykh) have always – and through to the present – occupied the main religious positions in Saudi Arabia.
- 13 This specific power lasted until 1964 only. A new Board of Grievances Regulation was enacted in 1982, changing considerably the nature of the Board. Article 1 recognises the Board as an independent administrative institution. Since the 1980s the Board has gained more competences, such as criminal jurisdiction for specific cases arising under, for instance, the Forgery Regulation, the Bribery Regulation, and the Post Regulation. And, in 1987, jurisdiction to handle commercial cases was transferred from the commercial disputes committees to the Board (Al-Jarbou 2004: 33). In 2007 a new Board of Grievances Regulation was issued (see 4.5).
- 14 For example, Abdallah ibn Hammud al-Tariqi became the Minister of Petroleum and Mineral Resources in 1961; he was succeeded by another commoner, namely Shaykh Ahmed Zaki Yamani (until 1986) (Niblock 2006: 44, 66).
- 15 The Ministry of Islamic Affairs, Endowment, Da'wa, and Guidance, established by King Fahd in 1993, played a major role in these activities.

- 16 The central figures in the government were, until recently, King Fahd (died in 2005) and his six brothers, who all held high positions. These so-called Sudayri Seven, were named after Abdulaziz al-Saud's favourite wife, Hassa bint Ahmad al-Sudayri.
- 17 The Ordinance of the Provinces divided the kingdom into thirteen administrative units.
- 18 See 4.5 on constitutional law.
- 19 Quoted in *Human Rights Watch* 1992: Intro.
- 20 In the last decade unemployment rates have gone down, with 11.6 per cent of the population estimated to be unemployed in 2009 (Bartleby 2009).
- 21 See e.g. BBC News Online: http://news.bbc.co.uk/2/hi/middle_east/4477315.stm, last accessed 14 January 2010.
- 22 See also MENA Election Guide: <http://www.mena-electionguide.org/details.aspx/13/Saudi%20Arabia/article421>, last accessed 14 January 2010.
- 23 Prince Sultan, the Minister of Defence, has become the new Crown Prince.
- 24 Human Rights Watch: <http://hrw.org/english/docs/2007/04/27/saudiar15774.htm> (last visited 14 January 2010); National Society for Human Rights: <http://nshr.org.sa/english/aRightMenuCMS.aspx?mid=30> (last visited 3 February 2010).
- 25 See *Saudi Arabia: In Focus* (weekly publication of the Saudi Arabian embassy in Washington, D.C.): <http://www.saudiembassy.net/files/PDF/Publications/Focus/2009/09-FOCUS-02-17.pdf>, last accessed 14 January 2010.
- 26 For the English translation see the International Constitutional Law (ICL) Project: http://www.servat.unibe.ch/icl/sa00000_.html, last accessed 9 February 2010.
- 27 In 2006, the Allegiance Committee was established by royal decree; the Committee is composed of male descendants of the founder, King Abdulaziz, who will play a role in choosing future Saudi kings. Future kings (the protocol will not come into effect until after the current Crown Prince Sultan has become king) will have to seek the approval of the committee for their choice of successor (i.e. crown prince). See the Website of the Royal Embassy of Saudi Arabia in London: <http://www.mofa.gov.sa/Detail.asp?InNewsItemID=55889>, last accessed 14 January 2010.
- 28 A *mufti* is a member of the community of religious scholars (the '*ulama*'), who is competent to give his authoritative legal opinion (*fatwa*) on a particular issue.
- 29 In 2007, the government launched an official website for *fatwas* issued by authorised scholars. Visitors can ask questions on various topics and receive a reply from the Council of Senior 'Ulama. See <http://www.alifta.com>.
- 30 He was succeeded by the current Grand Mufti, Abdulaziz al-Shaykh.
- 31 His writings, including *fatwas*, were – and still are – considered authoritative. Not just in Saudi Arabia, but all over the world, Muslims accepted his opinions as morally valid and practical guidelines.
- 32 But see e.g. Al-Jarbou 2007: 209, who writes that 'many laws and regulations are enacted every year without being studied by the Board of neither the Senior '*ulamā*' nor the Higher Council of Justice. The reason is that these laws can be implemented without having the traditionalists approve of them or at least participate in their enactment.'
- 33 English translation taken from the International Constitutional Law (ICL) Project: http://www.servat.unibe.ch/icl/sa00000_.html, last accessed 9 February 2010.
- 34 Basic Ordinance, Arts 49, 53. The Board is not allowed to hear any outcome of the shari'a courts, see Board of Grievances Regulation 2007, Art. 14.
- 35 However, appeals cases that involve amputation, execution, or stoning to death are adjudicated by panels comprised of five judges (Judiciary Regulation (1975), Art. 13; Regulation on Criminal Procedure (2001), Art. 10). There is a similar provision in the 2007 regulation (Art. 15(1)).

- 36 Some of its decisions were published by the secretariat of the *Diwan* for some years in the late 1970s, but publication of its decisions was discontinued after that period (Mallat 2007: 163-164 n. 70).
- 37 The Administrative Judicial Council's jurisdiction is similar to that of the Supreme Judicial Council. See Board of Grievances Regulation (2007), Art.s 4, 5, Articles 8 and 10 of the same regulation describe the mechanism of the Supreme Administrative Court.
- 38 Besides their classical shari'a college training, most Board of Grievances judges also hold a law degree from one of the legal departments offered by various universities in the country (Al-Jarbou 2007: 222).
- 39 A government delegation member in discussion with the CEDAW Committee in January 2008 informed the Committee that the government 'was in the process of establishing a high-level scholarly panel, including the various schools of jurisprudence, to codify all the provisions of Islamic law relating to personal status' (CEDAW Committee 2008, Summary record of the 815th meeting).
- 40 It should be noted here that the father is the primary legal guardian of the child from the moment the child is born. After divorce, the mother can become custodian of the child (i.e. physical custody) until a certain age, after which full custody will be automatically transferred to the father.
- 41 See *BBC News Online*: http://news.bbc.co.uk/1/hi/world/middle_east/4437667.stm, dated 12 April 2005, last accessed 14 January 2010. See also *Gulfnews.com*: http://www.gulfnews.com/News/Gulf/saudi_arabia/10228620.html, dated 14 July 2008, last accessed 14 January 2010.
- 42 The Islamic Fiqh Academy, established in 1981, is affiliated to the Organisation of the Islamic Conference (OIC) and is based in Jeddah.
- 43 See Arabi 2001: Chapter 7; Welchman 2007: 102-105.
- 44 It should be noted here that some *'ulama* have issued *fatwas* in which they contend that *misyar* is *zina* (fornication) (ibid: 107).
- 45 Non-Muslim heirs are excluded as heirs in the estate.
- 46 Male relatives in the male line.
- 47 The new Judiciary Regulation (2007) and the Board of Grievances Regulation (2007) provide that the commercial jurisdiction from the Board will be transferred to a specialised division within the regular shari'a court system.
- 48 The most important regulation governing companies is the Saudi Companies Regulation of 1965 (amended in 1967 and 1982). This regulation, for example, is largely taken from Egypt (Vogel 2000: 288).
- 49 Personal communication with F.E. Vogel, Leiden, March 2008.
- 50 It should be noted that citizens of the Gulf Cooperation Council who conduct commercial business in the kingdom are also subject to *zakat*. See: <http://www.dzit.gov.sa/en/CommerceZakat/commercezakat.shtml>, last accessed 14 January 2010.
- 51 Personal communication with F.E. Vogel, Leiden, March 2008.
- 52 Ibid.
- 53 English translation taken from the International Constitutional Law (ICL) Project: http://www.servat.unibe.ch/icl/sa00000_.html, last accessed 9 February 2010.
- 54 The other countries abstaining from voting included the Soviet Union, Poland, Yugoslavia, and South Africa.
- 55 See Human Rights Watch memorandum: <http://hrw.org/english/docs/2006/02/07/saudi2622.htm>, dated 7 February 2006, last accessed 14 January 2010.
- 56 For extensive and up-to-date information on state reports, reporting history, and reservations and objections regarding all UN treaties, see <http://www.bayefsky.com> (The United Nations Human Rights Treaties).

- 57 The woman and her male companion were initially both sentenced to ninety lashes. Four of the five accused rapists were sentenced to between one and five years imprisonment and received between eighty and one thousand lashes for the offence of kidnapping, as the Public Prosecution could not prove rape had occurred due to the strict shari'a rules of evidence that apply to this *hadd* crime. See *The Independent News Online*: http://news.independent.co.uk/world/middle_east/article3204058.ece, last accessed 14 January 2010.
- 58 See *Al Jazeera English Online*: <http://english.aljazeera.net/NR/exeres/AF444D2D-E666-437A-A441-37EA99C8BE4F.htm>, last accessed 14 January 2010.
- 59 The study notes that 'there appear to be no written legal provisions or official decrees explicitly mandating male guardianship and sex segregation, yet both practices are essentially universal inside Saudi Arabia' (Human Rights Watch 2008: 4)
- 60 The 2005 Labour Ordinance states that women are permitted to work in 'all fields compatible with their nature' (Art. 149). The Minister of Justice, however, prohibits the issuing of licences to women to practise the legal profession (Yamani 2008: 152).
- 61 Saudi Arabia feared that Shi'ite ascendance in the region would be strengthened by the 2003 ousting of the old Sunni regime in Iraq and that Iraq would become a Shi'ite state. It appears that in line with these fears, a number of Saudi religious leaders have encouraged young fighters to go to Iraq and fight against the Shi'ites (Schwartz 2005: 29-32).

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