

**Conformity of the Saudi
Rules and regulations
With
*The Conventions on
Basic Human Rights***



NATIONAL SOCIETY FOR HUMAN RIGHTS



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In the Name of God the Merciful the Compassionate

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NATIONAL SOCIETY FOR HUMAN RIGHTS

Introduction

The Kingdom of Saudi Arabia pays special concern to the issues of human rights at both the local and international levels. This is attributed to the Kingdom's compliance with the honorable Islamic Rules which call for forgiveness, justice, and reign of law. To achieve these values, many regulations and procedures have been implemented, such as Article (16) of the Kingdom's Basic System of Rule (Governance Act). This Article ensures the commitment of the Kingdom to protect human rights. In addition to that the Kingdom has joined four international basic conventions on human rights, and is in its way to join the rest of them, numbering seven conventions in all, and that an approval has been issued to establish the National Society for Human Rights, and the Governmental Commission for Human Rights. On the other hand, some International Legal Organizations, who had been given permission to visit the Kingdom, had met with the concerned officials, citizens and expatriates living in the Kingdom , and had also visited some prisons.

This methodology resulted in a positive impact reflected in the selection of the Kingdom as a member in the first International Council for Human Rights. The basic mission of this Council is to evaluate the status of human rights in the countries of the world.

Promotion of human rights practices at the local and the international cooperation levels, in order to solve human rights issues, requires, in addition to the positive steps achieved, that a comprehensive review be conducted of all laws and regulations issued before and after the joining of the Kingdom of the International Covenants on Human Rights. The purpose of this review is to ensure the conformity of these laws and regulations to the Kingdom's commitments under those Covenants. This is what the National Society for Human Rights is striving to achieve based on its responsibilities as mentioned in the third Article of the Kingdom's Basic System of Rule, which states in paragraph (1) thereof: "To ensure that the provisions of the Basic System of Rule will be incorporated in the Kingdom's internal Regulations and laws of relevance to human rights." Whereas paragraph (2) of this same Article says "To ensure the fulfillment of the Kingdom's human rights commitments under Cairo Declaration on Human Rights in Islam, the United Nations Human Rights Charter, and the International Deeds concerning human rights. On the other hand, paragraph (4) states "To provide ideas and proposals to the Governmental and Private Agencies so as to enlighten and promulgate awareness on human rights". Moreover, Paragraph (6) prescribes: " To study the International Covenants and Deeds relating to international human rights and their applications"

Based on the above, The National Society for Human Rights is pleased to present this study to the Society, Judicial and Executive Institutions to use as a guide for modifying some of the currently applicable rules and regulations and to enact new statutes in line with the prevailing conditions being witnessed by the world, as well as with the future changes. As the Kingdom is a part of that world, therefore it should have an effective role in the field of human rights, especially in enlightening the international masses to make them aware of human rights in Islam, and to defend those rights.

Dr. Bandar Bin Mohammed Hamza Hajjar
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NATIONAL SOCIETY FOR HUMAN RIGHTS

THE SUBJECT-MATTER & FRAMEWORK OF THE STUDY



NATIONAL SOCIETY FOR HUMAN RIGHTS

THE SUBJECT-MATTER & FRAMEWORK OF THE STUDY

The subject-matter of this study focuses on determining the extent of conformity and compliance of the laws of the Kingdom of Saudi Arabia with the International Covenants on Human Rights, including the Conventions which the Kingdom have joined and those which the Kingdom have not joined yet. The purpose is to show the elements of compatibility and divergence, to enable the scholar to look into ways for avoiding or rectifying these deficiencies, and the ways to apply the mentioned International Covenants at the local level.

The international legal mechanisms in the area of human rights are many and various. Some of them deal with the issue of human rights in general, such as the Universal Declaration of Human Rights. However, the International Covenants and Declarations on Human Rights deal with specific issues of human rights, such as the elimination of racial discrimination, denouncement of torture, human civil and political rights, the rights of specific group of people like women, child's rights, or laborer's rights Covenants. The description and legal values of these mechanisms vary. Some mechanisms take the form of declarations, principles, bases, approaches, or recommendations. These mechanisms do not have an obligatory legal effect but are being agreed upon as having moral and literal values. Other mechanisms are described as Agreements, Conventions, or Protocols. These are of legal obligatory nature. They include specific obligations imposed on the country who is a member

thereof, and are not a merely general framework or ambitions or recommendations as the case with the declarations and principles. Therefore, the responsibility of the country towards these covenants, conventions and protocols are more clear and well-defined. The assignment of this responsibility depends on the acceptance of the country of the Covenant, Conventions or Protocols whether wholly or partially. Consequently, the Article to which the country objects or raises reservations about will not be applied to that country.

Although the international legal mechanisms for human rights are various and many, but there are, in addition to the Universal Declaration of human rights, seven main International Covenants and Conventions, which are considered the pillars of international law for human rights. The Kingdom of Saudi Arabia have joined the following International Covenants and Conventions¹:

1. Convention on Elimination of all Forms of Racial Discrimination signed on December 21, 1965. The Kingdom has joined this Convention on November 1997.
2. Convention on Elimination of Discrimination Against Women signed on December 18, 1979. The Kingdom has joined this Convention on December 2000.
3. Convention Against Torture & other Cruel Inhuman or Degrading Treatment or Punishment signed on December 10, 1984. The Kingdom has joined this Convention on November 1997.

¹ According to official information forwarded to the National Society for Human rights from Ministry of Foreign affairs , and the Kingdom's report forwarded to the Committee of Elimination of all types of Racial Discrimination

4. Convention on the Rights of the Child signed on November 20, 1989. The Kingdom has joined this Convention on February 1996.

As for the Universal Declaration of Human Rights, the Kingdom voted in favor of the United Nation General Assembly Resolution which approved this Declaration on December 10, 1948.

The Conventions which the Kingdom of Saudi Arabia is in its way to join are:

5. Covenant on Civil and Political Rights signed on December 1, 1966.
6. Covenant on Economic, Social and Cultural Rights signed on December 1, 1966.

The Kingdom of Saudi Arabia has not joined the following Conventions as yet:

7. International Convention on the Protection of the Rights of All Migrant Workers & Members of their Families approved per United nations General Assembly Resolution No. 45/158 dated December 18, 1990.

These seven major Conventions are the subject-matter of this study, in addition to the discussion on the status of the Universal Declaration of Human Rights, as it has a referential importance in regard to human rights issues. It is not the purpose or objective of this study to deal with the Articles of the mentioned seven Conventions by way of explanation and analysis as if they are international legal publication for human right, but the aim is to compare the contents and provisions of these Conventions with the Kingdom's Rules and Regulations so as to determine the differences, if any, as well as the ways to rectify them and to enforce the provisions of the mentioned Conventions in the local arena. It is worth mentioning that the differences with the Conventions may arise from: a rule (a specific provision or context thereof), a regulation, a decision or even a mere practice.

The practice, however which is considered a violation of the Convention is not the individual isolated practice but it is the repetitive one which implies a constant pattern.

Certainly, to determine all laws, regulations, decisions, and practices and compare them with the Clauses of the mentioned seven Conventions, is not a realizable or attainable task in light of the framework of a study. This task should be accomplished by the Society. It is not a specific or time-bound task, but it is a continuous mission occurring every time a rule, a regulation or a decision is issued.

The study, therefore, will be limited to drawing comparisons with the rules issued in the Kingdom up to the date of this study. However, we will exert every effort to reveal any regulation or decision known by us, which constitute a violation to any of these Conventions. This issue clearly shows the importance of referring all future rules, regulations, and decisions to the respective concerned parties such as the National Society for Human Rights or Human Rights Commission in order to determine whether such rules and decisions conflict or comply with the provisions of the Conventions joined by the Kingdom or in its way to join them.

Once again I should assure that the purpose of this study is not limited to revealing the differences or doubts about differences with the International Conventions, but we shall by-pass that to show the methods of how to preclude these differences or to limit them, and more than that, this study will contribute to pushing forward the issue of activating the Conventions at the local level to guarantee an ideal application thereof.

As for the aspects of conformity of Laws, Rules and Regulations of the Kingdom with those Agreements, a quick reference will be enough, because this issue has no considerable practical significance as the course of action should be that the Conventions signed by the Kingdom conform with its own Laws and Regulations.

PLAN OF THE STUDY

THE PLAN OF THE STUDY

In order to achieve the objective of this study it has been constructed as follows:

Part One: The Conventions Joined by the Kingdom

Introduction: The extent of conformity of the Universal Declaration of Human Rights with the Saudi Rules and Regulations.

- 1- Convention on Elimination of all Forms of Racial Discrimination
2. Convention on Elimination of Discrimination Against Women
3. Convention against Torture & other Cruel Inhuman or Degrading Treatment or Punishment
4. Convention on the Rights of the Child

Part Two: The Conventions not joined by the Kingdom or in its way to join them

First: Conventions in the process of approval

- 1- The International Covenant on Civil & Political Rights
- 2- The International Convention on Economic, Social and Cultural Rights

Second: Conventions not joined by the Kingdom and is not in its way to join them:

- The International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families

PART ONE

THE CONVENTIONS JOINED BY THE KINGDOM

First: The International Convention on Elimination of all Forms of Racial Discrimination

- 1- The Status of the Convention in regard to the Kingdom
- 2- The General Framework of the Convention
- 3- Some of the Aspects of Conformity between the Convention and the Kingdom's Rules and Regulations
- 4- Differences or Doubts about Differences whereof
- 5- Activating Application of the Convention and the Kingdom's Rules and Regulations

Second: The Convention on Elimination of Discrimination Against Women

- 1- The Status of the Convention in regard to the Kingdom
- 2- The General Framework of the Convention
- 3- Some of the Aspects of Conformity between the Convention and the Kingdom's Rules and Regulations
- 4- Differences between the Saudi Rules and Regulations and the Convention
- 5- Measures for Activation of the Convention



NATIONAL SOCIETY FOR HUMAN RIGHTS

INTRODUCTION

CONFORMITY OF THE UNIVERSAL DECLARATION OF HUMAN RIGHTS WITH THE KINGDOM'S RULES & REGULATIONS

As mentioned earlier, the Universal Declaration of Human Rights is one of the oldest instrument of the International Law of Human Rights. It is thus a significant historical reference in the area of Human Rights. Therefore it is important to discuss it and to find out the extent to which it conforms with the Saudi Rules & Regulations through the following points:

1- The Stance of the Kingdom in regard to the Universal Declaration of Human Rights

The Universal Declaration of Human Rights has been approved by the UN Resolution No. 217 (D-3) dated 10/12/1948. The Kingdom has voted in favor of this Declaration, but has put forward reservations on Articles 16 & 18 thereof consecutively.

2- The General Framework of the Declaration

The Universal Declaration of Human Rights is considered one of the most famous instrument of human rights in view of its old-age and ambitions. The Declaration consists of 30 Articles dedicated to various areas of basic human rights such

as the rights to freedom, equality, dignity, life, security, employment, education, freedom of opinion, justice etc.. In reality all the mechanisms of the human rights international law that succeeded the Declaration are detailing a particular right or rights outlined in the Declaration.

The formulation of the Articles of the Declaration are characterized by generality expressive of ambitions and aspirations rather than specified obligations.

3- The Part of the Declaration that Concerns the Kingdom: The Kingdom's Reservations and their Assessments

The Kingdom has raised reservations in regard to Articles (16) and (18) of the Declaration. This means that these two Articles will not be applicable in the case of the Kingdom. The reason of the Kingdom's reservations to these two Articles is that they conflict with the Islamic Rules, i.e. Article (16-1) allows marriage of two persons of different religions. This obviously conflicts with the Islamic teachings. However, there is nothing in paragraphs (2) and (3) of Article (16) that conflicts with the Islamic Rules. Therefore these reservations should have been more specific, and should have been limited to the first paragraph of Article (16) without being extended to paragraph (2) and (3).

On the other hand, Article (18) gives the person the right to convert from his faith and the freedom to perform his religious rites with a group of people openly. This Article contradicts the public order in the Kingdom (more details about this issue are outlined hereinafter).

Moreover, the provision of Article (25-2) of the Declaration conflicts with the Islamic Rules as it calls for equalizing children born outside of wedlock with children of legitimate marriage. The Kingdom should have raised a reservation against this Article, because it may be applied in its case and thus become obligatory to it. However, this provision can not be applied in the Kingdom as it contradicts the Islamic law which differentiates between a child born in legitimate marriage wedlock and a child born outside of marriage wedlock.

4- The Legal Value of the Declaration:

Opposite to the International Agreements, the Declaration has no legal binding effect. Its value is limited to the moral and literal effects. The International Declarations for Human Rights represent inclinations, goals, or idealisms. The countries which had approved them should have to work to realize them. The badge of the Declaration reads: "The General Assembly of the United Nations widely announces this Universal Declaration of Human Rights as an idealism which should be achieved by all Nations.." The provisions of the Declaration also coincide with this direction. The Clauses of the Declaration are drafted in a general manner where the first Article therein says "All human beings are born free and equal in dignity and rights, they are endowed with mind and conscience, thus they should treat each another in brotherly spirits." Although the Declaration calls for 'the right to equality, freedom, and dignity', its encouragement of brotherly spirits implies that the nature of the Declaration (as idealism) is to be achieved, but without specific legal obligation. This is stressed by a number of Articles in the Declaration which reflects some goals and ambitions detailed

later in a framework of independent International Agreement. Article (3) provides for some of these goals which stresses the necessity not to discriminate against others because of race, color, sex, language or religion. This is determined and detailed in the International Convention on Elimination of all forms of Racial Discrimination signed in (1965).

On these same lines, Article (25-2) encourages care for children, which is more detailed in the Convention on the Rights of the Child signed in (1989). In addition to this there are the two International Conventions, one of which concerns Political and Civil Rights, and the other focuses on the Economic Social and Cultural Rights. Both Conventions, signed in (1966), have transformed a large number of the basic rights included in the Declaration general framework into specific, express mandatory-to- implement commitments.

This does not mean that the countries who have approved the Declaration have the freedom not to comply to it or dispose of it, otherwise the approval of a country or its reservation to some of the Articles thereof will be useless. The Universal Declaration of Human Rights has two values: the first is a moral value derived from a country's aspiration to fulfill its ambitions, which actually constitutes a commitment based on that country's satisfaction generated from its acceptance of the Declaration. Thus ignoring or non-abiding by an Article thereto will be a violation to that Article.

The other value is that the Declaration is considered a general reference of the International Law of Human Rights in the absence of specific contexts in the supplementary Agreements and Charters of human rights.

But should the Saudi Judge of a lawcourt take into consideration the provisions of the Declaration in passing judgments?

The answer is definitely NO! The Declaration is not an International Agreement. The courts and Judicial Authorities only apply in their verdicts the International Conventions approved by respective Royal Decrees as outlined in Article (70) of the Kingdom's System of the Basic Rule which states: *"Regulations, Treaties, International Conventions, privileges and amendments thereof are approved by a Royal Decree."*

5- Conformity of the Laws and Rules of the Kingdom with the Universal Declaration of Human Rights:

a) Aspects of the Declaration:

The contents of the Declaration agree with the rules and laws of the Kingdom. The statement in the Declaration in regard to the rights to life, dignity, litigation and security etc.. are the rights stated in many of the laws of the Kingdom such as the Basic System of Rule, Proceedings Act, and other Judicial Systems, in addition to its full compatibility with the Islamic Rules.

The general feature of the Articles of the Declaration necessities the differentiation between the violation of the right and to limit its effect on the one hand, and to regulate it on the other hand. For example Article (13-2) states that every person has the right to leave any country including his own country, and that any person has the right to return to his own country. The provisions of a law or legal measures

which prevent a person from traveling for security reasons, or because of a certain advocacy or a judicial case, are not considered defaulting this Article. Nevertheless, barring someone from traveling without a judicial verdict, or the mere strict unreasonable prevention is deemed to be a violation of this Article. No rule or law of the Kingdom of Saudi Arabia provides for this prevention. Also Article (17-1) states 'Every person has the right to own property by himself or with others.' The Saudi laws regulate this limitation of possession by non-Saudis of real estate, and their right in general to possess real estate in certain areas such as the Holy cities of Makkah and Al-Madinah in order to safeguard the sovereignty of the country over its territory. So this is not a cancellation or breach of the mentioned Article. On the other hand, any system or decision that undermines the right of ownership without any reasonable justification or without consideration of the public interest may be regarded as violating the right stated in this Article. The laws and rules of Saudi Arabia, which have been reviewed by the Human Rights Society do not include any of these violations.

Article (10) of the Declaration states that trial hearing should be open. This does not mean that a court session can not be closed in all cases without exception, but it gives the understanding that the court sessions should be open and that confidentiality is the exception. However this exception should be limited to specific cases and justifications. These limits are stated in Article (15) of the Principles of Litigation and Deliberation in a court of law. This Article allows an exception for a trial session to be secret for reasons of general courtesy, or for maintaining the general law and order. Both Article (61) of the Judicial Litigation System, and Article (155) of the Punitive Procedures Act use the same reasoning.

Despite the explicitly of the provisions of those Articles, there are some judicial practices, in which the judge orders closed hearing, other than those provided for. This is considered a violation to those provisions and also a violation to the Declaration at the same time. This abnormal situation requires that the concerned judges' attention be drawn to respect these provisions. Therefore it is required that special provisions be incorporated in these legal systems to invalidate any verdict, other than those stated explicitly, passed following closed hearing sessions,. This sort of action will absolutely guarantee the respect of the relevant rules.

b- Aspects of differences:

It is difficult to establish a violation of the mechanisms relating to the provisions and Articles of the International Law based on a general Declaration on International Human Right, or those Articles which are no more than general directives to what should be adopted by the States in particular cases. For example, the statements concerning the right to work and the right to a wage which cover the basic needs, as well as the right to education that develops an individual's faculties (Articles 22 & 26). Contrary to this, there are some Articles of specific nature, which can be compared with the Rules and Regulations of the Kingdom to determine the differences, or the possible differences. Such Articles are outlined hereunder:

- Article (6) states "Every human being, anywhere, has the right to have a legal identity." This Article conflicts with some Directives or Circulars, or other groundless legal practices which limit the right of the mature woman to litigate or to conduct legal businesses unless under the

consent of her guardian, even if she is of age. This means that her legal identity is not recognized. The recognition of the legal identity of a woman entails granting her the right of litigation and the right to manage her affairs once she reaches the age of maturity (this will be outlined in detail while discussing the Convention on Elimination of Discrimination against Woman).

- Article (15-2) of the Declaration states the right to change the nationality. As mentioned before, there is a difference between suspending the right on one the hand, and organizing that right on the other hand. Article (11) of the Saudi Nationality Act provides "It is not permissible for a Saudi national to have a foreign nationality without a prior permission from the Council of Ministers. The Saudi national who elects to have a foreign nationality without the prior permission of the Council of Ministers is still considered a Saudi, unless the Government of His Majesty the King decrees to deprive him from the Saudi Arabian nationality in accordance with Article (13). The Saudi Legal System is based on the principles of one nationality. The person who has another nationality should waiver his Saudi nationality to maintain a foreign nationality. This provision which stipulates acquisition of the permission of or approval of the Council of Ministers (the highest Authority in the Kingdom) will dampen the enthusiasm of those who want to practice their rights to change their nationality. Therefore, this provision undermines the right to change a nationality and consequently violates the Article of the Declaration.
- Article (23-2) states "All individuals, without exception, have the right to have equal wage for equal work". Although

there is no Clause in the Kingdom's' new Labor Law (issued in 1426H) clearly contradicts this statement (as the determination of the wage is subject to the mutual agreement between the parties to an employment contract), the regulations of some Public and Governmental Establishments differentiate between the wages of expatriates and those of the national workers, or differentiate in the wages of expatriates according to their nationalities even if they perform the same job. These regulations violate the mentioned Article of the Declaration as well as contradict the provision of the Convention on the Elimination of all forms of Racial Discrimination. This will be discussed in detail in the section dealing with that Convention.

- Article (23-4) outlines the right to establish trade unions and the right to join those trade unions. Whereas the new Saudi Labor law does not allow this.
- As far as the Kingdom has not raised any reservation about any Clauses of Article (25), and has also not raised a general reservation against any Article that conflicts with the Islamic Law, discriminating between the children born within a legitimate wedlock and those born outside such legitimacy is an express violation of Paragraph (2) of this Article. As we have stated earlier, this Paragraph should be subject to a reservation.

The effect of these violations is deprecated because the Universal Declaration of Human Rights has no law-enforcing

authority, although it has the moral influence mentioned in a previous place in this study. This situation will have completely changed if any of these provisions and contexts have contradicted any of the Clauses of the International Conventions joined by the Kingdom as explained hereinafter.

FIRST:

The International Convention on Elimination of All Forms of Racial Discrimination

*Approved under the Resolution of the UN
General Assembly No. 2106 dated
December 21, 1965*



NATIONAL SOCIETY FOR HUMAN RIGHTS

First:

The International Convention on Elimination of all Forms of Racial Discrimination

1. The Status of the Convention in Relation to the Kingdom

The International Convention on Elimination of all Forms of Racial Discrimination has been approved under the United Nations General Assembly Resolution No. 2106 with effect from the 4th of January 1969 and has been joined by the Kingdom according to the Royal Decree No. (M/12) dated 16/4/1428 (November, 1997). The Kingdom has raised a general reservation against all the provisions in the Convention that contradict with the Islamic Law, and has also raised a specific reservation against Article No. (22) which states: "Any dispute or controversy in regard to the interpretation or application of this Convention shall be referred to the International Court of Justice". Also the Kingdom has not issued an announcement in recognition of the authorities of the Committee mentioned in Article (14).

Contrary to the Declaration, the Convention is legally binding to the Kingdom under which it is obligated to take action to facilitate execution of the Convention at the local level, and the Kingdom's judicial authority should be obligated to enforce it and to refrain from applying any law or regulation that contradicts it.

2. The General Framework of the Convention

- a) The Convention consists of (25) Articles, divided into two parts. The first part consists of Articles 1 - 7. This part determines the forms and concepts of banned and forbidden discrimination. Unlike the Universal Declaration of Human Rights, the Convention consists of specific obligations imposed on the countries who are parties to it. The second more detailed part (Articles 8 - 25) is devoted to establishing the monitoring system and the strict application of the Convention through the Committee mentioned in Article (14) called 'The Committee for the Elimination of Racial Discrimination.' This Committee accepts complaints from individuals against the Member States, investigates these complaints and takes the appropriate actions. The Kingdom has not yet acknowledged recognition of this committee.

The Committee for the Elimination of all Forms of Racial Discrimination aims to follow up the strict application of the relevant Convention by Member States, and has a wide authority in this respect, including investigating violations and recommending the action that should be taken with respect to the violating country. Also, the Committee prepares an annual report about its activities, and appraises the application of the Convention during that year. The special mechanism included in the Convention (mentioned in Article (22)) requires that disputes arising from misinterpretation or execution of this Convention be submitted to the International Court of Justice if no reconciliation is reached through the procedures set out in the Convention. This mechanism will not be applicable in the case of the Kingdom because it has a reservation against it.

- b) The Convention eliminates all Forms of racial discrimination, instigation or encouragement of discrimination. The countries who signed the Convention should resist all forms of discrimination through systematic, administrative regulations or by practice or other measures, although the Convention has not specified certain means to control discrimination. Therefore, each country has the discretion to set up the means which suits it to combat all forms of discrimination. Each country's commitments are not only limited to purifying its laws and regulations from the provisions admitting some forms of discrimination that conflict with the Convention, but also binding that country to draw up appropriate measures, including enforcement of laws and directives, to prevent discrimination and penalizes those who practice it.
- c) The Discrimination Forbidden By the Convention:
 According to the Article (1) of the Convention, the forbidden racial discrimination covers:" Any distinction, exception, limitation, or favoritism based on race, color, origin, native origin, or ethnic origin and targeting or resulting in a suspension or hindrance of the recognition of human rights and basic freedoms, or prevent exercising those rights, or hinder practicing them with others on grounds of equality in political, economic, social and cultural fields, or in any other spheres of life". The forbidden discrimination does not include the discrimination based on granting advantages to prefer nationals to expatriates (like the procedures encouraging the employment of the citizens, restricting expatriates employment, restricting the public governmental jobs to citizens, limiting the work of expatriates, preventing or

limiting expatriates to possess assets or perform certain activities. Article (1-2) of the Convention does not apply to these measures and procedures.

It is worth mentioning that this Convention organically applies only to the prevention of all forms of racial discrimination, and thus it is not a general Convention on human rights. The granting of a right to a certain person and preventing another person of that right is considered a distinction which constitutes a violation under the Convention. Nevertheless, the Convention does not decide that the same right should be provided to another person. This issue is beyond the content of the mentioned Convention, but falls within the subject-matter of other Conventions and Committees of Human Rights. If the Convention is to assume other subjects besides this one, it will expand the scope thereof to an unreasonable extent and transform it to 'an International Obligatory Declaration of Human Rights', consequently the Human Rights Committees shall be divested of their authorities stated in other Conventions of Human Rights {such as the International Convention on Civil and Political Rights, and the International Convention on Economic, Social and Cultural Rights} and devolve those authorities upon the Committee for the Elimination of Racial Discrimination. This can not be approved of from a legal viewpoint.

The significance of this issue is evident from the paragraphs of Article Five of the Convention on Elimination of Racial Discrimination, which discusses a number of human rights as if approved under this Article.. However the rights included in this Article should be put within the framework

and subject-matter of the Convention. In other words, the commitments that arise from the Convention are those regarding the elimination of discrimination such as giving a right to one person and deny it to another, or giving it to a group of people and deny it to others, or discrimination in regard to the practice of these rights. It should be understandable that the Convention does not approve the right to employment, as this issue falls outside its subject-matter and purpose. On the other hand, the Convention is concerned about the distinction arising from the right to employment such as the discrimination in wages or in assigning employments. This distinction falls within the concerns of the Convention because it involves racial discrimination.

3. Aspects of Conformity of the Convention with the Laws and Regulations of the Kingdom.

The Laws and Regulations of the Kingdom agree with all of the Articles of the Convention. Elimination of discrimination and promotion of equality are among the principles of the righteous Islamic faith. Many Articles of the Convention conform with the Saudi Laws. For example, most of the provisions of Article (5) include various rights protected by the Convention, like the right to justice and equality before lawcourts, the right to security, the right to protection by the State without discrimination, the right to education and health care without distinction etc., and in addition, Article (6) states, among other things, the right to resort to a court of law without discrimination or distinction. These are expressly provided for in Article (47) of the Kingdom's Basic System of Rule.

In support of this Convention, the Kingdom has approved the mandatory Health Cooperation Insurance System (which incorporates expatriate workers in the Health Insurance umbrella on equal basis as applied to the national workers).

4. Aspects of Differences or Doubts Arising whereof

- (4-1) Paragraph (C) of Article (5) prevents discrimination in political rights especially the right to vote in election. This paragraph is contradictory as women are barred from nomination for election or from voting in the municipalities elections (opposite to the elections for the Councils of the Chambers of Commerce). This prevention is not based on law and regulatory systems, but it is based on a decision or a practice, which is considered an apparent violation to this Convention involving a discrimination that should be righted. (also consider the violation of this right in regard to the Convention on Elimination of Discrimination against Women).

Activation of this provision of the Convention necessitates enacting a special law for elections, which should specify the terms for nomination and election through a certain legal framework in order to guarantee equity and non-discrimination between men and women. A law and not a decision is the appropriate means to regulate political rights.

- (4-2) Paragraph (E-1) of Article (5) prevents discrimination in regard to the rights to employment, to freedom, to choose the type of work etc... As mentioned in a pervious statement, the steps taken by the Kingdom through the new Labor Law, and the other related measures which

aim to encourage the hiring of national citizens instead of expatriates is not considered a violation to this Convention according to paragraph (2) of Article (1) thereunder. The Labor Law does not include any provision that conflicts with this paragraph .

It is evident from the provisions under the Regulations of some Governmental Departments that distinction in wages based on expatriate nationalities is prevalent {as stated in Clause (9) relating to employment of non-Saudis at the Saudi Universities}, which is considered a violation to the mentioned Article of the Convention, therefore such provisions should be abrogated. The Administrative Judiciary Authority at the Bureau of Grievances should disregard this Clause as it contradicts the Convention. Also discrimination in wages between nationals and expatriates is a violation to this paragraph. This discrimination is obvious in the Regulations of Governmental Departments, which, in our opinion do not agree with the previously discussed exception mentioned in Article (1-2), stating: "This Convention is not applicable to any sort of favoritism, exception, limitation, or distinction between national citizens and expatriates in any Member State). This exception regards the granting or non-granting of the right itself, such as limiting the employment of public jobs to citizens and not to expatriates. Therefore If the right to employment is granted to the nationals as well as to the expatriates, then no statement need be included in the Regulations of Governmental Departments differentiating in wages of the same work, otherwise a doubt of a violation of this paragraph may arise.

This doubt is more perceivable in public employment procedures than in private sector recruitment practices. Whereas in private sector the employment relationship is based on mutual agreement, i.e. the Labor Law has no provision that approves discrimination in wages, so the matter is left to the mutual agreement of the parties.

- (4-3) The validity of the Islamic Law references which support legal competence for marriage should be revised as the current applications based on those references conflict with the Islamic righteous principles (which do not differentiate between an Arab and a non-Arab, and ordain that people are equal). The current judicial applications in regard to the legal competence for marriage run against these principles, as well as violate Article (12) of the Saudi Basic System of Rule, which, under the Section titled 'Fundamentals of the Saudi Society' it says "Enhancing national unity is a duty. The State prohibits all actions that lead to discrimination, separation and chaos". Such actions which augment racial discrimination are banned under Article (1) of the Convention. This issue is among those against which the Kingdom has raised reservations relating to non-recognition of any Article of the Convention that contradicts the principle of Islam as an International Faith. Thus there is a doubt that the mentioned judicial practices violate the Convention.
- (4-4) Paragraph (E-2) of Article (5) states the right to establishing and joining trade unions. In order to determine the extent of compliance of the Saudi Laws and Legal Systems with this provision, we should differentiate between trade unions and the professional gatherings on

the one the hand, and trade unions and labor conglomerations on the other hand. The term 'trade union' is rarely used in the Kingdom Rules and Regulations, but this may be deemed as an exchangeability of terms as the Saudi Laws, specifically the Chambers of Commerce Regulations, allow the establishment of professional Committees within the Chambers of Commerce themselves, such as the National Committee for Contractors, the National Committee for Barristers, the National Committee for Insurance etc. The Association Regulations also allows the establishment of professional Committees. There is no provision in these regulations that allows discrimination or distinction, as expressed in the Convention, in regard to the establishment and the joining of these conglomerations.

The explicit provision of the above-mentioned Article dictates the issuance of a unified system for all professional conglomerations regardless of the respective titles thereof, instead of the current dispersed situation. If such system is issued, it will outline the conditions for setting up conglomerations, the membership thereto, and the party who should supervise these conglomerations, without involving any discrimination or distinction. Currently the Private Committees & Corporation Act is being revised by the Legislative Council, hopefully with a view to taking these issues into consideration.

However, this issue is quite different when it comes to Laborers Trade Unions as the new Labor Law does not include any statements or provisions allowing or organizing the way of establishing labor conglomerations

in the sense mentioned in the Convention. Nevertheless, laborers in any Establishment employing more than a hundred employees are allowed to form a Laborers Committee within that Establishment. The Committee Members are elected by the laborers of the respective Establishment to look after their interests. This right however is not yet activated as should be.

(4-5) Investigating the Right to Freedoms
of Thought, Religion or Belief

As mentioned earlier, the Kingdom has raised a general reservation that any Article of the Convention which contradicts the Islamic Law will not be binding to the Kingdom. On the other hand, differentiation should be made between the freedom of belief and the freedom to perform the religious rites in public. The freedom of belief is a personal matter that is beyond the jurisdiction of the State and its legal systems. However, performance of religious rites in public by non-Muslims - as provided for under paragraph (7) of Article (5) of the Convention - contravenes the general law and order under paragraph (1) of the Kingdom's Basic Governance Act on the one hand, and the international understanding and the Islamic Law on the other hand. As the Kingdom has raised a general reservation that any Article of the Convention which contradicts any of the Islamic ordainments, non-Muslims performance of religious rites in public is inapplicable in the case of the Kingdom. But it should have been more beneficial to have raised a specific reservation in regard to this Article instead of a general reservation as will be discussed hereinafter.

5. Means of Enhancing and Activating the Application of the Convention in the Kingdom:

In addition to the importance of redressing the mentioned violations, there is a possibility of enhancing the activation of this Convention, which comprises an obligation to the Kingdom as mentioned in the foregoing Point No. (1). The following are some means to activate the Convention in the Kingdom:

- a. A law should be enacted to make all forms of discrimination and perpetrators thereof punishable under that law. This is called for especially under prevalent practices of discrimination between the different categories of citizens. These practices require that the State issues procedures to incriminate them under appropriate punishments. Also an Article or a system concerning this issue can be included (not necessarily independent) in the proposed Penal Act, such that every person who sounds a verbal statement, or commits a physical act, or instigates discrimination, or plots to insinuate discrimination acts or distinction based on race, color, sex, origin, or descent should be punished by imprisonment or by fine or both. The courts of law are obliged to apply the provisions of the Convention in respect of disputes relating to discrimination, though the Convention does not specify punishment on persons who commit the act of discrimination.
- b. Article (6) of the Convention gives the person the right to bring an action at a lawcourt to obtain a fair compensation, or a suitable contentment for the damage

he sustains from racial discrimination. This Article affirms the idea of incorporating a law or a provision in the proposed Penal Code to deal with the perpetrators of racial discrimination and to grant the right for compensation for damage inflicted thereunder (be it material or moral compensation), or otherwise appropriate measures should be introduced to deter the crime of discrimination and to regain respect to the victim of discrimination. Such a law or measures should conform with the Islamic righteous enjoinders which incriminate discrimination.

- c- In order to apply Article (4-a) of the Convention, which discourages propagation of racial discrimination, a provision should be incorporated in the Publications & Publishing Act to punish the Publishing House or the Newspaper if found involved in publishing ideas based on or encouraging racial discrimination, or instigating for it. There should be a personal punishment for the instigator or the person who calls for discrimination based on the suggested provision mentioned above. The enforcement of a punitive law or procedure for racial discriminating acts, or instigation for it, is not considered an alternative to this solution, because the application of the Convention requires that express provisions for punishing racial discrimination or instigation for it be enacted.
- d. The reservation to any provision which contradicts the Islamic Law is beneficial as a precautionary measure. The first Seven Articles of the Convention (regarding the rights of individuals) place obligations on the State. These obligations do not entirely conflict with the Islamic Rules.

The only provision which may contravene the Islamic Rules is contained in paragraph (f) of Article (5) concerning 'the right of belief and religion involving performance of religious rites in public) (see the foregoing discussion).

Therefore, a specific reservation should be raised particularly in regard to this Article instead of the general reservation which may be exploited by incorporating personal jurisdictional ideas under the umbrella of the Islamic Law, especially with the consideration that the general reservation raised by the Kingdom may throw shadows of ambiguity on the credibility of the Kingdom's commitment, called for under the provisions of the Convention, in front of the Committee for Elimination of Discrimination. This will support the intention aiming to study in depth the Seven Articles of the Convention, relating to individuals rights and the relevant obligations placed on the State, in light of the Islamic Law so as to determine the provisions or Articles worthy of reservation.

- e- The reservation against Article (22) of the Convention, which allows the referral of disputes to the International Court of Justice, may be justified by international considerations, although the content of the Convention makes this an exceptional arrangement (because it has not been applied to date), it would be wise not to raise a reservation against this Article, because this may make the Kingdom look as if it attempts to avoid being brought to stand before the International Court of Justice, or as though the Kingdom has committed violations and wants

to hide or cover them, thus the seriousness of the Kingdom with regard to this Convention may be jeopardized, although there is no strong justification thereof.

- f- The Kingdom's non-recognition of the Committee mentioned in Article 14 (46 countries have recognized this Committee) will jeopardize the seriousness of the Kingdom's commitment to this Convention. However, in the event that a person or a party has lodged a complaint with the Committee of Elimination of Racial Discrimination, and been investigated by the said Committee, it will not place any responsibility upon any of the other States, because in the course of investigation the truth will be revealed and the involved State will answer to the complaint and the matter will be done with there and then. However, the Committee does not accept complaints directly from individuals, unless the complainant is unable to submit his case to a local court of law, therefore there is no place for fear of this Committee's jurisdiction.
- g- In addition to the proposed legal procedures and systems, the status of the Convention should be backed up by the adoption of certain measures, programs, and procedures to be issued by specialized, professional parties to disseminate the culture of equality and to shun hatred. The educational field is a conducive environment for the dissemination of these values.

SECOND:

Convention on Elimination of Discrimination Against Women

*Approved under the UN General Assembly
Resolution No. 34/180 dated December
18, 1979*



NATIONAL SOCIETY FOR HUMAN RIGHTS

Second:

Convention on Elimination of Discrimination against Women

1. The Status of the Convention in regard to the King-dom

This Convention was approved by the United Nations General Assembly under its Resolution No. 34/180 dated December 18, 1979 and has been effective since September 03, 1981.

The Kingdom has Joined this Convention on 12th December 2000, but it has raised general reservations to the Articles of the Convention which contradict the Islamic Rules so that such contravening provision shall not be effective in the case of the Kingdom. For example, the Kingdom has raised a reservation to the second paragraph of Article (9) which states “The Member States should grant the woman rights equal to those of the man in regard to the nationality of her children.”

Also the Kingdom has raised a reservation to paragraph (1) of Article (29) of this Convention, which allows referral of any dispute between two or more countries to the International Court of Justice according to certain measures and conditions (see the assessment of the reservation in point 'E' hereunder).

However, the Kingdom has not joined the optional Protocol of the Convention signed on 10th December 1999.

2. The General Framework of the Convention.

a) Content of the Convention:

The Convention consists of (30) Articles divided into six parts:

- Part one (Articles 1 - 6): Outlines the general terms of the Convention such as the concept of prohibited discrimination, and the objectives of the Convention .
- Part two (Articles 7 - 9) Is Dedicated to non - discrimination against women with respect to political rights and participation in power and decision -making.
- Part three (Articles 10 - 14) Discusses non-discrimination against women in the areas of social and economic rights, such as the rights to education , employment, and medical care.
- Part four (Articles 15 - 16) Focuses on non-discrimination against women in matters relating to litigation and the family relationships.
- Part five (Articles 17 - 22) Outlines the organization relating to the formation and functions of the Committee for the Elimination of Discrimination against Women.
- Part six (Articles 23 - 30) Is devoted to the procedures of how to apply the Convention .

b) The Possibility of Filing a Protest against the Convention

The Convention represents a set of commitments addressed to the Member States to encourage them to take appropriate action to protect women's rights against discrimination, therefore it is difficult for the judge of a

lawcourt to refer directly to one of the Articles in the Convention to pass judgment. The Articles of the Conventions oblige the State to take appropriate measures (at its own discretion) to protect the rights of women against discrimination. The concerned judge may represent the State and adopt by himself these measures. This action is provided for by paragraph (F) of the Second Article of the Convention, which states that Member States are obliged to take all appropriate measures including legislations so as to change or invalidate the existing laws and rules, conventions or practices that constitute discrimination against women. This statement means that the judge can not directly apply the provisions of the Convention which contradict the laws and regulations of the legal system (as this violates the general regulations resulting in the International Conventions overriding the internal rules.). So, if the aim is to execute the Convention in line with the judicial system of the Member State, then the provision of the above-mentioned paragraph (F) should not have been thus formulated. On the other hand, If the Convention conflicts with any of the provisions of the legal systems, then this paragraph obliges the State to cancel that provision contradicting the Convention. On the other hand, if this paragraph is not activated , then the Saudi judge has to apply the laws of the State and not the Articles of the Convention. This goes along with the fact the State should take the necessary measures, at the local level, to implement the Convention and fulfill the State's International obligations thereunder.

Although this is the general nature of the Convention, there are some few Articles phrased in a way such as to vest the right directly and not by encouraging the State to take the appropriate action to determine that right. For example, paragraph (3) of Article (15) states "The Member States agree to cancel and hold void all contracts and documentation which limit the legal competence of women." The phrasing of this provision in this way directly acknowledges women's rights, and that any other action or a provision or a law which contradicts this Article will be invalid, and consequently the concerned judge may refer directly to the mentioned provision to cancel or nullify what contradicts it.

c) What is meant by Discrimination which the Convention enjoins to be Eliminated?

Article (1) of the Convention explains what is meant by discrimination against women that should be banned. The limiting of any right exclusively to men, and depriving women from that right is a discrimination. Similarly discriminative is the practice of a right by men without any limit or condition, while the practicing of this same right by women is subject to limitations and conditions. This is a situation which necessitates the intercession of the State to prevent occurrence thereof.

The rights which this Convention aims to prevent discrimination against are those basic human political, social, economic, and civil rights as well as the right to live, the right to preserve one's dignity, the right to medical care etc.

d) The Obligations Imposed by the Convention on the State:

From the Articles of the Convention it can be seen that the obligations imposed on the State thereunder are either a certain result or a certain objective the State should take measures to implement, such as imposing a legal protection for woman's rights. The state has the discretion to draw up appropriate procedures (according to the Convention 'the appropriate measures') to achieve this goal . Therefore, the State has the right to enact a law to achieve this goal or amend or add to a provisions of the applicable laws to realize this objective. Such measures are called legislative measures. To this end, the State can take other non-legislative or legislative-associated measures, such as the establishment of an Agency/ Institution, or the adoption of a certain policy/decision, or the allocation of a budget, or formation of working teams etc. The State has the full freedom to take up the measure or measures which it sees appropriate to achieve the objectives set in the Convention .

There are other commitments relating to more specific scopes not limited to just the determination of an objective to be realized by the State, such as the provision of paragraph (a) under Article (2) which obliges the State to incorporate in its Constitution the principle of equality in regard to women's rights compared to those of men's and the other relevant Legislations. This provision imposes a specific obligation that the State should implement, and thus should not regard it as a general objective that it should attempt to achieve, although most

of the obligations mentioned in the Convention are of this latter nature.

It should be noted that the Articles of the Convention have not set a specific period for the State to execute its obligations. The reason for this is that the realization of the objectives of the Convention require that a change in the social and cultural conduct within the State be made. For example, paragraph (a) of Article (5) of the Convention states "Attempts to change the social and cultural conduct of men and women should be made so as to eliminate bias and social norms". This can not be achieved unless over a long period of time. Moreover, the fulfillment of some obligations requires financial resources and economic development which may not be achieved in a relatively short period of time. Example of this, the provision of Article (14) relating to the improvement of living and health conditions of women in rural areas.

This, however, does not mean that the State may slacken in the implementation of its obligations under the Convention. A large number of these obligations do not need a long time to execute, although no specific periods are assigned them, such as the obligations which require modifications to some internal laws by adding or omitting certain provisions involving discrimination against women, in addition to the other obligations discussed in detail hereinafter.

e) The Evaluation of the Reservations Raised by the Kingdom against the Convention

The Kingdom has raised three reservations against the Convention for Elimination of Discrimination against Women:

First Reservation: Is a general reservation to any statement or Article which conflicts with the Islamic Rules as previously discussed. But the way in which this reservation is raised is not proper in terms of putting forward reservations as it is characterized by ambiguity, generality, and does not show the demarcation between the legislative opinion and religious stance. It should have been more prudent to review the Articles of the Convention in the light of Islamic Law, then raise reservations against those Articles which non-comply thereof, especially when we realize that the Senior Islamic Specialized Scholars in the Kingdom can determine whether a certain subject or provision complies or non-complies with the Islamic Rules.

By examining the Articles of the Convention, it has been found that the paragraphs and provisions which should be investigated in the light of the Islamic Rules are as follows:

- 1- Paragraph (c) of Article (10) concerning "encouragement of co-education".
- 2- Paragraph (f) of Article (16) stating "Woman should have the same rights and responsibilities in regard to sponsorship, basic responsibility for family, custody and caring for children".
- 3- The determination of the current situation relating to woman's custodianship. This custodianship in its current status conflicts with many of the provisions of the Convention, as shall be disclosed herein under.

Second Reservation: Relates to the provision of paragraph (2) of Article (9) of the Convention which states: "The Member States should grant women rights equal to those rendered to men in regard to the nationality of their children". The Kingdom may not be inclined to want to change the criteria for granting nationality stated in Article (7) of the Saudi Nationality Act, which grants the Saudi nationality absolutely to the children of a Saudi father who is married to a foreign spouse, and denies or limit that right to the Saudi mother who is married to a foreigner (this will be discussed in more detail hereinafter). To our knowledge we are not aware of any legal principles supporting this situation which gives high importance to the relationship of the child to his father and puts that relationship in regard to a mother in a lower rank.. This contradicts the science of embryos and heritage on the one the hand, and contravenes a number of Islamic Rules on the other hand, especially those rules which emphasizes the status of mother in Islam.

Third Reservation: Raised against paragraph (a) of Article (9), which allows the referral of any dispute between two countries in regard to the interpretation or application of the Convention to the International Court of Justice.

We have discussed earlier this reservation based on international considerations, which the Kingdom had raised against Human Rights Conventions.

3. Aspects of Concurrence of the provisions of the Convention with the Saudi Rules and Regulations

- Paragraph (a) of Article (10) of the Convention says that the State should take measures to guarantee that women are granted rights equal to those rendered to men in regard to education and training, by enabling women to enroll in various educational Institutions to obtain educational degrees. Equality in education should be guaranteed to women from kindergarten up to university education. The Kingdom has exerted appreciable efforts in this respect, and is still putting forth endeavors to provide more education to women. One can say that the Kingdom is implementing the obligation under the above-mentioned paragraph. On the other hand, paragraph (b) of the same Article stresses equality in curricula, examinations, teachers ranks etc.
- The paragraphs of Article (11) are devoted to the obligations of the State to prohibit discrimination against women in employment. Nothing in the Civil Service Act, the Labor Law, and the Social Insurance Regulations indicates a contradiction with any of the provisions of the paragraphs under the above-mentioned Article.
- Article (12) imposes an obligation on the State in regard to prohibiting discrimination in medical care. This Article complies with the condition prevailing in Kingdom.
- Also paragraph (1) of Article (9) allows women to exercise the right to acquire a nationality and to change it on equal footing with men's. Saudi Arabia Nationality Act

does not impose a restriction on a Saudi woman who is married to a foreigner to lose her nationality, or to compel a foreign woman who is married to a Saudi citizen to obtain the Saudi nationality.

4. The Differences Between the Provisions of the Convention and The Saudi Laws

4-1: Paragraph (a) of Article (2) prescribes that the Member States denounce all types of discrimination against women, and agree to pursue, by all suitable means and without delay, a policy targeted to eliminating discrimination against women. To achieve this goal, they pledge to do the following:

- a) To amalgamate the principle of equality between men and women in their Constitutions or other suitable Legislations, if this principle is not yet included, and to undertake to practically achieve this principle through legislative means and other suitable ways..

This statement imposes a certain obligation on the State i.e. the integration of equality between men and women into its legal system. In other words, in the Kingdom's Basic Governance Act or any other related system. But this is not achieved; perhaps because establishing absolute equality is against Islamic Rules. The Kingdom had raised reservations against any provision of an Article that contradicts Islamic Law so that it will not be binding to the Kingdom. This analysis might not be precise as one can not say that the Islamic Law approves of differentiation between men and women in general. However, equality exists between both sexes in some

areas, and distinction prevails in others. For example, the rights to live, to preserve one's dignity, to education, to medical care and to possess etc. are all rights given to men and women without discrimination.

Paragraph (a) of Article (2) does not oblige the State to incorporate the principle of equality between men and women in the Basic System of Rule (the Constitution) as the only solution, but the State has an option to include this provision in its other legal systems. Since each law or system of the State cover a certain aspect (such as Labor Law, Civil Service Law, Bar Act, Chamber of Commerce Regulations etc.), then this provision can be incorporated in every law or system relating to an area in which no differences should be allowed between men and women. This obligation imposed by the mentioned provision is not necessarily involving the use of such expression as 'equality between men and women', but it may be sufficient to use another phrase that implies elimination of discrimination and distinction between the two sexes. Therefore, the application of the obligation under Article (2/a) by the Kingdom should be done through the selection of the appropriate legislation in which no prohibition is imposed under the Islamic Law. Thus a provision can be prescribed in any appropriate law prohibiting inequality between men and women, or emphasizing that the law be applicable to both sexes without distinction. For example, and as we shall see hereinafter in detail, a provision may be prescribed in the Bar Act, saying that the term 'Bar' is applicable to male and female attorneys, and that the word 'Lawyer' is used for both males and females. This implies that a woman

can be a lawyer as well as a man. This will be an express representation of the principle of equality between men and women, and can also be applied to other legal systems such as Labor Law, Civil Service Act, Civil Registration Regulations, Commercial Systems, and in any other area involving a practice undermining the right of women, or any field in which a probability of violating the rights of a woman exists.

- 4-2: Paragraph (b) of Article (2) provides for the obligation of the Members State by stating "to take the appropriate legislative and non-legislative measures, including suitable penalties, to prohibit any discrimination against women."

No doubting that the only suitable means to impose penalties is represented in legislative measures, i.e. within the framework of law. But so far no rules have been enforced in the Kingdom to penalize discriminatory acts against women, and even more than that there is no law to prohibit such acts in the first place, although there is a critical need for these legal measures in view of the increasing practices violating women's lawful rights.

The other statutes in which a provision can be incorporated to punish any discriminatory act against women is the Labor Law, Civil Service Act, Civil Registration Regulations, Education and Health Care Legal Systems and Utility Regulations, so that any government official who commits an act of discrimination against a woman while receiving a public service, shall be penalized through administrative disciplinary action.

Moreover, a statement may be included in the proposed Penal Code enjoining punishment for degrading or transgressing women's rights.

- 4-3: Paragraph (c) of Article (2) states "to enforce a legal protection for women's rights on equal footing with men, and to guarantee the effective protection for women through the concerned Courts of Law and the other relevant State's Public Corporations without any discrimination."

The legal protection will not be achieved unless through two actions: the first action can be accomplished through acknowledging or establishing legal rights, and the other through providing the judicial protection for this right (or through non-judicial, such as the Public Corporations, semi-judicial Committees, Municipalities, & Police). To fulfill this obligation under the above-mentioned paragraph, women's rights should be provided in light of their objectivity (acknowledging the right and establishing that right) and their procedural aspect (judicial and non-judicial protection). As for the protection, there are still deficiencies (including this part of the study). Whereas the judicial protection is deprecated through the practices that contradict the Convention and conflict with the litigation systems, specifically the system relating to hearings. Because some judges will not accept the action brought by a woman directly and insists on the presence of that woman's guardian². This sort of practice runs against the righteous Islamic teachings, contravenes the Arbitration

² - For more explanation refer to the speech of Dr. Yousif Al-Jabr (an ex-judge) about 'the development of Saudi Judicial System in relation to women's rights) a point paper presented to the third National Dialogue Convened in Madinah

System, and violates paragraph 'C' of the second Article of the Convention. Therefore it will be useful to incorporate a provision prohibiting the judge of a court of law from rejecting a case brought by a woman in the judicial system, or in the procedural judicial system, or in the penalties procedural systems, although the current laws or systems do not include a provision that justifies rejection of a case raised by a woman. The seriousness of this subject requires that an explicit provision be established to redress these inconsistent practices. Moreover Directive Circulars addressed to the judicial parties may serve the purpose of making it easier for women to bring action before courts of law.

- 4-4: Paragraph (d) of the second Article prohibits the State and Public Institutions from 'indulging into any discriminatory act or practice against women'.

The obligation here concerns the discriminatory acts which can be committed by the State itself or any of its Agencies and Establishments whose systems should be devoid of any indication to discriminatory actions against women. The Saudi Monetary Agency, for example, has to cancel the condition which requires the approval of the woman's guardian to open an account in her name. Any other governmental department should refrain from any practices against women, and should not include in its regulations any statement that may be interpreted discriminatory against women, in the sense set forth in Article (1) of the Convention. These discriminatory practices violate paragraph (d) of the second Article.

4-5: Article (7) of the Convention obliges the State to take the appropriate action to eliminate discrimination against women in the political and public arenas, especially the right to vote in all elections. No doubting that the only suitable measure through which this goal can be achieved is to issue a law allowing both sexes to perform their political rights in voting without discrimination thereof. The non-existence of a law, which explicitly allows women to practice their right to vote and be elected, is considered a violation to this Article of the Convention..

4-6: Paragraph (2) of Article (9) reads: "The Member States grant the woman an equal right as of the man's in regard to the nationality of her children."

The Kingdom has put forward a reservation against this paragraph which is inapplicable in the Kingdom. Consequently the Kingdom will not be violating the Convention by maintaining Article (7) of the Nationality Act issued under the Royal Decree No. 08/20/5604 dated 22/2/1374, which states: "He who is born within or without the Kingdom to a Saudi Father, or to a Saudi mother and a father of no or unknown nationality, is a Saudi national."

In view of the controversy this Article has raised among the International Human Rights Organizations, some points thereof have to be clarified:

Examining the Reality & Wisdom of the Seventh Article of the Saudi Nationality Act:

The apparent status of this Article is that, it agrees to discriminate in favor of the man. A child born to a Saudi father shall have the Saudi nationality readily without any condition. Whereas a child born to a Saudi woman, can not obtain the Saudi nationality unless it satisfies certain conditions i.e. the father should be of unknown nationality, or can not prove his nationality, or has no nationality. On the other hand, if a child is born to a Saudi father by birth, this will be satisfaction enough to have that father's nationality descended upon that child through the right called the "absolute blood right". But if a child is born to a Saudi woman, it will not be an absolute right case justifying grant of the Saudi nationality, and therefore to obtain the Saudi nationality for that child, certain conditions must be fulfilled. Approving the Saudi nationality for a child born to a Saudi mother and a father of no or unknown nationality is subject to what is called 'the conditional blood right'. This is what has driven the Kingdom to be reserved against paragraph (2) of Article (7) of the Convention, and thus has prompted the mentioned controversy.

The seemingly intelligible provision of the above-motivated paragraph is shadowed by many considerations relating to the perception of the Kingdom's stance in this regard. The wisdom of imposing two conditions for granting a child of a Saudi mother the Saudi nationality (not readily as in the case of a child of a Saudi father) is to avoid granting dual nationality to the same child from a Saudi woman. It is agreed that dualism in regard to nationality is considered a source of problems and difficulties, and is categorized under the International Law

Publications as one of the problems of nationality that should be avoided. The Saudi law is based on the concept of the unification of the nationality and limitation or riddance of dualism thereof. To shed more light on this issue, a child of a Saudi mother will naturally obtain the nationality of his father. So, if the father is a Saudi national, then there will be no problem, but if the father is non-Saudi and the nationality law allows his child to have a Saudi nationality because the mother is a Saudi national, then this would mean a double nationality for the child, whose mother is a Saudi national, as he will have the nationality of the foreign father and that of the Saudi mother at the same time. This is what the Saudi legislator is trying to avoid. The philosophy of this provision is that the Saudi nationality will be transferred to the child who is born to a Saudi mother if the father's nationality is unknown or if he has no nationality. In this case there is no problem of double nationality.

If we take into consideration this important dimension and goal of the provision, we will notice that it seeks the benefit of the child born to a Saudi mother and a foreign father by forbidding occurrence of dual nationality. Its goal then is not to create discrimination between man and woman.

But the text of the seventh Article in its present state is incomplete and does not conform with this philosophy that seeks to benefit the child. This is because the two cases mentioned in this Article are limited. The child born to a Saudi mother and a foreign father has a recognized nationality. He may not get the nationality of his foreign father for any one or other reason, and this would lead to a child without nationality born to a Saudi mother. This would be discrimination between man and woman

in rendering nationality to children, which forfeit the benefit of the child at the same time.

The issue is not limited to this hypothesis. We can imagine the case of the Saudi woman married to a foreigner who constantly resides in the Kingdom. It would not be in the benefit of the child born to a Saudi mother to deprive him of the Saudi nationality while he is born and resides in the Kingdom with his family. Thus it would be essential to allow such child to have the Saudi nationality if he could not obtain the nationality of the foreign father for any reason.

4-7: Paragraph (2) of Article (9), about which the Kingdom has raised reservation, is concerned only with the case of the Saudi woman who is married to a foreigner and wants to transfer her Saudi nationality to her children. Thus the Kingdom may seem to be a violator of the Convention in other cases which are enumerated as follows:-

- While Article 16 of the Nationality Act provides for a special status for the non-Saudi woman, who is married to a Saudi, that allows her to have the Saudi nationality. On the other hand, no provision exists that allow similar status for the foreigner who is married to a Saudi woman as he is subject to ordinary procedural routine for obtaining the nationality. This is considered a prohibited discrimination according to the first Article of the Convention.
- Concerning acquisition of citizenship through naturalization, the latest amendments of the Saudi Arabian Nationality Act and its Executive By-law have established the method of total points to be scored by the naturaliza-

tion applicant. This is stated in detail in Article (8) of the Executive By-law. The provision of the third paragraph of this Article states:

“Family ties: to be confirmed through the existence of Saudi relatives of the applicant. The total points under this category are not more than 10 points distributed as follows:-

- a- 3 points if the father is a Saudi national.
- b- 3 points If the mother and her father are Saudis. But if the mother alone is a Saudi then (2) points are given.
- c- 2 points if the wife and her father are Saudis. But if the wife alone is a Saudi, only (1) point is give.

It is obvious that the provision discriminates against the woman, which is contradictory to the Convention. While it is sufficient, according to paragraph (A), to have a Saudi father to get three points, it is not possible to get this score if the mother is a Saudi. Paragraph (B) requires an additional condition to get these three points i.e. the father of the mother should be a Saudi also. This discrimination is not in conformity with the Convention. The second part of paragraph (B) states clearly that, if only the mother is a Saudi, two points can be acquired by the applicant and not three points as in the case where only the father is a Saudi.

The discrimination against the woman is enjoined by paragraph (c) which states that if the applicant is married to a Saudi woman whose father is a Saudi national, the applicant gets 2 points. But if the wife is a Saudi national, whose father is non-Saudi, the applicant gets only 1 point.

The discrepancy with the Convention here is that the foreign woman who is married to a Saudi national is treated differently in terms of the facilities offered her to get the nationality of her Saudi husband according to the Rules of Article (16) of the Act and Article (21) of the Executive By-law. Whereas the Saudi woman who is married to a foreigner has little chance of her husband getting the Saudi nationality by the dictates of paragraph (C).

The other aspects of non-conformity of this paragraph (C) to the Convention is what it creates of discrimination against the Saudi woman who is not of a Saudi origin, especially if her father is non-Saudi i.e. her foreign husband would not get more than one point, whereas the foreigner who is married to a Saudi woman whose father is a Saudi national scores two points.

- Article 21 of the Executive By-Law includes details of the terms of Article (16) of the Act providing for the requirements of granting the Saudi nationality to the foreign wife who is married to a Saudi national. Of these requirements is the duration of married life, which stipulates the elapse of five years of legal wedlock. Also the paragraphs of this Article detail the situations legible for the reduction of this duration. Amongst these cases is the stipulation in Fifthly, “the duration of wedlock will suffice if one of the following cases exists:-
 1. *If her father (i.e. the father of the foreign wife) is a Saudi by naturalization and she has not had obtained the nationality through him.*

2. *If she gave birth to one male child and her mother was a Saudi.*

Discrimination against the woman is clear in this provision which is non-conforming with the Convention. While any period that elapses since marriage is sufficient if the father of the foreign wife is a Saudi by naturalization, it is not sufficient for the foreign wife whose mother is a Saudi national to have the same advantage. But besides the foreign wife's mother being A Saudi, she must give birth to a child. This represents discrimination against the woman in favor of the man, instead of treating equally the Saudi father and the Saudi mother whose respective daughters are married to a Saudi national. This sort of discrimination is prohibited according to the first Article of the Convention.

- Article 22 of the Executive By-Law allows application of the provision of Article 16 of the Act in the case of the widow of a Saudi national to obtain the Saudi nationality if certain conditions or requirements exist such as those stated in paragraph (3) of this Article that require the mentioned widow “not to remarry after the death of her husband”. In addition to the oddity of this condition and its contravention of the Islamic Rules that grant the widow the right to marry after the completion of Iddah "the elapse of the period of time stipulated for the widow to remarry.” This condition violates the right granted to her under the Islamic law. There is no similar situation in the case of the man, which constitutes discrimination forbidden under the Convention.

The odd thing is that in spite of these plain violations to the Convention we find Article 34 of the By-Law stipulates: “In applying the provisions under the law, consideration shall be given to the international, regional and bi-lateral Conventions joined by the Kingdom”. The By-laws that stipulates the necessity of paying consideration to the international Conventions joined by the Kingdom are the same By-laws that incorporate many violations of the provisions of the Convention of Elimination of Discrimination against Women.

4-8: Forms of Discrimination between the Man and the Woman in Employment

Article 11 of the Convention stipulates that the Member States should take all appropriate measures to eradicate discrimination against women in the field of work so that equality in terms of rights is observed. The paragraphs of this Article enumerate details of the aspects of this equality. In fact there are no inconsistencies in law regarding the commitments mentioned in this Article. The new Labor Law, the Civil Service Law, and the Social Insurance Regulations do not include any violations to this Article. Moreover, the new Labor Law has assigned an independent Chapter for organizing employment of women (Articles 149 to 159) including all aspects of protection and advantages to the working woman. In fact it distinguishes the woman compared to man in regard to the retirement age where Article 74 specifies retirement age for the women at 55 years and for man at 60 years, and in addition, the woman's right to a full end-of-service award if she terminates the employment contract within 6 months from

the date of her marriage, or three months from the date of her confinement”. Employment of the woman on equal basis as the man is not a question of laws, but administrative measures that should be adopted to remove obstacles hindering employment of women. The main obstacle emanates from the norms and traditions that do not accept employment of women in some areas. The Kingdom is required by paragraph (A) of Article (5) of the Convention to take the suitable measures to “change the social and cultural behavior of men and women in order to eradicate discrimination and habitual norms and all practices based on the conception of one sex taking rank over the other.” The important issue remains relating to the conformity of the Saudi laws with the provisions of the Convention. Confining the employment of woman to certain jobs, or forbidding her from being involved in any scope of work based on the presumption that she is of less capability than the man, such as stated in Article 149 of the Labor Law, is not considered a violation of Article 11 of the Convention which states: "with due consideration to the stipulation in Article (4) of this system, women should be employed in all scopes consistent with their nature. Therefore women should not be allowed to take up dangerous jobs or to employ them in harmful industries. The Minister may take a decision specifying or determining certain controls in regard to the jobs or works that are considered harmful to health or that can expose women to dangers." This provision does not constitute a violation to Article (11) of the Convention, because the purpose of prohibiting employment of the woman in some areas is not based on the consideration that she is of less capability, but

for providing her the protection against the risks associated with hazardous jobs in the light of the social and cultural norms prevailing in the Kingdom.

It may be useful to add an Article to the Labor Law, without, violation to Article 149, that forbids discrimination between man and woman in employment or wage, or any other aspects that touch on woman's legal rights. Such Article would support the protection required under this provision and enhances application of the Convention.

On the other hand, there are some employments organized under special systems whose conformity with this Article of the Convention is questionable, such as the employment of woman as a lawyer, or as a member in Legal Committees, or as an authority in some judicial matters.

This is especially questionable following opening of Legal Studies at some of the Saudi Universities for enrollment by women. There is no provision in the Bar Act that confines this profession to man alone. But by reviewing the provisions of the legal system we find that they use masculine gender terms such as “Lawyer”, “ Saudi national”, “He has” etc. all referring to man. That arouses doubt about employment of women in such professions, although there is no express provision in the system that indicates or gives a hint to prohibiting women from assuming the mentioned professions. The same logic is adopted by the Judicial System issued by the Royal Decree No. M/64 in 1395H which does not contain any direct reference to forbidding the woman from taking up a judicial profession. However, again the terms and terminologies of

the legal system are written in the masculine gender form, which show that women may not take up judicial professions. In addition to that there are legislative statements prohibiting women from assuming judicial positions.

But this in itself is not considered a violation of Article (11) of the Convention, or of any other Article. At any rate, the implication can not be that equality between man and woman should be absolutely established in practicing different activities irrespective of any other consideration. In fact, the discrimination that does correspond with the Convention in regard to employment is that which is based on the understanding regarding the mental inability of the woman to do the work as well as the man. The scopes of work that require mental ability and sound judgment must be open to both the man and the woman so long as this does not run contrary to the prevailing social and cultural conditions, and thus does not negatively affect the satisfactory performance of adjudication. In such a situation, the Kingdom should, in the first place, take the necessary procedures (under Article 5 of the Convention) to facilitate and orient these social and cultural conditions.

4-9: Violation of the Convention in respect to Woman's Guardianship and the Forms of Degradation of her Competency:

Article (15) of the Convention is dedicated to the legal status of the woman. The first three paragraphs provide for the following:

- 1- *The Member States acknowledge equality between man and woman before the law.*
- 2- *As far as civil affairs are concerned, the Member States recognize woman's legal competency on the same footing as man, and grant equal rights to man and woman to practice such legal competency. Moreover the Member States guarantee, especially for women, equal rights in concluding contracts and managing property, as well as treat women equally in all judicial processes.*
- 3- *The Member States agree to deem all contracts and other documentation which aim to limit the legal competency of women void and null.*

The following provisions and legal issues are considered inconsistent with this Article, and therefore should be cancelled according to paragraph (F) of Article (2):

- All forms of guardianship over financial matters concerning woman in such a way that forbids her from dealing in her money, or from concluding any financial contract unless through a male guardian of hers. This is degrading to the woman's competency or legal personality putting her in the rank of “deficiency of common sense” which contradicts paragraph (2) of Article (15). The grownup woman, of (18) years age, should exercise the same rights as those of the grownup man in concluding dealings. However this situation, which is not based on sound legal foundations. can not benefit from the general reservation against all that contradicts Islamic legislation.

- The above-mentioned Article also contradicts the provision of Article (76) of the Civil Affairs Law which states: “All those who have completed fifteen years of age of the male Saudi citizens should contact one of the Civil Affairs Departments to obtain the I.D Card. But the acquisition of this I.D Card is optional for women whose age fall in the range of 11- 15 subject to the approval of the their respective guardians. The mentioned I.D. Card is issued by the Central Civil Record Department. The discrimination against women in this Article conflicts with the first and second paragraphs of Article (15) of the Convention. On the one hand, this Article strengthens the idea of absolute guardianship over all woman’s actions, and constricts her right to have an I. D. Card which will in turn leads to depriving her from her right to discretion.
- While the above-mentioned Article (15) of the Convention is being violated, Article (7) of the Political and Special Passports Act states: “The children may be added to their father’s Passport, or independent Passports may be issued to the males of them, whose age is up to 18 years”, but the females of them shall have a Passport only after marriage as long as they remain under the guardianship of their fathers.”

It is worth mentioning that the previous provision contradicts Article (15) and paragraph (C) of Article (2) of the Convention which says: “The State undertakes to protect women’s rights on the same equal basis as men’s”.

- 4-10: This provision of the Convention also contradicts several Articles of the Executive By-Law relating to Travel

Documentation Act which ignores the Legal Competency of the woman and expressly treats her as legally incompetent. These Articles of the Executive By-Law are as follows:

Article (5) stating: “To obtain a Saudi Passport, the following conditions should be satisfied”.

1. The applicant should attend personally, or the guardian on behalf of a woman/women, or child/ children who are underage. Power of Attorney is unacceptable.”

Article (2) stipulates: “Saudi Passports and all documentation relating to travel are issued to the Saudi woman and the Saudi underage whose guardian has died, subject to the presentation of a Legal Deed that proves custodianship over them by the respective guardian. If it is proved that a woman does not have a guardian, then she will be granted a passport through the District’s Passports Authority”.

Paragraph (1) of Article (9) requires the attendance of the applicant personally. On the other hand, women, and children whose age is below 21 years, must have their guardian attend on their behalf excluding married persons”.

These provisions plainly contradict Article (15) of the Convention as they rank the underage, as well as women at the same status subject to guardianship.

- 4-11: Article (13) of the Convention goes “All the Member States shall take appropriate measures to eradicate discrimination against women in areas relating to

economical and social activity so as to guarantee for them the same equal relevant rights as those exercised by men such as:

- a) The right to family entitlements.
- b) The right to obtain bank loans, real estate mortgages and other forms of financial credits.

This paragraph is violated by the third paragraph of the Real Estate Development Fund Regulations which confine granting housing loans to those whose age is not less than twenty-one years, as well as to the married persons, and orphans. On the other hand, granting housing loans to women is limited to the following categories:

- a) Unmarried women, widows, and divorced whose age exceed forty years even if they are childless.
- b) The orphan whose age is less than twenty-one years and who owns a land jointly or a house unfit for habitation, which is proposed to be demolished and rebuilt through a loan in his name, provided that neither of his parents has got a loan from the Fund, and provided that will not result in denying the loan, in the future, to those who fulfill eligibility thereunder. This provision includes discrimination against women and opposes paragraph (B) of Article (13) of the Convention as the right to borrowing is guaranteed for the man just when he reaches the age of twenty-one years, while such right is so much constricted and limited to certain categories.

Moreover, the Civil Retirement Act contradicts Paragraph (A) of Article (13) of the Convention in regard to discrimination over the entitlements of the retirement pension of the inheritors of the Saudi woman who is married to a foreigner. The above-mentioned paragraph of the Convention stipulates that the sons (and the foreign husband) of a Saudi woman should obtain the Saudi nationality in order to be entitled to the pension of their mother. Whereas the foreign woman who is married to a Saudi is entitled to this pension.

The Kingdom is obliged under the Convention to cancel the foregoing provisions.

Paragraph (F) of Article (2) of the Convention stipulates the commitment of the government to “Take all suitable measures, including legislation, to change or nullify the existing laws, systems, norms, and practices that constitute discrimination against women”.

The overriding importance of this provision lies in the Kingdom’s commitment thereunder to cancel all Rules and Regulations that discord with the Convention as discussed in this section of the study, otherwise the Kingdom shall be considered a violator of the Convention.

5. Measures for Activation the Convention:

It is not enough to clear the Legal Systems from any provisions that are in discord with the Convention, according to the commitment of the Kingdom through its membership of the Convention, but, as explained earlier, the general nature of the provisions of the Convention

tends to oblige the Member States to take all required measures to achieve the objectives of the Convention aiming at the elimination of all forms of discrimination against women. As mentioned above, ridding the legal systems from the provisions contravening the Convention is explicitly enjoined under paragraph (F) of Article (2). But there is another positive part which the Convention consider obligatory, i.e. that part which necessitates taking all procedures for the protection of women against discrimination by adopting the following procedures:

- Encouraging and preparing women to take leading positions in conformity with paragraphs (B) and (C) of Article (7).
- Offering opportunities to the Saudi women to represent the Kingdom at the international level, and to participate in the activities of the International Organizations in accordance with Article (8) of the Convention.
- Offering employment opportunities to the Saudi women and attempting to diversify the roles of their employment so as to create a sort of balance in such roles compared with men's, and to ultimately achieve the objectives of Article (11) of the Convention.
- Development of a national plan aiming to change the social norms putting women in a lower rank than men, thus losing their legal rights in executing the provision of Article (5) of the Convention.
- Setting up Committees to support women in judicial issues,, i.e. enlighten them on their legal rights and the judicial procedures so as to achieve the objectives stated in paragraph (C) of Article (2) which commits the Government to take legal measures to protect women's

legal rights at the courts of law where under the present situation the woman is unable to bring an action as the man.

- Determining full legal competency by specifying adulthood age for both sexes through creating a provision capable of resolving this issue and forbidding the present practices relating to the guardianship system opposed by legal, competent legislations. Due to the non-availability of civil controls regulating dealings in general, a legal provision may be introduced into the Legal Proceedings Act specifying the age of 18 years as the legal age at which both sexes can conclude dealings.
- To enact a law for practicing political rights stipulating clearly the right of women to vote and be nominated for elections.
- To incriminate any discriminatory action against the woman that results in delaying or damaging her legal rights.
- Regulating personal status issues so as to determine the rights of woman in marriage, divorce, and nursing in a manner that enables her to be fully aware thereof, and in addition, establishing the principles of proof in matters of special nature, as well as establishing courts of law to handle family affairs.
- Adopting all measures leading to the development and respect of women at all fields of employment, as well as providing expressly for her rights in compliance with Articles (1) and (24) of the Convention.

THIRD:

Convention Against Torture & Other Cruel Inhumane or Degrading Treatment or Punishment

*Approved under the UN General Assembly
Resolution No. 46/39 dated
December 10, 1984*



NATIONAL SOCIETY FOR HUMAN RIGHTS

Third:

Convention Against Torture & Other Cruel Inhumane or Degrading Treatment or Punishment

1- The Status of the Convention In Relation to the King-dom

This Convention has been approved by the UN General Assembly Resolution No. (39/46) dated December 10, 1984 in its Thirty-Ninth Session, and has been effective since 26th July 1987 under Article (42/B).

The Kingdom has joined this Convention on 23rd September 1997, but has put forward a reservation, and thus has not joined the 18th of December 2002 optional Protocol attached to the Convention.

Contrary to the Declarations on Human Rights, this Convention is officially binding to the Kingdom as well as to the other participants States. Therefore, the Kingdom is obliged under this Convention to take all necessary procedures to enforce the provisions thereunder internally including issuance of the related Rules and Regulations. The concerned Judicial Authority is bound to execute the Convention and to abstain from applying any non-complying provisions.

2- The General Framework of the Convention

A- The Convention consists of (43) Articles, and is divided into two Sections: The First Section (Articles 1-16) is

devoted to the concept of torture. Contrary to the Universal Declaration of Human Rights issued on 10th December 1948, this Convention contains specific obligations charged to the Member States so that each State who is a party to the Convention should treat torture acts as crimes under its Criminal Law, and accordingly take the necessary procedures to establish its judicial authority thereto. The State should also provide assistance to the other countries concerning torture crimes whose perpetrators are subject to apprehension. On the other hand, the State should guarantee to the torture victim the right to bring action and to get fair compensation. The State shall also undertake to prevent any action of torture, severe punishment, inhumane or degrading treatment

The Second Section of the Convention is the larger (Articles 17-43) and is dedicated to the Control Authority in charge of monitoring satisfactory application of the Convention through a Committee provided for under Article (17) called "The Committee Against Torture". The members of this Committee are elected through confidential voting from a list of candidates nominated by the Member States. The mission of the Committee is to receive reports from each Member State on the procedures taken by that Member State in honor of the undertaking it has made under the Convention. Moreover, the Committee conducts secret investigations on torture cases or the situations where violations to the Convention are committed., and is empowered to take all relevant necessary procedures. The Kingdom has not yet announced its recognition of this authority vested upon the Committee.

The above-mentioned committee's objective is to ensure that the Convention is being applied satisfactorily by the Member States, in addition to the other authorities vested on it in this respect, including conducting investigation on the reported violations, holding closed meetings to study the complaints it receives, submitting annual reports to the Member States on its activities along with the recommendations on the procedures to be taken against the defaulting State, such as drawing the attention of that State to the violations it has committed. One of the instruments provided for under Article (40) of this Convention is represented in referring any dispute arising from the interpretation or application of this Convention to the Arbitration Authority based on the request of any of the Member States. If such dispute can not be settled through negotiations, or if disagreement arises in regard to the Arbitration Authority, then any of the disputing parties may refer the dispute to the International Court of Justice, but this provision is not applicable in the case of the Kingdom because of the reservation it has put forward in this respect.

- B- The Convention obliges the Member States to take effective legislative, administrative or judicial measures or any other procedure to prevent the acts of torture in any region subject to its sovereignty. The Convention does not determine specific means for this prevention,; each State has the freedom of selecting the methods it deems suitable for the elimination of torture and other kinds of cruel or inhumane treatment or punishment. The commitment of the State is not limited to the purification of its Laws and Regulations from all provisions that enjoin torture or oppose those of the Convention. Moreover, the State is

obliged to take the necessary action including the issuance of Rules, Regulations and Decisions in order to prevent any forms of torture, and to render fair and immediate compensation to the victims of torture or inhumane treatment, and to discard any evidence extorted through confession by torture.

- C- The torture prohibited by the Convention means any act that results in pain or severe torture either physical or mental, which is intentionally inflicted upon a person for the purpose of obtaining from him or a third party information or confession, or for punishing him for an act that he had perpetrated or he is suspected of perpetrating, or threatening or forcing that person or that third party, or when this pain or torture is inflicted, for any reason based on discrimination irrespective of its kind, is provoked or agreed or hushed up by a public official or by any other person who behaves in his official capacity. The torture or pain inflicted upon a victim is not limited only to that pain or torture resulting from legal penalties or accompanying these penalties or a casual result from penalties. It is noticed that the Convention is keen to decide that the protection it prescribes for the human being in attempting to prevent torture is considered as the minimum limit of protection. That is why the Convention has stipulated in Article (1/2) that this Article does not breach “any International Deed or National Legislation that include or may include provisions of a more comprehensive application”.

The Convention also decides that the State “should not use any exceptional circumstances whatever, such as dictated by a war or threat of war or internal political instability or any

other circumstance from emergency situation as an excuse to inflict torture (Article 2/2). Also justifying infliction of torture by orders of high-ranking staff or authorities is unacceptable (Article 2/3).

We shall demonstrate the aspects of accord as well as the aspects of differences between the two topics under discussion hereto in order to find means to avoid the areas of deficiency, if any, in the Saudi Rules and Regulation to ensure constant activation of the Convention - the subject-matter of this study - at the local level.

Within the framework of this methodology, we have enumerated the provisions under the Rules and Regulations related to the issue of torture, or cruel, inhumane or humiliating treatment or punishment in the Kingdom of Saudi Arabia to draw a comparison between those provisions and the provisions of the Conventions based on the following:

- (1) Is there any general provision in the Saudi Rules and Regulations that prohibits torture, and if so, where does it lie? And what scope and value does it have?
- (2) Is there any provision that treats all acts of torture as crimes in accordance with the internal Rules and Regulations of the Kingdom?
- (3) What are the measures being taken by the concerned authorities in the Kingdom against those who commit crimes of torture? Are there any provisions that specify these measures?
- (4) Are there any procedural provisions in the Kingdom that allow the concerned authorities to charge, investigate,

interrogate, and present for trial the person who commits an act of torture?

- (5) Are there any provision in the Saudi Rules and Regulations that decides on conducting a fast and honest investigation?
- (6) Does the person, who has been exposed to torture, have the right of filing a claim thereof?
- (7) Are there any provisions in the Saudi Rules and Regulations that prescribe an effective protection for the witnesses in the crime of torture?
- (8) Is there any provision in the Saudi Rules and Regulations stipulating that the person exposed to torture shall have the right of obtaining a fair and suitable compensation?
- (9) Are there any provisions in the Saudi Rules and Regulations that decide on taking or citing any statements that are proved to be stated or expressed as a result of torture?

Here is an outline of the relevant Saudi Rules and Regulations:

- (1) The Basic System of Rule (Governance Act) issued by the Royal Decree No. (A/90) dated 27-8-1412H.
- (2) Penal Procedures Act (Penal Code) issued by the Royal Decree No. (M/39) dated 28-7-1422H.
- (3) Imprisonment & Detention Rules and Regulations.
- (4) Detention and Arrest Rules and Regulations.
- (5) Internal Security Forces Rules and Regulations.
- (6) Public Security Rules and Regulations.

- (7) Residency Rules and Regulations.
- (8) Board of Investigation and Public Prosecution.
- (9) The Rules and Regulations governing the Commission for the Promotion of Virtue and Prevention of Vice.
- (10) The Principles of Proceedings before the Board of Grievances.

3- Aspects of Concurrence of the Convention with the Kingdom's Rules and Regulations

The Rules and Regulations in force in the Kingdom agree with the provisions of this Convention as a whole, where the prohibition of torture and respect of mankind and the humanitarian treatment are among the noble principles ordained under the Islamic Law. The Almighty says: 'We have honored the humankind'. Also Article (26) of the Kingdom's Basic Governance Rule issued by the Royal Decree No. (A/90) dated 27-8-1412H stresses 'The State shall protect the human rights in accordance with Islamic Law'

The Penal Procedures Act issued by the Royal Decree No. (M/39) dated 28-07-1422H includes significant provisions enjoining humanitarian treatment of the accused and the prohibition of infliction of injury on him physically or morally, and in addition, Article (2/2) explicitly prohibits ill-treatment, or humiliating or degradation treatment or infliction of physical or moral torture upon the accused. Whereas Article (35) decides: "With the exception of the cases where a perpetrator is caught red-handed, it is not allowed to arrest or detain any person without injunction from the competent authority, and that person should be

treated in a manner that respects his dignity without inflicting any harm or injury upon him physically or morally, and he should be informed of the reasons of his detention, and allowed the right to notify any person he sees appropriate”.

Moreover, Article (36) of this Law includes a provision stipulating that it is impermissible to detain or imprison any person unless in the legally designated detention houses.

Articles (36,37,38) guarantee to the prisoner the right of submitting a written or a verbal complaint, also Article (39) obliges the Member of the Board of Investigation and General Prosecution to immediately, upon his knowledge of an illegal detention case, pay a visit to that detention place and conduct an investigation and issue an order for the release of the detainee if his imprisonment or detention proves to be illegal. Then he should submit a report to the competent authority to apply the Rules and Regulations against the person who perpetrated this act of illegal detention.

The law provides that the order of detention should include details showing reason for the accusation charge with the relevant documentation as well as instructions to the concerned detention warden to admit the accused in the detention house (Article 104).

Article 112 of this law specifies the crimes requiring detention and the duration thereof, provided that it should not exceed 6 months from the date of detaining the accused (Article 113,114). Also this law stipulates that the original detention order be handed over to the detention house

supervisor after acknowledging receipt of the same (Article 115), and that anybody who is arrested or detained should immediately be informed of the reasons of detention, and shall have the right to conduct communication to notify any person of his choice of the detention case (Article 116). The provision of this law prohibits arrest or detention following elapse of three months from the date of the Arrest Warrant unless renewed (Article 117). The law has authorized the investigator to issue an order for releasing the accused if it is found that his detention is unjustified, or that the investigation shall not be affected by the release of the accused, or that the accused has no solid reason to prompt him to escape or disappear (Article 12). The law grants the accused the right to appoint an attorney or an agent to attend the investigation (Article 64). Also the law does not provide for the investigator to isolate the accused from his agent or attorney who should be present during the investigation process (Article 70/1). The presence of an agent or attorney is supposed to enhance humanitarian treatment of the accused.

Article (102) is among the most important provisions of this law,

in so far as it stipulates that interrogation should be conducted in a condition that has no impact on the will of the accused in regard to voicing statements, and should not be forced to take oath, or exert pressure or coercion on him, or interrogate him outside the Investigation Authority Headquarters unless for exigency reasons to be determined at the discretion of the investigator. On the other hand, the law has also considered the health condition of the detainee at the time of investigation. The investigator should be

notified if the health of the accused does not enable him to be brought to interrogation, or if the accused is unwilling to be interrogated, or if his health condition does not permit bringing him up to interrogation.

In such an event, the investigator should be notified thereof to immediately issue his order for the necessary action (Article 111).

In view of the fact that apprehension precedes torture, cruel and inhumane treatment, the relevant Regulations (Articles 33 - 39) stipulate the availability of substantial proven facts justifying arrest with a report documenting such evidence., and in addition, the issuance of an apprehension a warrant in this respect by the competent authority. The law has established guarantees for the inspection of persons, residences, offices, vehicles (Articles 40 - 54) and censorship over correspondence and telephone conversations (Articles 55 - 61).

The law has given the victim of a crime the right to claim compensation for damage incurred during investigation into the relevant case (Article M 68) or to bring action to a law of court adjudicating under legal penal proceedings (Article M 148). Also the law grants the accused the right to state his claim without moral effect on his will as the law has prohibited the investigator interrogating the accused from forcing him to take oath against his will (Article M 102) so as to rule out any psychological or moral pressure on the accused in responding to the interrogation in his absolute free will. These are significant guarantees adopted by the judiciary in many countries, whereas other countries have

not yet stipulated such procedures whose incorporation in the Saudi Rules and Regulations is recommended.

4- Differences between the Convention & the Rules and Regulations of the Kingdom.

- (4-1) The Basic Governance Act does not include a general provision that prohibits torture and the other forms of cruel, inhumane or humiliating treatment or punishment, although Article (36) of this Act prescribes "The State provides security to all its citizens and residents in its regions, and nobody shall be detained or his freedom be limited unless in accordance with the provisions of the law" So, this Article prohibits apprehension and detention, unless under the law, but does not provide for torture, or cruel and inhumane treatment.

In this respect, it can be said that the provision of Article (2) of the Penal Code, which prohibits exposing the accused to torture or to cruel or inhumane treatment, provides protection for the accused against torture, yet such provision does not provide the sufficient protection as it does not stipulate any penalty or punishment against the person who commits the act of torture or treats the accused inhumanely i.e. it does not incriminate these acts where it can be said that the Saudi Rules and Regulations do not include any provision that incriminate those acts as a whole, which is considered a violation to Article (4) of the Convention stating:

- (1) Each State who is a party to the Convention shall ensure that all acts of torture are considered as crimes under its Criminal Law. This should apply in the

events of acts of torture, plotting to torture or participating in torture.

- (2) Each State who is a party to the Convention shall make these crimes suitably punishable taking into consideration their dangerous nature.

The necessity calls for the establishment of a provision that prohibits torture similar to the one stipulated by the Laws enforced in some of the Arab States (provided for under Article 126). For example, the Egyptian Penal Code stipulates “Each employee or public official who orders torture of an accused, or who commits such act as to force the accused to confess, shall be sentenced to punitive servitude or imprisonment for a term of three to ten years, but in the event that the victim dies, the mentioned employee or official shall be charged with intentional murder. Consistency with Article (4) of the Convention requires the enforcement of a general provision that does not only incriminate torture, but treats such an act as a serious crime for which an inhibitive punishment should be instituted. Also all acts contributing or augmenting commission of torture crime whether by association or instigation shall have to be incriminated.

- (4-2) There is no provision in the Penal Code that decides on the ineffectiveness of the procedures of investigation and the ruling based upon confession extorted by torture, although Article (199) provides for the invalidity of any procedure that violates Islamic Rules or the Rules or Regulations derived wherefrom. So it is worth mentioning that the confession of the accused as a result of torture is

considered a violation of the Islamic ordainments. On the other hand, Article (201) enjoins invalidation of the ruling if it violates a provision from the Holy Koran, or Sunnah (the Prophet's traditions, sayings and teachings), or runs against the consensus of Muslim Scholars. Yet the theory of the ineffectiveness of the law of Penal Procedures is characterized by ambiguity in general, where the judge of a lawcourt has a wide discretionary power in estimating the rightness or inconsistency of the relevant procedure as no provision in this regard exists. For example, Article (2/9302) of the Egyptian Criminal Procedures Act states "Any statement proven to be voiced by an accused or a witness under torture or threat shall be considered void."

The non- existence of a provision that decides the ineffectiveness of the procedures of investigation based on a confession under torture is a violation to Article (15) of the Convention, which stipulates: "Each Member State must guarantee that any statements extorted under torture shall be void and null, unless against a person accused of commission of torture acts as an evidence of extortion of those statements."

- (4-3) No systemic or regulatory provision exists in the Treaty of the Extradition of Criminals, to which the Kingdom is a Party, that treats torture acts, stipulated in the Article (4) of the Convention, as crimes liable to extradition of criminals, such as in the case of terrorism and organized crimes.
- (4-4) There is no legal or regulatory provision that guarantees the right of any person to file a claim to the concerned

Saudi authority for compensation for damage from torture, so that such a claim is considered justly and expediently. The absence of such a provisions in the Saudi Rules and Regulations violates the provision of Article (13) of the Convention.

According to Articles (37) and (38) of the Penal Procedures Act, the prisoner has the right to file a written or verbal complaint, and that the Prison's officer or warden is obliged under the above-motined Articles to immediately forward the same to the concerned Member of the Board of Investigation and Public Prosecution. However, the relevant provision does not state the extent of protection that should be provided to the prisoner, that is to say the provision makes no reference to the action being taken by the Member of the Board of Investigation and Public Prosecution, as well as to the penalty to be levied on the perpetrator of torture suffered by the victim. Whereas Article (38) determines that the Prison or Detention Authority should designate a separate office for the Member of the Board of Investigation and Public Prosecution to follow-up the affairs of the prisoners and detainees. We believe that this Article should include a provision guaranteeing protection for the prisoner by vesting powers on the Member of the Board of Investigation and Public Prosecution to investigate into the complaint or claim filed by the detainee or prisoner, and if it is evidenced that torture is inflicted, the Member of the Board of Investigation and Public Prosecution should have the authority of imposing punishment on the perpetrator or to refer the indictment to the judiciary to take the necessary action.

The responsibility of the concerned Member of the Board of Investigation and Public Prosecution in accordance with Articles 37 - 38 is limited to hearing the complaint of the detainee or the prisoner, or to receiving that complaint. These two Articles do not detail the responsibility of the investigator in probing into the cruel or inhumane treatment or torture to which the detainee or prisoner is exposed.

Thus it is obvious that the Penal Procedures Code neither contains a specific provision that outlines the procedures taken by the Saudi competent authorities against anyone committing a crime of torture or cruel, inhumane act, neither does it include procedural provisions allowing such authorities to pursue and charge the perpetrator of torture crime, or inhumane treatment, and to conduct an investigation accordingly preparatory to bringing him into court of law to pass judgment. This represents a violation to the provisions of Articles (5,6,7) of the Convention, the subject-matter of this study, which oblige each Member State to take the necessary action to establishing judicial measures relating to crimes of torture being committed in its territory or on board a ship within its region whether or not the perpetrator of the torture crime or the victim is a citizen of that Member State. In addition, Article (13) is being breached as there are no legalized provisions protecting the witnesses or victims of torture, threat, inhumane or cruel treatment.

- (4-5) Whereas getting the assistance of an attorney during the investigation process is considered one of the most important procedural guarantees, under the Penal

Procedures Act, for protecting the legal right of the accused in abstaining from responding to interrogation, or from insinuating coercion against him to respond to interrogation. Therefore the presence of an attorney enhances the accused chances of protection against any adverse influences. But the Penal Procedures Act does provide for the right of the accused to obtain an attorney's assistance at the stage of collection of evidence. On the other hand, Article (69) of the mentioned Act authorizes the investigator to conduct the investigation in the absence of the accused, or the victim, or the claimant and their respective attorneys if he deems that is necessary to demonstrate the truth. We believe that the presence of the attorney beside the accused, since the beginning of the process of evidence compiling, is looked upon as a basic guarantee to protect the accused from inhumane treatment or negative influences by the Criminal Apprehension officials at the time of arrest, or while being subject to interrogation.

- (4-6) The Saudi Laws are devoid of any provisions that guarantee justice for the victim of torture and his right to obtain a fair applicable ruling for compensation including his right to a satisfactory rehabilitation. Moreover there is no explicit provision that determines the right of the individuals supported by the victim of torture to a suitable compensation. This contradicts Article (14) of the Convention.

It is worth mentioning that Article (148) legalizes the torture victim's right to file a claim for damage incurred thereby. This Article states: "Any one who suffers injury

from torture crime has the right, for him and his inheritors after his death, to file a claim for whatever compensation to the concerned court of law even if his claim is rejected during investigation." Nevertheless this provision shall remain a general one, i.e. covering all crimes that are being charged, and not specifically assigned to torture crimes, because an act of torture is not provided for under the Saudi Laws as a crime, excluding the Islamic Rules which prohibit it. Therefore the protection prescribed under this provision for the victim and his inheritors is considered incomplete protection. Moreover, Article (217/2) of this law provides for the possibility of compensation against malicious accusation, imprisonment, and detention as it prescribes "Any one who sustains damage resulting from malicious accusation, prolonged term of imprisonment or detention has the right to file for compensation" but this Article gives no specific reference to the right of the victim of torture to obtain fair and suitable compensation.

- (4-7) The Penal Procedures Act is devoid of any provisions that guarantee adequate control by the judicial authorities over the charge and investigation processes that precede trial.
- (4-8) In accordance with the Act of the Commission for the Promotion of Virtue and Prevention of Vice issued under the Royal Decree No. (37/M) dated 26-10-1400H, and the Executive Regulations thereof No. (2740) dated 24-10-1407H, the Commission conducts control, arrest, inspection and investigation, which are wide authorities not accurately specified under the Commission's Act neither under the relevant Executive Regulations. Such

vast authorities may prompt perpetration of acts contrary to the provisions of the Convention.

(4-9) Article (19) of the of the Penal Procedures Act includes a provision that stipulates delegating authority to the investigator to prevent the prisoner or the detainee from contacting other prisoners and detainees, and also to deprive him from being visited for a period of not more than (60) days. This provision may be acceptable in that the prisoner or detainee may not contact his other detained or imprisoned colleagues, but to deny him visits by others is against the provisions of the Convention, because preventing the prisoner or the detainee from being visited by his attorney, relatives, and others for sixty days is considered as a sort of inhumane treatment.

(4-10) The Saudi Rules and Regulations, which have been reviewed, do not include provisions related to incorporating the media and education sectors in enlightening all concerned staff on the total prohibition of torture, such law-enforcers whether civilians or military, medics, public employees and others who are related in some way or another to detention, imprisonment, or investigation processes. This deficiency in the Rules and Regulations contradicts with the provision of Article (10) of the Convention which obligates each State to comply therewith.

Articles (115 to 118) of the Internal Security Forces Act issued by the Royal Decree No. M/30 dated 4/12/1384H (based on the Council of Ministers' Decision No. 501 dated 26-27/11/1384H) specify the duties and prohibitions

imposed on the policemen, officers, and raking officers, but have not included the prohibition of torture or inhumane or degrading treatment, although those soldiers and officers are among the most important officials who are vested with the authority of the enforcement of the Laws and Regulations relating to the Convention the subject-matter of this study.

(4-11) Although Article (224) of the Penal Procedures Code states: "This Code abrogates all provisions non-complying thereof", the Regulations of apprehension, temporary detention, and reserve arrest issued under the Council of Ministers' Decision No. 233 dated 17/11404H include provisions relating to detention, which are not provided for under the mentioned Penal Procedures Code. Article (1) of these Regulations state: "The Patrol Policemen and the other authorized officials have the right to detain anyone who arouses suspicion." This right of the public authority officials may lead to the perpetration of inhumane, or humiliating acts that violate the Convention.



NATIONAL SOCIETY FOR HUMAN RIGHTS

FOURTH:

The International Convention on the Rights of the Child

Approved on the 20th of November 1989



NATIONAL SOCIETY FOR HUMAN RIGHTS

FOURTH :

Convention on the Rights of the Child

1- The Status of the Convention in regard to the King-dom

This Convention is approved on the 20th of November 1989 and has been effective since the 2nd of September 1990 according to Article (49) of the Convention itself. The Kingdom has joined the Convention on the 25th of February 1996, but it has raised a general reservation to all Articles that may contradict the Islamic Rules without specifying those Articles.

The Kingdom has not joined the optional Protocol of this Convention concerning the involvement of children in armed conflicts. The Kingdom has not joined this Protocol which has been approved on the 25th of May 2000, neither has the Kingdom joined the Protocol concerning trading in children, child prostitution and exploitation of child in pornography. There is no justification for the Kingdom not joining these two Protocols, because the laws of the Kingdom do not contradict tangibly with the provisions and obligations thereunder.

2- The General Framework of the Convention:

a- The Convention consists of (54) Articles divided into three parts as follows:

Part one (Articles 1 to 41): Discusses the various types of child rights, as well as measures which the Member States should take to implement and honor these basic rights including the right to live, the right to medical care, the right to education, the right to expression, to preserve dignity and body, and in addition, it tackles other various rights of children such as the direct rights and the rights associated with the child's family or parents, and the right to have a nationality since his birth, in addition to the child's cultural rights. These Articles also State special protection for the child in regard to incrimination, punishment, as well as the special rights of the handicapped children. This part is closely related to the subject-matter of this study.

Part two (Articles 42 to 45) Describes the controlling structure of the Convention represented in the Committee of the Child's Rights. This Committee receives reports from the States who are Members to the Convention and proposes appropriate recommendations to activate the Convention.

Part three (Articles 46 to 54): These Articles organize the procedural processes concerning the implementation of the Convention.

b- The Commitments imposed by the Convention on the Member States:

The Articles of the Convention are of general nature which set down deductions or objectives, then obligate the Member States to take the appropriate measures to achieve those objectives without determining the time limit or method which the State should adopt to realize such objectives. This may be due to the fact that, to maintain some of the child's rights, relevant social and economic policies should be established by

the State, such as the right to education, the right to medical care, and the right to social insurance. Similar to the previous Conventions, this Convention does not obligate the Member States to take measures of special nature, although the forms and nature of these measures cover four main aspects (by enacting new laws or legal systems, amending the prevailing laws and legal systems by deleting the provisions therein contradicting the Convention, and incorporating new provisions consistent with those of the Convention.) These measures are legislative measures i.e. establishment of a specialized Organization dedicated to the subject-matter of the Convention, formulating a specific policy and drawing up a working program to achieve the Convention's objectives or specific goals thereunder. The State has the option to take what appropriate measures it sees fit. However, the legislative measures are fundamental in regard to some of the child's rights such as the right to a nationality since birth. This Convention has the advantage of containing exceptions which allow the State to avoid complying with some of its Articles for reasons of public interests, public health, public ethics, or the rights and freedoms of others as outlined in Articles (10-2), (13-2), (14-3) and (15-2) thereunder.

On the other hand, some of the Articles provide for specific commitments whereby the Member State has no option but to comply, otherwise non-complying States shall be held to be defaulters of those Articles, examples of which are: Articles 1-2 , 3 , 4 , 5 , 7 and (12).

The nature of the diverse commitments imposed by the above-mentioned Articles have a decisive effect on assessing how far

the State has broken from the dictates of the provisions of the Convention, as we shall see later hereto.

c- Possibility of Using the Convention to Argue Before a Court of Law

According to the aforementioned related general rules, this Convention overrides the State's laws in terms of statutory power. Thus obligates the judge of a lawcourt to apply the Articles of the Convention ruling out contradictory provisions of national systems. This has prompted the Child's Rights Committee to request the Kingdom to advise whether the Convention will be enforced directly by the national judicial authorities, and to provide the Committee with the cases in this respect. On the other hand, the ambiguous wording of Article (70) of the Kingdom's Basic Governance Act created confusion as it states: "The enforced International Deeds, Conventions, and Covenants shall be amended under Royal Decrees." According to this Article, an International Convention should be issued in a form of a Royal Decree, otherwise it will not be effective at the national level, neither shall it be recognized by the Saudi lawcourts. This Article indicates that the International Convention and the Law are of the same rank, but if the provisions of the Convention conflict with those of a legal system or vice versa, whichever is the latterly enforced shall control according to the general rules of law.

This interpretation, which might be adopted by some parties, is incorrect. The local law will never override an international Convention even if that law succeeds the Convention. The State can never be released of her obligations under the International Convention by its own will, or by issuing local

laws contradicting the Convention as far as it has not officially withdrawn from the Convention.

The mechanism through which the International Convention has been made (by consensus of the Member States) differs from the methods by which the local laws are made. Consequently the International Convention and the local or national Law can not be treated equally when one of them contradicts the other. The only effect of Article (70) of the Kingdom's Basic Governance Act is that the International Convention will not take force locally unless it is issued in a form of a Royal Decree. This procedure is adopted by many countries including those who look upon the International Convention as ranking above the national laws.

Article (81) of the mentioned Kingdom's Basic Governance Act supports this prevalence of the provisions of the International Convention by stating "The enforcement of the provisions of this Act will not interfere with the fulfillment of the Kingdom's commitments under the International Conventions and Covenants signed by the Kingdom besides other Countries, International Institutions and Organizations." If the Basic Governance Act itself, which is a constitutional system, states that it does not interfere with the Kingdom's commitments under the International Conventions, then the provisions thereof do not override or nullify those of the Conventions.. Thus it will be more likely that if a valid law conflicts with an International Convention joined by the Kingdom that law will not nullify or override the mentioned Convention.

This reasoning will be valid even if the latest law itself, which contravenes an International Convention, does not prescribe

that the enforcement thereof shall not interfere with the application of that International Convention to which the Kingdom is a party, as the case with Article (34) of the Executive Regulations of the Kingdom's Nationality Act.

This direct application depends on the nature of the commitments imposed by the International Convention as mentioned above. As previously discussed, a considerable number of the Convention's Articles are confined to deduced results or objectives which are to be fulfilled by the State through taking the measures it deems appropriate. Therefore if a court of law abstains from applying the national law which conflicts with the Convention, it can not replace the State in taking the appropriate actions to fulfill the Convention's objectives. Such provisions of the Convention addresses the Member States who should take the measures to execute the Convention . Thus the national lawcourt can not replace the State in this respect. For example, Article (4) of the Convention says "The Member States should take all legislative, administrative and other measures to enforce the provisions relating to the human rights approved hereto. As for the economic, social and cultural rights, the Member States should take the mentioned measures to the maximum of their respective available resources, and whenever necessary within the framework of international cooperation"

Another example is represented in paragraph (1) of Article (22) which states "the Member States should take appropriate measures to enable the child who is striving to reach a Refugee Center (or who is considered a refugee according to the international or local laws and regulations, whether accompanied by his parents or any other party) to have

protection, suitable humanitarian assistance in fulfillment of the rights provided for under this Convention or the other international humanitarian Covenants and to which the State is a party."

If the Member State will not take the measures under the above-mentioned two Articles, then the national law of court can not replace the State in this respect, and has only to avoid the provision which conflicts with the Convention and attempt to reach applicable solution.

This is also the case with respect to the Articles of the Convention, which provide that the State is obliged to adopt certain policy to achieve the objectives of this Convention, or to execute the Articles thereunto that require financial resources or necessitates the establishment of relevant Corporations or Agencies to achieve the objectives of the Convention, such as enjoined by paragraphs (3) & (4) of Article (23), and all paragraphs of Article (24), and Article (27), in addition to a number of other relevant Articles of the Convention.

On the other hand, other Articles of the Convention materialize, recognize and acknowledge direct rights for the child, which do not need protection or intervention of the State to bring into effect. In case a provision of a local law conflicts with or deviates from any of the Articles of the Convention, the lawcourt should treat the Article of the Convention as overriding that provision of the local law, and thus should apply the Article of the Convention. Example of this are the Articles recognizing direct or a specific rights, which should take force at the local level, such as stated in paragraph (1) of

Article (7): "The child should be registered immediately following birth, and should have the right to have a name and acquire a nationality since his birth ...". Also paragraph (2) of Article (12) state: The child should be given the opportunity to be heard in any legal action involving himself. He should be heard directly, or indirectly through a representative or appropriate authority in a way consistent with the procedural principles of the National Law."

d- Assessment of the Kingdom's Reservation Against the Articles in Disaccord with the Islamic Rules

The foregoing Chapters outline the disadvantages of this reservation, which is being referred to as non-specific on the one hand, and on the other opens the door to individual or opinions or legislations not collectively agreed upon by the Muslim Scholars on the basis that they are irrelevant to the Islamic Ordainments. The ambiguous content of the said reservation have triggered the criticisms of the Human Rights Commissions and aroused their concern about the interruption such a reservation may create in regard to the fulfillment of the objectives and goals of the Convention. This necessitates that the mentioned general reservation be made more specific in relation to the Articles found to be in disaccord with the Islamic Enjoinments. The issue of compliance or non-compliance of the Articles of the Convention with the Islamic Law can be determined by one of two methods: first, presenting the provisions of the Convention or those Articles suspected to be in disaccord with the Islamic Rules to the High Commission of Scholars to determine the extent of compatibility of these Articles to the provisions of the Islamic Ordainments. Second, to make

the Articles which carry doubt of non-conformity with the Islamic Rules in the form of plain specific questions addressed to the High Commission of Scholars (instead of presenting the same in their present intricate technical form, which may not be quite intelligible.)

On the other hand , some of the child's rights under the Convention have no relative local regulatory system, but subject to be controlled through legislations. For example, custody, adoption, and nursing of the child, and in addition, child punishment (be it under the Islamic Punitive Rules or under Penalty Codes) as well as punishment of the child's assaulter, if one of the family members like the father. In the viewpoint of legality, establishing these rights make it incumbent upon the Kingdom to determine its stance in regard to the commitments under the Convention by ensuring consistency of the Convention with the Islamic Rules.

3- Conformity of the Articles of the Convention with the Rules & Regulations of the Kingdom

In general, the Articles of the Convention conform to a great extent with the legislative and legal regulations of the Kingdom. Examples of this are many such as the special Rules & Regulations concerning the status of the handicapped children, which comply with and achieve the objectives of the Conventions mentioned in Article (23). Also the Kingdom's effort in regard to health care for children conform with Article (24) of the Convention. On the other hand, the Kingdom guarantees the child's right to social insurance as stated in Article (26) of the Convention.

Hence the tremendous efforts being exerted in the area of the child's right to education conform with the requirements in Article (28) of the Convention. Moreover, Chapter (10) of the new Labor Law complies with to a great extent with paragraphs 2 & 3 of Article 32 of the Convention, and in addition, all relevant provisions under the military laws conform with paragraph (2) of Article (38) of the Convention, which prohibit enlisting of those under the age of 15 years.

4- Aspects of Disparity between the Provisions of the Saudi Laws and the Articles of the Convention

- 4-1: The first Article of the Convention defines the child by stating: "for the purpose of this Convention, the word child means every human being whose age is less than 18 years, unless that human being comes of age earlier according to the relevant applicable law."

According to this Article, every one under 18 years of age is considered a child who is subject to the relevant provisions of the Convention. But if the laws of the State specifies the age of maturity to be less than that (for instance, 17 years), then those below this age are considered children and the terms of the Convention are applicable in their case. The challenge raised by this Article is that there is no specific provision under the Kingdom's Rules & Regulations which determines the age of adulthood. However, in commercial and Bank dealings, the agreed age of maturity is 18 years. On the one hand, there is no specific age for marriage, but the age of 17 years is set for eligibility to employment in the public sector (stated in Article '4' of the Civil Service

Regulations). But the age of legal competency relating to criminal responsibility and incurrance of legal punishments is not accurately specified. However, the lawcourts consider 15 years as the maturity age.

This situation constitutes an obstacle to the execution of the Convention at the national level as it is not possible to determine to which category in the Kingdom the Convention applies. Perhaps the appropriate action to adopt is provided for in Article (1) of the Convention, which determines the maturity age at 18 years, and thus can be applicable to all aforementioned cases, because, on the one hand the national laws do not specify any other age, on the other hand the Kingdom's former Legislative Council had adopted the age of 18 years as the adulthood age. Paragraph (c) of the Executive Regulations of the Kingdom's Nationality Act determines the age of maturity at 18 years. This age is also specified under Article (41) of the Residency Regulations.

(4-2) The Right of the Child to Acquire a Nationality by Birth & the Avoidance of the Non-Availability of a Nationality since Birth

The Convention guarantees the right of the child to acquire a nationality and calls upon the Member States to avoid the situation where a child is deprived from a nationality. Paragraphs (1) and (2) of Article (7) provide for the following:

- 1- *"The child should be registered immediately following birth, and should have the right to acquire a nationality, and, to the extent possible, to recognize his parents and enjoy their care."*

- 2- *The Member States undertake to bring into effect these rights according to their respective national laws and obligations under the International Conventions thereof, considering that the child shall be deprived of a nationality if these obligations are not honored.*

Accordingly, if a case of a child without nationality exists under the Saudi Arabian laws, this shall constitute a breach to the Convention. Article (7) of the Saudi Nationality Act states "He who is born within or without the Kingdom to a Saudi father, or to a Saudi mother and a father of unknown nationality or without a nationality, or born within the Kingdom to an unknown parents shall be a Saudi national. The foundling is considered born in the Kingdom unless proved otherwise."

This provision guarantees and complies with the two paragraphs of Articles (7) of the Convention on the one hand, and deviates there from on the other hand. The provision that grants the nationality by birth to the child of a Saudi mother exceptionally if the father is unknown or has no nationality aims to avoid depriving that child from acquiring a nationality. Because if the nationality of this Saudi mother does not descent on her child, he will have no nationality as the father's nationality is anonymous or unproved. Therefore from this viewpoint, this provision fully conforms with the objective of Article (7) of the Convention.

Also the status of the foundling according to the above-mentioned Article of the Saudi Arabian Nationality Act achieves the wisdom and goal of Article (7) of the Convention. Although Article (7) of the Saudi Arabian

Nationality Act does not state expressly the granting of the Saudi nationality to the foundling, the context thereunder and its practical application support this. The foundling will have the Saudi nationality by the force of the law. But the disparity between Article (7) of the Saudi Arabia Nationality Act and Article (7) of the Convention will remain . The father could be of known nationality but unable to transfer his nationality to his child for one reason or another. This will result in that the child will be deprived of the nationality of his foreign father or the nationality of his Saudi mother, thus he will be of no nationality. In order to preserve the right of the child to a nationality, it should have been more feasible if Article (7) of the Saudi Arabian Nationality Act is extended to guarantee the nationality to the child if it is proved that his mother is a Saudi national and his father is a Non-Saudi and that the child can not acquire his foreign father's nationality for whatever reason without limiting such situations in which the father is of no or unknown nationality and the mother is a Saudi national, or the mother is a Saudi national and the father is Non-Saudi and the child is born in Saudi Arabia. It is in the interest of this child to have the nationality of his Saudi mother to enable him to avoid living in the country of his mother and being treated as a foreigner. Article (7) of the Nationality Act impels the child to live in the country of his mother and be treated as a foreigner. This situation will not be reversed if the child have obtained the nationality of his Saudi national mother when he reaches the age of adulthood even if he lives permanently in the Kingdom and fulfills the other conditions mentioned in Article (8) of the Saudi Nationality Act. This will not change his status before he reach the age

of maturity (even if he reaches this age, Article (8) of the Nationality Act denies him the Saudi Nationality.

It is worth mentioning that Article (7) of the Saudi Nationality Act does not render the child of a Saudi father the Saudi nationality unless he is born under a legal wedlock. An illegitimate child may not be granted the nationality of his Saudi father (even if the father admits that the child is his). Consequently the child who is born to a Saudi father and a foreign mother of a marriage not approved by the State will be without nationality, because the marriage has not been pre-legalized. The Saudi nationality in this case can not be transferred from father to child, thus the child of the foreign mother and a Saudi national father may not have a nationality if the nationality law of the country to which the child is a subject is adopting the same provision of Article (7) of the Saudi Nationality Act.

- The cases where a child is deprived from a nationality is not limited only to the consequences of the application of Article (7) of the Saudi Nationality Act, but also to Article (23) of this Act, which states "The withdrawal of the Saudi nationality from a person of Non-Saudi origin involves withdrawal of the same from the others who had the Saudi nationality descended upon them from that person. But if it has been proved that those others are of good moral conduct, and that there is no reason justifying withdrawal of the Saudi nationality from them, then the same shall be granted them and the elapsed period counted in their favor. According to paragraph (b) of Article (14) of the Saudi Nationality Act, the children of the father who acquires a Saudi nationality by naturalization will have the Saudi

nationality descended upon them, but according to Article (23) of the mentioned Act, the Saudi nationality of those children will be withdrawn if the same has been withdrawn from their father in the first place (the reason of withdrawal of the nationality from their father may be due to an indictment or imprisonment for a period of more than one year for committing a felony involving honor or betrayal of trust according to paragraph (a) of Article (21) of the Nationality Act. Based on these provisions, the children of the person from whom the nationality is withdrawn (for committing a crime specified in the latter Article) will become of no nationality. The withdrawal of the nationality from the father involves the cancellation of the nationality of those who acquire the same by dependence according to Article (23) of the Saudi Arabian Nationality Act. In addition to the fact that this provision contradicts a legal principle which say (an action or a crime committed by one should not have an adverse consequence on another person), and the punishment for a crime should be personal and must not have negative repercussions on the other innocent persons who have nothing to do with that crime. This also adversely affect children's interest and wellbeing as well as contradicts Article (7) of the Child's Rights Convention. Therefore Article (23) of the Nationality Act should be amended so that withdrawal of the nationality from the father will not entail his children, who obtain the nationality by dependence, in case the father is indicted as mentioned in Article (21) of the Act. Therefore the amendment should be made so that this provision shall have the same ruling under paragraph (b) of Article (19) of the Nationality Act, which expressly decrees that the withdrawal of the Saudi Arabian

nationality from a person (under Article 11 of the Act) does extend to his wife or children or any of his kin who acquire the nationality by way of dependence.

The contradictions of the provisions of the Nationality Act with Article (7) of Convention on the Rights of the Child should be abolished. These contradictions seem to be odd as Article (34) of the Executive By-Laws of the Saudi Arabian Nationality Act provide that "In applying the provisions of the Rules and Regulations, the International, Regional, and Bilateral Conventions signed by the Kingdom with other countries should be observed taking into consideration the principle of reciprocal treatment.

(4-3) Article (2) of the Convention stresses prohibition of discrimination between children by stating:

- 1- The Member States respect the rights mentioned in the Convention, and guarantee the same to every child under their custody without discrimination, and regardless of the child's parents or guardians ethnic origin, nationality, color, language, religion, political opinion, national origin, ethnic origin, social status, wealth, incapacity, birth or any other status.
- 2- The Member States shall take necessary measures to protect the child against all forms of discrimination or punishment based on the status of his parents, legal guardian, family members or the activities or the family members and their opinions or beliefs. Consequently any practice, decision, decree, system, or controls that limit the female child's rights and free those of the male child such as in physical exercises, or favor the male child on account of the female child in regard to education shall be an act violating the provisions of Article (2) of the Convention. This same judgment applies to any

discrimination in rights between the Saudi child and a non-Saudi child as the later, by residing in Kingdom, is under the patronage of the Saudi State, hence all types of discriminations should be removed for non-compliance with the above-mentioned Article. Perhaps the issuance of a regulatory directive may prove effective in eliminating all forms of discrimination between children in the field of education in particular, and in all other fields in general, which are related to children.

(4-4) Article (6) of the Convention States:

- (1) The Member States acknowledge that every child has a basic right to life.
- (2) The Member States undertakes to guarantee, to the maximum degree, the survival of the child and his growth.

The Convention is not applicable in regard to protection of embryos from abortion, which is provided for by the Saudi law. This is because the embryo is not considered a child. But the violation to the mentioned Article, especially paragraph (1), originates from non-application of the legal punishment by some of lawcourts if the murderer of the child is the father. This partly signifies that the right of the child to life is not recognized, and partly the life of the child is owned by his father. This understanding conflicts with paragraph (2) above. The non-application of the legal punishment in this case is a failing attributed to the State for non-abiding by the mentioned undertaking relating to the child's survival.

These failings on the part of some lawcourts require rectification of the scopes and legal fundamentals thereof, so that a child's life shall not be considered as owned by his father, and disparity in verdicts in this regard is avoided.

- (4-5) Paragraph (1) of Article (7) of the Convention states "The child should be registered immediately after birth". But this paragraph does not set a time limit for this. On the

other hand, Articles (32 & 34) of the Kingdom's Civil Affairs Regulations require that the reporting of a birth of a child should be within 15 days of the date of birth. This is not considered as a real violation of the provision of Article (7) of the Convention, which requires immediate registration. On the one hand, Article (44) of these Regulations requires from the concerned physician or the concerned health authorities to keep the registration document showing the day and date of birth, which means immediate registration of the child birth. On the other hand, the period of (15) days requested from the family of a new-born child to report the birth of that child is an organizational action related to convenience only with regard to the nearness or remoteness from the office of registration, and so it is not meant to slacken the registration process of the child-birth.

- (4-6) Paragraph (1) of Article (8) of the Convention stresses respect of the child's right to maintain his identity including nationality, name, and family relationship in the proper legal way. As previously mentioned, paragraph (1) of Article (2) of the Convention prevents discrimination between children according to their sex, but Article (67) of the Civil Service Regulations contradicts the above motioned two Articles of the Convention as it imposes on the Saudi male citizen who completes (15) years of age to report to one of the Registration Centers to obtain an identify card, while it does not impose this condition on the female citizen who completes (15) years of age but associated this requirement with the consent of the guardian of that female citizen. This is considered a plain violation to paragraph (1) of Article (2) and paragraph (1) of Article (8) of the Convention.³

³ See the previously mentioned Report of Dr. Yousef Al Jabr

- (4-7) The Civil Affairs Registration System makes no reference to the minimum marriageable age for both sexes, although it dedicates a whole chapter (Chapter 6) for the issue of marriage and divorce, but it has omitted to specify ages; perhaps because of the differences in opinions in this regard. This deprecates protection for children, i.e. those who are married before the age of (18), which contradicts with the provisions of Article (3) of the Convention.
- (4-8) paragraph (2) of Article (12) of the Convention states that the child should be heard, either directly or through a representative or an agency, in any judicial or administrative procedures concerning him in such a way that conforms with the procedural principles under the national law.

Nevertheless, the judicial procedure principles in the Kingdom, such as of the Litigation Act and Punitive Procedures Act, give no reference to the right of the child (of an age permitting of expressing oneself) to be heard in legal proceedings in the cases related to him. This is left to the discretion of the judge of the lawcourt. Perhaps this provision might have been more consistent with the Convention if the right of the child to be heard is expressly stated in the procedural systems such that it runs as follows: "The child should be heard in all legal proceedings related to any of his rights as far as this is possible." The advantage of this statement is that it will oblige the judge of a lawcourt to listen to the child and saves that judge from discretionary behavior. Perhaps this statement fits more appropriately in the areas of Civil Affairs Regulations and child abuse Penal Code

- (4-9) Paragraph (a) of Article (15) of the Convention states:
"The Member States acknowledge the child's right to the freedom of peaceful assembly and the setting up of Associations." Activation of this provision requires that the Association Act be amended to allow for the young founders and members, so that membership is accessible to every one who reaches 15 years of age (the age when the child is eligible to obtain his own personal identify card.)
- (4-10) Paragraphs (1) and (2) of Article (16) of the Convention require addition of a provision on the Publications and Publishing Act prohibiting display of photos of children, or their names if this entails a slander to a child's honesty or reputation. It is also worthwhile incorporating a penalty provision relating to the violation of this stipulation.
- (4-11) Paragraph (1) of Article (18) of the Convention prescribes:
"The Member States shall exert all efforts to ensure that the principle of raising up the child through mutual responsibly of parents is recognized. The parents and legal guardians, in al situations, are responsible in the first place for the child upbringing. The wellbeing of the child shall be the main focus of their concern."
The activation of this provision requires that punishment be levied on either parent who fails to raise up and up bring his child. This proposal can be limited exclusively to the case where a father abandons or leaves his family without alimony although he is able to afford that. The non-availability of a legal mechanism to penalize the father or mother for such failings negatively affects the protection imparted to the child, which violates Article (19) of the Convention as well as this Article.

(4-12) Article (19) of the Convention States:

- 1- "The Member States shall take all appropriate legislative, administrative, social and educational measures to protect the child from all types of violence, injury, physical harm, mental abuse, negligence, or maltreatment involving negligence or abuse or exploitation, including sexual abuse, while the child is under the care of his father, parents, a legal custodian or any other guardian who takes care of the child."
- 2- "These preventive measures should include (as required) effective procedures for establishing social programs to provide appropriate support for the child and those who take care of him, as well as for drawing up effective ways that provide other forms of protection, determine child abuse and maltreatment contexts, and to investigate follow up, report, and rectify these situations through judicial procedures if required.

The legislative measures enjoined by this Article take the form of legal provisions to be incorporated into the existing relevant legal systems. In reality, these provisions outline illegal actions which should be punishable under strict punitive procedure because the perpetrators of such illegal actions are those who are supposed to be the guardians of the child. Therefore these provisions necessitate drafting of a legal system for relevant crimes so as not to leave the judgment thereof to the discretion of the judge of the lawcourts under the existing Punitive Codes. This can be achieved either by regulating the Penal Code or through a Penal System for the crimes in which the child is the victim.

(4-13) Paragraph (1) of Article (31) of the Convention states:

"The Member States acknowledge the right of the child to resting and enjoying leisure time, as well as to practicing sports and recreational activities suitable for his age , and to participate by his own free will in cultural activities and arts.

On the other hand, restricting the above motioned activities to the male children without involving the females' for the reason that mixed participation in such activities is ruled out, contradicts the above provision.

(4-14) Children Employment: Paragraph (2) of Article (32) states:

"The Member States pledge to take appropriate legislative, administrative, social and educational measures to help implement this Article. For this purpose, and in consideration of the other international relevant provisions and documentation, the Member States will specifically take the following procedures:

- a- Specify the minimum employment age.
- b- Establish an appropriate system for working hours and working conditions.
- c- Impose penalties or other suitable punishments to ensure effective implementation of this Article.

As far as the employment of child in the public sector is concerned, Article (4) of the Civil Service System determines the minimum age to join the public service at (17) years. Joining public service at this early age will make from the public officer a child according to the Convention. It may be more appropriate to amend this provision by raising the age to (18) years to avoid luring

the young to committing frauds related to that public position. This amendment, if done, will also comply with other regulatory laws which specify the age of adulthood in Kingdom at (18) years as mentioned previously (see paragraph 4-1) above.

On the other hand, private sector employment regulations fully conform with this Article. Chapter (10) thereof is dedicated to juvenile employment. The juvenile, according to Article (1) of the Employment Regulations is every person whose age is (15) years, and not (18) years. Article (162) of these Regulations affirms that the minimum age to join the working force is specified at (15) years. Whereas Article (164) of the Labor Law establishes working hours for the juvenile at 6 hours prohibiting employment of a juvenile for more than that limit in one day, or for 4 continuous hours at the maximum in a day. Also Article (161) of the mentioned Regulations prohibits employment of juvenile in hazardous jobs, whereas Article (163) thereof bans nightly work of the juvenile.

(4-15) Juvenile Delinquency:

Article (37 /a) states "The Member States undertakes not to expose the child to torture, other type of maltreatment, cruel, inhumane or humiliating punishment. The Member States pledge not to impose death penalty or life imprisonment for crimes committed by persons of less than (18) years old, but without the possibility of releasing them."

All provisions of the above-mentioned Article underscore the necessity for enacting an integrated Penal or Punitive Procedure Code for the juvenile delinquency. This is also

stressed in Article (13) of the Penal Act which States "Juvenile of both sexes are subject to investigation and trial according to the applicable laws and regulations.", but no special juvenile penal procedures are yet instituted in most countries of the world. The current situation leave to the judge of a lawcourt the freedom to determine the age of criminal responsibility, which entails an explicit violation of this Article of the Convention.

In all contexts, Paragraph (a) of Article (37) prohibits death penalty or life imprisonment for those who are less than (18) years of age. But the concerned national lawcourts do not abide by this provision of the mentioned Article as many of those courts of law pass verdicts of death penalty on juveniles. The supposition is that the enforcement of the mentioned provision will restrain lawcourts from passing this verdict as the age of criminal reasonability is a controversial issue in the Islamic Legislation.

Also paragraph (c) of Article (37) prohibits detaining those who are less than (18) years of age with adults. This is not implemented whether in the case of the temporarily detained or regularly imprisoned, which is anther violation of the Convention requiring rectification of the Prisons Regulations or the establishment of a Juvenile Act to expedite the removal of the mentioned violations in the interest of the juvenile. The mentioned suggested Juvenile Act should include appropriate measures for the rehabilitation of juvenile as provided for in Articles (39 & 40) of the Convention. Moreover, this Act should include an objective aspect concerning crimes

and punishments, as well as a procedural aspect involving investigations and the related guarantees for the juvenile according to Article (13) of the Punitive Procedure Code to ensure activation and implementation of the guarantees mentioned in Article (40) of the Convention. Following enforcement of the mentioned Juvenile Act, a special juvenile lawcourt should be established. In this respect paragraph (3) of Article (40) encourages the Member States to establish "laws, procedure, or Organizations especially assigned for the juvenile claimed to have violated the Penal Code."

(4-19) Paragraph (6) of Article (44) States: "The Member States should make their respective reports available to a wide public in their countries." This provision prompts the Kingdom to publicize its reports submitted to the Child's Rights Committee. Publication should be in the Saudi daily newspapers or through any other effective publicity means.

Also Article (42) states: "The Member State should publicize the principles and terms of the Convention to a wide public including the young and elders using appropriate and effective means. This will enhance the awareness about the Convention at schools and all Organizations concerned with child protection and child care.

- Article (4) of the Convention states "The Member States will take all legislative and administrative measures and other procedures to put into effect the rights acknowledged in this Convention."

This provision constitutes a significant aspect in regard to the subject-matter of this study, because under this provision, the State should delete any stipulations of its laws, rules and regulations that interfere with the implementation of the rights outlined in the Convention, as discussed in this study. These required deletions should be accomplished according to legislative measures i.e. modifying the relevant laws, rules and regulations. The legislative measures shall not only be limited to this function, but also extended to include incorporation of new provisions aiming to enforce the child's rights mentioned in the Convention. We have already indicated the areas where legislative intervention is required to expedite bringing the child's rights (mentioned in the Convention) into effect at the local level.

5- Other Measures to Activate the Convention

The foregoing part of this study discusses the violations of the Saudi laws and Regulations of the Convention. These violations therefore should be removed in order to conform to the provisions of the Convention in the first place, but there is another aspect concerning conformity to the Convention., which necessities taking up measures to fulfill the objective of the Convention by bringing the laws, rules and regulations to conform with the Convention as follows, and in addition by taking up the following procedures:

- (5-1) Activation of the four paragraphs of Article (9) of the Convention by establishing a lawcourt to handle family affairs, which is determined under the new measures concerning lawcourts. The establishment of these special-

ized lawcourts should be expedited and supported by a number of associated systems such the psychiatry system and the social affairs system so that the relevant courts of law function satisfactorily. On the other hand, the Paragraphs of Article (9) focus on the child's rights in the event of separation of his parents.

- (5-2) An effective means for activating the child's rights connected with family matters (such as custody ,alimony, visiting the child by one of his parents in case of divorce etc.) is through regulating Islamic Rules related to family affairs as applied by most of the Islamic countries for the benefit of the parents and children, and the preservation of the rights of every family member. This will achieve the objective of child's care and wellbeing prescribed under Article (3) of the Convention as well as the rights mentioned in Article (9) thereof. Contrary to the recommendations forwarded to the Kingdom by the Committee of the Child's Rights (following its meeting no. 1120 convened on 27th of Jan. 2006), the provisions of Article (3) of the Convention can not be fully incorporated into the rules and laws of the Kingdom because they are associated with local systems on the one hand (esp. the Systems of Education and Social Affairs respectively) and the non-regulation of the Islamic Legislations and Rules concerning family affairs on the other hand.
- (5-3) Paragraph (2) of Article (31) prescribes: "The Member States should respect and support the right of the child to fully participate in the cultural and art events, and should encourage the provision of enjoining equal opportunities

in cultural, art and leisure-time recreational activities." This provision stands in need of activation. The child in the Kingdom lacks the means for participating in cultural, art recreational and leisure-time activities, which are necessary to develop his personality, such as establishing libraries, Social Centers in residential areas, and sports clubs, and in addition, landlords should be obliged to establish utilities for the child activities, by stipulating a condition that a building plan shall not be approved unless it includes establishment of such utilities by the owner.

- (5-4) As previously discussed, there is a need for establishing lawcourts to handle juvenile delinquency (aggressive children). Moreover a need still stands for enforcing a law to protect the child from all types of abuse, negligence, selling, begging, sexual abuse etc. (aggressiveness against children). This sort of law should provide for deterring penalties for every form of child abuse as well as for defaming the aggressor (as adopted by some countries by way of mitigating child abuse incidence.) The proposed law should also include a number of measures which aim to rectify the psychological, social and economic traumas associated with child abuse, according to Article (19) of the Convention.
- (5-5) Efforts should be exerted to eliminate all types of discrimination between female and male children, and to attempt to put into force the provisions of Article (2) of the Convention. In order to achieve these objectives not only legislative measures should be laid down, but also administrative and special organizational procedures, especially in the area of educational sector. Moreover,

directives in this respect should be put forward to the official in charge of the educational sector.

- (5-6) The National Committee of the Child's Rights should have the authority to raise complaints aiming to protect the child rights or to request punishment against those who violate these rights .
- (5-7) The maternity leave granted to the working mother under the Saudi Labor Law is inadequate, which deprecates the child's right in this respect, although it is not considered a violation to the Convention.
- (5-8) A foreign laborer whose age is less than (18) years should not be granted an entry visa to the Kingdom. This requires that the Residency and Foreign Manpower Recruitment Rules and Regulations be amended to provide for this stipulation including amendment of Article (32) of the Labor Law by adding the condition of age in regard to the expatriate worker . This should not be compared to the national worker who is allowed to work in the public sector at the age (15) since he lives in the Kingdom with his family, unlike the young foreigner who will have to leave his country to work abroad. This provision supports the child's rights and helps achieve the objectives of the Convention, and therefore it is a discrimination between the young national worker and his foreigner counterpart.



NATIONAL SOCIETY FOR HUMAN RIGHTS

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- The International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families

First:

Conventions in the Process of Approval

A- The International Covenant on Civil & Political Rights

B- The International Convention on Economic, Social & Cultural Rights

Approved under the United Nations General Assembly Resolution No. (220/a) dated 19th Dec. 1966, effective from the 23rd of March 1976 according to Article(49).

First:

Conventions in the Process of Approval

A- The International Covenant on Civil and Political Rights :

1- Status of the Covenant in Regard to the Kingdom

The Covenant was endorsed, submitted for signature and approval per the United Nations General Assembly Resolution No. (220/a) dated 19th Dec. 1966, effective from the 23rd of March 1976 according to Article (49) of the Covenant.

The Kingdom has not joined the Covenant up to date of this study. According to an official letter received by the National Organization for Human Rights from the Saudi Ministry of Foreign Affairs, the Kingdom is in its way to join this Covenant immediately following completion of the study thereof and preparation of applicable procedures. There is no definite date in which the Kingdom is expected to join the Covenant, but it can be mentioned that the reviewing process of the Covenant is in its final stages which will be followed by the Kingdom's accession thereof. Now the Kingdom has a good experience in the field of International Conventions of Human Rights. This experience has been gained through joining the four past Human Rights Conventions following revision of the same, as well as through the formulation of the already- completed work reports required by the

Conventions. These reports have been discussed by the Committee of each Convention and comments regarding each have been forwarded.

As in the case with most or all of International Human Conventions, it is unlikely that the Kingdom will join this Covenant unconditionally. That means it is expected that a reservation or reservations against some of the Covenant provisions will be raised, which the Kingdom considers as non-complying with the Islamic Ordainments. The experience accumulated by the Kingdom in this area will be reflected through the way in which it will raise the reservation. In this part of the study we shall present our suggestions about the provisions which prompt reservations and the appropriate manner in which these reservation should be raised..

The International Covenant on Civil and Political Rights is connected with two Protocols: an optional Protocol approved on 16th Dec. 1966, and another one approved on 15th Dec. 1989 aiming to omit death penalty. As in the case with other Protocols associated with the pervious Conventions, it is unlikely, at least in the short run, that the Kingdom will join these two Protocols if it becomes a member to the relevant Covenants, especially the last Protocol which conflicts with the Islamic Ordainments approving death penalty.

Joining the Covenant does not mean that the Kingdom recognizes the Human Rights Committee which is responsible for supervising and monitoring the implementation of the Covenant. Acknowledgement of this committee's responsibilities shall not be automatically granted by the

State who is a member to the Covenant, but requires that the State should issue an official recognition thereof as outlined in paragraph (1) of Article (41) of the Covenant, which reads:

"Every Member State of the Covenant may announce at any time and in accordance with this Article, its recognition of the Committee's responsibilities in receiving and reviewing complaints or claims of any of the Member States saying that another Member State does not fulfill its commitments under the Covenant. The Committee is not allowed to receive and review such claims, according to this Article, unless forwarded by a Member State who recognizes the Committee's responsibilities. On the other hand the Committee is not allowed to receive any claim or complaint about a Member State who has not announced its recognition concerning the Committee's responsibilities.

The Kingdom has not recognized the responsibilities of any of the mentioned Human Rights Committees established under the previous Conventions. Also it is not expected, at least in the short run, that the Kingdom will announce recognition of the International Covenant for Civil and Political Rights, because such a recognition may involve the Kingdom in conflicts between Member States over human rights issues, leading to a Member State disputing against another concerning the rights provided for in the Covenant. However the Committee will play the role of arbitrator according to specific instruments, outlined in the Covenant, to solve that dispute.

2- Assessment of the Provisions Prompting Reservations:

Contrary to some pervious Conventions which include Clauses providing for submission of claims by a Member

State against another to the International Court of Justice, the subject-matter of the Kingdom's reservation, such Clauses are not included in the Covenant as they are being replaced by mechanisms permitting Member States thereof to submit claims to an Arbitration Committee. In all cases, these procedures are not applicable unless the Kingdom recognizes the Human Rights Committee mentioned in Article (41) above. Therefore there is no need to raise such reservations against the Covenant.

The other reason for bringing up reservations still remains, which are represented in the provisions of the Articles of the Covenant that contradict the Islamic Rules as mentioned previously. Normally the Kingdom raises a general reservation to any provision which contradict the Islamic Ordinances without specifying that provision. This will raise ambiguity about the Kingdom's commitments mentioned under the International Conventions of Human Rights. Therefore it is necessary to replace the general reservation, at least in regard to the Covenants, by specifying the provisions or Articles of the Covenants that prove to be in conflict with the Islamic Rules.

Here are some of the Articles of the Covenant which should be reviewed in the light of the Islamic Rules, because of ambiguity about their conflict with the Islamic Rules:

Evaluation of the Provisions arousing Doubt of Contravention of the Islamic Rules:

- Paragraph (2) of Article (6) states that "The States who have not abrogated death penalty are not allowed to pass this sentence, unless in cases of the most serious crimes, according to the applicable rules or legislation at the time of

4- See the assessment of the Kingdom's reservations against the previous Conventions.

commission of that crime, which does not contradict the provisions of the Articles of this Covenant, or the Articles of the Convention on the Against Genocide. However, this penalty shall not be passed unless through a final verdict of a competent court of law." At the first instance, this stipulation does not seem to arouse any doubt about whether or not to put forward a reservation thereto. But the doubt arises from the provision of 'the most serious crimes' which, under the criteria of the United Nations Committees for Human Rights, is limited to the intentional or premeditated crimes leading to death, or other felonies of serious consequences.' In the light of this limitation relating to the mentioned provision a doubt arises on whether or not death penalty is applicable in the case of adultery crime committed by a married man or a married woman as well as burglaries, drug crimes, and the other felonies punishable by death.

Even so, we do not believe that there is a need to raise a reservation in regard to this paragraph of Article (6) because eventually the provision thereof is general and not specific, with the exception of the limitation that death penalty shall be passed in regard to serious crimes only.

The seriousness of the crime can be measured by the consequences thereof on the Saudi society, i.e. the assessment of whether a crime is serious or not is based on its repercussion on the society. The crime of rape, for instance, has a tremendous impact on a Muslim, conservative society like the Saudi's, which is considered a very dangerous crime in the eye of the Saudi society deserving of death penalty to the perpetrator. This situation may not be similar to one in any other country.

- Paragraph (5) of Article (6) prescribes: "It is not permissible to sentence a verdict of death penalty to a person of less than (18) years of age." This provision is also included in the Convention on the Rights of the Child (Article 34). The problem brought about by this verdict is that Islamic legislation has not reached a unanimity on the age of criminal responsibility. There is a tendency of the Judicial system to consider adulthood based on reality and not specifically a certain age. That means every one who reaches actual adulthood can be a subject to a death penalty. There are instances in which death penalty has been passed on persons whose age is less than (18) years. From a legal and regulatory viewpoint, there is no integrated law concerning juvenile delinquency as said earlier (refer to the Convention on the Rights of the Child). This issue is being regulated in the Kingdom through the Social Care Houses Act issued by the Decision of the Council of Ministers No. 611 dated 13.5/1395, which provides for admitting the juvenile delinquent (under 18 years of age, according to the Article "1" of the Act) to the mentioned Houses immediately after being caught, where he shall be subject to investigation, trial and punishment.. However an exception to provision is this that the juvenile will be treated as an adult if he commits a crime of burgling kidnapping, or killing (or the crimes penalized by stoning or chopping of limbs) decreed by the Decisions and Circulars of the Ministry of Interior such as the Decision No. 8/T/142 dated 12/8/1420. These juvenile crimes will be punishable by death (provided that perpetrator's age ranges between 17 and 18 years) according to the relevant Islamic Rules and the prevalent law. In the light of this situation which contradicts paragraph (5), it is inevitable that one of two solutions be adopted:

First: To raise a reservation in regard to paragraph (5) if it is likely that the weighing Islamic opinion over this question is against death penalty for those who are less than (18) years of age, although the Kingdom's report submitted to the Child's Rights Committee on November 2004 says that there is no provision in the Islamic Law that decrees death penalty for those who have not reached this age.

Second: To issue a special Juvenile Penal Code covering crimes and punishment, as well as the procedural aspects for the juvenile crimes. This solution is optimal in view of the fact that it constitutes a condition of the Human Rights Conventions to which the Kingdom is a party, especially the Convention on the Rights of the Child. But this solution is called for by Article (13) of the Punitive Procedure Act (refer the Section of Convention on the Rights of the Child). Moreover, a provision can be incorporated in the Social Care Houses Act to prevent the exclusion of any crime from being treated as juvenile case so that death penalty should not be passed in that case. There are considerations which can support this solution such as the age of (18) which has been adopted, under many Regulations and Laws, as the adulthood age. This age is clearly adopted by the first Article of the Social Care Houses Act as the age of criminal responsibility. Thus the criteria for determining adulthood as the age of maturity (reasoning age) may be disregarded as the legal age is being determined on the basis of the young person's ability to understand and distinguish things. Therefore maturity relates to cognitive ability rather than physical ability such as adulthood. Commission of crimes depends more on the cognitive ability and the power to distinguish rather than on physical build. That is why the insane person will not be

executed even if he is an adult. Therefore not every one who achieves adulthood has the ability to understand and to distinguish what conduct is required for behaving properly i.e. the adulthood may be achieved at (10) years of age, so can a ten -year old child be executed? This logic is supported by the fact that there is no consensus on an Islamic opinion relating to specified age of criminal responsibility. This allows the custodian or guardian to determine the age on the basis of the conditions and interests of the Saudi society.

- Paragraph (6) of Article (6) says: "There is no provision in this Article that gives indication to justify delaying or preventing decreeing death penalty by any lawcourt at any of the States who is a party to this Convention." No reservation need be raised against this provision although it contradicts Islamic Enjoinments (which provide for death penalty), This provision aims to encourage, and not enjoin, abrogation of death penalty. Otherwise the provision of the second paragraph of the same Article will be void, which prescribes: "The States who have not abrogated death penalty shall not stipulate this penalty unless in the cases of the most serious crimes." The gist of both the 2nd and sixth paragraphs indicate that the Covenant does not prefer death penalty, and rather encourages its cancellation, but if these two paragraphs enjoin abrogation of death penalty the formulation thereof will have been different such that the text will expressly state that the death penalty should not be implemented, or that the Member States should undertake to omit death penalty. This understanding is confirmed by the separate optional Protocol which aims at abrogating death penalty (approved in 15th of Dec. 1989).

- Article (11) states: "It is not permissible to imprison any person merely because he fails to fulfill his contractual obligations." The implication of this provision is express i.e. it means imprisonment in that event is not allowed even if it is an exception. But this contradicts the practices being carried on by the Kingdom's lawcourts, such as sentencing the indebted, who is not actually insolvent, to imprisonment. Therefore approval of the Covenant can not be made unless this issue is resolved either by raising a direct reservation against this provision, or by adopting another solution to cancel imprisonment in the case of the indebted (by holding up the assets of the indebted instead, if any), although the indebted may have the right to claim or bring action against the mentioned ruling if the Kingdom has joined the Covenant.
- Paragraph (1) of Article states: "Every human being has the right to free thoughts, sentiment, and religion, including the freedom to believe in one faith or a another, freedom to believe in any religion or faith, and freedom to demonstrate one's faith or belief by worshipping or learning or practicing religious rites by oneself or with a group of people, openly in public.

Concerning the rights to freedom of thought, sentiment and religion, no comments need be made as these are inherent rights, uncontrollable by human beings. But it is worth mentioning that a Muslim can not have the freedom to convert to another faith as this is prohibited under the Islamic Rules, therefore the Kingdom must raise a reservation against this sort of freedom. On the other hand, the freedom to openly practice religious rites is unacceptable and can not be tolerated in the Kingdom. Nevertheless the reservation may be lifted

from this provision by virtue of paragraph (3) of this Article, which states: "It is not permissible to bar the freedom of a human being to demonstrate his religion or believe, except for the restrictions enjoined by the law, which are necessary to protect public safety, public order, public health, public morals, the rights of others, and the basic freedoms." This provision prohibits demonstration of religion and religious rites if it involves disturbance of the public discipline. Hence the restriction thereof makes it unnecessary to raise a reservation against the provision of the above-mentioned paragraph (1) as the practicing of the non-Islamic religious rites in public disturbs the public order in the Kingdom for the reason that it arouses public resentment and undermines the Kingdom's religious status worldwide. This is not an extremist view, because the concept of public order in international law does not break away from this analysis.

- Paragraph (4) of Article (23) states "The States who are members to this Covenant will take the appropriate measures to guarantee equal rights and duties of the couple at marriage, during marriage, and while the breaking off of that marriage, and in the case of the later event, the States shall take certain measures to protect the children, if any, from that marriage." Although this provision may arouse doubt in regard to its contradiction with the family rules under the Islamic law, there is no need to raise a reservation against this provision because of its generality. The principles of the family under the Islamic Law is not based on inequality between the wife and husband, but based on the distribution of roles between them in a way that fits the natural capacity of each of them. Therefore, no reservation need to be raised against this provision.

- Article (27) prescribes: "The States which has ethnic, religious or linguistic minorities shall not deprive the persons belonging to those minorities from the right to practice their cultural activities, or to demonstrate their religion in public, or to worship or perform their religious rites in public, or to use their language in communicating with others Members of their group.

If we consider the Shiites as a religious group, which is not a minority, considering that they are Muslims, then there is no need to raise a reservation against this provision. But if it has been suggested otherwise, then a reservation should be raised because the mentioned provision allows demonstration of religious rites in public without a restriction or an exception that allows avoidance of the stipulation thereof as outlined in paragraph (1) of Article (18).

3- The General Framework of the Covenant:

a) Content of the Covenant:

The Covenant consists of (53) Articles divided into six parts as follows:-

Part one: Consists of one Article (Article 1). This Article represents the introduction of the Covenant. It begins by outlining the human right of the societies to determine their destinies. The dedication of the first Article of the Covenant to this right is attributed to the generalization of the right of self-determination on the one hand, and the significance of that right on the other hand, and the association of a number of the other human rights with that right on the third hand.

Part two: Consists of Articles (2 to 5) dealing with the method of activation and implementation of the rights included in the Covenant.

Part three: Consists of Articles (6 to 27). This part forms the core of the Covenant. The Articles of this part include civil and political rights to which the Covenant enjoins protection.. Every Article of this part is dedicated to a certain right. This part of the Covenant is the subject-matter of our study, which focuses on the conformity of the laws of the Kingdom with the rights included in the Covenant, i.e. the ones mentioned in this part.

Part four: Consists of Articles (28 to 45), which are dedicated to organizing the controlling party which will supervise and monitor the implementation of the commitments under the Covenant on the same lines as applied to the Universal Declaration on Human Rights. This party will be called (a Committee) and specifically (the Committee concerned with human rights).

Part five: Consists of two Article (46 and 47) which discuss the considerations that should be observed in interpreting or explaining the Covenant.

Part six: Consists of Articles (48 to 53) which outline the general terms of the procedures for joining the Covenant and the criteria of the implementation of the provisions thereunder.

b) The Commitments Imposed by the Covenant on the State:

The International Covenant on Civil and Political Rights is an International Convention like any other international Convention regarding human rights, although it is entitled 'Covenant' which is more or less of the same value as those of the International Conventions in general.

The Covenant is distinguished from other International Conventions on human rights, previously reviewed, by the generality of its subject. The other four Conventions are confined to specific subjects or a certain group of people targeted for protection due to the sensitivity of their status and the violation of their rights. Thus we find that the four previous Conventions are limited to two subjects: elimination of racial discrimination and prevention of torture. The other two Conventions (Convention on Elimination of Discrimination against Women and the Convention on the Rights of the Child consecutively) deal with the rights of children and women. On the other hand, the International Covenant on Civil and Political Rights, as its name implies, deal with wider and more expansive subjects and is not limited to a certain category of people. It is similar (from the viewpoint of its wide content) to the Universal Declaration of Human Rights. However, this Covenant with the other International Covenants on Economic, Social and Cultural Rights enjoin all the rights outlined in the Universal Declaration of Human Rights.

However, the generality and expansiveness of the International Covenant on Civil and Political Rights is not absolute. It addresses and protects two types of rights: the civil rights i.e. those which are guaranteed to individuals through their normal life and interaction with other people or with the Departments of the State, such as the right to live, to freedom, to equality, justice etc. On the other hand, the political rights cover the individual's right to participate in managing the State, to vote and to be nominated for election, to freedom of expression, formation of Committee or Trade Unions etc. This Covenant does not give legal

significance to differentiation between the civil rights on the one hand, and the political rights on the other hand. The Covenant protects all the rights it incorporates, whether civil or political.

It is worth mentioning that the provisions of the International Covenant on Civil and Political Rights are characterized by a distinctive quality compared to the previous of the other four International Conventions. These provisions do not address the Member State or request it to take the appropriate measures to achieve certain objectives and goals thereunder as discussed hereto earlier, but they directly determine the nature of the right and the acceptable restrictions to it. This involves the feasibility of applying the provisions of the Covenant at the local level without the need to enact relevant laws or regulations, and when the Kingdom joins this Covenant, the provisions of the Articles thereof will supersede any Articles and provisions contradicting those of the Covenant. This, of course, may arouse reservations by Kingdom. The directness and specificity of the provisions of the Covenant will have a considerable impact on the issue of their implementation by the national lawcourts, which is discussed hereinafter.

c- The Possibility of Using the Provisions of the Covenant to Bring Action at a National Lawcourt

The Covenant, like other International Conventions, should either have a legal value equivalent to the those of the State's, or a legal value higher than the local laws. If its legal value is equivalent to the local laws, then a question will arise in case a local law or regulation conflicts with one of the provisions of the Articles of the Covenant, and which of them

will override the other? The only solution in this respect will be to apply the principle of 'the successor supersedes the predecessor'. i.e. as long as the latest laws do not include a provision or a rule that may adjust this situation or nullify the mentioned principle.

But this suggested solution is obstructed by many considerations, such as the provision that 'though the State may be absolved of its international obligations under the Convention, it shall remain a party to the Convention'. The State can not disable any Convention to which it is a party by enacting a law conflicting with the provisions of the Convention, even if that law is more modern. As mentioned before, the wording of Article (70) of the Basic Governance Act can not be interpreted in a manner indicating that the International Convention and the local laws have the same legal force. The instrument used to draw up the International Convention by the unanimous consent of the Member States differs from the methodology used to formulate local laws. Thus both the International Convention and the local laws can not be treated on the same grounds in case one of them contradicts the other. The only effect of Article (70) of the Kingdom's Basic Governance Act is that the Covenant will not be valid locally unless it is issued in a form of a Royal Decree. This practice is being adopted by many countries, even those who give the Covenant a status above their respective local laws. As mentioned earlier, Article (81) of the Kingdom's Basic Governance Act supports the prevalence of the Covenants provisions over the national ones, it states: "The implementation of the local laws will not contradict with the Kingdom's obligations under the International Covenants and Conventions signed with the other States and

International Organizations. Even the Basic Governance Act (which is a constitutional system) states that none of its Provisions contradict any of the International Conventions to which the Kingdom is a party. In other words, the Kingdom's Basic Governance Act does not nullify or supersede those International Conventions. Hence it is more likely that this will be the case when a law conflicts with an International Convention to which the Kingdom is a party even if a provision or provisions of a newly enacted law contradict an International Convention already joined by the Kingdom.

From the above, we conclude that the national lawcourt, when it encounters a local law that contradicts a provision of the Covenant, shall implement that provision of the Covenant and not the provision of the local law.

Contrary to most of the paragraphs of the previous Conventions, the provisions of the Covenant may be directly applied by a lawcourt in relation to disputes, even if it involves nullifying any provision of a local law that contradicts the Covenant. Most of the provisions of the Covenant incur direct rights which are held valid by lawcourts as no relevant rules or regulations need be issued. For example the provisions of the Covenant do not enjoin upon the State to take legislative measures (i.e. laws, rules or regulations) to prevent arbitrary detention, but the Covenant itself regulates this right directly by stating in the Ninth Article thereunder: "It is not permissible to detain or imprison a person arbitrarily." Similar to this is the provision of paragraph (5) of the same Article which states: "Everyone who is a victim of detention or illegal imprisonment has the right to claim compensation." This is the dominant tinge of the provisions of the Covenant, which enable a national

lawcourt to implement the provisions thereunder in regard to actions brought thereto without having to wait for the State to issue a law to allow this. Consequently the prime purpose of amendment of the laws of the State is to comply with the provisions of the Covenant, and to detail the rights outlined in the Covenant on one hand, and to make them easier for the judge to understand on the other hand. This is because the lawcourts used to apply the laws without referring to the provisions of the International Conventions as long as they are not being used to bring action before those lawcourts.

4- *Aspects of Concurrence of the Saudi laws with the Covenant*

Most of the Articles of the Covenant agree with the legislative and regulatory laws of the Kingdom. Only few differences exist, which are discussed in the fifth point hereunder.

We can say that all the Saudi laws which are not conflicting with the provisions of the Covenant are considered consistent with the Rules and Regulations of Kingdom. Here are some examples of these consistencies:

- Paragraph (1) of Article (6) of the Covenant states: "The right to life is an inherent right in human beings. The law should protect this right. Nobody shall be deprived of his life arbitrarily." This statement coincides with the provision under the Saudi laws, which enjoins the mentioned right: "For this we have prescribed to the Sons of Israel that he who kills an innocent soul or spread corruption on Earth as if he kills all the people." (the Verse from the Holy Koran).

6- See the previous explanation on the foregoing Conventions about the possibility of using the provisions of the Convention to bring action before a lawcourt esp. what has been said about the Child's Rights Convention.

- Article (7) of the Covenant states: "It is not permissible to subject a person to torture, cruel or inhumane treatment." This is expressly stated in Article (2) of the Saudi Penal Codes: "It is prohibited to harm a detainee physically or morally, or to subject him to torture or inhumane and humiliating treatment."
- Paragraph (1) of Article (9) of the Covenant states: "Every person has the right to freedom and personal safety. It is not permissible to detain a person or put him in jail unjustly or deprive him from his freedom unless for reasons enjoined by the law and according to the prescribed procedure thereunder." This is precisely stated in the 2nd Article of the Kingdom's Punitive Procedure Act, which States: "It is prohibited to stop anyone or search him or detain him or put him in jail unless enjoined by the law." Also Article (38) of the Basic Governance Act provides: "Punishment is personal. No crime or punishment exist unless under a legal provision of law."

There are many other examples of conformity of the Saudi Regulations and Rules with the provisions of the International Covenant on Civil and Political Rights. To mention some of them: Paragraphs (2) and (3) of Article (9) of the Covenant agree with Articles (33 , 34 a, 35) of the Saudi Punitive Procedures Act; Paragraph (1) of Article (14) of the Covenant (public hearing and public announcing of verdicts) concur with Article (15) of the Basic Governance Act (litigation at lwacourts), and also agree with the following Articles: Article (15) of the Principles of Proceedings at the Bureau of Grievances, Articles 61 & 163 of the Proceedings Act, Articles 15 & 182 of the Penal Code.

On the other hand, Article 15 of the Covenant agrees with Article 38 of the Basic Governance Act etc.

5- Aspects of Differences between the Saudi Laws and the Articles of the Covenant:

5-1 Article (12) of the Covenant regulates 'the freedom of travel'; it states in paragraph (2) thereof: "Everyone has the right to leave any country including his own country." Whereas paragraph (3) of this same Article outlines the acceptable restrictions on the right to travel by saying: "It is prohibited to bar the rights mentioned above by any restrictions other than those provided for by the law, such as those restrictions considered necessary for the protection of national security, public order, public health, public ethics, the rights and freedom of others."

These provisions do not differentiate between the citizens and the expatriates, but are being violated by 'the current practices in the Kingdom' such as the sponsor's confiscation of the Passports of his expatriate employees who can not obtain exit visa unless agreed by the sponsor. These violations of paragraph (2) are not justified by any restriction outlined in paragraph (3). Thus effective measures need to be taken to prevent such practices and to enforce relative punitive codes, if necessary. These types of practices have no parallel in the Member States, and may subject the Kingdom to questioning, criticism and recommendation by the Committee of Human Rights mentioned in Article (28) and after that.

- The question is more intricate in regard to the restrictions imposed on women's travel, and those who are under (21)

years of age. Are these restrictions valid under paragraph (2)? or are they justified because they are meant to protect public interests, social and public ethics as provided for under paragraph (3)? On the other hand, according to Articles 5, 8, & 9 of the By-Laws of the Travel Documentation Act, a woman is absolutely prohibited from traveling unless by a permission of her guardian or husband, and regardless of her age, or her social and family status (refer to the earlier discussion on these Articles relating to the Convention on Elimination of Discrimination against Women). This is considered an extremity which is unacceptable under the justification of public order or public ethics, and may constitute a violation to paragraph (2) of Article(12). As for the issue of imposing restrictions on the travel of those who are below 21 years of age, and the condition of obtaining the sponsor's approval (see the Travel Documentation Act), it can be justified on the grounds of providing protection to them against going astray as provided for under the above-motioned paragraph (3) (protection of public order and public ethics). But this provision lacks consistency with the provisions relating to juvenile delinquency and adulthood criteria. However, 21 years is the age of reasoning or maturity and whoever reaches this age need not have a guardian or custodian, consequently it should be reduced to (18) years.

- On the other hand, paragraph (2) of Article (12) prescribes that the reasons for barring a person from travel should be specified through legal provisions. The extremity and strictness associated with travel and the non-specifying of the reasons thereof, makes this provision inconsistent with the above-mentioned paragraph (2) of Article (12).

Therefore specifying these reasons and associating them with the justifications under paragraph (3) may make this consistency with paragraph (2) more explicit.

5-2 Article (13) regulates the protection of the resident expatriate from deportation, it states: "It is prohibited to deport the expatriate who is residing legally in a Member State unless in line with a decision taken under the related Rules, provided that (unless for matters concerning national security) he is given the opportunity to file a claim, by himself or through an attorney, against deportation to the concerned authority or to those appointed by the concerned authority." This provision (under Article 32 of the Residency Act) enjoins that the reasons for deportation be specified and that the deportee be given the opportunity to present his claim against the deportation decision prior to implementing deportation. This Article of the Covenant conflicts with Article (33) of the Residency Act which states: "The Ministry of Interior has the right to cancel the residence permit of any expatriate, and to order him to leave the Kingdom at its own discretion without giving any reasons thereof. It is true that the State has sovereignty over its territory, and may prevent any foreigner from residing therein, but the wording of the mentioned Article (33) contradicts the provision of Article (13) of the Covenant, which requires the concerned authority to justify the deportation of an expatriate subject to arbitration by a competent legal authority. It would have been appropriate if this Article (33) of the Residency Act is reformulated to imply that the deportation is justified by stating that the concerned expatriate residence in the Country threatens the

national security or other similar reason so that this provision complies with Article (13) of the Covenant.

The decision of deportation should not be executed unless after a reasonable period of time during which the expatriate may appeal against that decision. Also Article (13) requires that a certain mechanism or mechanisms be specified for filing claims against the deportation decision. It is true that the deportation decision is an administrative decision and can be contested before the concerned Administration Department of the Judicial Chamber, but Article (13) of the Covenant does not necessitate a judicial appeal to the deportation decision. On the other hand, the deportation decision is a technical one, which takes a long time to be concluded. Therefore, other more effective procedures should be adopted such as determining a maximum term during which the concerned lawcourt should finalize the deportation case so that the violation to Article (13) of the Covenant is lifted.

- 5-3 Article (16) of the Covenant states: "Every person everywhere has the right to a legal identity." This general and absolute statement is being contradicted by all rules and regulations which deprecate the woman's eligibility, and consequently a woman's legal competency by having to obtain her guardian's permission in all matters relating to her personal affairs as discussed earlier in the Section of the Convention on the Elimination of Discrimination against Women, in which all forms of guardianship over women is detailed, including the woman's financial affairs where she is deprived of the freedom to spend her money as she wishes, or to conclude financial contracts unless through her

guardian. On the other hand, Article (76) of the Saudi Civil Registration Act, and Article (7) of the Political and Special Passports Regulations, and Articles (5 , 8 , 9) of the Executive By-Laws of the Travel Documentation Act, may all be interpreted as degrading the woman's legal competency, and thus violate Article (16) of the Covenant.

5-4 Article (19) of the Covenant Provides for the Freedom of Expression and the Acceptable Restrictions thereof, as detailed hereunder:

- 1- Everyone has the right to accept any ideas without harassment .
- 2- Everyone has the right to speak freely, including his freedom to acquire different types of information and ideas, and to communicate them to others without consideration to boundaries, and be it in the form of written or printed matter, or in a technical form or any other means he may choose.
- 3- Practicing of the rights mentioned in the above paragraph (2) involves special duties and responsibilities. Therefore it is permissible to set some restrictions thereof on condition that they are necessary and provided for under a law, such as:
 - a) Respect of the rights of others and their reputation.
 - b) Protection of national security, public order, public health, or public ethics.

The freedom of expression is not an absolute right, it is limited by the restrictions mentioned in paragraph (3). These are restrictions stated for limitations and not for examples,

which imply that a restriction that is not provided for in this paragraph can not be incorporated into the relevant law. However the right of expression and the restrictions thereof have aroused controversy. Perhaps because the controversy is attributed to the practices restricting these rights beyond the relative provision thereof. The only aspect which concerns our study is represented in the legal considerations arousing the questions: "Are the provisions under the Saudi Laws, Rules and Regulations relating to the freedom of expression, and the restrictions thereof, consistent with Article 19 of the Covenant? And what contradictions are there? And what measures or procedures that should be taken to rectify these contradictions?"

The freedom of expression and the restrictions thereof in the Kingdom are regulated by the following provisions:

- 4-1 Article (39) of the Basic Governance Act states: "All authorities in charge of media, publication, and other means of expression undertake to use decent wording, observe the State's Rules and Regulations, contribute to educating the nation and supporting its unity, and abstaining from sedition or any other actions that may lead to splitting up, or harming the security of the State or its public relation, or degrading the dignity of the human being or his rights. The Laws, Rules and Regulations show how to do these."

This provision states the restrictions of the freedom of expression, and should therefore be compared to paragraph (3) of Article (19) of the Covenant concerning acceptable restrictions on the freedom of expression. According to this

paragraph, any restriction on the freedom of expression to be acceptable should observe the following factors:

- 1- Respect of the rights of others.
- 2- Respect of the reputation of others.
- 3- Protection of national security
- 4- Protection of public order.
- 5- Protection of public ethics.

The problem of these restrictions, outlined in the Covenant, is that some of them are characterized by generality and non-specificity, i.e. many restrictions may be incorporated under the concepts of national security and public order, thus limiting the freedom of expression.

Therefore a specific, precise provision should be formulated to cater for these concepts as long as they constitute a restriction or exception to a right, according to the legal principle which says: "Exceptions should not be detailed or standardized."

By drawing a comparison between the restrictions outlined in Article (39) and the acceptable restrictions under paragraph (2) of Article 19 of the Covenant, the following can be deduced:

Article 39 of the Kingdom's Basic Governance Act	Paragraph 3 of Article 19 of the Covenant
The restriction concerning adherence to decent wording	This restriction is vague and ambiguous, It has no definite meaning. So it is not easy to incorporate it in any of the five restrictions mentioned in this paragraph of the Covenant. Hence it is considered a digression and may spoil the exceptional nature of the restrictions of the freedom of expression. Therefore, this restriction is not consistent with the acceptable ones under the above mentioned paragraph
Respect of the State's Rules and Regulations	This restriction is unnecessary as it's a matter of course that all public and private Institutions, as well as the national and foreign workforce employed by those Institutions, are obliged to respect the State's Rules and Regulations. Although this restriction does not directly conflict with any of the restrictions outlined in the Covenant in regard to freedom of expression, a legal problem may arise from that restriction if the Kingdom decides to join the Convention. And, if this happens, can the media be obligated to abide by the restrictions of freedom of expression stated in the Convention, or the restrictions provided for under Article (39) of Kingdom's Basic Governance Act, or those outlined in the Media and Publication Act? As long as the Kingdom has not raised a reservation to this Article or this paragraph of the Article of the Covenant, the provisions of the Convention shall override those which contradict them as mentioned before.

Contributing to the education process and supports the nation's unity.	This is not quite express to be considered as a restriction, but it may be an objective.
Prohibition of actions or conduct arousing disorder.	What is meant by the term 'disorder' mentioned herein? Is it the acts that threaten the national security stated in the Covenant? And what is national security? National security means prevention of all actions arousing or leading to Sectarian disorder, or encouraging enmity that threatens the integrity and sovereignty of the State over its territories. The concept of national security, although a general term, is more limited and specific than the concept of 'disorder'. This may permit of passing a number of restrictions under the title "prevention of disorder", which retractions may not aim or have a relation to protecting national security or public order. Therefore this restriction does not comply with the restrictions acceptable under the Covenant.
What leads the nation to disintegrate?	This is a general and loose restriction. it is difficult to incorporate it in any of the restrictions mentioned in paragraph (3) of the Covenant. It is also unlikely to count this restriction as aiming to protect national security or public order without being extreme in a manner that goes against legal logic. Therefore this restriction conflicts with paragraph (3) of Article (19), and in addition, its loose content allows passage of many restrictions on the freedom of expression, which

	may undermine this freedom in a way opposing the objective of Article (19) of the Covenant.
The issues that have bearing on the States' public relations	Perhaps this implies the issues that affect the State's relations with other countries. This restriction is loose, inexplicit, and does not comply with the philosophy of the Covenant. Also it is not possible to associate this restriction with one of the restrictions outlined in paragraph (3) of Article (19) of the Covenant. This is not a matter that concerns the rights of others or respect of their reputation, or a matter of protecting public ethics or the Kingdom's public order. Thus it will be a sort of exaggeration to consider it a matter of protecting the national security. This restriction dose not comply with the Covenant.
The issues that affect dignity	This restriction comes under the provision of respect of rights of others and their reputation stated in paragraph (3) of Article (19); therefore it complies with the provisions of the Covenant regarding the restrictions of the freedom of expression.
The issues that affect human rights	The provision of this restriction is wide, and lacks specificity in regard to the rights. The degradation of a person's dignity may mean undermining that person's rights. Or, on the other hand, may imply the human rights relating to good reputation and confidentiality of personal life. If this is so, then the mentioned restriction aims to respect the rights of others and their reputation, which can be said to comply with the acceptable restrictions under the Covenant.

4-2 Article (8) of the Kingdom's Publications and Publishing Act issued in 1421H states: "The freedom of expression is granted to various types of publishing means within the framework of the Legal and Organizational Regulations."

The Legal and Organizational Regulations in the Kingdom constitute the elements that shape the Legal System. The provision of this Article (8) signifies respect of the Laws, Rules, and Regulations of the Kingdom in regard to the restrictions imposed on the freedom of expression. Thus nothing in this implication contradicts Article (19) of the Covenant unless the Kingdom's Legal System itself comprises provisions that conflict with this Article as shall be revealed from the study of Articles 9 and 18 of this Legal System.

4-3 Article (9) of the above-mentioned Legal System lists the restrictions on the freedom of expression, which can be compared to the acceptable restrictions under paragraph (3) of Article (19) of the Covenant as follows:

Restrictions under Article (9) of the Kingdom's Media and Publishing Act	Acceptable Restrictions under the Covenant
<p>Approval of publishing & printed matter shall be subject to the following:</p> <p>1- Shall not contradict any of the provisions under the Rules</p>	<p>As discussed earlier, the Islamic Rules along with the other legal regulations constitute the Kingdom's Legal System. However, judgment under the Islamic law has a more legal value than the other juristic systems. Islamic Law is an integral part of the Kingdom's public discipline. Paragraph (3) of Article (19) provides for the restrictions which aim to protect public discipline. Thus we can say that these restrictions comply with Article (19) of the Covenant.</p>

	But this is exclusively limited to the Islamic Rules and does not cover individual juristic legislation which lack consensus or support by the majority of the Muslim Scholars.
2- Should not lead to disturbance of the State's Security or cause to serve the interests of the foreign parties opposing the national interests.	This restriction meets and relates to the acceptable restrictions under Article (19), specifically the protection of national security and public order. Thus it complies with paragraph (3) of Article (19) of the Covenant.
3- Should not arouse ethnic conflict and disunity among the citizens	This restriction has no similarity to the acceptable restrictions under paragraph (3) of Article (19) of the Covenant. This lengthy provision gives rise to a wide and diverse interpretations which rule out the possibility of associating it with the protection of the national security or public order. These diverse interpretations contradict with the concept of restriction under the law, which may lead to a legal restriction of the freedom of expression in a way that conflicts with the concept mentioned in Article (19). Therefore this restriction does not comply with the Covenant.
4- Should not harm the dignity and freedom of human beings or cause to blackmailing or tarnishing their reputation or commercial names	This restriction comply with the acceptable restrictions under paragraph (3) of Article (19), because it observes the respect of the rights of others and their reputation, thus it complies with the contents of paragraph (3) of Article (19) of the Covenant.
5- Should not promote or	This restriction relates to the protection of the State's

<p>provoke commission of crimes</p>	<p>public discipline as provided for by paragraph (3) of Article (19), thus it complies with the Covenant.</p>
<p>6- Should not harm the economy or health condition of the country</p>	<p>This restriction is not appropriate for freedom of expression, because it is difficult to imagine that the restriction of freedom of expression can protect the economy or health condition of the country. In all cases this restriction is vague and of wide scope and does not easily fit in with the concept of public order or national security, and therefore does not comply with paragraph (3) of Article (19) of the Covenant.</p>
<p>7- Should not disclose minutes of investigations or proceedings of trials without permission from the concerned authority</p>	<p>The requisite is the freedom of expression, whereas the exception is to limit it with certain restrictions. This is the concept of the freedom of expression and its limitations according to the Convention. The requisite therefore should be the freedom to publish the minutes of investigations and the proceedings of trials unless a decision decrees prohibition thereof due to public interest considerations or for the interest of the relevant trial. This will come under the concept of the protection of public ethics, the regime, public discipline, and the reputation of the others.. In regard to the restriction in Article (9) of the Legal System, it makes the freedom of expression as the requisite, and the exception is to allow it. This conflicts with the concept of the freedom of expression according to Article (19) of the Covenant, because prohibiting publishing of minutes of investigation or trials proceedings can not be considered as an issue always necessitated by public discipline or public ethics.</p>
<p>8- Should abide by</p>	<p>If the freedom of expression does not rely on real events and tangible evidence, it will turn to a threat to</p>

objective, constructive criticism in the public interest based on real events and substantial evidence	the rights of others and their reputation, and also a threat to other objectives as stated in paragraph (3) of Article (19). Therefore no contradiction to this Article exists. Restricting freedom of expression to objective, constructive criticism in the public interest is an ambiguous restriction, because it can be interpreted in many ways and consequently breaks away from the restrictions allowed under Article (19) of the Covenant.
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4-4 Article (18) of the Publications and Publishing Act states :

"Foreign publications are allowed if they do not contain offences to the Islamic Faith, or to the Kingdom's Basic System of Rule (Basic Governance Act), or if they carry no harm to the State's higher interests, or violate public ethics and morals."

If we draw a comparison between the restrictions related to the above-mentioned Article (18) with those mentioned in paragraph (3) of Article (19), the following can be deduced:

Restrictions of Article 18 of the Kingdom's Media and Publishing Act	Paragraph (3) of Article 19 of the Covenant
Offence to Islam	Islam is the main component of the general order of the Kingdom, and offence to it in the name of freedom of expression is an offence to Saudi National Security. Therefore, and from this legal basis, this restriction comply with Article (19-3) of the Covenant , but this will not be extended to the legislative matters. What is meant by offence to Islam is the insult to its pillars and

	principles .
Offence to the Kingdom's System of Rule	Offence to the Kingdom's System of Rule means the offence to the general governance system or national security. Thus this restriction comes under Article (19-3) of the Covenant. Offence to the System of Rule can actually lead to the offence to the national discipline or national security, but this is not definite. Also the term 'offence' is vague and relative and elastic, such that it can be thrown over many types of criticism and opinion which have no real offence to the public order or national security. Here lies the conflict between this restriction and the ones allowed under Article(19-3) of the Covenant.
Offence to the supreme interests of the State	This restriction is vague and elastic such that it can be interpreted both ways, i.e. provides for the achievement of the objectives of Article (19-3), or runs against those objectives. This does realize the signification of the term 'restriction'. Therefore this elasticity in interpretation makes this restriction inconsistent with Article (19-3) of the Covenant.
Offence to the public ethics and morals	This restriction protects the public ethics and comply with Article (19-3) of the Covenant.

- 4 – 5 Article 39 of the Press and Publication Act assigns a part thereof for the violations of the restrictions mentioned in Articles 9 and 18 i.e. the right to withdraw printed materials from circulation. The legal problem that may face the Kingdom in joining this Covenant is the inconsistency of the restrictions stated in the Kingdom's law with those provided for under the Covenant. In turn this may raise the question of which is above which; the Covenant overrides the law or the law overrides the Covenant? We have already answered this question in detail in a previous occasion. The Covenant is above the law and consequently it overrides any penalty or punishment mentioned in the Press & Publication Act. So the ideal situation is to rewrite this Article in such a way that complies with the Covenant's Article (19 –3) in the light of the comparison outlined in the previous tables.
- 4–6 Also Article (19-3) of Publication Act contradicts with the Council of Ministers' Decree # 214 dated 28/07/1425H which prohibits the government employees from criticizing the government. The restrictions under this Article of the Covenant aim only to protect the rights and reputation of others, as well as the public discipline, the national security and public ethics. Therefore the restrictions under the Council of Ministers' Decree are not part of the restrictions stipulated in the Covenant and violate Article (19 – 3.) thereof.

6- *Activation of the Rights Provided for by the Covenant:*

The following points are not considered to violate the provisions of the Covenant (this has been mentioned in the previous point '5') and are stated hereunder as suggestions to

help implement the rights outlined in the Covenant in an ideal and effective manner:

- The fulfillment of the provision of paragraph 2 of Article 6 (mentioned above) need us to determine the conditions on which the death penalty is decided, so that it will not be implemented beyond the limit of these conditions.
- Paragraph 4 of Article 6 states "Any person sentenced to death has the right in all conditions to appeal for forgiveness or for a change of penalty. It is permissible to grant public or private forgiveness or to change the death sentence." A mechanism should be determined to implement "the right for forgiveness" provision. It is well known in the Kingdom that the right for forgiveness is given to the relatives of the victim, and the government is encouraging this attitude. This is what is categorized under the "private forgiveness" whereas the right for public forgiveness is granted to the King; this is well known in all types of public crimes, such as terrorist crimes.

This paragraph could be activated by incorporating a provision in the Penal Procedures Act allowing the convicted person or his representatives or his relatives to apply for forgiveness.

- To activate a number of the Covenant's provisions, especially the paragraphs of Article 9, this need to speed up the issuance of punitive procedures so that the provisions therein should be effective achieving the objectives of these paragraphs as we have recommended earlier.

- No law or a text in the laws is found to contradict paragraph 1 of Article 9: which says "Every individual has the right to freedom and safety and shall not be arbitrarily detained or arrested or deprived from his freedom, unless provided for under the law." The violation of this paragraph always comes from the wrong practice that is contrary to the provisions of the law. The right and effective implementation of this Article require that detention justifications be accommodated in the relevant legal regulations, which does not exist at present. The Penal Procedures Act includes only one reason to detain a person, i.e. when a person is caught red-handed in the crime scene (33m), but if he is not caught red-handed, Article (35) enjoins that no right exists in detaining a person, unless under official instructions from the concerned authority. Even though Article 2 of the law states "It is not allowed to detain, inspect or arrest any person, unless on the conditions dictated by the law." In addition there are detaining conditions mentioned in the procedures that give an absolute access to a person on suspicion bases. In attempting to determine the reasons for detention in order to narrow the inconsistencies thereof, Article 112 prescribes "Based on the recommendation of the Investigation and Prosecution Bureau, the Minister of Interior determines the serious crimes that necessitate detention". Article 10 of the Temporary and Precautionary Detention Act, issued by the Decision # 233 in 1404H, has determined the types of serious crimes. If we compare Article 112 of the Penalty Procedures Act with Article 10 of the By-law thereof, we will find that it is limited to the apprehension conditions,

which is compliant with the provision of Article 11 of the Detention By-law. The importance of this and many overlooked and excessive detaining cases and the reasons thereof need to be sorted out and accommodated under one legal system in order to determine the kinds of penalties that have to be implemented or the effect of detention in the cases other than these (see the Section on Compensation of Illegal Detaining). Whereas Article 10 of the Detention By-law does not include major crimes; this indicates that detention in minor infractions may be overlooked., such as the traffic accidents in which no injuries are sustained. All this point to the importance of setting up an instrument to determine the crimes on which to detain people. This appears to be impossible unless we regulate or organize the provisions of Islamic Law and legislation (regulating Islamic Punitive Provisions) in order to realize an ideal implementation of this paragraph.

- Paragraph 2 of Article 9 states "Any detained person should be enlightened on the reasons of his detention and the charges thereunder". This paragraph is composed of two parts: first to inform the detained person about the reasons for his detaining, second informing should be at the time of detention. These two conditions of the Article are clearly restated in Article 116 of the Penalty Procedures Act which states "any detainee or arrested person should be informed forthwith on the reasons for detaining, provided that the detainee reserves the right to contact whoever in charge of the jail wardens". This Article provides that a detained person has the right to be informed, but this is not ensured, because there is no specific procedures and means determining how to inform

the detained person (verbally or in writing) and who is supposed to do that. Such important procedures should be clearly stated in the by-laws of the Punitive Procedures Act, which is yet to be issued. If this is not expressly determined, the informing right will be useless, and denying this right may lead to practices that could violate paragraph 2 of Article 9, and may also violate the provision of Article 116 of the Punitive Procedures Act as well.

- Paragraph 3 of Article 9 states "A detained person on a crime charge, should be hastily brought before justice or before a juristic body who is legally authorized to practice Judicial functions within a reasonable period of time, or otherwise the detainee should be released, and the detention of persons in wait for trial should not be a general practice. But it is permissible to release the detainee on bail to ensure his attendance of the trial at any stage of the judicial procedures, as well as to ensure the implementation of the court's decision when the trial is over." This provision imposes two conditions and favors the third one. First, it speeds investigation with the detainee, second, it expedites presenting the person to trial, and the favored condition is to release the detainee (on bail for example), as a substitute to his detention. Whereas expediting the investigation process with the detained person has been clearly stated in the Punitive Procedures, Article 109 and Article 114 could be used to speed up presenting the detainee to the trial. In reality speeding up investigation or expediting presenting a detainee to trial could not be easily done unless non-juristic means has been provided, such as increasing the

number of the investigators and prosecutors and fulfilling the relevant requirements to enable them to conduct a swift and effective investigation...etc, and in addition, increasing the number of judges and activating the inspectors' role to shorten lengthy trial procedures.

The conditions relating to temporary or conditional release are expressly stated in Chapter 9 (Article 120 and the succeeding Articles) of the Punitive Procedures Act, but practically it has been noticed that the cases thereof are few and scarce. In reality, detaining persons pending trial is becoming a general practice irrespective of the type of the charge, so a means should be adopted to redress this situation, for example the temporary or the conditional release should be mandatory, and not optional, in some cases under specified conditions as is the case with the minor infractions, if other conditions are met, such as bail or personal bail so as to ensure that the accused will not escape justice. To do this we need to amend the Punitive Procedures Act, or to include this in the Executive By-laws instead of depending only on the Circulars of the Ministry of Interior or on the Circulars of the Investigation and Prosecution Bureau.

- The fifth paragraph of Article 9 of the Covenant states "Any person who has been illegally detained or arrested has the right to claim compensation". This provision does not contradict with the Islamic Rules and Regulations adopted in the Kingdom. Article 217 states "Any person who sustains damage due to malicious plotting or due to long imprisonment, or whose detention term overruns the specified detention duration under the law has the right to

claim compensation". To ensure proper implementation of this right, a provision should be added to the Punitive Procedures Act or to the relevant Executive By-laws setting forth the controls for this compensation as follows:-

- a. Specifying the conditions for compensation (in the cases of failings relating to detention procedures, judicial transgressions, arbitrary detention and detention in the cases not provided for under the law).
 - b. The controls that determine the magnitude of compensation: (based on detention period, the material and moral damage sustained by the detainee and his relatives due to illegal detention, the extent of the failing that led to detention etc.).
- Article 10 of the Covenant sets forth the rights of the detained person in three paragraphs therein generally consistent with the Punitive Procedures Act, Prisons Regulations, the Detention By-laws and the Social Observation By-laws. The problems arising from these paragraphs of Article (10) of the Covenant remain those relating to administrative organization and allocation of funds for the prisons, in addition to the problems relating to some practices denying the rights provided for by the motioned Article. To activate the provision of this Article (10) administrative, organizational and financial measures are required to be drawn up rather than administrative organizational principles.
 - Regarding the status of the underage mentioned in paragraph (2) (B) and the drawback of paragraph (3) of Article 10 of the Covenant, in which paragraph 2 (b)

addresses the underage as an accused, whereas paragraph 3 holds him as guilty under the following provisions:

- Paragraph 2 (b) states: "the accused persons who are underage should be separated from the adults and treated according to their age and legal status".
- Paragraph (3) states "The guilty underage should be separated from the adults and treated according to their age and legal status".

To implement and enforce the rights of the underage mentioned in the above-mentioned two paragraphs, principles relating to the status of the underage, which are not available right now, should be established. The first Article of the Prisons Regulations states: "without breaking the rules governing the treatment of the underage" But in fact the prisons rules are devoid of any special procedures for treating the underage, except for the provision under Article 16 of the Detention By-laws, which gives the underage the right to be released on bail under certain conditions. According to the explanatory memorandum of the Prison Detention Rules, the procedures for detaining a young person will be included in the draft of the Criminal Procedures Act as mentioned in the memorandum. Article 13 thereof states "young males and females should be subject to investigation and trial according to the rules and regulations organizing such cases". But no integrated legal system, as recommended by us previously in other areas, concerning the underage has been issued as yet. On the other hand, the Social Care Regulations, issued in 1395H followed by the complementary Circulars issued by the Ministry of Interior, contain many drawbacks and do not provide for any type of special investigation methodology in

regard to the underage, or any detailed procedures for the trial of the young, or how the trial has to be formed, or how to hold sessions thereof, or the type of the punishment that has to be imposed on the young etc. All these drawbacks make it imperative that a Juvenile Integrated Legal System be enacted as enjoined by the Convention on the Rights of the Child on one the one hand, and by the International Covenant on Civil and Political Rights on the other hand.

- Paragraph 3 (a) of Article 14 states: "The accused should be fully informed on the reasons for detention and the accusation charge in a language he understands,". This provision calls for the use of the contexts under Articles (33, 34, and 35 of the Punitive Procedures Act.) But the manner of informing (verbal or written) and the reasons for accusation and the language used in informing the accused; all these important details should be clearly provided for in the relevant By-laws which are expected to be issued for executing the Punitive Procedures Act.

Whereas paragraph 3 (b) states: "The accused should be given enough time and enough facilities to present his defense and call his lawyer". The nature of the facilities, manner and time should be specified in the mentioned By-laws which are expected to be issued for executing the Punitive Procedures Act. The failings in these two paragraphs will continue as long as the judicial authorities present practices are ongoing and as long as the By-laws for implementing the Punitive Procedures Act (paragraphs 'a' and 'b') are not yet issued..

Paragraph 3 (d) of Article 14 states: "The accused should be informed that he has the right to have a defender, and that if he is unable to hire one, the court should provide him with an attorney, whenever justice requires so, in order to defend him free of charge." This provision requires the defendant not to appear in court without a lawyer even if he is not inclined to do so or is unable to hire a lawyer. So the presence of a lawyer to defend the accused is a must for the validation of the trial procedures. This should be clearly stated in the Executive By-laws relating to the Punitive Procedures Act, through coordination with the Lawyers Committee to determine the appropriate instruments to implement this provision, which should only be applicable to crimes with a reasonable degree of seriousness.

- Article 14–6 states the importance for compensation against judicial shortcomings on certain conditions: "when a final judgment indicts a person, but afterwards this judgment is nullified, or that a special pardon is issued in light of a newly discovered conclusive evidence of the occurrence of a judicial error, the wrongly condemned person should be compensated under the law, unless it is not proved that he bears all or partial responsibility of not disclosing the unknown fact in the appropriate time". There is no doubt that this provision only recognizes the principle of compensation for judicial failings. The matter still needs further clarification (as stated hereunder) specifically the criteria of compensation in the event of justice failings by, in the first place, determining the judicial failing and the extent of damage to be compensated. Second, defining the amount of compensation in light of the nature of the damage incurred. However, without providing for these important limitations,

the fate of the claim brought by the victim of the judicial error will remain neglected or unacceptable, which may lead to a judicial practices contrary to this provision.

- Activation of Article 17, which states:
 - 1- "It is not permissible to subject any person to arbitrary or unlawful conduct, either by interference in personal,, family, home, correspondence affairs, or by illegitimate raids that may tarnish his honor or reputation."
 - 2- " Every person has a right to be protected by law against such interference or arbitrary practices."

The enforcement of this Article requires that punishment on personal privacy transgressions (defamation) be provided for, in addition to laying down relevant complementary provisions enjoining compensation. Such provisions should be placed in one of two legal systems: the first is the regulations relating to the confirmatory rulings or, the second, the Information and Publication Act. However, the first place is more appropriate, since defamation may not be promulgated through traditional media, but through the internet for instance, or on an individual basis, which requires general protection. Such procedure is necessary because the provision of Article (17) does not determine the kind of punishment thereof neither the means of rendering compensation, but depends on the State's valid laws.

- Article 21 states that "the right of peaceful assembly is recognized. No restrictions should be placed on the exercise of this right other than those imposed in

conformity with the law, which are necessary in a democratic society, in order to maintain national security, public safety, public discipline, or to protect the public health or the public morals, or to protect other right and freedoms".

This Article governs the right of peaceful assembly as follows:

- A. Recognition of the right to peaceful gathering finds its direct source from the text of this Article. So any other provision that denies this right will contravene this Article. Once the Covenant is approved the right of peaceful gathering will be fully legitimate.
- B. Permissible restrictions on this right are:
 - Maintenance of national security
 - Preservation of public safety
 - Maintenance of public order
 - Protection of public health
 - Protection of public morals
 - Protection of the rights and freedoms of others.
- c. A statute is required to provide for these restrictions, either by enacting such statute or through introducing a provision specifically assigned to guarantee political rights.
- We have previously commented on the rights to establishing Unions or to joining Unions. This right is stipulated in the Covenant (Article No 22), wherein we have mentioned that using the term "Union" in Saudi laws is very rare (it was used only once in the framework of the

Vehicles Union). The term (union) is interchangeable with 'Committee', 'Organization' or 'Association'. In the Kingdom there are Committees, Organizations or Professional Associations in different fields (economical and occupational) functioning either under the umbrella of the Chamber of Commerce or under other Institutions. The Organization Rules and Regulations allow the formation of professional Associations. As for Labor Unions in the Kingdom, there are general Rules permitting the companies with more than a hundred laborers to form "Labor Committees" (union) composed of not more than nine members.

No doubt these different provisions are inadequate and do not meet the requirements of Article 22 of the Covenant. Therefore, a unified legal system for forming professional conglomerations must be introduced, and in addition, provisions relating to Organization of Unions in labor environments consistent with Article 22 should be drawn up as the current relevant rules are inadequate and do not meet the purpose of this Article neither in terms of numbers of members of the "Labor Committee" nor in terms of the rules relating to joining such Committees. As we have mentioned before, the Consultative Council is presently studying a system regulating setting up of private Organizations and Establishments.

- Paragraph (2) of Article 23 of the Covenant states "The men and women of marriageable age have the right to marry and form a family". To activate this Article in the Kingdom the minimum marriageable age should be determined.

- Paragraph (3) of Article 24 states "Every child has the right to acquire nationality." In a previous occasion we have mentioned in details the circumstances in which a child may not acquire a nationality under the Saudi Arabia Nationality Law (please go through the part of discussion relating to the Convention on the Rights of the Child to which the Kingdom is a member). To activate this Covenant's provision, and to ensure proper application thereof, some provisions of the Saudi Arabia Nationality Law should be amended as mentioned earlier.
- Article 25 of the Covenant states the right to political freedom, both in terms of election and nomination. As we have mentioned earlier, women are not allowed to take part in elections, which contravenes the provision of this Article. This political right can only be enforced through the implementation of an adequate integrated legal system, and not by subdivided mechanisms.
- Article 26 provides for the right to equality and non-discrimination before the law. The International Convention on Elimination of all Forms of Racial Discrimination is exclusively dedicated to this right which has undergone a special study. The provision of Article 26 OF this Convention stipulates the necessity of establishing provisions or controls to protect this right, an in addition, enacting punitive procedures against violators thereof on the one hand, and the reinstatement of the respect of the victim of discrimination on the other hand, including the right to compensation.

B- The International Convention on Economic, Social and Cultural Rights

*Approved and ratified
under the UN General
Assembly Resolution
No. 2200 (d-21) dated
16th December 1966*

1- The Status of the Convention in regard to the Kingdom:

The International Convention on Economic, Social and Cultural Rights has been approved and ratified under the UN General Assembly Resolution No. 2200 (d-21) dated 16th December 1966, which concurred with the issuance of the Resolution of the Covenant on Civil and Political Rights. The wisdom behind separating the above mentioned two Conventions i.e. by not publishing them in one folder or in a single Convention is to facilitate membership so that if one country is not willing to join the Covenant on Civil and Political Rights, it could access the Convention on Economic, Social and Cultural Rights. This Convention has been in effect since the 3rd of January 1976 as per Article 27. Unlike the International Covenant on Civil and Political Rights, this Convention has not been associated with any optional Protocol.

The Kingdom has not joined this Convention to date, however it has announced that it shall join following completion of a study in this respect. It seems that the

Kingdom intends to join both Conventions simultaneously. Naturally the Kingdom has the right to raise whatever reservations against any of the provisions of the Convention upon joining thereof. Hereinafter we will be discussing the benefits or the ideas of expressing reservations on the provisions of the Economic, Social and Cultural Rights Convention.

Before discussing the reservations issue, we have to note that this Convention is very peculiar, in several ways, compared to the Covenant on Civil and Political Rights. In this Convention no “Committee” is dedicated to supervise the implementation thereof as is the case with all the Conventions previously discussed. However, this supervisory task has been entrusted to the Economic and Social Council of the United Nations, who shall, pursuant to Article 19 of the Convention, transmit to the ‘Human Rights Committee’ of the UN General Assembly the reports of the Member States as required under Articles 16 and 17 of the Convention. Perhaps this is another reason for separating the two Conventions in two different volumes. The UN Economic and Social Council has been charged with the task of watching over the proper performance of the rights provided for in this Convention. The task charged to the Economic and Social Council does not require the Member States to issue a recognition concerning the special powers vested on the Council, as is the case with the responsibilities vested on the Human Rights Committees mentioned earlier. The Council powers take effect following a State’s accession to the Convention.

The other distinguished feature of the Convention on Economic, Social and Cultural Rights compared to the Covenant on Civil and Political Rights is the direct communication with the Member States without having to introduce any of the issues relating to domestic rights. This is due to a number of provisions which call for the States to carry out appropriate measures to take care of some rights, such as education, health care and decent life rights. This is not a defect in the Convention, but a requisite dictated by the nature of these rights (for more details on this issue, see the following point 3 b).

2- Assessment of the Provisions Arousing Reservations:

By exploring the Kingdom's stance towards the Human Rights Conventions to which it is a member, it has become evident that it has not won membership thereto unconditionally. The Kingdom has put forward reservations concerning enforcement of some of the provisions stated in those Conventions. Those reservations are due two reasons: the first refers to the Kingdom's respect of external relations, where the government rejected the provisions that allow any Member State taking action (to the extent that a disagreement should be brought before the International Court of Justice) with respect to the human rights stipulated by the Convention against another Member State (the Kingdom has raised some reservations concerning Article 22 of the Convention on Elimination of all Forms of Racial Discrimination, and Article 30 of the Convention against Torture, and Article 29 of the Convention on the Elimination of Racial Discrimination against Women.)

The Kingdom has not raised any reservations in regard to the International Convention on Economic, Social and Cultural Rights due to the nature of the content of the Convention and to its close association with the respective economic, social and cultural policies of the Member States, so that there is no reason to raise reservations in this regard.

However the possibility of the Kingdom's raising reservations against any of the provisions of the Convention that opposes Islamic Law still exists. But the approach followed by the Kingdom in raising its reservations, as discussed earlier, has derived a lot of criticisms due to the generality of those reservations. In fact the Kingdom is reserved against any provisions that contravene the Islamic Rules without specifying those provisions. (see the earlier discussion about the criticisms aroused by the Kingdom's reservations against the provisions of the International Covenant on Civil and Political Rights, and the Universal Declaration of Human Rights joined by the Kingdom). This should be avoided if the Kingdom intends to join this Convention. Therefore, the only alternative to adopt, before joining the Convention, is to study and understand carefully every legal provision thereunder in order to compare it with the provisions of the Islamic law so that all provisions suspected to contravene therewith should be determined and analyzed as follows:-

Evaluation of the Convention's Provisions Suspected of Contravening the Islamic Rules:

There is only one provision in the International Convention on the Economic, Social and Cultural Rights which can be

suspected of contravening the Islamic Law. It is the provision (of Article 3) which reads as follows:

“All States who are Members of the Convention undertake to guarantee equality among men and women in practicing all their Economic, Social and Cultural rights stipulated in this Convention”.

The Kingdom has joined the independent Convention on Elimination of Discrimination against Women, but has raised a general reservation against any and all provisions contravening Islamic Rules without specifying a particular provision. Thus the Kingdom's stance toward this Convention will not help us to judge its position regarding the wide content of Article 3 of the Convention which enjoins some applications contrary to the provisions of the Islamic Rules. Therefore, under this Article, the concept of equality between men and women in regard to economic rights may contradict with the Islamic inheritance provision which states: “A male's share of the inheritance is equal to twofold of that of a female's.” The equality required under the motioned Article conflicts with the family rules ordained by the Islamic law. Here lays the possibility of a contravention and hence a reservation.

But it is also possible not to raise a particular reservation against this Article for several reasons. First, the Convention on Elimination of Discrimination against Women and the Committee attached to it are mainly concerned with the question of equality, or non-discrimination between men and women in all rights, and not the economic and social rights.

The Kingdom has already raised general reservations to all that is against Islamic law.

Second, the scope and the generality of Article 3 (i.e. unspecific about certain rights) can mitigate the direct or express contravention to Islamic rules.

Third, the Islamic rules governing inheritance are considered as constitutional rules and constitute a part of the general Rules and Regulations of the Kingdom, which can not be refuted by any worldly Convention, and therefore there is no need to raise a reservation to this effect.

It is therefore evident that the opportunity for the Kingdom to join the International Convention on Economic, Social and Cultural Rights without any substantive reservations is fully ripe now.

3- The General Framework of the Convention

A) The content of the Convention:

The Convention is made of 31 Articles and is divided into five parts as follows:-

- Part one consists of only the first Article which is dedicated to the Civil and Political Rights and the right of people to self-determination and to freedom to dispose of their wealth.
- Part two consists of Articles 2 to 5, which give an interpretation on how to apply and understand the Convention.

- Part three is composed of Articles 6 to 15, devoted to the rights under the Convention. These rights are arranged as follows: the right to work (Article 6 and 7), the right to form Trade Unions and to boycott (Article 8), the right to social security (Article 9), the rights of family and children (Article 10), the right to decent economic life (Article 11), the right to health care (Article 12), the right to education (Article 13 and 14), cultural and intellectual property rights (Article 15). This is the part of the Convention most related to our study in terms of comparison with the Rules and Regulations of the Kingdom.
- Part four consists of Articles 16 to 25, dedicated to the controls over the proper execution of the provisions of the Convention and the functions of the Economic and Social Council in regard to the control and supervision of the Convention.
- Part five consists of Articles 26 to 31, dedicated to closing the provisions, such as those relating to the procedures for joining the Convention and the possibility of amendment.

B) The Possibility of Enforcing the Provisions of the Convention by a National Lawcourt

Unlike the International Convention on Civil and Political Rights, most of the provisions of the Convention on Economic, Social and Cultural Rights address the State Members, call upon them to take measures to protect and to care for the rights enjoined by the Convention, consequently reducing applicable local provisions. Accordingly, this required a Member State to translate the rights stipulated in the Convention to reality in the domestic

sphere through measures mostly related to the public policy of the Member State. On these terms, this Convention is similar to the Convention on Elimination of Racial Discrimination. An example of these similarities are as follows:

Paragraph (1) of Article 2 of the Convention states:” Each State who is a Party to the present Convention undertakes to take steps, individually and through international assistance and cooperation, particularly on economic and technical aspects to the maximum of its available resources, as well as take the necessary steps to ensure the effective exercising of progressive rights recognized in the Convention following the appropriate ways, especially the adoption of legislative measures”.

Article (11) of the Convention prescribes:

“The States who are Parties to the present Convention should recognize the right of every person to an adequate standard of living for that person and his family, that provides their needs of food, clothing and shelter, as well as the right to continuous improvement of living standard. The Member States undertake to adopt the necessary measures for the enforcement of this right, recognizing to this effect the importance of international cooperation based on free will “.

And Article 23: -

“The States who are Parties to the present Convention agree that international measures to ensure the realization of the rights recognized in the present Convention include holding gatherings, the adoption of the recommendations thereof, provision of

technical assistance, and holding of regional and technical meetings in order to consult and study in conjunction with the concerned Governments”.

All these provisions confirm the close association of the Convention’s provisions with the general policies and development plans of the State, and that the fulfillment of its commitments under the Convention depends on its resources and priorities. This will have a profound impact on the application of the provisions of the Convention by a national lawcourt in respect to the disputes presented thereto, because these provisions are unsuitable for application by a national lawcourt as they address the Member State itself in accordance with the considerations relating to propriety, State’s resources and development priorities. Therefore a national lawcourt can not supersede the State in such matters, neither capable of directing the State’s general policies.

On the other hand, the Convention contains some provisions which directly determine the rights, without any intervention of a Member State, and accommodate them in the domestic environment. Effectiveness of these rights in the domestic environment occurs as soon the membership of the convention is acquired and so long as no reservations are made against a provision incurring a direct right. Such provisions are included in the International Convention on Economic, Social and Cultural Rights (Paragraph 1 of Article 8) which reads:

“The States who are Parties to the present Convention undertake to ensure the following”:

- (A) The right of everyone to establish Trade Unions in association with others, as well as the right to join those

Trade Unions without any restriction, except for the observance of the rules of the Organization concerned, with the intention to promote and protect economic and social interests. However, exercise of this right should not be subject to any restrictions other than those prescribed by law, which are necessary in a democratic society for the maintenance of national security or public order for the protection of rights and freedoms of others.

- (B) The right of Trade Unions or Associations to establish National Confederations and the right of those Confederations to set up International Trade Union Organizations or joining the same..
- © The right to strike according to the State's valid rules and regulations.

The right to establish Trade Unions, the right of the Trade Unions to establish Confederations, and the right to strike or boycott are all directly derived from the Convention, and the decisions whereof does not require intervention by a Member State, except for regulating, controlling and actuating such rights. Therefore, the national lawcourt should apply such provisions even in the non-existence of internal relevant rules and regulations, or even in the existence of conflicting laws.(see the discussion relating to the provisions of the Convention that conflict with the System's Regulations.)

An example of this is the provision of Article (9), which runs: "The States who are Parties to the present Convention recognize the right of everyone to social security and social insurance."

This provision is explicit and specific as far as everyone's right to social security is concerned.

In general, based on the idea of the distinction between recognition of the right on one hand, and organizing this right on the other hand, and limiting it on the third hand, it is not easy for the national judge to draw from the provisions of the Convention, even the general ones, a clear and specific right recognition. The Convention itself identifies acceptable restrictions on the right as exclusive to that right i.e. with no room for additions, such as the rights set forth in paragraph (1) of Article 8, and the relevant exclusions under paragraph (2) of this Article (8). The role that is left to be adopted by the State through appropriate procedure is to organize the right itself and to draw up relevant conditions for fulfillment thereof. In this way the national judge could play a bigger role in the enforcement of the rights contained in this Convention.

4 – The Similarities between the Convention & The Legal Systems:

The International Convention on Economic, Social and Cultural Rights is one of the most International Covenants on human rights consistent with the Kingdom's legal systems and statutes. Examples of this consistency are found in the provisions of the following Articles:

Article (9) provides:

“The States who are Parties to the present Convention recognize the right of everyone to social security, including social insurance.”

This provision is consistent with the provision of Article 27 of the Basic Governance Law, which provides that “The State ensures the right of the citizen and members of his family in case of emergency, sickness, disability and old age, and supports the social security system, and encourages the Institutions and individuals to contribute to charities.”

Paragraph (1) of Article (12) states:

“The States who are Parties to the present Convention recognize the right of everyone to the highest attainable standard of physical and mental health.”

This Article is compatible with Article 31 of the Basic Governance Law which states: “the State takes care of public health, and provides health care for every citizen.”

Paragraph (1) (a) of Article 13 of the Convention which makes primary education “mandatory” and freely available to all is consistent with Article 30 of the Basic Law, which states “the State provides public education, and is committed to combating illiteracy.”

Paragraph (2) Article 10 states: “It is incumbent upon the State to provide special protection for mothers within a reasonable period before and after childbirth, in addition to granting working mothers paid leave with adequate social security.”

This Article is compatible with Article (151) of the subsequent provisions thereof. The later Article (151) gives working women the right to maternity leave before and after the expected date of delivery. Whereas Article 152 states the right of working mothers to a paid maternity leave. Article

153 adds the woman's right to medical care during pregnancy and childbirth.

Paragraph (d) of Article 12 states "the importance of creating conditions which assure medical services and medical care for all in case of illness." This is Consistent with "The Compulsory Health Insurance Cooperative System" which does not differentiate between the citizen and the foreigner, but takes care of a foreigner in the first place."

5- The differences between the Convention and the Saudi Systems

- Article seventh stipulates the conditions and the regulations of the right to employment by stating:
"The States who are Parties to the present Convention, acknowledge the right of everyone to the fair working conditions to satisfy the following:

A) Minimum Pay for all workers:

- (1) Equal pay for equal work without discrimination, provided that women shall be guaranteed employment opportunities on equal basis with men, and shall draw a remuneration equal to that of men"

The principles of equal employment opportunities based on equal pay is consistent with the Labor Law which determines the pay in accordance with the mutual agreement between the employer and the worker. However in the case of disagreement Article (15) of the Labor Law provides for the pay to be equivalent to that of a similar situation. But the provision of this Article is being contravened at some Establishments where discrimination between the wages of the citizen and his foreigner counterpart is prevalent despite

the similarity in the nature and quantity of work. Moreover the Regulations of some Institutions and Government Departments distinguish between foreign workers themselves in terms of pay based on nationality, as stated in Article 9 of the employment contract of the foreigners who are employed by the Saudi Universities, which discriminate between nationalities, i.e. provides for the European and American nationalities to draw salaries above 50% to 100% of the salaries of the other nationalities. This constitutes a violation of the principle of equal pay for equal work stated in the aforementioned Article. Perhaps the right action to take is to add a provision to the Civil Service Act to rectify this situation and to eliminate the inconsistencies in public Organization Regulations.

- There is also a contravention to paragraph of Article 7, which reads: “To guarantee working conditions for women on equal basis as men” This equality is not limited to pay but includes the overall working conditions. We have already discussed the right of women to employment and the extent of discrimination between men and women in this regard while discussing the provisions of the Convention on the Elimination of Discrimination against Women. Depriving women from work in certain professions and forcing them to obtain permission of their guardians or spouses in order to apply for a job is a violation to the Convention. This inequality may result from mere public practices or practices of Private Institutions, or may be decreed by instructions or circulars or regulations. The measures required by Article 2 of the Convention to prevent such practices or Circulars or Regulations or Resolutions are legislative measures, which

call for the introduction of relevant rules into the Civil Service Act.

- The question arises with regard to Article 149 of the Labor Law, which reads: “Considering the provision of Article 4 of this Law, women can work in all professions consistent with their nature excluding hazardous jobs or harmful activities. In this respect the Minister should determine the jobs harmful to health or which expose women to specific dangers so as to bar women from assuming such jobs through instituting relevant specific conditions”. This Article may indicate discrimination between men and women in terms of working conditions, as it gives men the freedom to work in all areas, whereas it restricts professions for women. This understanding leads to the consideration that this provision violates Article 7 of the Convention, as well as contravenes the Convention on Elimination of Discrimination against Women. However, we do not support such an understanding and such a result. In fact, the phrase “consistent with her nature” might open the door to excessive, therefore it should be interpreted in the light of the provisions of Article (149) which aim to protect women from assuming physically strenuous jobs, or being involved in hazardous working environment. It is out of question that this Article can be interpreted to mean that women should be prevented from assuming engineering or law professions, as these areas do not pose any danger. The mentioned provision does not even prohibit women from working in the area of industry if not involving strenuous physical effort. Understanding the provision of Article 149 in this broader sense does constitute a conflict with the dictates of Article 7 of the Convention,

particularly since expanding working areas for women are much needed to create a social and cultural environment..

- Article 8 of the Convention provides that:
 “The States who are Parties to the present Convention undertake to ensure:
 - (A) The right of everyone to form Trade Unions in association with others and to join the Trade Union of their choice, without restriction, except as required under the rules of the concerned Organization, to promote and protect social and economic reconciliation. The right to practice this activity shall not be subject to any limitations other than those prescribed by law, which are necessary in a democratic society for the maintenance of national security, public order, and the protection of the rights and freedoms of others.
 - (B) The right of trade unions or associations to establish national confederations and the right of unions to set up International Trade Union Organizations
 - © The right to strike, provided that the exercise of this right conform with the laws of the country concerned.
- (2) This Article does not prevent subjecting the members of the Armed Forces or Police Personnel or Government Departments to legal restrictions on exercising these rights. “

We have already discussed the right to form and join trade unions under the provision of the Convention on Civil and Political rights, since this right is a civil right on the one hand, and economic and social right on the other hand, and

that trade unions have a role in maintaining the workers financial and social rights.

We have explained that the term “Trade Union” has a very rare use in the Kingdom and is normally interchangeable with the term “committee” or “organization”. Saudi Laborers Committees are counterparts of Trade Unions in the other countries. These Laborers Committees are limited to companies with more than one hundred workers, provided that the number of the members of these Committees shall not exceed the allowable number of 9 members .The violation of Article 8 of the Convention is that the restrictions on Laborers Committees are not consistent with the restrictions contained in this Article. These restrictions are not necessary for the maintenance of national security or public order or for the protection of the rights and freedoms of others.

- Paragraph © of this Article enjoins the right to strike, provided that it is exercised according to the laws of the country concerned.” This paragraph requires a provision of a legal regulation of the right to strike, and to organize this exercise. The absence of a rule or a provision (such as in the Labor Law) to regulate the right to strike is in itself a violation. Because this right should be automatically effective once a State joins the Convention, but the practice thereof will be questionable in the absence of a provision organizing such practice.

6- Ways of Activating the Convention in the Domestic Environment:

- The activation of paragraph (a) of Article 7, which stipulates the need to provide “fair remuneration” to ensure decent living for the worker and his family, whereas (paragraph b) requires that the establishment of a minimum wage takes into account annual review of the living conditions in the Kingdom according to Article 89 of the Labor Law, which provides “The Council of Ministers, where appropriate, on the proposal of the Labor Minister shall determine the minimum wage.” The activation of this provision also revives Article 7 of the Convention.
- Paragraph (3) of Article 10 states:

“Protection measures and special assistance should be considered for the benefit of all children and adolescents without discrimination on grounds of parentage or other conditions. It is a duty to protect children and adolescents from economic and social exploitation, we must make the law punishes whoever abuses them in work, corrupt their morals or damage their health or threaten their life or harm their natural growth”

This provision requires two things:

First: Punishment should be imposed on exploiting children in any action that is liable to “corrupt morals, harm health, threaten life, or affect their natural growth.” The natural instrument for imposing such punishment is the law. Therefore a provision should be prescribed to provide for punitive procedures in which a specific punishment of this

crime should be enjoined. On the other hand, a regulation or formal provision is required to enforce the tenth paragraph.

Second: Regarding the Labor Law, more than any other law, where an addition to this paragraph stipulates: “The States should enact a law prohibiting employers from hiring children of a predetermined age range, in which case a non-abiding employer shall be punished under that law.” Article 161 of the Labor Law determines the minimum working age for the young and states instructive regulatory texts in this respect. But the Labor Law does not specify a particular punishment for violation of these provisions, leaving it open to general punishment, which stipulates (in Article 239) a fine of not less than two thousand riyals and not more than five thousand. This penalty fulfills the requirement of the latter requirement of the third paragraph. But the optimal application of this provision requires that a strict punishment be imposed for violating the regulation of the child employment in order to ensure the necessary protection of children..

Paragraph (1) of Article 13 states:

“The States who are Parties to the present Convention recognize the right of everyone to education. The States agree on the necessity of direct education for the development of human personality, preservation of human dignity, and to consolidate respect of human rights and fundamental freedoms.”

This paragraph provides for the right of every “person” to education. The other paragraphs of this same Article which are dedicated to the right of education use the word “all”,

thus education shall not be limited to citizens rather than foreigners. Therefore any practice or action that aims to prevent foreign children from being admitted in public schools shall be deemed to contravene this provision. Also limiting education at certain university colleges to the citizens only, such as the Faculty of Medicine, is an express violation of paragraph © of the aforesaid Article.” The failings in regard to adherence to the right to education constitute a drawback if the Kingdom intends to join the Convention on Economic, Social and Cultural Rights. Whatever the case, in order to activate the right to education in its absolute legal status, as provided in this Article, requires a resolution or a formal provision to prevent limitation of the right to education.

The activation and application of this Article in optimal form also require the teaching of human rights at appropriate educational level, in honor of the slogan “towards the consolidation and the respect of human rights and fundamental freedoms.”

Paragraph (2) of Article (13) provides for making primary education compulsory. Whereas Article (14) expands on the principles of compulsory and free-of-charge primary education by stating “Each State who is a Party to the present Convention, or shall become a party thereto, undertakes to ensure that it has been able to guarantee compulsory and free primary education in that country or in other regions under its jurisdiction, and that within two years it should develop and adopt a detailed plan of action for the effective implementation of the progressive principle of compulsory and free education for all, over a reasonable

number of years specified in the plan. “ The natural tool for making education compulsory is the Law or a Resolution (such as the Resolutions of the Council of Ministers) or a Circular resolution (regulations). The provision for compulsory education is not sufficient, but should be accompanied by action and even punitive measures to ensure the respect and the effectiveness of compulsory education principle; otherwise this principle shall be not more than ink on paper.

Paragraph (3) of Article (15) states: “The States who are Parties to the present Convention undertake to respect the freedom indispensable for scientific research and creative pursuits.” Activating this Article requires facilitation and simplification of printing processes and dissemination of awareness on scientific creativity literature in the Kingdom. This requires that the provision of Article (13) relating to the Press and Publication Act be revised to achieve this objective.

Second:

Conventions Neither Joined Nor in the Process of being Joined by the Kingdom

**The International Convention on the
Protection of the Rights of All Migrant
Workers and Members of their Families**

*Endorsed by the United Nations General
Assembly Resolution No. 45/158 dated
December 18, 1990*



NATIONAL SOCIETY FOR HUMAN RIGHTS

Second:

Conventions Neither Joined Nor in the Process of being Joined by the Kingdom

The International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families

1- The Status of the Convention

This Convention has been endorsed by the United Nations General Assembly under its Resolution No. 45/158 dated December 18, 1990, and thus has been open to membership since then. The Convention is the latest of seven major UN Conventions on Human Rights.

This Convention entered into force on July 1, 2003, i.e. after 13 years from being open to membership. Despite the passage of seventeen years since the endorsement of this Convention by the UN General Assembly, it has not been as successful as the similar earlier Conventions. It has received acceptance only from a limited number of States (not more than 34 States) to date, including two Arab countries: Egypt and Morocco who ratified the Convention, whereas Syria, Libya, and Algeria have signed only. The incomplete success of this Convention is due to the fact that the countries with considerable foreign workforce are not among the 34 countries who gained accession thereto. This is why in August 2006 the UNESCO has called for the preparation of reports to determine the obstacles hindering accession to the Convention. However, that does not necessarily mean that

success of this Convention can not be achieved considering that only 14 States have joined thereof since it has taken force, i.e. in four years time, and in addition, awareness campaigns are being launched to enlighten the States on this Convention.

Perhaps the significant aspect of the protection of migrant workers raises some relatively sensitive issues in respect of any involved State, such as the sovereignty over its territory, allocation of financial funding, and in addition, the organizational, administrative and health care issues relating to the protection of foreigners, especially in the countries hosting large communities of migrant laborers. Therefore, the Convention makes a kind of balance between the rights of the State dictated by the protection of migrant workers and the rights of the latter. This is outlined in the provision relating to the commitment of the migrant workers to observe the laws of the respective State, and the other provisions relating to association of the State's commitments with its financial abilities, as well as the provisions requiring the State to take appropriate measures without imposing obligations on that State, and in addition, the provisions which allow the State to impose restrictions on the migrant workers in order to protect public discipline, national security and public ethics.

The Kingdom has not joined this Convention and has not even announced that it will join it, and we do not expect that the Kingdom will join it at least in the short term. But thinking over this issue now may prove useful as the Kingdom as it hosts foreign workforce whose status has been the target of criticism by the United Nations Human Rights Committees. Therefore it would not be easy for the Kingdom to justify its stance in abstaining from joining the present Convention, whereas many

large and important States have already joined it. By joining the International Covenant on Civil and Political Rights and the International Convention on Economic and Social Rights, the Kingdom will be a party to the significant UN Conventions on Human Rights, with the exception of the Convention on the Protection of the Rights of Migrant Workers and Members of their Families.

Arranging the legal systems, and establishing the conditions in such a manner that allows the Kingdom to join this Convention is only a question of time. Perhaps the time is now ripe to study and assess the mentioned Convention in light of the Kingdom's legal systems, taking into consideration the status of the Kingdom in respect to the previously studied conventions.

2- The Reservations Against the Convention's Provisions:

We have explained earlier that the Kingdom's reservations against the provisions of the International Conventions on Human Rights are, first: the possibility of referring the controversy on any of the rights to the International Court of Justice, which is not provided for in this Convention. The second, regards the provisions that conflict with the Islamic Ordainments. Although this Convention includes only two provisions that may conflict with the Islamic Rules, some mechanism may be formulated to avoid being protested by the Kingdom, which is discussed hereinafter. These two provisions are as follows:

- 2-1 Article 4 defines the family members of the migrant worker protected under the Convention. This Article has extended the protection to include the husband or other similarly related parties. No doubt this contravenes the

Islamic Rules which only recognizes the marital relationship.

2-2 Article 12 states the freedom of a migrant worker in belief and in practicing religion rites. We have already commented on this right when we discussed the International Covenant on Civil and Political Rights to the extent that does not allow reservations thereto. Paragraph 3 of this Article allows restriction of this right if provided for in the National Regulations with the aim to protecting public security, public order, public health, or public ethics. We have mentioned that since the Kingdom enjoys a distinguished status being the accommodator of the holy shrines where Islamic faith had originated, which makes public practicing of other religions intolerable. Therefore there is no need to raise reservations in respect of this provision.

3- The General Framework of the Convention:

a) The Content of the Convention: -

The Convention is composed of 93 Articles and is divided into nine parts, as follows:

Part One consists of Articles 1 to 6, dedicated to the definitions and to the determination of the scope of the Convention.

Part Two consists of a single Article (VII) outlining elimination of discrimination in rights, and discusses other International Declarations such as the Convention on the Elimination of Racial Discrimination and the International Covenant on Civil and Political Rights. This Article does not introduce anything new in this regard.

Part Three consists of Articles 8 to 35, a part of which is devoted to the recognized human rights of all migrant workers and members of their families, whether on legitimate or illegitimate (regular or irregular) employment. Most of these rights are provided for in the International Conventions such as the Covenant on Civil and Political Rights covering the rights relating to humane treatment, elimination of slavery, and mockery, freedom of thought, belief, honor, security, freedom of expression, freedom of litigation and fair trial etc..

Part Four consists of Articles 36 to 56, dedicated to further the rights of the legitimate and regular workers, excluding irregular migrant workers. These are civil and social rights, such as the rights to education, to join Trade Unions, to free movement, housing, residence and employment etc.

Part Five consists of Articles 57 to 63, outlining the rights of some categories of migrant workers, such as borders and seasonal workers.

Part Six consists of Articles 64 to 71, which determine the decent conditions of migration of workers and their families.

Part Seven consists of Articles 72 to 78, dedicated to the application and activation of the mechanisms of the Convention.

Part Eight consists of Articles 79 to 84 prescribing the general provisions.

Part Nine consists of Articles 85 to 93 dedicated to the conclusion.

b) The Prominent Features of the Convention:

The prominent feature of this Convention is its adoption of an expanded concept of a migrant worker. According to Article 2 of

the Convention, the protected migrant workers are all persons who exercise or practice a paid activity in the States other than those to which they belong. This is the Convention's general definition of a migrant worker, a definition that does not require the worker to practice a work in reality or to acquire a legitimate residency status. This also includes all disciplines of employment regardless of the nature or duration thereof, as long as such employment is practiced in a State other than the State to which the worker belongs.

Article 3 excludes certain groups from the scope of the Convention, such as students, investors, refugees, trainees and maritime workers.

The families of the workers to whom the protection is supposed to be extended under the Convention are the worker's wife, or the female worker's husband, their children or dependents according to the valid laws of the country of employment.

The entire Convention, particularly Article 6, provides that the protection of foreign workers does not extend to those who are without nationalities or whose nationalities are unknown.. The Convention provides only for the rights of the migrant workers and members of their families. Such rights cover the migrant workers preparation for traveling till they settle in the host country, and in addition, the rights to be extended by the country of origin including the rights relating to traveling, to obtaining minimum information about the host country, such as the laws touching relating to migrant worker's interests etc.

The rights of migrant workers and members of their families are divided by the Convention into three categories: general rights covering all kinds of migrant workers, including illegitimate or

irregular employers, and the rights of special migrant workers communities, like the border and seasonal workers.

These rights have been planned for all categories of migrant workers and members of their families and are almost identical to those contained in the International Covenant on Civil and Political Rights, such as the right to life, the right to security, the right to a decent treatment, the right to freedom of expression, and the right of the migrant worker in the event of his arrest or imprisonment etc.

There are also certain rights characterized by this Convention, such as the right of the migrant worker to leave the host country or the country of origin, or to return to his country of origin. This right is stated in paragraphs (1) and (2) of Article 8, which is an application and explanation of the right of movement provided for in the International Covenant on Civil and Political Rights, as well as applicable under the provision prohibiting detention, or retaining or destroying the identity documents (such as Passports) of a migrant worker, which is expressly mentioned in Article 21. Also among other rights is the right relating to deportation procedures in which some safeguards are guaranteed for the migrant worker and members of his family in the event of deportation (Articles 21 and 22 of the Convention); in addition to the right to remit savings and personal effects provided for in Article 32. The particularity of the Convention is also reflected in the fact that Article 34 thereof imposes on the migrant worker and members of his family obligations without rights thereunder as is the case with the remainder of the Articles of the Convention, as well as the other Human Rights Conventions. These obligations bind the migrant worker to respect the laws, customs, traditions and cultural identity of the host country. The

Convention outlines details on the various aspects of the right to employment.

Like most Covenants on Human Rights, this Convention is sponsored by a Commission called "Committee for the Rights of Migrant Workers" which, similar to the Committee of Covenant on Civil and Political Rights, is empowered by the States who are parties to the Convention. However some of the authorities vested on this Committee require a special announcement by a Member State.

4- The Compatibility of the Kingdom Laws with this Convention:

There are various rights contained in this Convention, some of which are general but compatible with the provisions of the foregoing two International Conventions. The other rights are connected with the migrant workers. Therefore, we find that this Convention touches on a considerable part of the Saudi regulations and exclusively cares for the migrant workers and their rights, and narrows the scope of the legal systems directly related to it. Therefore, In order to join this Convention the following directly-related legal systems have to be revised:

- i. The Labor Law
- ii. The Social Insurance Regulations
- iii. The Residency Regulations
- iv. Foreign Laborers' Recruitment Criteria
- v. Some of the Rules and Regulations relating to the Passport Dept.

Article 20, for example, prohibits deportation for reasons relating to non-implementation of the employment contract. Article 22

prevents group deportation, and provides for individual deportation based on the situation and status of that individual (paragraph 1). This Article also requires that the deportation should be based on solid grounds, rendering the worker ample time to file an appeal on the deportation decision. This Article also provides other rights for the deported worker not available on the current existing deportation rules.

The requirements of Article 24 necessitates the cancellation of the compulsory sponsorship which is prerequisite for the legitimacy of the residency of a migrant worker in the Kingdom. This follows the right of the migrant worker to keep his own identity documentation and not to be confiscated or destroyed, which is explicitly outlined in Article 21 of the Convention.

Article 8 provides the right to the migrant worker to leave the country of employment, i.e. not to be prohibited from departing unless required under the prevailing laws and regulations relating to protection of public security, public order, public health, morals, or the protection of the rights and freedoms of others (which is also required by the International Covenant on Civil and Political Rights). Currently there are no provisions in the Kingdom's By-laws that specify clearly the reasons for barring a foreign worker from departing..

Article 27 of this Convention calls for the revision of the Social Insurance Regulations and Rules in order to achieve equality between the migrant worker and the citizen, or at least to provide some sort of equal treatment (as stated in paragraph 2 of this Article).

Article 44 includes the right of the migrant worker to bring his family to the host country according to reasonable regulations.

This requires a revision of the foreign Manpower Recruitment Rules and Regulations in order to mitigate the strictness thereof.

To conclude, the biggest obstacles to any potential Kingdom's accession to the Convention are the Regulations of the Compulsory Sponsorship, which are not based on any legitimate or logical foundation, particularly the current rules which have, over the years (the age of the compulsory sponsorship) led to building up economic and social interests. These Rules and Regulations should be revised with a view to canceling all of the provisions relating to compulsory sponsorship system., which have no place in the future Conventions on Human Rights, and not only in the Convention on the Protection of the Rights of Migrant Workers and Members of their Families.

CONCLUSION

Conclusion

There are several significant points that can be deduced from this study whose objective is to gain an insight into the extent of consistency of the Kingdom's regulations with the seven major UN Conventions on Human Rights. If we are to assess the extent of compatibility thereof, we might as well say that there are a lot of inconsistencies attributed to the credibility of the Kingdom's in joining these Conventions. But the general statements are always inaccurate, and if we are to specify, we will find the status of the Convention on Elimination of Discrimination against Women in the Kingdom is the worse considering that this Convention represent the biggest challenge to the Kingdom, not only in terms of the existing Rules and Regulations thereof , but also in terms of the requirements to develop plans to change the prevailing social and cultural patterns that degrade women in the face of men, whereas the status of the provisions of the International Convention on Economic and Social Rights is more moderate. Here is the summary of the results of this study:

- vi. We have been cherishing the belief that western-inclined International Conventions on Human Rights conflict with the Islamic Rules, thus often generates negative reaction. But this study proves the contrary; we find no tangible violations of the Islamic Rules that justify total rejection of these Conventions. We have analyzed the questionable provisions thereunder and have found them to be quite limited (review each Convention separately), and can be avoided, without having to raise reservations, but by

using the legal instruments provided in the Convention itself. There are also some provisions of these Conventions conflict, in reality, with the prevailing social conditions rather than with the Islamic Rules. Many of the provisions of the Conventions relating to women's rights esp. the Convention on Elimination of Discrimination against Women contradict with the prevailing social and cultural traditions that degrade women. The status of women in regard to adjudication and the exaggeration being voiced on guardianship over women and their illegibility to legal responsibility are not based on any reference in the Islamic Law, but attributed to social and cultural heritage in the first place. There are also some groundless jurisprudential issues having no consensus such as death sentence on children, which we have already discussed. So, we can not say that Islamic Rules ordain killing a child. There are also some issues that we believe to have violated the Islamic Ordainments. But this is due to misunderstanding of the provisions of the Convention, such as the provisions which decide the freedom of religious belief. This right is inherent and thus uncontrollable, and therefore it should not be mixed with the right of practicing religious rites (other than Islamic rites) in public which runs against Islamic teachings, but the restrictions contained in some of the provisions of the Conventions lead to disrupting this right in respect to the Kingdom as we have explained earlier, so there is no need to voice reservations against this right. These considerations have led us to believe that reservation against any provision contravening Islamic Rules should be forgone if no specific justification can be provided thereof. We have explained the disadvantages of such an approach,

which reduces the Kingdom's obligations under the Convention. This approach can be replaced by a more specific method i.e. examining the provisions of the Convention in the light of the Islamic Rules based on the foregoing details.

- Argument about regulating Islamic provisions based on Islamic Legislation is still ongoing ever since the time of Ottoman Juristic Rulings Magazine and through King Abdul-Aziz reign in which regulatory efforts had been made (more than 70 years ago). Meanwhile we are still waiting for the enforcement of the Punitive Procedures Act which is yet to be issued. Whatever the considerations that have hindered the enforcement of this Act in the Kingdom, the respect of the Conventions on Human Rights in the Kingdom will not be complete unless by regulating Criminal Codes. These Conventions predetermine the actions leading to perpetration of crimes and the penalties thereof as provided for in Article Thirty -Eight of the Basic Governance Law which states that no crime and no punishment exist unless under a legitimate relevant regulatory provision. The issue relating to the importance of investigating the reasons for detention has shown the intensity of this problem, whereas the rules governing the actions of the Commission for the Promotion of Virtue and Prevention of Vice came to open the door wide open for detention without specific controls. The proper execution of most of the Conventions on Human Rights, to which the Kingdom is a member or about to be a member, require explicit punitive provisions. Moreover, the right to a fair trial, and to freedom and security, set forth in more than a Convention, can not be fulfilled unless the crimes and

relevant penalties are regulated. On the other hand, the absence of an integrated legal system for governing juvenile delinquency and the non-availability of By-laws for the implementation of the Punitive Procedures Act and the scattering of punitive procedures among a number of regulations, all this reflects the inadequacy of the criminal legal structure, which in turn hampers the Kingdom to implement its commitments under the Conventions on Human Rights , the subject-matter of this study.

- The International Covenant on Civil and Political Rights is the leading Covenant among the International Charters on Human Rights. Not only should it be hastily joined after more than 40 years since its inception, but should also be attended by rectifying the inconsistencies of the national Rules and Regulations, as well by issuing new Regulations to activate it. The sensitivity of a State towards the human rights issues in general is measured in the light of the rights stated in this Convention.
- Non-revision of the new legal systems in the light of the Conventions on Human Rights despite the fact that these systems have been issued after the Kingdom has joined some of the mentioned Conventions, which is proven through the study, can be attributed to the technicality and specialty of the Articles and provisions of those Conventions. This shortcoming could be redressed by presenting the draft of any new Regulations or Procedures to a specialized body, such as the National Human Rights Commission or the Committee of Human Rights.
- It is very important to purify the laws from all the provisions that violate these Conventions. Therefore, it is incumbent upon the Kingdom to shoulder the responsibility

under the Convention as it is accountable to the concerned Human Rights Committees. This also raises significant legal problems for the national Judge who is supposed to reconcile the Kingdom's rules and regulations with the provisions of the Convention according to the foregoing discussion. This question is not always readily solvable particularly in regard to the provisions the Conventions, which do not represent direct texts that a national judge can rely on, as such texts address the State itself.

- There is a need to prepare or review the Kingdom's reports, submitted to the Human Rights Committees, by a special official body such as the National Human Rights Committee or the Commission on Human Rights.
- vii. The issue of reconciling Saudi regulations with the Conventions on Human Rights is not receiving adequate care, which result in the abnormal situation represented in the gap between the requirements of these Conventions and the domestic regulations. However, the reason for optimism about the improvement of this situation is that Specialized Bodies are in the process of being created to take charge of this issue., such as the National Human Rights Committee and the Commission on Human Rights. These Specialized Bodies will have an impact in narrowing the gap between the Kingdom's internal Rules and Regulations and the provisions of the Human Rights Conventions. Perhaps the creation of such Bodies signals the Kingdom's launching of efforts to overcome the gap and delays caused by procrastination over the past years.

May Allah Grant Success