

QUICK POLICY INSIGHT

Cautious reforms in Saudi Arabia

Author: Pekka HAKALA

While a number of recent 'firsts' have suggested that Saudi Arabia may be open to reform, particularly for women, the reforms have not altered the basic structure of the Saudi legal and administrative system.

Over the past months, a number of 'firsts' in Saudi Arabia have been described as signs that the kingdom is willing to reform the legal and administrative system and provide the country's women with new opportunities. King Abdullah bin Abdul Aziz appointed the first female members of the Consultative Council, the Majlis al-Shura, in January, and in April, Saudi authorities issued a license allowing a woman to practice law for the first time. Other events have also been heralded as signs of change in Saudi society: a major advertising campaign against domestic abuse was unveiled a few weeks ago, for example, and women will be able to vote in municipal elections in 2015.

In fact, these developments have done little to reform the structure of the Saudi system, which remains patriarchal and clan-based. The recent execution of seven men who committed robbery — when they were minors — underscores the country's resistance to western notions of human rights. Yet Saudi Arabia has signed a number of covenants that outlaw such actions. The European Parliament should pursue its dialogue with the country in order to support reformist factions and highlight the commitments that the kingdom has made.

A staid system

Saudi Arabia traditional position of leadership within the Islamic and Arab worlds is being seriously challenged.

The Saudi regime is in a state of anxiety over their external and internal leadership role. The country traditionally views itself as a leader in the Islamic world, the Arab world and the oil-exporting world. However, on all these fronts, the Saudis find themselves in highly competitive environments. In the Islamic world the Saudis contend with rivals Iran, Turkey and Indonesia. In the Arab world, the Saudis are challenged by Qatar and Egypt in setting a common agenda for the whole Arab world. Within the oil cartel OPEC, Saudi Arabia is a leading state, although losing the ability to control fluctuations in the price of oil. At the same time, Saudi Arabia maintains its position the leader of the Gulf monarchies and has done its utmost to contain the spread of the Arab Spring in the region.

Within Saudi Arabia's absolute monarchy, the King and the most senior members of the House of al-Sa'ud firmly hold the reins of power. The

The judicial system is configured to maintain the status quo.

Shari'a (Islamic law) is applied by ultraconservative religious leaders, slowing down efforts to reform Saudi society.

country's 'parliament' Majlis al-Shura has only consultative powers and all of its members are appointed by the King. The country's judicial system is a guarantor of societal status quo. It is based on the ultraconservative Hanbali interpretation of Shari'a (Islamic Law) for both criminal and civil cases, including family, contract and commercial matters. The King is the supreme judicial authority, appointing judges and acting as the final court of appeal and source of pardon. The Saudi court system consists of three main parts. The largest is the Shari'a Courts, which hear most cases. Judges and lawyers form a part of the *'ulema*, the country's religious leadership, mainly originating from the conservative central region of Nejd. For nearly 300 years, the Al-Sa'ud clan has controlled the state while the Al ash-Sheikh clan, descendants of Sheikh Muhammad ibn 'Abd al-Wahhab (1703-1792), controlled the religious institutions. The two most powerful clans of the country are intimately linked by a high degree of intermarriage. Their cooperative and consensual relationship has provided the kingdom with one of the most stable societies in the region. Faced with turmoil in the Arab World, Saudi Arabia's leadership seems to have opted for maintaining the status quo and reinforcing its traditional power sharing arrangement and the sense, stability and continuity it offers.

In a country where the Qur'an and the Prophet's tradition (Sunna) make up the constitution and in which women have limited legal rights, the king's nomination of women to the Consultative Council struck many as revolutionary. Liberal Saudis and women activists branded the decision 'historic' and their elderly monarch a 'reformer'.

Judicial reform held back by the religious establishment

Recent changes are consistent with a number of gradual reforms initiated in 2007 by King Abdullah when he approved the plan for new judicial system, including the establishment of a Supreme Court and special commercial, labour and administrative courts. These reforms, albeit gradual and prudent, have been resisted by conservative clergy and judges, who regard them as an attempt to 'westernise' the divinely ordained legal system. In 2009 the King appointed a young legal scholar, Muhammad Al-Issa as the Minister of Justice in 2009 in an attempt to expedite the reform. Recent high appointments to the Supreme Court (a new president) and the Supreme Judicial Council (secretary-general) are further steps on this rough path.

Saudi Arabian judges apply shari'a (Islamic law) based on their individual interpretations.

Many reform-minded observers claim that the progress of Saudi society is hampered by legal uncertainty in the country's laws due stemming from the non-codification of the shari'a — the only such case in the Muslim world — and the lack of judicial precedent. Although the government announced it would codify the shari'a in 2010, it has yet to do so. In the absence of codified laws, the judges (*qadis*) are free to issue sentences based on their own interpretations. Vague concepts of 'protection of common good', 'prohibiting practices to ward off corruption', or 'going beyond the realm of obedience' can be used against women driving, peaceful advocacy of basic legal rights or critical remarks on the country's

The judicial system lacks basic safeguards of fairness.

situation in social media¹. The Saudi system of justice has been criticised as slow and lacking in safeguards of justice. The notion of 'fair trial', providing the accused access to legal counselling and public trials, does not exist. Confessions obtained under duress or as a result of torture are commonplace.

Ample application of capital punishment

Ignoring international and EU condemnation, Saudi Arabia has continued to execute criminals, including minors, for a wide range of offences.

Saudi Arabia has long been criticised for its human rights record. Amnesty International and Human Rights Watch condemn both the criminal justice system and the cruel punishments it imposes. However, the Saudi political establishment claims that existing practices maintain a low crime rate and are in full compliance with the shari'a.

The physical punishments imposed by Saudi courts — such as beheading, stoning, amputation and lashing — and the number and pace of executions are a matter of serious concern. In 2012, 79 people were executed and 47 so far in 2013. There were 423 reported executions between 2007 and 2012. The death penalty can be imposed for a wide range of offences including murder, rape and armed robbery, as well as for offences not universally considered 'serious', such as drug crimes, apostasy, adultery, witchcraft and sorcery. Executions can be carried out by beheading with a sword, stoning, firing squad or by crucifixion. It has been reported the lack of official qualified swordsmen has led the government to using firing squads instead.

On 13 March 2013, seven youngsters, minor at the time of their arrest were executed in Abha, in south-western Saudi Arabia, for an armed robbery that took place when they were minors. Their sentences were based on 'confessions' obtained under torture and submitted at a trial where they had no legal representation or recourse to appeal. The cases sparked an international uproar.

Subordinated role of women

In Saudi Arabia, all women

Saudi Arabia has a notoriously bad record on women. Some observers refer to 'virtual slavery, in which wives and daughters can be physically, psychologically, and sexually abused at the whim of male family members, themselves protected by an all-male criminal system and judiciary.'² Every adult woman must have a close male relative as her 'guardian'. As a result, the legal position of Saudi women is that of a minor, with little authority over their own lives. Women also face discrimination in the courts, where the testimony of one man equals that of two women, and in family and inheritance law. Child marriage is common in Saudi Arabia.

¹ Saudis are exceptionally well connected by social media: only Egypt ranks ahead in Facebook usage in the region; a higher proportion of Saudis now use Twitter and YouTube than almost any other nation in the world.

² <http://www.nybooks.com/articles/archives/2013/jan/10/will-saudi-arabia-ever-change/?pagination=false>

are subordinated to a male guardian. They face discrimination and lack of protection

While the profession may be opening to female law graduate — as the April licensing of a lawyer trainee suggests — further reforms that would allow women to make their own decisions about their lives, including the freedom to travel and to drive, are not on the horizon.

Policy options: Upholding political dialogue and international conventions

It is important to maintain intensive political dialogue with Saudi Arabia on a wide range of issues, including the country's adherence to universally recognised human rights.

There are few signs that the Saudi monarchy is even contemplating far-reaching reforms. While demographics suggest the country is relatively young — more than half of the population is under 25 — the faces of the Al Saud dynasty seems geriatric: the king is 88 and the crown prince 77. Moreover, given Saudi Arabia's system of succession, there is little likelihood that a charismatic young reformer will soon ascend to the throne. The House of Saud is likely to stand firmly on the oil revenues that flow into its coffers and on the support of the religious establishment and large state administration. The question is for how long the regime can continue to persuade a majority of Saudis to support, or at least tolerate, a government in which they have almost no say.

The leading member state in the Gulf Cooperation Council (GCC), Saudi Arabia is also a member of G20, a major regional power and an important partner for the European Union. The country's strategic role has been recognised by the European Parliament, which in March 2011 became the first EU Institution to call for a strategic partnership between the EU and its Member States, on the one hand, and the Gulf Cooperation Council (GCC) and its Member States on the other.

Despite the fundamental differences in the visions of the EU and Saudi Arabia on the organisation of society, the EU should develop closer links with Saudi Arabia and support the reformist factions within Saudi society and the Saudi political establishment.

To bridge some of the wide gulf that separates the partners' notions of human rights, the EP could:

- Remind Saudi Arabia of its commitments to several human rights instruments. The country has ratified the 2004 Arab Human Right Charter (including Articles 12 and 13, on the right of citizens to a fair trial); the Convention on the Rights of the Child (CRC), which prohibits the death penalty for offences committed under the age of 18; the Convention against Torture; the Convention on the Rights of the Child (CRC); and the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW, which bans child marriages).
- Encourage Saudi Arabia to sign and ratify the International Covenant on Civil and Political Rights (ICCPR), which entered into force in 1976. Article 6 of this covenant states 'every human being has the inherent right of life'.