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The Role of Law in Economic Development Process within the Context of the Islamic World: De-linking Oil and Gas Projects and Re-linking International Legal Reform

Abstract

In many Islamic countries, it appears that outside of oil and gas projects and a few specific infrastructure projects, far-less real economic development has taking place than would have been expected. This is considering the immense endowment of both natural and human resources in the region. Focusing on the stable oil-rich (Gulf) Arab States, the paper examines the role of Law and the formal legal system in the economic development process. It argues that weaknesses in Gulf State legal systems distort the ability of these States to diversify their economies beyond oil and gas and there is the need for international legal-reform in these States, but also the reform should be pursued to serve the needs of the local people. The paper uses the structural-functional legal theoretical approach, interdisciplinary and critical-analytical perspective within the framework of international law and development. It employs qualitative empirical evidence from developed and developing countries.

Keywords: (International) Law and Development, Islamic World, Gulf Arab Region, Oil & Gas Economy, Rule of Law, Role of Law, Economic Development

Section 1: Introduction:

It is a common place that many Islamic countries, particularly the stable oil-rich Gulf Arab States could be described as rich States because they have some of the highest gross domestic product (GDP) per capita rates in the world.¹ These States collectively have less than one percent (1%) of the world's population, their enormous oil reserves have placed them in a position where they exert great influence within the international political economy on the global arena.² However, these States appear to have deficiencies at different scales, in both the rule of law and, the specific content of legal rules and quality of legal institutions.

Research conducted by scholars suggest that the region, particularly the Gulf Cooperation Council ('GCC' – comprising of Kuwait, Bahrain, Qatar, Oman, United Arabs Emirates, and Saudi Arabia³), is considered to be among the most influential economic and political partnerships in the world.⁴ The member States of the GCC depend much on oil resources to grow their economies, develop their states and compete favourably with other nations globally. The oil boom that was witnessed between the year 2002 and 2008 generated a lot of revenue for all the six members. It is estimated that the average annual revenue was about \$327 billion between the year 2002 and 2007 – the oil revenue has also been a key in enhancing the

¹ Though, the Arab States of the Persian Gulf (like Qatar, Dubai, Oman, Bahrain, Saudi Arabia, Kuwait, and the United Arab Emirates) are widely seen as the richest among them – The Gulf States have long been an economic powerhouse within the region; for example, of the 50 companies in the Arab world, 45 are located in the member States of Gulf Cooperation Council (GCC). This has placed the members of GCC in a good position and giving them an important role promoting wider economic growth in the region – See The Legal 500, Bridging the Gulf: An investigation of the GCC and Middle East legal market: available at https://www.legal500.com/assests/pages/client-insight/middle_east (accessed 29 June 2019). It is to be noted that these Arab States on the Persian Gulf are culturally close to each other, except for Iraq and Islam shapes most of the cultural traditions and customs.

² World Bank, 'Inequality, Uprisings and Conflict in the Arab World, (2015) International Bank for Reconstruction and Development / The World Bank available at www.worldbank.org (accessed 07 July 2019).

³ See G. Puig and A. Al-Khodiry, The Economic and Monetary Union of the Gulf Cooperation Council (2012) Journal of World Trade, 46(1), 121-154. Doi: TRAD2012005.

⁴ See S. Colombo, C. Committeri, R. Ayadi, S. Gadi, W. Groen, A. Al-Shalabi, and C. Bianco, Bridging the Gulf: EU-GCC Relations at a Crossroads (2014). Istituto Affari Internazionali (IAI): Italy, Rome.

competitiveness of the nations and promoting economic growth in the region due to the issue of diversification.⁵ Oil revenue to a large extent determines the various macro and micro-economic indicators such as investments and growth in the region. However, while there are other vital indicators like structure of the economy, labour market and the governance; these have remained less positive in the Gulf region.⁶

These States have operated well and enviably within the global economy because of their natural resource gifts, especially enormous reserve of oil until the recent unforeseen and unpredicted global financial downturn⁷ that negatively affected the global oil prices.⁸ The unexpected crash on oil prices associated to the financial crises sent a shocking wave throughout the region; e.g., available statistics suggest that in a little over one year (2014-2015) oil prices have fallen drastically from \$108 a barrel to around \$33, with 2016 projection, suggesting a lower price of \$20.⁹ Yet, different levels of failings in both the rule of law and content of legal rules in the States seem obvious. The legal system remains largely dysfunctional; there is a consensus that Arab judiciaries do not hold the powerful accountable to clear legal doctrines and people who criticise human rights breaches are at serious risk of arbitrary detention,

⁵ A. AlQudah, A. Badawi, and M. AboElsoud. The Impact of Oil Sector on the Global Competitiveness of the CGG Countries: Panel Data Approach (2016) *Research Journal of Finance and Accounting*, Vol.7, No.20. *It is important to emphasise that the level of dependence on oil and gas is at different degree among the Gulf Arab States and the implication on the rule of law and economic development also differ among the countries. Countries like Dubai and Kuwait appear to fare better; though, they still have serious rule of law and human rights issues; for example, in Dubai in certain situations, men and women do not stay in the same taxi or train coaches.*

⁶ *Ibid.*

⁷ This crisis arguable started in 2008; it is documented that while it is almost impossible to disentangle the causes of global financial crisis, the most often discussed causes include (1) deregulation of financial markets; (2) sophisticated financial innovations linked to rapid changes in computer technologies; (3) excessive executive compensation; (4) low interest rates; (5) subprime loans, especially for mortgages; (6) speculation in general, with an emphasis on speculation in housing; (7) Fraudulent Misrepresentation; and (8) securitisation on war against terror – See B. Ikejiaku, *The Recent Global Financial Crisis, De-Linking Security-Protectionism and Re-Linking Fraudulent Misrepresentation in MNCs & Global Market: contending existing issues in international law (IL) & international relations (IR)* (2018) *Comparative and International Law Journal of Southern Africa*, Vol. 50. Issue 3.

⁸ *The Legal 500*, supra note 1.

⁹ According to International Monetary Funds, the Gulf States are facing a cumulative fiscal deficit of more than \$1 trillion over the next five years, and there seems to be no short-term fix on the horizon. Current projections or forecasts show that oil prices will increase slowly, but by 2020 oil is expected to be trading at around \$63 a barrel, a level that is still lower than most of the States break-even prices at current spending levels.

imprisonment and torture. Every Gulf country shows similar symptoms, but perhaps on a different scale.¹⁰

This situation has raised doubt about the wealth and affluence of the States / region centred on oil; it has equally questioned the viability of the region's diversification development strategies.¹¹ And has transformed the way international investors think about engaging with the region.¹² This interesting interplay centred on dependence and over-reliance on oil, the fluctuations of oil prices, the effects on the economic development and the need for legal reforms in the region forms the basis of this paper.

Based on the above background, the major argument that the paper advances are that failings in Gulf State legal systems hamper the ability of these States to diversify their economies beyond oil and gas, in order to achieve real economic development. These shortcomings relate to 'general respect for the rule of law', and, to the 'specified content of legal rules and quality of legal institutions'. Law reform is imperative to correct these failings; and to be effective, law reform must be adequately tailored to the local context, reflecting the distinctive needs and realities of each State.

It appears that outside of oil and gas projects in the oil-rich Arab States and a few specific infrastructure projects, far less real economic development has taking place than would have been expected. This is considering the immense endowment of both

¹⁰ B. Daragahi, *Middle East: Against the Law*, 2013 The Financial Times at www.ft.com

¹¹ The recent move by the GCC member States to make economic diversification an important area of focus is in itself an indication of the realisation of the fact that oil resources influences the regions development and their competitiveness – see M. Hvidt, *Economic and Institutional Reforms in the Arab Gulf Countries*, (2011) *Middle East Journal*, 65(1), 85-102. Also, Al-shaikh et al, argue that in order to reduce their future dependence on oil, the GCC States are pursuing unprecedented economic structural reform – See M. Al-shaikh, M Kolbe, and Y. Al-zayyat, *A Return to Reform in the Gulf Cooperation Council* (2017) www.stratflor.com.

¹² The Legal 500, supra note 1.

natural and human resources in the region.¹³ Looking from the perspective of global competitiveness of the GCC region, is the simple fact that the reliance on oil revenue crowds, out any other economic activity that the countries engage in. This situation has been presented thus: “The Gulf States’ drama is that it (oil extraction) is not simply another economic activity added to the other existing productive sources within a viable and modern economy, as it is with the Netherlands or, for that matter, Canada, Australia, and the Scandinavian countries. In the Gulf, the oil sector dominates the economy; it is almost the unique source of wealth”.¹⁴

The paper identifies that the issue centres on the deficiencies in the legal systems of the Gulf States that obstructs diversification and economic development. In many Islamic countries, outdated legal environment and legal frameworks largely based on the outworn old UK Law that have remained non-updated (i.e. weak legal reform) and merged with Sharia, realistically are not compatible with the present-day development.¹⁵ While there are efforts to have different Law for some countries; for example, the Dubai free trade zones – Jebel Ali in the 1970s probably was the first major development of its kind. However, the Law still impacts on the market and social activities and needs revision in these States.¹⁶ The intrusion of British political influence in the coastal Gulf countries, beginning in the late eighteen century, has greatly affected the legal system operating in the region today. Extraterritorial

¹³ D. Jordan, Trends in Trade and Investment Policies in the MENA region, available at <http://www.oecd.org/mena/competitiveness/WGTI2018-Trends-Trade-Investment-Policies-MENA-Nasser-Saidi.pdf> (accessed 16/08/2019).

¹⁴ J. Seznec and M. Kirk, *Industrialisation in the Gulf: A Socioeconomic Revolution* (Routledge: New York, 2010), 97-185 at 183.

¹⁵ R. Lackey, 'Why have the Islamic Countries failed to Develop even with Resources like Oil. While Countries with no Resources like Switzerland have Flourished', available at <https://www.forbes.com/sites/quora/2013/01/08/why-have-the-islamic-countries-failed-to-develop-even-with-resources-like-oil-while-countries-with-no-resources-like-switzerland-have-flourished/#7522ce10282c> (28/05/2019)

¹⁶ Ibid.– See also A. Al-Suwaidi, Developments of the legal System of the Gulf Arab States. (1993) Arab Law Quarterly, Vol.8. No.4. 289-301.

jurisdiction was given in Bahrain, Qatar and the Trucial coast and began with the protection agreements from 1880. Under British influence much of the legislation adopted by local authorities was borrowed from the common law codes of India and final appeal from decisions taken in the court late to Privy Council in England.¹⁷

The research examines the role of Law and the formal legal system in the economic development process; it focuses on the stable oil-rich Arab States. It argues that failings in Gulf State legal systems hamper the ability of these States to diversify their economies beyond oil and gas. It calls for the need for legal reform in the Gulf States and the reform should be adequately tailored to the needs of the local people.

1.1: Method/approach and legal theory

In terms of method and approach, the research uses the structural-functional legal theoretical approach, interdisciplinary, and critical-analytical perspective within the framework of (international) law and development. It employs (comparative) qualitative empirical evidence from Islamic Arab Gulf region and developed and developing countries for the analysis. While the structural-functionalist legal theoretical approach will be used to analyse the proposed important and functions of Law, which is centred on considering and improving the needs of the local region (in this paper the Arab Gulf countries). The interdisciplinary and critical-analytical perspective involve employing literature in the legal, IR, economics, and international development. This will be critically analysed within the framework of (international) law and development. The (comparative) qualitative empirical evidence is employed by gathering relevant

¹⁷ Ibid.

material from Arab region, developing and developed countries for an in-depth analysis.

The paper adopts Structural-Functional Legal Theory in the analysis section to demonstrate that both the rule of law and the content of legal rule and the legal institutions need to be functional in order to create an enabling environment for diversification and to achieve economic development. From a legal perspective, a functional explanation in legal theory is an important and familiar legal concept in positive legal theory.¹⁸ It emphasises the idea of functional explanation of a phenomenon or society. For example, in response to the common, but very important questions: Why do legal rules have the form and content that they do, in fact, have? A key answer according to functionalist is that the function of a rule can be part of the causal explanation of the content of the rule. Why does corporate law limit the liability of stockholders? A functionalist answer might be that the rules are the way they are because they serve the interest of the capitalist class. Or that this is the rule because it is the efficient rule, and common Law selects for efficient rules.¹⁹

Similar questions relevant to this paper are: Why have the problems bordering on the role of Law and/or the rule of Law in development process continue to re-occur in the global south? A simple answer from a functionalist point of view might be that there are weak legal reforms that do not allow the rule of Law to function in many countries of the global south. Or why has far less real economic development outside oil and

¹⁸ Positive legal theory attempts to explain and predict legal behaviour, especially the content of legal rules; see for example, H.L.A. Hart, *The Concept of Law* (Oxford: Clarendon Press, 1961); H. Hart, Positivism and The Separation of Law and Morals, (1958) *Harvard Law Review* Vol. 71, 593; and L. Fuller, Positivism and Fidelity to Law, (1958) *Harvard Law Review* Vol. 71, 630.

¹⁹ See L. Solum, *Legal Theory Lexicon 040: Functionalist Explanations in Legal Theory* (Georgetown University Law Centre, 2003).

gas projects taking place in many Islamic countries, including the stable oil-rich Arab States? The simple and precise answer from a functionalist perspective will be that the issue centres on neglect for the role of Law and the formal legal system in economic development process in the region. Several other researches have applied a similar approach in the realm of Law and economic development. Reference is often made to Max Weber's nineteenth-century work "Sociology of Law", which "inquired into the casual relationship between particular features of western Law and the development of capitalism".²⁰ In particular, Sen's work on the centrality of the Law in development process also provides a helpful answer to the question which is relevant to functional approach of law.²¹

In line with this theory, it is the view of this paper that dysfunctionality in Gulf State legal systems at different level distorts the ability of these countries to diversify their economies beyond oil and gas, with negative impact on economic development, as this paper intends to demonstrate in the following sections. In other words, various Islamic countries show deficiencies in their practice of the rule of Law and symptoms of weak content of legal rules and legal institutions at difference levels. Some proponents of human rights are deeply sceptical of Islam generally. They argue that the two are inherently incompatible. There is plethora of examples of Islam being used to legitimise violations of human rights. Notable cases are Saudi Arabia's use of whipping and other inhuman punishments, Pakistan's blasphemy legislation, or the

²⁰ See for example, K. Gadio, *The Role of Law in the Development for the African Continent from a Development Agency Perspective*, Keynote Speech delivered at the 2010 Harvard African Law and Development Conference from 16–18 April, available online at: <http://www.afdb.org/en/newsevents/article/the-role-of-law-in-development-for-the-african-continent-from-a-development-agency-perspective-6590/>, accessed 2 September 2018.

²¹ See A. Sen, *Development as Freedom* (Oxford University Press, 1999).

many gender discrimination laws in many Muslim-majority countries. Yet, country like UAE has shown a record of improved rule of Law.²²

The paper is structured into five sections – Section 1 introduces the paper and presents the methodology, including looking at the structural-functional legal theoretical approach, which the paper employs for the analysis. Section 2 discusses the theoretical views on the relationship between the rule of Law and economic development process and provides some examples from specific countries. Section 3 analyses oil-based economy and the challenges of role of Law in economic development process with a focus on the stable oil-rich (Gulf) Arab States. Section 4 examines and analyses the functional nature of the role of Law in providing enabling environment for diversification in Arab States, in order to achieve economic development, before summarising and concluding the paper in section 5.

Section 2: The relationship between the rule of law and economic development

The subject of rule of Law is an age-long discourse,²³ but more recently the discussion on rule of Law and economic development has prominently featured in the academic literature and professional practice.²⁴ There appears to be a close association

²² See M. Petersen, *Islam and human rights: clash or compatibility?* June 11, 2018 www.blogs.lse.ac.uk.

²³ Plato wrote one of the earliest surviving discussions. While convinced that the best form of government is rule by a benevolent dictator, Plato concedes that, as a practical matter, persons with the necessary leadership qualities are rare. Accordingly, he imagines a utopia that is governed not by a benevolent dictator, but by Nomos, the god of Law. In "The Politics," Aristotle also considers whether it is better for a king to rule by discretion or according to law and comes down firmly on the side of law; individuals are too often swayed by private passions. Christian philosophers, seeing the power to rule as a delegation from God, the Lawgiver, saw any kingly act contrary to "natural" law as an express violation of this delegation for which a monarch would surely be punished after death – See M. Thomas, 'Rule of Law in Western Thought' (World Bank Group, 2005) available at www.worldbank.org/WBSITE/EXTERNAL/TOPICS/EXTLAWJUST (26/08/2018).

²⁴ See for example, B. Ikejaku, *The Role of Law and the Rule of Law in the Economic Development Process: Quest for New Directions and Approaches in International Development Law Regime* (2020) *Denver Journal of International Law & Policy* Vol. 47.1, 51-71; See also S. Rolland, *Developing country coalitions at the WTO: In search of legal support* (2007) *Harvard International Law Journal*, 48(2), 483-551; See also Stephenson, M. *Rule of Law as a Goal of*

between efficient rule of Law and high growth, as well as between respect for the rule of Law, justice, political stability, and sustainable development.²⁵ In his work, Faundez argues that constitutionalism seeks to reduce the stakes of politics by protecting liberty and human dignity.²⁶ In this respect constitutionalism sets limit to the powers of the state and protects individual freedom. This is considering that the concept of constitutionalism is not far from the notion of the rule of Law, as it provides the institutional foundation for the rule of Law in the contemporary society to thrive.²⁷ While the similarities between constitutionalism and the rule of Law may still raise some debates, there is clear suggestion that the protection of basic rights and liberties is an essential component of any democratic process and essential feature of the rule of Law.²⁸ It has been argued that distortion of the rule of Law weakens the institutional foundation of economic growth, and therefore, results in legal and institutional frameworks of the State being crippled.²⁹ This creates the single greatest obstacle to good governance, economic, and social development.³⁰ The harmful effects of weak legal system (e.g., corruption) are especially severe on the poor, who are hardest hit by economic decline, and are the most reliant on the provision of basic needs and public services.³¹

Development Policy (World Bank Research, 2008) at www.econ.worldbank.org/; and Thomas, C. "The Rule of Law Revival" (1998) *Foreign Affairs* 77(2):95-106 (1998)

²⁵ See G. Yash, "The Rule of Law, Legitimacy, and Governance" (1986) *International Journal of the Sociology of Law* 14:179-208. See also Bingham, L 'The Rule of Law' (2007) *Cambridge Law Journal* Vol. 66, No.1, 67-85.

²⁶ See J. Faundez, *Law and Development Lives On*, Legal Studies Research Paper No 2011-12, Warwick Law School.

²⁷ Ibid

²⁸ Ibid

²⁹ See A. Chong, and C. Cesar "Causality and Feedback Between Institutional Measures and Economic Growth" (2000) *Economics and Politics* 12(1):69-81.

³⁰ Ibid

³¹ World Bank, 'World Bank finds corruption is costing billions in lost development power'; The Chartered Institute of Building (CIOB), September 29/2004. available at <http://www.odiousdebts.org/odiousdebts/index.cfm?DSP=content&ContentID=11519> (05/09/18)'

For the purpose of this paper, the rule of Law incorporates the simple and direct UN definition and Lon Fuller's eight (8) principles of legality that capture the basic essence of the rule of Law. According to the UN, the term rule of Law refers to:

A principle of governance in which all persons, institutions and entities, public and private, including the state itself, are accountable to Laws that are publicly promulgated, equally enforced and independently adjudicated, and which are consistent with international human rights norms and standards. It requires, as well, measures to ensure adherence to the principles of supremacy of Law, equality before the Law, accountability to the Law, separation of powers, participation in decision-making, legal certainty, avoidance of arbitrariness and procedural and legal transparency.³²

Lon Fuller, in his much authoritative work, *The Morality of Law*, promulgates eight principles of legality that capture the basic essence of the rule of Law: (i) laws must be of general application; (ii) Laws must be widely promulgated or publicly accessible to ensure that citizens know what the law requires; (iii) Laws should be prospective in application; (iv) Laws must be clear and understandable; (v) Laws must be non-contradictory; (vi) Laws must not make demands that are beyond the powers of the parties affected; (vii) Laws must be constant and not subject to frequent changes; and (viii) laws must reflect congruence between rules as announced and their actual administration and enforcement.³³

Considering the above definitions of the rule of Law, some examples from the GCC countries suggest several deficiencies in their rule of law. Despite the great windfall,

³² See UN "What is the Rule of Law? United Nations and the Rule of Law, available at <https://www.uk.org/ruleoflaw/what-is-the-rule-of-law/> (accessed 14/09/2018).

³³ See L. Fuller, *The Morality of Law* (New Haven: Yale University Press, 1964), p.39. Also, the World Justice Project has proposed a working definition of the rule of law that comprises four principles: (a) A system of self-government in which all persons, including the government, are accountable under the law (b) A system based on fair, publicized, broadly understood and stable laws (c). A fair, robust, and accessible legal process in which rights and responsibilities based in law are evenly enforced (d) Diverse, competent, and independent lawyers and judges – see American Bar Association *What is the Rule of Law*, available at <https://www.americanbar.org/content/dam/aba/migrated/publiced/features/Part1DialogueROL.authcheckdam.pdf> (accessed 15/11/2018).

the GCC faced similar challenges they had in previous years. Efforts at diversifying their economies and reducing high oil dependency resulted in limited change. Governance indicators were weak and improvement in public finance and the necessary relationship to sustain the social contract between the rulers and the people required for enhancing accountability and the rule of law – both of which were conspicuously absent.³⁴ Corruption and neglect on the rule of law is widespread; politically, the six GCC States are royal governments, and some of the ruling families in the region date back to the eighteen centuries, as in the case of Oman. Besides, there is no real political opposition in the form of political parties except in the case of Bahrain, which turned into constitutional monarchy allowing the establishment of the political parties since 2000.³⁵

While most of the GCC countries have signed the United Nations Convention Against Corruption (UNCAC), few of them have put in place legislation which criminalises bribery in the private sector. None of Bahrain, Kuwait, Oman, or KSA has passed laws that specifically tackle private sector corruption. Conversely, both Qatar and the UAE have laws that define bribes as any advantage of any sort whatsoever offered to public officials or private sector employees.³⁶ The politico-legal structure of some Arab States, including the GCC States (such as Qatar, Saudi Arabia and Kuwait) makes it difficult to differentiate between corruption in its conventional form (abuse of public office for personal gain), and an inherent failing (rigged rules) in the system itself. For example, in some States both law and custom decree that the land and its natural resources belong to the ruler and fail to distinguish at this level between the private

³⁴ See I. Saif, *The Oil Boom in the GCC Countries, 2002-2008: Old Challenges, Changing Dynamics* (2009) Carnegie Endowment for International Peace.

³⁵ See A. Al-Kindi, *Press Freedom and Corruption in the GCC: Are There Better Future Horizons? An Analytical-Critical Study*, (2019) IntechOpen.

³⁶ C. Pianese, *Fighting Corruption in the GCC* www.theoath-me.com.

and public life of the ruler, while the private property of the ordinary citizen becomes a grant from the ruler.³⁷

The level of freedom of the press in the Arab countries, including the GCC States are generally weak. Freedom House reports in the last 5 years (2013-2017) that covered 17 Arab countries, including the 6 GCC States, suggest that in only 5 out of 17 countries in the region is classified as 'partially free' namely, Kuwait, Lebanon, Morocco, Tunisia, and Jordan. The GCC States are totalitarian regimes despite development efforts that have covered many areas including the establishment of parliaments and representative institutions, except Bahrain.³⁸ There is built-in inequality before the law and internal discrimination – various forms of discrimination thrive in the Arab world including within the GCC countries. This makes the rule of law difficult to recognise. The most common of these forms is the ironclad discrimination against women, which is attributed to the will of God. Women are not equal to men under family law and laws of inheritance.³⁹ In Saudi Arabia and Iran, they are subject to a harsh dress code. Saudi women may not drive a car or travel alone and may not stay in the same car or train coach with men.⁴⁰

While there is available evidence to suggest how the rule of Law interacts with development.⁴¹ However, the greater debate centres on the approach and direction of

³⁷ B. Whitaker, *Corruption in the Arab Countries*, available at <https://al-bab.com/corruption-arab-countries> (accessed 5/6/2020).

³⁸ A. Al-Kindi, *supra* note 35.

³⁹ See A. Wing, *Custom, Religion and Rights: The Future Legal Status of Palestinian women*, (1994) 35 *Harvard International Law Journal*. 149, 158; see also Simons, M., *Cry of Muslim Women for Equal Rights Is Rising*, New York Times, March 9, 1998.

⁴⁰ See M. Mugraby, *Some Impediments to the Rule of Law in the Middle East and Beyond* (2012) *Fordham International Law Journal*, Vol. 16, Issue 3.

⁴¹ According to Sen, development is about creating freedom for people and removing obstacles to greater freedom. Greater freedom enables people to choose their own destiny. Obstacles to freedom, and hence to development, include poverty, lack of economic opportunities, corruption, poor governance, lack of education and lack of health – See A. Sen, *supra* note 20.

the Law that is how to go about it, rather than whether Law has the potential to promote development.⁴² There is a wide assumption suggesting that the rule of Law is essential for economic growth – a very essential attribute of economic development, but the rule of Law is multidimensional concept that connotes various ranges of different components.⁴³ Contemporary legal and economic theory exposes the link between the rule of Law with the economic growth and development. But this appears not to be the case within the GCC; except for the very vital oilfield supply and business sector service. The world of oil and gas in the Gulf countries exists to a large extent outside the ordinary structures of business and law. It is largely conducted outside the private sector by the central governments through their ministries of petroleum or other parastatals, such as ADNOC in Abu Dhabi predominantly without following legal process. In legal theory there is a general view that the rule of Law is essential to any modern legal system, but there is no single viewpoint in terms of determining its scope and content.⁴⁴

Series of empirical research conducted show considerable efforts to formulate suitable empirical assessment of the rule of Law covering the subjective indices and objective indicators.⁴⁵ However, the relative benefit of either type of indicator has been an ongoing point of controversy. While the subjective measure is prone to risk of bias, there is the tendency that the objective assessment may be irrelevant on how the

⁴² See K. Davis, and M. Trebilcock, "The Relationship Between Law and Development: Optimism versus Skeptics", *American Journal of Comparative Law* (2008) Vol. 56: No. 4 (section 4 of this paper dealt on the role of Law in creating an enabling environment for diversification and economic development).

⁴³ This ranges from the same law applicable to everybody, human rights including security of the person, and property rights, to separation of powers, checks and balances on the arms of government, combating of corruption, and accountability – See S. Haggard, and L. Tiede, "The Rule of Law and Economic Growth: Where are We?" *World Development* (2011), Vol. 39, No. 5.

⁴⁴ See K. Kocevaska, Rule of Law – Condition for Economic Development (Republic of Macddonia), *SEEU Review*, Special Edition, Magna Carta 800th (2015) Vol. 11, Issue

⁴⁵ While the subjective indices involve the evaluations of experts or citizens or those that make up aggregate measures; objective indicators are mapped out to capture features of the institutional and legal environment.

institution works.⁴⁶ For example, how does one assess the law and market activities in the GCC – investments by foreign companies and individuals in companies organised within the GCC States is subject to restrictions. Except in Bahrain, Oman and Saudi Arabia in certain circumstances, foreigners are not permitted to hold more than a 49 percent interest in a local company and certain business activities.⁴⁷ As subjects seeking assurance of protection from the Law, the rule of Law still implies the creation of legal system that establishes public order. In this respect, it suggests that the exercise of freedom of market and entrepreneurship, and the protection of ownership rights are possible only if the natural and artificial persons acting on the market or property owners feel confident and safe in an entity.⁴⁸ In the GCC, the only liberal and free market regime (especially from the point of view of a foreign company), is the establishment of free zones to attract foreign business, most notable the Jebel Ali Free Zones at the Port of Jebel Ali, Dubai. For example, if a foreign organisation can meet the requirements of the Jebel Ali Free Zone, it can set-up a 100 percent company, free of local involvement.⁴⁹

During the 1990s and 2000s, the notion that favourable economic development impacts on formal legal institutions was virtually acceptable by many. This is essentially as a result of the growing use of standard of measurement professing to measure the quality of the rule of Law.⁵⁰ The World Bank's rule of Law Index compiled from many sources and stand-points on the operation of legal institutions was employed to demonstrate that the nature of a country's adherence to the tenets of the

⁴⁶ See Haggard, S., MacIntyre, C. and L. Tiede, "The Rule of Law and Economic Development", *Annual Review of Political Science*, Vol. 11, No.1, 205.

⁴⁷ K. Kocevskaja, supra note 44.

⁴⁸ Ibid.

⁴⁹ Ibid.

⁵⁰ See D. Chen, and S. Deakin, "On Heaven's Lath: State, Rule of Law, and Economic Development (Centre for Business Research, Working Paper, 2014) No. 464, University of Cambridge.

rule of Law significantly correlates to the effects of its level of economic development.⁵¹ For example, it was argued robustly that an improvement in the rule of Law scores by one standard deviation (from levels existing in Ukraine in early 2000s) would as it was claimed, lead to a fourfold increase in per capita income over the long term.⁵²

However, this World Bank and other similar initiatives came to be questioned as the expected relationship between rule of Law (or legal reform) and economic growth failed to yield positive result in a number of contexts. A good illustration is China under Deng Xiaoping – how should one reconcile China’s (economic) growth rate with its rule of Law credentials? China has been ear-marked as the fastest growing economy and one of the most important in the world. There is prediction by commentators that China will surpass the size of the U.S. economy at some point in the second decade of this century (in particular on purchasing power parity ‘PPP’, but not in per capita income level).⁵³ For example, China’s profile in manufacturing, particularly in labour intensive industries is an accepted challenge to the manufacturing sectors of the most advanced economies. China is also growing beyond low wage manufacturing and has entered the high technology platform. This is based on high-level research and highly educated scientists and engineers that have performed in the area of research and development activities from some of the world’s most accomplished high technology firms.⁵⁴ This suggests the coexistence of the two may mean that, contrary to the prevailing academic view, institutions appear as not important element, after all to

⁵¹ Ibid

⁵² Ibid

⁵³ K. Dam, *China As a Test Case: Is the Rule of Law Essential for Economic Growth?* (John M. Olin Program in Law and Economic Working Paper No. 275, 2006).

⁵⁴ Ibid

economic growth.⁵⁵ In fact, one group of scholars has gone far about reaching that conclusion, thus;

China is an important counter example to the findings in the law, institutions, finance, and growth literature: Neither its legal nor financial system is well developed by existing standards, yet it has one of the fastest growing economies.⁵⁶

A tentative conclusion from this specific view-point could be, at least that legal institutions and the rule of Law are, not particularly important to the extent as previously claimed.⁵⁷ The Chinese case provides a clearer picture and plausible support, just as Faundez suggests that the rule of Law does not necessarily promotes economic development.⁵⁸

However, while emphasising the important of the rule of Law to development process, Sen argues that development has to include a notion of the rule of Law or freedom, since development is not only about economic growth, as measured by standard of indices such as GDP per capita.⁵⁹ Rather, he views development as a broader process, which aim is to enhance people's capabilities. Thus, according to Sen, scholars and development practitioners should take into account all the domains of social life, including economic, social, political and legal, since they all have a part on

⁵⁵ An important alternative route (from the Rule of Law) to achieving economic development is what is generally referred to as 'phenomenon of economically benevolent dictatorships' demonstrating that countries under dictators such as Chile under Augusto Pinochet (1973-1990) and South Korea under Park Chung Hee (1961-1979). In these countries rapid economic development was realised not on the basis of adherence to the Rule of Law but on the ability of non-democratic governments to create 'non excludable' public goods for the benefit of the masses – See R. Gilson, and C. Milhaupt, 'Economically Benevolent Dictators: Lessons for developing Democracies' (2011) *American Journal of Comparative Law*, Vol. 59, 227-288. See also J. Y. S. Cheng, China's approach to BRICS (2015) *Journal of Contemporary China*, 24(92), 357-375.

⁵⁶ A. Franklin, J. Qian, and M. Qian, Law, Finance, and Economic Growth in China (2005) *Journal of Financial Economics* Vol. 77, 57-116.

⁵⁷ Indeed, one group of scholars, Allen, Qian and Qian ('AQQ'), has gone far to reaching that conclusion; See K. Dam, "China As a Test Case: Is the Rule of Law Essential for Economic Growth?" (John Olin Law & Economic Working Paper, 2006) No. 275, University of Chicago.

⁵⁸ See J. Faundez, (ed.), *Good Governance and Law: Legal and Institutional Reform in Developing Countries* (New York: St. Martin's Press, 1997).

⁵⁹ See A. Sen, supra note 20. See also J. Faundez, Rule of Law or Washington Consensus. The Evolution of the World Bank's Approach to Legal and Judicial Reform, In Perry-Kesaris, A (ed.) *Law in the pursuit of Development* (Routledge, London, 2010).

the development process.⁶⁰ In this context, various spheres of social life cannot be independently considered – economic growth without social equality or economic redistribution without effective political participation could hardly be taken as meaningful contribution to development. In Sen’s perspective, these different sectors are part of a single process, since each plays a relatively equal role in enhancing people’s capabilities.⁶¹ Within Sen’s conceptualisation, even if it were established that Law did not contribute one iota to economic growth, Law’s central role in the process of development would not be questioned. Sen believes, however, that Law *does* make an important contribution both to economic growth and to other domains of social life.⁶² Yet, he cautions that while Law’s contribution to economic growth is crucial, its role is not self-evident. Because social life is complex, in order to understand the role of the rule of Law in development, it is necessary to carefully investigate the causal interconnections between the economic, social, political and legal domains.⁶³

The implication is that at extremely exceptional cases, societies can still experience economic development with or without the rule of Law depending on the culture, political leadership, and attitudinal belief of the indigenous population, just as the case of China suggests. However, the conclusive and general understanding based on majority views of scholars and most empirical studies is that societies can hardly experience ‘real’ economic development without the rule Law, irrespective of the culture, political leadership and belief of the indigenous population. More so, societies without efficient rule of Law could hardly be developed.

⁶⁰ Ibid

⁶¹ Ibid

⁶² Ibid

⁶³ See A. Sen, What is the Role of Judicial Reforms in the Development Process? (2006) *The World Bank Legal Review: Law Equity and Development*, Vol. 2, 33-51.

Section 3: Examination and analyses of oil-based economy and legal challenges to economic development process in the oil-rich Arab States

Under this section, the paper examines and analyses; (i) the nature and dynamics of an economy based on oil and the issue of rule of Law and (ii) the challenges to role of Law (i.e., problems of the specific content of legal rules and quality of legal institution) in boosting such economies centred on natural resources, like the countries of Arab Gulf region in economic development process.

(i) *Oil-based economic development and the issue of rule of Law in the oil-rich Arab Gulf States*

Trends of events within the international system suggest that most of the countries within the global south with large oil and gas reserves, including the oil-rich Arab States are over-dependence on oil.⁶⁴ In all these countries, economic activity, fiscal revenue, export earnings and foreign exchange are directly and indirectly dependent on oil production to a large extent (see Table 1):

Countries	Government	Oil	Other
Algeria	11%	27%	62%
Bahrain	11%	24%	65%
Iraq	12%	47%	41%
Kuwait	11%	63%	26%
Libya	45%	39%	16%
Oman	11%	56%	33%

⁶⁴ L. Al-Khatteeb, 'Gulf Oil Economies must wake up or face Decade of Decline. Brookings Initiative available at www.brookings.edu (accessed 04/07/2019).

Qatar	6%	51%	43%
Saudi Arabia	12%	43%	45%
UEA	3%	34%	63%
Yemen	10%	19%	71%

GDP Composition of Arab Oil Exporters, 2014; Sources: WEO; and IMF staff estimates.

Most of the developments that have taking place in these countries were based on wealth from oil and gas. In other words, the economy of these countries is built on natural resources extraction, as opposed to economy of most countries in the global north build on productive labour by the population.⁶⁵ There is a huge qualitative difference between an economy built on natural resource extraction, where the populace is a cost centre, and an economy built on productive labour by the population – where increasing capabilities of the society leads to more wealth.⁶⁶ This becomes more glaring when the economies and GDP per capita in 2014, which vary significantly across countries, are considered. Saudi Arabia has the largest economy, with a nominal GDP of US\$746 billion while Bahrain is the smallest of all, with a GDP of US\$34 billion. The disparity in 2014 per-capita-GDP is very large: Qatar had one of the highest per-capita-GDP in the world at close to US\$94,000 (and the highest in the world when measured in purchasing power parity terms).⁶⁷ Conversely, Yemen had a GDP per capita of US\$1,574 in 2014. There were also significant variations in real GDP-per-capita growth across countries in the group, but in all countries except Iraq

⁶⁵ R. Hutt, Which Economies are most Reliant on Oil? World Economic Forum available at <https://www.weforum.org/agenda/2016/05/which-economies-are-most-reliant-on-oil/> (accessed 24/8/2019).

⁶⁶ R. Lackey, supra note 14.

⁶⁷ See M. Bahrain, *Economic Diversification in Oil-Exporting Arab Countries* (International Monetary Funds, 2016). The world average total GDP per capita was estimated at 10,848 nominal USD in 2014.

it was lower than the world average of 3.1 percent over 2010-14. Over that period, GDP per capita declined in Yemen and Oman in real times.⁶⁸ However, when oil and government sectors are excluded (as a measure of the wealth-generating value added produced outside the oil sector), the remaining GDP per capita is low in most countries. Only a few Arab oil exporter economies would have per capita GDPs above the world average.⁶⁹

Empirical evidence could be drawn from the above chart, which in part, portrays variations in economic diversification across Gulf States. The economies of four States (Algeria, Bahrain, UAE, and Yemen) show lower dependence on oil, and in effect better economic diversification, than the other six States. Evidence shows that UAE and Algeria are in the top five ranked Arab States (Middle East and North Africa region) on rule of Law and corruption records according to countries assessed by the World Justice Project (WJP) Index 2019 and Transparency International Index 2018.⁷⁰ This may suggest that countries with better (or improvement on) rule of Law records have tendency to greater economic diversification and countries with evidence of economic diversification have better chances of experiencing economic development.⁷¹ This may establish that there is a casual relationship between the rule of Law, economic diversification and economic development.⁷²

⁶⁸ Ibid.

⁶⁹ Ibid.

⁷⁰ The rule of Law according to WJP is a framework of Laws and institutions that embodies four universal principles – accountability, just Laws, open government and accessible and impartial dispute resolution; see The World Justice Project Rule of Law Index 2019. See also Middle East and North Africa: Corruption Continues as Institutions and Political Rights Weaken, Transparency International Rankings 2019.

⁷¹ Economic diversification can be defined as the shift toward a more varied structure of domestic production and trade with a view to increasing productivity, creating jobs and providing the base for sustained poverty reduction and economic growth – See OECD/WTO, *Aid for Trade at a Glance 2019: Economic Diversification and Empowerment* (OECD Publishing, 2019) Paris. Thus, diversification strategies can deliver sustained, job intensive and inclusive growth – See C. Fruman, *Economic Diversification: A priority for action now more than ever*, World Bank, Private Sector Development Blog.

⁷² However, this is not a strong relationship, as Qatar with high dependency on oil and gas has better corruption record than Bahrain and Yemen.

A good consideration of the development pattern of most western countries, even Taiwan, Korea, Japan and China suggests that these countries more or less virtually achieved development through manufacturing strategy, initially low cost, low value added manufacturing, climbing up the ladder-chain, which results in vigorous, well-educated, and diversified economies. And all these countries equally have elements of positive records of rule of Law at different levels. While Taiwan, Korea and Japan may have some issues on their rule of Law; but available empirical evidence shows that it is only China that has defied the theory and attain economic development in spite of its poor rule of Law credentials.⁷³ This does not suggest that natural resource endowments have not been one of the factors that helped led some countries (for example the US) to achieve economic greatness. However, economies centred on natural resources in the absence of active legal reform / rule of law would hardly, in most cases lead to well-developed society.⁷⁴ Just as argued above, China is the only very good case of a country that has (defied this theory) achieved buoyant economy and veritable economic development with a poor rule of Law credentials.⁷⁵ A large body of research suggests that a strong rule of Law is a key prerequisite for sustained economic development, but China's unique political economy which puts limited power on its judiciary / courts seems to defy conventional wisdom. There is also argument put forward that the defining features of a 'disinterested government', under President Yang Yao's government fulfil many of the same roles as the rule of Law from a development perspective.⁷⁶ It should also be appreciated that China's unique and

⁷³ K. Dam, *supra* note 53.

⁷⁴ See G. Barron, *The World Bank and Rule of Law Reforms*, (Working Paper Series 2005), Development Studies Institute: London School of Economics and Political Science; also see B. Ikejiaku, *International Law, International Development Legal Regime & Developing Countries*, *Law & Development Review* (2014) Vol. 7(1): 131-163.

⁷⁵ A. Franklin, J. Qian, and M. Qian, *Law, Finance, and Economic Growth in China* (2005) *Journal of Financial Economics* Vol. 77, 57-116.

⁷⁶ See J. Mazur and A. Ursu, *China's Disinterested Government and the Rule of Law* (2017) *Asia & the Pacific Studies*, Vol. 4, Issue 2.

surprising economic breakthrough was possible because China maintained a competitive labour-intensive manufacturing industries, technological advanced structure grounded and backed up with high-level research, and highly educated scientists and engineers that rivalled the world's most advanced technological countries.⁷⁷

Resource-based economic wealth is usually distributed more unfairly and unequally without producing any significant or desired effect. It is documented that during and aftermath of the Arab Springs, State patronage has been heavily employed by all GCC countries. But most generously by those countries where potential destabilisation has been highest due to weakness in the rule of Law, particularly Saudi Arabia, Oman and Bahrain.⁷⁸ For example, with a total estimated volume of \$130 billion, the welfare package announced by Saudi Arabia in May 2011 is larger than the countries total annual budget in 2007. Similarly, in the same year, Qatar with more than national population of 300,000 as at 2011 announced a welfare package worth \$8 billion.⁷⁹ Such massive expenditures by the State raise a serious question about the long-term sustainability of the whole welfare package in the absence of oil wealth.

There are clear indications the GGC and entire Gulf region are currently embarking on transitions toward a non-hydrocarbon economy, a move from wide-ranging fees toward fewer broad-based taxes (e.g., VAT and excise taxes). This appears to be a

⁷⁷ K. Dam, *supra* note 50; See also Mazur & Ursu, note 58.

⁷⁸ See S. Colombo, *The GCC Countries and the Arab Spring. Between Outreach, Patronage and Repression* (IAI Working Paper 1209 – March 2012).

⁷⁹ *Ibid*

positive step that could provide much-needed revenue diversification. Notable cases are Kuwait and Saudi Arabia.⁸⁰

In many cases, the distribution of such wealth is to a small number of the people at the top echelon of the society. This set of people, in most cases is at the top due to tribal, family, or political connections, and not due to their skills or productive capacity – thus, could be described as patronage-oriented placement opportunity.⁸¹ Most notable are those connected to the royal family. The economic weight of former Qatari Prime Minister Hamad bin Jassim Al Thani and several sons of late UAE President Sheikh Zayed, including Abu Dhabi's Crown Prince Mohammed bin Zayed, the children and grandchildren of the former Kuwait ruler, Sabah Al Ahmed and the three sons of Sultan Qaboss in Oman illustrate this.⁸² The reverse is the case in a vibrant, competitive manufacturing economy, where wealth tends to accrue to innovators and efficient operators, and someone with a novel idea or better approach of doing things has more chance to get or rise to the top of the ladder because the rule of Law is active. It is acknowledged, this is not an ideal situation and imperfect even in the United States, but it is more accepted as a better system than political patronage system.⁸³

The above suggests that there is also the danger or possibility that at a point, the oil and gas will run out and finished or unable to be burned because of global warning;

⁸⁰ According to Reuters, the IMF recently said: Kuwait – which has one of the world's biggest sovereign funds – could need some \$180 billion in financing over the next six years in the absence of more drastic fiscal measure; and Saudi Arabia – the Arab world's largest economy and the world's largest crude exporter, expects a deficit of \$50 billion this year (2020), up from \$35 billion in 2019. D. Barbuscia and Y. Saba, *Gulf's Financial Wealth could be over in 15 Years*: IMF: available at www.reuters.com/article/amp/idUSKBN2002HZ (accessed 12/03/2020)

⁸¹ R. Lackey, *supra*, note 15.

⁸² See M. Kamrava, G. Nonneman, A. Nosova, and M. Valeri, *Ruling Families and Business Elites in the Gulf Monarchies: Ever Closer?* Chatham House, 2016, The Royal Institute of International Affairs.

⁸³ R. Lackey, *supra*, note 15.

this will pose a great challenge to the oil-based economy.⁸⁴ This is because economic activities and development are centred more on oil – products and services for local consumptions that is consumer spending income is directly from energy related jobs or from government redistribution of energy wealth, and development in local transport, power, and water funded by energy wealth to a large degree.⁸⁵ Even most of other domestic-based development that has taking place in many GCC countries seems to be economically inefficient. For example, building of skyscrapers in the desert has been largely directed by government, or influential families affiliated with government, and financed by huge capital flows from oil/gas and foreign investments from Russia, South Asia, and other parts of the Arab or Muslim world. They were not the product of real free enterprise founded on active legal framework and rule of law.⁸⁶ A good example is UEA – Burj Khalifa tower, centre, and other skyscrapers, including the new malls in Dubai, United Arab Emirate are now a slow bleed because oil spenders are retrenching.⁸⁷

A closer look at these set of investments suggests that a good number of them are not wealth producing, rather they are business or economic model of storing wealth generated elsewhere, as a form of regulatory venture. Abysmally, even most of the labour sourced for these investments in many of these countries, (including skilled labour, to build building and operate companies) is also imported – involving labour from China and Pakistan, accountants from the Philippines, advertising executives from the Levant, and engineers and architects from the UK and US.⁸⁸ More so, setting

⁸⁴ A. Malik, The Gulf Economies coming Meltdown How to prevent it? Foreign Affairs, available at www.foreignaffairs.com (accessed 27/07/2019).

⁸⁵ Ibid; see also Table 1.

⁸⁶ R. Lackey, *supra*, note 15.

⁸⁷ Z. Fattah, *A Haven for Money in the Middle East, Dubai is Losing Its Shine*. (Bloomberg, 2018)

⁸⁸ Ibid

oil and gas revenue into sovereign wealth funds (SWFs) which invest in business in the West has from all indications identified as the other form of investment. Notwithstanding the risk posed by the western financial collapse of 2008-2009, major Islamic SWFs still make most of their investments outside the region.⁸⁹ Though, there have been changes in recent times.⁹⁰ The GCC authorities until recent times were always criticized of not utilizing the enormous resources extracted from oil revenues in an efficient manner to diversify their economies, thereby provide economic development and to become independent economies. However, since the dawn of the new century, the financial strategy, mood and behaviour in the region has gone through a revolution: GCC countries have been, not only aggressively working towards becoming financial centre of the region by competing with each other, but also challenging the status quo of the West's hegemonic financial power – a good case being Dubai's attempt at buying the US ports.⁹¹

Scholars and experts have put up a few likely reasons why energy wealth has not been sufficient to push these countries in the Arab Gulf region (like Qatar, Dubai, Jordan, Oman, Bahrain, Saudi Arabia, Kuwait, and United Arab Emirates) toward greater, robust and more buoyant development (i.e., real development not mainly financed by oil wealth). These includes: (i) Legacy: a historical legacy of a Soviet alliance and socialism in the Arab world (due to their opposition to the West during the early cold war, opposition to Israel, and some ties between Pan-Arab nationalism and socialism just due to both being revolutionary anti-colonial movements, and due to the

⁸⁹ E. Lambrianos-Sabeh, and D. Graves, *Mid-East States Attempt to Diversify Economies amid Low Oil Prices* – Forbes available at www.forbes.com (12/08/2019).

⁹⁰ See M. Asutay, *GCC Sovereign Wealth Funds and their Role in the European & American Markets (2008) Equilibri*, Vol. 12, Issue 3, 335-354.

⁹¹ Ibid

beliefs of specific leaders like Nasser);⁹² (ii) Anti-intellectualism and anti-science bias of modern fundamentalist Islam: clearly, it is not the case that Islam itself is hostile to science; after all, for hundreds of years, the Islamic world was the standard-bearer for world scientific knowledge and progress. Yet, education in many Muslim countries consists primarily of religious rather than scientific programs, and those who do get quality educations in the west tend to remain overseas;⁹³ (iii) Women as second-class citizens: it is not just that women cannot contribute directly to the workforce (although that is a big factor), but that women are not educated to the same standard, and thus are not able to raise children to be scientists and engineers as effectively. This is one area where great progress has been made, but there is a generational lag;⁹⁴ (iv) Corruption: it is a combination of an inefficient official process and a small number of wealthy and powerful families, able to either change the Law as needed, or ignore it. If a person ever gets into a dispute with a local national, the person is going to lose. If local nationals of different levels of power ("wasta") get into a dispute, it is usually decided based on connections, vs. the merits of the case;⁹⁵ (v) Geopolitical instability: In general, lack of stability does not lead people to make long-term investments in the future. If a person is worried the world is going to end, the person is going to enjoy life now (to the extent possible), not sacrifice a lot to potentially have a better future. A high level of fatalism and lack of feeling of agency has never helped

⁹² See R. Lackey, *supra* note 15; see also S. Radchenko, *The Rise and the Fall of the Sino-Soviet Alliance 1949-1989* (ed) N. Naimark, S. Pons, and S. Queen-Judge, *The Cambridge History of Communism*, (2017) Cambridge University Press, 243-268 available at www.cambridge.org/core/books/cambridge-history-of-communism/rise-and-the-fall-of-the-sinosoviet-alliance-1949-1989/C1CDD3827D7D4DB5EABBD45B92B3548 (22/8/2019).

⁹³ Ibid, R. Lackey, see also M. Lynch, N. Onar, and C. Kerr, *Islam in a Changing Middle East*. In *Islam and International Order, Middle East Political Science, Transatlantic Academy* available at https://pomeps.org/wp-content/uploads/2015/07/POMEPS_Studies_15_Islam_Web.pdf (22/8/2019);

⁹⁴Ibid. R. Lackey, *supra* note 15 see also R. Allam, *Countering the Negative Image of Arab Women in the Arab Media: Toward a 'Pan Arab Eye' Media Watch Project*, Middle east Institute, available at <https://www.mei.edu/publications/countering-negative-image-arab-women-arab-media-toward-pan-arab-eye-media-watch> (accessed 19/8/2019).

⁹⁵ Ibid, R. Lackey, *supra* note 15 see also I. Fabir, & S. Yarkes, *Governance and the Future of the Arab World*. Carnegie Endowment for International Peace available at <https://carnegieendowment.org/2018/10/16/governance-and-future-of-arab-world-pub-77501> (accessed 07/8/2019).

entrepreneurship;⁹⁶ (vi) Basically, there is a kind of assumption that this is a push against the economic efficiency gradient: it will not happen without serious effort and luck, at least until energy income declines,⁹⁷ and (vii) Resource curse ("Dutch Disease"): essentially, it appears that anyone smart goes into oil/gas, or if smart/lazy, into oil/gas ministry jobs, and anyone seeking safe investment returns tends to invest in oil/gas, where a great return is likely. Having some resources is better than no resources but having resource-based industries dominate an economy crowds out all other investment.⁹⁸

However, discussion as presented in this paper suggests that the degree of variation in economic outcomes across Gulf States is more explained by legal-related reasons, which is the more significant variables than the other non-legal reasons; though, it is not an exclusive one.

(ii) *Legal challenges to the role of law in economic development process within the context of oil-rich Arab Gulf States*

In order to consider the legal challenges to the role of Law in economic development process, it is necessary to look at the failures of the specific content of legal rules and quality of legal institution within the context of oil-rich Arab Gulf States. When Faundez⁹⁹ doubted whether the shift in attention from legal institutions to economic

⁹⁶ Ibid, R. Lackey, supra note 15 see also A. Cordesman, Stability in the Middle East: The Range of Short and Long-Term Causes. Centre for Strategic & International Studies (CSIS) available at <https://www.csis.org/analysis/stability-middle-east-range-short-and-long-term-causes> (accessed 12/6/2019)

⁹⁷ See R. Lackey Ibid.

⁹⁸ Ibid, R. Lackey, supra note 15 see also A. Bacevich, '6 Basic Assumptions about the Middle East That the Washington Consensus Gets Dead Wrong. Mother Jones Magazine available at <https://www.motherjones.com/politics/2014/11/its-time-reconsider-these-5-assumptions-about-middle-east/> (accessed 21/8/2019).

⁹⁹ See J. Faundez, (ed.), *Good Governance and Law: Legal and Institutional Reform in Developing Countries* (New York: St. Martin's Press, 1997).

analysis would help avoid the problems of the earlier attempts at reforms in developing countries; his concern was that there are unanswered questions that lurked behind the law and development movement. One of his concerns about unanswered questions relates specifically to the role of law and the formal legal system in development process. Faundez presented his argument by analysing the different approaches of the law and development movement and that of the World Bank.¹⁰⁰ Even though, they appear similar, he argued that the context in which the Bank's programmes were being carried out was to a large extent different. While the law and development movement premised that the State 'would initiate and promote the process of economic development', in contrast, the Bank perceived Law as facilitating market transactions by defining property rights, guaranteeing the enforcement of contracts, and maintaining Law and order. Since the State is no longer the champion of social change, as it was in the Law and development model, there is less room for error.¹⁰¹ However, Faundez in his analysis appeared to be uncertain that the mistakes of the law and development movement would not repeat itself. There was doubt whether the shift in attention from legal institutions to economic analysis would thereby avoid the problems of the earlier attempts at reform.¹⁰² His concern was that all the unanswered questions that lurked behind the law and development movement – the role of Law and the formal legal system in development, the relationship between Law and politics, and the relationships among democracy, authoritarianism, and development – will continue to exist.¹⁰³ But, McAuslan and Thome had no doubts that the mistakes of the

¹⁰⁰ Ibid

¹⁰¹ Ibid

¹⁰² See J. Faundez, (ed.), *Good Governance and Law: Legal and Institutional Reform in Developing Countries* (New York: St. Martin's Press, 1997). See also World Bank 'Law and Development Movement' available at <http://siteresources.worldbank.org/INTLAWJUSTINST/Resources/LawandDevelopmentMovement.pdf> (accessed 18/11/2018).

¹⁰³ Ibid

past, particularly those bordering on the role of Law and the formal legal system in development process would reoccur and, no doubt these have continued to reoccur.¹⁰⁴

These mistakes bordering on the role of Law and the formal legal system have continued to reoccur, particularly in the global south, including within the Islamic oil-rich Gulf countries. In many Islamic countries, there are outdated legal environment and legal frameworks largely based on the outworn old UK Law that have remained non-updated (i.e., weak legal reform) and merged with Sharia, which realistically are not compatible with the present-day development.¹⁰⁵

The deficiencies in the legal rules in the GGC States are underlying in the legal structure with arbitrary exercise of authority. In all six of the member countries supreme executive, legislative and judicial authority is divided between the federal government and ultimately in the ruler and his family. Although in the UAE authority is divided between the federal government and the seven constituent emirates, each with a ruler.¹⁰⁶ While all six countries have separate, substantially independent judicial system, only in Kuwait and Bahrain is there a clear distinction between the legislative and executive branches of government. The distinction is observed in the UAE, Qatar and Oman, but the legislatures there are accorded primarily a consultative role.¹⁰⁷ Sharia courts exist side by side with civil courts, but in practice the Sharia courts and

¹⁰⁴ See P. McAuslan, "Law, Governance, and the Development of the Market: Practical Problems and Possible Solutions", In J. Faundez, (ed.), *supra*, note 102 pp. 6–17.

¹⁰⁵ See S. Perfects, *Sharia Law: what it is, what it is not, and why you should know*, THEOS available at <https://www.theosthinktank.co.uk/in-the-news/2019/02/25/sharia-law-what-it-is-what-it-isnt-and-why-you-should-know> (accessed 27/8/2019). See also note 15.

¹⁰⁶ See N. Angell, *An Overview of Legal Structures In The GCC Countries – Issues of Risk and Strength* (World Service Group, 2006).

¹⁰⁷ *Ibid*

the body of Sharia Law is increasing influential and restricted to family matters, succession, property and to some extent torts and criminal law.¹⁰⁸

Within the oil-rich Arab region, while there are efforts to have different Law for some countries; for example, the Dubai free trade zones – Jebel Ali in the 1970s probably was the first major development of its kind.¹⁰⁹ The development of free zone was not dependent on wealth from natural resources and was based on different legal framework, where the Law was allowed to play its role; for example, the free zone (Jebel Ali Port) became independent of Dubai municipal Laws in 1986 and the UEA Commercial Companies Law amended in 1998 to carve out the free zone, allowing establishment of free zone companies inside JAFZ (FZCOs).¹¹⁰ JAFZ developed over time in response to needs of business – By some estimates, responsible for as much as 30% of the GDP of Dubai and after 15 years of development, JAFZ became a model that Dubai could replicate. For example, Dubai copied JAFZ ‘rules’ in establishing Dubai Airport Free Zone (DAFZ); however, DAFZA authority was established as separate authority from JAFZA.¹¹¹

However, the ‘Law beyond the realm of business’ still needs revision in these States. The general understanding underlying the legal systems of the six GCC countries, involves the tension that exists between the deeply felt need to protect and advance the business and economic interests of the governments and the nationals, on the one hand, and the competing dependence on worldwide demand for their vital oil and gas resources. Thus, there has been the traditional need, more concentration and

¹⁰⁸ Ibid

¹⁰⁹ See C. Gunson, *Attracting Investment Zone Users. Case Study: The Dubai Free Zone*, Second Meeting of the Working Group on Investment Zone in Iraq, Pillsbury available at <https://www.oecd.org/mena/49226268.pdf> (12/08/2019).

¹¹⁰ Ibid.

¹¹¹ Ibid.

emphasis to provide legal protection mainly on business in the GCC, to ensure their fair participation in the economic benefits of oil and gas wealth. But evidence shows that the legal protection to business is not even effective as required; thus, legal protection to business and Law beyond the realm of business still need revision in these States – the revision must tailor the Laws to the local needs and context.

A good example is Sharia permits a man to marry many women (wives) and instructed he could beat and scourge the wife when she disobeys him.¹¹² This is because the content of the legal rules in these States do not provide protection for the women equal to the men. This inequality permeates the whole legal framework of the UAE. The UAE not only lacks the highly important legal framework to protect women from domestic violence and rape, but the penal code allows men to chastise their wives and children if the punishment does not exceed the prescription of Sharia Law.¹¹³

Notwithstanding the above, historical antecedents inform us that Islam is certainly not inherently opposed to development and progress¹¹⁴ – there are good cases in point: the shining example of the classical period of Islamic civilization, and the huge number of successful Muslim scientists, engineers, entrepreneurs, and business people in the US, Europe, Africa and elsewhere.¹¹⁵ Though, it has been argued that contemporary

¹¹² See The Holy Qur'an 4.34 – This suggests that men are generally responsible for the well-being and prosperity of the family members. So while the verse directs men as to how they should treat rebellious women who are of bad conduct, it guides them to a gradual means of education: admonish them (to do what is right), then, (if that proves to be of no avail), remain apart from them in beds; then (if that too proves to be of no avail), 'beat or strike them lightly' (without slapping them in their faces). Some Islamic scholars in their interpretation suggest that these measures are aimed at education and saving the marriage from collapse in case of a wife's rebelliousness. It is not a matter of women being beaten only because they are women, but rather this punishment is only applicable to a truly rebellious person who is of evil conduct, a person who displays obstinacy, not only not doing her duty in the home but also one who does not care about good moral conduct; in short, such a woman is not only wronging her family, she is also wronging herself.

¹¹³ See I. Abousleiman, *Women in the Gulf countries: Perceptions and reality*, (2019, World Bank Blogs, Aran Voices).

¹¹⁴ E. Elshaikh, *The Rise of Islamic Empires and States*, Khan Academy available at <https://www.khanacademy.org/humanities/world-history/medieval-times/spread-of-islam/a/the-rise-of-islamic-empires-and-states> (accessed 27/8/2019).

¹¹⁵ See M. Kroessin, *Concepts of Development in 'Islam': A Review of Contemporary Literature & Practice*. Working Paper 20-2008 Religion and Development Research Programme, International Development Department, University of Birmingham. See also W. Rodney, *How Europe Underdeveloped Africa*, (Bogler-L 'Overture Publications and

Islam is not known for its engagement in the modern scientific projects. But this attribution or reference to Islam science of old is a sort of heir to legendary 'Golden Age' of Arabic Science frequently cited or invoked by commentators in a bid to make Muslim and Westerners more respectful and understanding to each other.¹¹⁶ It is suggested that tributes of this kind to the Arab world's era of scientific achievement are generally made with political underlining or in service of a broader political point, as they usually precede discussion of the region's contemporary problems.¹¹⁷ They serve as an implicit exhortation and an avenue to re-inspire the spirit of the old that the Islamic could still attain advancement in development: the great age of Arab science demonstrates that there is no categorical or congenital barrier to tolerance, cosmopolitanism, and advancement in the Islamic Middle East.¹¹⁸ The irony is that while real growth should originate from and be sustained by the private sector, it is undeniable that some of the enlightened governments of the Gulf (e.g., Qatar) are more progressive and pro-growth than their populace.¹¹⁹ So, there is probably a necessary government role in starting the process, but the State needs to get out of the way after giving an initial push.¹²⁰

Tanzanian Publishing House, 1973); and Hvidt, M. *Economic diversification in GCC countries: past record and future*. The Kuwait programme on development, Governance & Globalisation. London School of Economics (LSE) 2013.

¹¹⁶ Ibid. This alludes to President Obama's speech in Cairo, in June 4, 2009, where he praised Muslims for their historical scientific and intellectual contributions to civilization; thus:

It was Islam that carried the light of learning through so many centuries, paving the way for Europe's Renaissance and Enlightenment. It was innovation in Muslim communities that developed the order of algebra; our magnetic compass and tools of navigation; our mastery of pens and printing; our understanding of how disease spreads and how it can be healed.

¹¹⁷ See H. Ofek, Why the Arabic World Turned away from Science, *The New Atlantis, A Journal of Technology and Society* Number 30, Winter 2011, pp. 3-23 available at <https://www.thenewatlantis.com/publications/why-the-arabic-world-turned-away-from-science> (accessed 27/8/2019).

¹¹⁸ Ibid. Other examples drives for democracy, science and modernity are the Nahda (Arab renaissance) of the 19th century and the Arab Spring, which is a challenge against totalitarian regimes.

¹¹⁹ R. Lackey, *supra*, note 15; See also M. Sturm, J. Strasky, P. Adolf, and D. Peschel, *The Gulf Cooperation Council Countries Economic Structures Recent Developments and Role in the Global Economy*. Occasional Paper Series No 92 July 2008 European Central Bank.

¹²⁰ Ibid

(a) Relevant legal reforms needed with specific countries examples

However, it is argued that this is due to weak legal reforms that sometimes lead to inefficient official process in the States championed by a few wealth and influential (oil-magnate) people or families, able to either change the Law as they desire, or neglect it.¹²¹ Access to justice, particularly for women remains weak due to the longstanding tradition that women seek mediation through their family before turning to the courts, and there is the common patriarchal attitude of many of the male judges.¹²² In Kuwait, though the criminal procedure code does provide all residents with equal access to courts and entitles them to a court-assigned lawyer and an interpreter; however, mechanisms to ensure the enforcement of judicial decision remains weak.¹²³ In the United Arab Emirate, there are serious breaches of fair trial and due process guarantees. Judges appear to have lacked impartiality and shows bias, especially regarding non-nationals of the UAE.¹²⁴

Common difficulties with the use of translators in the UAE involving non-Arabic speakers, as required by the law, or not provided at all or their quality was poor.¹²⁵ And standard practice of signing a confession without translators – an empirical case was the treatment of a British academic (Matthew Hedges) jailed for life in the UAE for spying; though, he was kept in solitary confinement for weeks without access to legal help.¹²⁶

¹²¹ See E. Bellin, *The Road to Rule of Law in the Arab: Comparative Insights*. Crown Centre for Middle East Studies, Brandeis University US Publications available at <https://www.brandeis.edu/crown/publications/meb/MEB84.pdf> (accessed 25/8/2019).

¹²² H. Murray, *Hope for Reform Springs Eternal: How the Sponsorship System, Domestic Laws and Traditional Customs Fail to Protect Migrant Domestic Workers in GCC Countries*, 2012 *Cornell International Law Journal* Vol. 45, 461-485

¹²³ *Ibid.*

¹²⁴ BBC *Why is the UAE's Legal System being Criticised*, by Reality Check Team BBC News 22 November 2018 available at <https://www.bbc.co.uk/news/amp/world-46304951> (accessed 12/06/2020).

¹²⁵ *Ibid.*

¹²⁶ *Ibid.*

While, this buttresses the point that the Law beyond the realm of business still needs revision at different levels in GCC States, few countries like United Arab Emirates and Jordan have maintained relatively positive records in rule of Law and led all Islamic countries according to World Justice Project (WJP) Index 2019.¹²⁷

It has generally appeared in the international development legal regime that Law could be approached as a tool for development itself. In this sense, experts sometimes assume that Law is both distinctively placed and uniquely suited as mechanism for development programmes and projects because a key function of Law is to engineer, attain or enhance the social and economic changes necessary to achieve the goals of development.¹²⁸ From this perspective, it is expected that Law will provide the infrastructural mechanism required for development, and that Law has the capacity to bring about the social, economic, and political changes needed, as well as necessary cultural attitudinal tenets conducive to development.¹²⁹

However as argued, the Law beyond the realm of business within the rich-oil Arab Gulf States is weak and dysfunctional at different level and needed reform that will be tailored to the local needs and context. This will provide enabling environment for

¹²⁷ The rule of Law according to WJP is a framework of Laws and institutions that embodies four universal principles – accountability, just Laws, open government and accessible and impartial dispute resolution; see The World Justice Project Rule of Law Index 2019.

¹²⁸ See for example: P. McAuslan, *Law, Governance, and the Development of the Market: Practical Problems and Possible Solutions*, in J. Faundez, *Good Governance and Law: Legal and Institutional Reform in Developing Countries* (New York: St. Martin's Press, 1997); F. Sherman, *Law and Development Today: The New Developmentalism* (2009) 10 *German Law Journal*, No.9, pp. 1258-1273; Scot, S. 'International Law and Developing Countries', In R. Denmark; & T. Farrell, (ed.), (2010) *The International Studies Encyclopedia*, edn. 1st Wiley Blackwell M. A. Malsen; M. Badarin, *Law and Development in Africa: Towards a New Approach* (2011), *NIALS Journal of Law and Development*; B. Ikejiaku, *International Law, International Development Legal Regime & Developing Countries* (2014), *Law & Development Review (LDR)* Vol. 7(1): 131-163.

¹²⁹ *Ibid*; See also B. Ikejiaku, *supra* not 24.

diversification, in order to achieve economic development not dependent on natural resources and investments (in oil and gas) controlled by the government.

Basically, investment by government can only provide a foundation for private development. Building infrastructure (physical, educational and human capital) with oil wealth, until the oil wealth runs dry (solving the resource curse) – so the best, brightest, and efficient of the individuals, will then go and start productive businesses¹³⁰ and, with a good legal reform – are the key path-way for the solution. But this could take some time depending on the commitment of different countries in the Gulf region. If you consider where the Arab World was about fifty years ago, and where it is today, there is good reason to be optimistic about the future,¹³¹ but only if there is an enabling environment with well drafted content of legal rules and quality legal institutions in place.

It is documented that the absence of modern insolvency Laws has restricted the Gulf Cooperation Council ('GCC' made up of six Middle Eastern countries – Saudi Arabia, Kuwait, the United Arab Emirates, Qatar, Bahrain, and Oman) corporates' ability to compete favourably within the international global economy.¹³² There are the so-called zombie companies – entities generating sufficient revenue to cover debt payments but not to grow – are noticeable and widespread in the region.¹³³ There are poor qualities of commercial courts in these States, resulting to both domestic and international

¹³⁰ R. Lackey, *supra*, notes 14, 54, 64, 68, 73, & 85.

¹³¹ See M. Puddko, and N. Bhargava, *The Influence of Islam on the Economic Development of Muslim Countries*, *Economy, Business & Finance* Vol. 20, 235 16-28.; See also IFEP. *Global Peace Index 2018 Measuring Peace in a Complex World*. Institute for Economics & Peace available at <http://visionofhumanity.org/app/uploads/2018/06/Global-Peace-Index-2018-2.pdf> (accessed 24/8/2019).

¹³² Legal 500 *Bridging the Gulf: An Investigation of the GCC and Middle East Legal Market* available at <https://www.legal500.com/assets/pages/client-insight/middle-east-insight/files/assets/common/downloads/publication.pdf>

¹³³ *Ibid*

lawyers' reluctant to litigate.¹³⁴ Also, the courts are slow to reach a decision and judges often lack relevant legal expertise.¹³⁵ While the GCC economies continue to perform well and show impressive growth with oil-based businesses; however, there is the tendency that any fall in the oil prices in the coming years will translate into lower margins, increased litigation, tighter, and tougher legal budgets.¹³⁶

In these countries, there is clash of legal cultures at different dimension – the tension between civil Law, common Law and Islamic Law practice in the GCC is a common trend. While many international firms are steeped in UK or U.S common Law traditions, the legal systems of the GCC are, for the most part, based on civil and Islamic Law.¹³⁷ The countries of the GCC are not black-letter Law jurisdictions, and many GCs felt confident that U.S and UK style contracts would protect their interests, even if not strictly enforceable under local Laws. Nonetheless, for international deals with a GCC component there is a great premium on the need for local counsel capable of acting as an intermediary between the regional courts and the legal assumptions of the commercial parties to a deal.¹³⁸

There are other apparent legal challenges within the region; the UAE, for example has one of the most complicated legal system of all the GCC states, with its Laws varying between the various emirates and free zones. As a civil law country overlaid with an impression of common Law practice, the UAE is in many ways a strange jurisdiction.

¹³⁴ N. Fieldman, *Constitutions in a non-constitutional world: Arab basic laws and the prospect for accountable government*, Nathan J. Brown, Albany (Sunny press, 2002 xiv 244 pp).

¹³⁵ *Ibid*

¹³⁶ N. Turak, Oil price slump won't hurt most Gulf States – but they're far from out of the woods, available at <https://www.cnbc.com/2018/11/27/oil-price-slump-wont-hit-most-gulf-states--but-theyre-far-from-out-of-the-woods.html> (accessed 26/8/2019).

¹³⁷ Legal 500, *supra*, notes 1, 8, & 93; and N. Fieldman, *supra*, notes 95 & 96.

¹³⁸ *Ibid*

This is in view of its legal challenges on: compliance, financing, litigation and data protection.¹³⁹ And in common with other GCC states, compliance was the top concern of UAE-based businesses.¹⁴⁰ There is a similar situation in the Saudi Arabia, where its Laws are found to be challenging, mostly due to the so-called legislative vacuum.¹⁴¹ Also in Kuwait, there is still too much ambiguity and contradictions in their legal processes and lack of clarity on legal provision made planning difficult, even for businesses, including global investments with long standing operations in the country.¹⁴² Excessively lengthy and uncertain timeframes for licensing and starting companies were seen as a barrier to new business, as was the limited legal protection offered to foreign investors.¹⁴³

While all Gulf countries have ratified or acceded to the UN Convention Against Corruption (UCAC) and have signed the Arab Convention Against Corruption (ACAC). Yet, when it comes to domestic regulation, they have taken uneven steps to prevent and prosecute bribery.¹⁴⁴ Countries like Qatar, Kuwait, and the UAE criminalise bribery in their penal codes, but only UAE 's Law criminalises the receipt of a bribe within the private sector. Other GCC countries address bribery under an assortment of Laws. In Bahrain, for example, bribery and corruption are prohibited under four separate Laws. Only Saudi Arabia has enacted a Law specifically focused in bribery.¹⁴⁵ This shows that there are transparency challenges to overcome in the GCC countries relating to legislating laws like the right access to information and giving protection to whistle-

¹³⁹ Ibid

¹⁴⁰ Ibid; see also M. Cogel, T. Miceli, and R. Ahmed, 'Law, State Power, and Taxation in Islamic History (2009) *Journal of Economic Behaviour and Organisation*, Vol. 71, 704.

¹⁴¹ Ibid

¹⁴² Ibid

¹⁴³ Ibid

¹⁴⁴ A. Wrage, How Effective are Anti-Corruption Law in the GCC (2016) *Construction Week*.

¹⁴⁵ Ibid

blowers of corruption. There is lack of active civil society that is essential for monitoring of public institutions and secrecy of public spending.¹⁴⁶

Complexity and lack of uniformity characterise the judicial systems of the GCC countries; judges and officials in the GCC countries stated that different judges reach different conclusions on cases involving similar facts; for example, in family Law.¹⁴⁷ Some Shi'a judges have affirmed this lack of conformity and predictability in the legal practice and have sought to draft sharia rules based on Shi'a schools of jurisprudence, as guidance to other judges. However, these drafts are merely advisory, not binding.¹⁴⁸ Islam varies widely across the region in several respect, such as practice, legal and theological orientation.¹⁴⁹ Moreover, the religion's role and significance in government, judicial system, and society differs from one Arab society to another.¹⁵⁰

In Bahrain, Kuwait and the UAE, Sunni jurisprudence is based on al-Madhahab al-Malki¹⁵¹ or the Malik School; in Oman the personal status Law is based on the Abadi School¹⁵² and can be applied to both Sunni and Shi'a litigants. In Qatar and Saudi Arabia Shari'a-based rules are interpreted in accordance with the Hanbali School.¹⁵³ However, it is submitted that all Laws, whether secular, religious or based on customary Law, should be consistent with international human rights standards.¹⁵⁴

¹⁴⁶ Ali, J., Many Factors Pulling Gulf States Down in Transparency Index, 2017 Gulf News Business Analysis.

¹⁴⁷ See Amnesty International, Gulf Cooperation Council (GCC) Countries: Women deserve dignity and respect, www.amnesty.org.

¹⁴⁸ Ibid.

¹⁴⁹ See generally F. Daftary, "Varieties of Islam" in Robert Irwin (ed), The New Cambridge History of Islam (Cambridge University Press, 2010).

¹⁵⁰ See J. Lane, "The 10 Most Spoke Languages In the World" (2016) Babbel Magazine.

¹⁵¹ Al-Madhahab al-Malki, is a school of Islamic jurisprudence that was established in an-Madina al Monacoura, Saudi Arabia in the second half of the eighth century.

¹⁵² The Abadi school was established by 'Abdullah ibn Ibad around the year 700.

¹⁵³ Al-Madhahab al-Hanbali is a school of Islamic jurisprudence that was established in the first half of the ninth century, by al-Iman Ahmed ibn Hanbal.

¹⁵⁴ Human rights standards allow all people to live with dignity, freedom, equality, justice, and peace. Every person has these rights simply because they are human beings. They are guaranteed to everyone without distinction of any kind, such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or

All these issues and challenges about dysfunctional legal system would no doubt have negative impact on business activities, impact the civil and social life of the masses negatively and retard economic development.

Section 4: The functional nature of role of Law in enhancing diversification and economic development

The oil-rich Arab Gulf States should respond to the international development community approach of promoting the Law that is legal and judicial reforms. There is the belief that, besides their inherent efficacy, such reforms will help to provide enabling environment for diversification and economic performance.¹⁵⁵ As argued, the belief in the efficacy of legal and judicial reforms to stimulate economic development is supported by a growing body of research showing that economic development is strongly determined by the quality of institutions – including the quality of a nation’s legal institutions.¹⁵⁶ However, while there is the case for reforming legal institutions on economic basis, there is little about what institutions to reform and how to engage in such institutional reform. It is a very difficult task to measure the quality of legal institutions, but even more difficult to practically reconcile the strength of the causal

other status – See the Universal Declaration of Human Rights (UDHR) ratified by the UN General Assembly on 10 December 1948.

¹⁵⁵ B. Aymo, and B. Weder, "Political Credibility and Economic Growth in Less Developed Countries" (1994) *Constitutional Political Economy* 5(1):23-43

¹⁵⁶ G. Yash, "The Rule of Law, Legitimacy, and Governance" (1986).

relationships between their quality and economic development. And virtually impossible from the trends of events within the international system, to sort out the complex and contingent relationship between the different components of real-world institutions, particularly in the developing countries.¹⁵⁷ As argued, this is similar to what Haggard terms ‘the rule of Law complex,’ – suggesting that the relationship between the efficient Law and economic development goes beyond ‘getting the Law right’, but rather how distinct entities may emerge from complex casual chains that include reciprocal institutions and political arrangements.¹⁵⁸

Law and development in the form of legal reform should be made to be functional in the Islamic Arab Gulf States by establishing effective legal and institutional frameworks. This will create an enabling environment for economic diversification, in order to build economic development beyond the realm of business and that takes into consideration indigenous realities and local value creation.¹⁵⁹ From the functionalist theoretical point of view, the local lawyers and practitioners in the region should be trained to learn international development legal reform from the context of indigenous exigencies and distinctiveness (that is the needs, stage of development, cultures, and value systems of the local people) of the Gulf region. While there is need for legal reform in the GCC countries at different levels; from the functionalist perspective, the suggestion is that the role of Law in this direction will have local relevance and not concentrating on the protection of business. But should go beyond the realm of

¹⁵⁷ See J. Smith, Inequality in international trade? Developing countries and institutional change in WTO dispute settlement (2004) *Review of International Political Economy*, 11 (3), 542–573.

¹⁵⁸ S. Haggard, and L. Tiede, *The Rule of Law and Economic Growth: Where Are We?* (2010) Presentation at The University of Texas School of Law, Conference on Measuring the Rule of Law.

¹⁵⁹ Local value creation in this context is any indigenous innovation or assets such as technology, cultural heritage, tourism, agriculture, craftsmanship and others that will give comparative advantage to the State in the globe – this is because effective legal and institutional framework without local value creation might to necessary lead to economic development.

business, by facilitating local empowerment, social cohesion, and justice, in order to be functional.

It is contended that there is a 'gap' that Law supposes to fill in the efforts toward actualisation of good governance and socio-economic development. Improved content of legal rule and quality legal institution has the tendency in creating enabling environment for diversification, in order to achieve economic development in the Arab countries. Research has shown that well-drafted content of legal rule and high legal institutional quality, in the form of: courts accessible to the public, judges being impartial, bureaucrats recruited on merit, public power should not be used for private gain, gender equality uphold, property rights secure and active rule of law – will provide enabling environment for economic diversification.¹⁶⁰ Economic diversification serves as a shift toward a more structure of domestic production and trade with a view of increasing productivity, creating jobs and providing the base for sustained poverty reduction and economic growth.¹⁶¹ Scholars argue that economic diversification acts as one of the key constraints on elite behaviour, affecting their ability to form collusive coalitions. When the economy is concentrated to a few sectors, elite interests (particularly in Arab States controlled by few royal family elites) are more uniform making easy for them to organise.¹⁶² When elites are more organise and their interest is projected, there is the possibility of public exploitation. This suppress innovation, minimise diversification and retard economic development, as more efficient uses of capital are prevented from being realised.¹⁶³ However, as the economy becomes more

¹⁶⁰ See for example, P. Olander, *Economic Diversification and Institutional Quality – Issues of Concentrated Interests* (2019) *Studies in Comparative International Development* 54, 346-364.

¹⁶¹ See OECD/WTO, *Aid for Trade at a Glance 2019: Economic Diversification and Empowerment* (OECD Publishing, 2019) Paris.

¹⁶² See for example, P. Olander, *supra*, note 155

¹⁶³ See A. Chaudhry and P. Garner, *Do Governments Suppress Growth? Institutions, Rent-seeking and Innovation Blocking in a Model of Schumpeterian Growth* (2007), *Econ Polit*, Vol.19 No.1 35-52.

diverse, collusion becomes difficult; then, elites must settle for impartial institutions more often.¹⁶⁴ Thus, diversification strategies can constrain exploitative elites, deliver sustained, job intensive, inclusive growth and economic development.¹⁶⁵

This, no doubt has led to more legal scholarly works on the very important of Law in this direction. For example, scholars submit that while many factors play an important role in development and good governance that many donors are recognizing the importance of role of Law. This is by actively supporting legal and judicial reforms, including judicial training, development of new laws and legal institutions, and capacity building.¹⁶⁶ Perry and Hatchard arguing in this perspective, observe that ‘the ideas about development which fuel contemporary interest in the Law, also seem to encourage the hope that Law could simplify development policy making, toning down its engagement with political and economic controversy’.¹⁶⁷ In this direction, Law could provide congenial atmosphere for diversification, and diversification helps to manage volatility and provide a more stable path for equitable growth and development.¹⁶⁸ In reaction to the exploitative activities of some multinational companies (MNCs) and weak CSR in poor developing countries, there were calls to both the international community and national governments of resource-rich developing countries – ‘To ensure that there is a balanced legal framework in place that recognises the interests of the broader population...’¹⁶⁹

¹⁶⁴ Ibid.

¹⁶⁵ See C. Fruman, *Economic Diversification: A priority for action now more than ever* (World Bank, Private Sector Development, 2018) Blog.

¹⁶⁶ See for example, M. Sachiko, and D. Zaelke, *Rule of Law, Good Governance, and Sustainable Development*; paper presented in the Seventh International Conference on Environmental Compliance and Enforcement, 2007.

¹⁶⁷ See A. Perry, and J. Hatchard, eds. *The Rule of Law as Development' in contemplating complexity: Law and Development in the 21st century*, (Cavendish Publishing London, 2002).

¹⁶⁸ World Bank, *Aid for Trade at a Glance 2019: Economic Diversification and Empowerment* (OECD, WTO, 2019).

¹⁶⁹ See Catholic Agency for Overseas Development (2006), *Unearth Justice*, CAFOD Report May, p.12

The above argument is important and relevant to the Arab regions and is in line with the functional theoretical approach as presented in this paper. The functional theory subscribes that Law should be functional that is by considering the distinctiveness of developing countries in which it is expected to reform. While there is the necessity of legal reform in the GCC to provide enabling environment for diversification, such Law should be tailored to serve the needs for the welfare of the indigenous people in the Arab Gulf countries. Generally, the importance of legal reform that is the role of Law in development process should offer an opportunity to re-focus attention on the indigenous political choices and economic assumptions embedded in policy making that favour the local populace.¹⁷⁰ There is a suggestion for the centrality of Law as a facilitator of development process when it was highlighted; for example, that more recent legal reforms throughout Latin America have focused on local necessities, as a way to increase transparency in most institutions and nation building.¹⁷¹ There is a common conjecture by many scholars that such reforms also improve good governance, encourage diversification, and by extension economic development.¹⁷²

Scholars have argued that for the Law to be effective it must be meaningful and functional in the societal context in which it is applied, so citizens have an incentive to use the Law and to demand for institutions that work to enforce and develop the Law. A legal reform strategy should aim at improving legality by carefully selecting legal rules which meaning can be understood in the context of local needs (such as diversification as one of the major needs of the Arab States) and which purpose will

¹⁷⁰ B. Ikejiaku, *supra* note 69.

¹⁷¹ L. Hammergren, Latin American Experience with Rule of Law Reforms and its Applicability to Nation Building Efforts, (2006) *Case Western Reserve Journal of International Law*, Vol. 38, Issue 1.

¹⁷² See L. Tiede, (2012). Legal Reform and Good Governance: Assessing Rights and Economic Development in Chile, *Law & Policy*, Vol. 34, Issue 3, 237-262; See also S. Jednak, D. Nikolic, M. Vujosevic, and D. Kraglj, The Effects of Economic Activities Diversification on Development: The Perspective of Serbia (2016) *Industrija*, Vol. 44, No. 2.

be appreciated by domestic Law makers, Law enforcers, and economic agents, who are the final consumers of these rules. This is a crucial condition for improving the overall effectiveness of legal institutions, which over time and in turn, will foster economic development, and if combined with 'local value creation' will boost economic development.¹⁷³

4.1: *Legal reform and local needs*

Tamaharan's work lends credence to the position of this paper that there should not only be legal reform, but the reform should be pursued based on the needs of the local people (in this case, the people in the Arab Gulf countries, where economic diversification is indispensable).¹⁷⁴ He argued that legal development (not law and development) projects without enjoying an artificial boost from money and pressure from externality, must gather sufficient local support from influential players to prevail in local socio-political contexts.¹⁷⁵ Local agendas and priorities need be pursued. The projects would be designed, run, and implemented by people who understand the situation, who know what is possible and appreciate what compromises must be made, and who have long term relationships and understanding of social and political capital, to draw on in the course of implementation.¹⁷⁶ While none of this assures the success of legal development initiatives because legal development in every country

¹⁷³ D. Berkowitz, K. Pistor, and J. Richard, Economic Development, Legality, and the Transplant Effect available at www.siteresources.worldbank.org/INTLAWJUSTINST/Resources/pistor-transplantpdf (accessed 19/11/2018).

¹⁷⁴ B. Tamanaha, The Primacy of Society and the Failures of Law and Development (2011) *Cornel International Law Journal*, Vol. 44, 209-247.

¹⁷⁵ Ibid

¹⁷⁶ Ibid

is uneven, but this format of local process of legal reform avoids several of the key flaws that plagued law and development projects.¹⁷⁷

In most Arab Gulf countries for example, the legal reforms on anti-corruption Laws have not been effective at different levels over the past decades and this is particularly due to 'wasta' or political-elites' clientelism. The weak legal framework on anti-corruption has provided a fertile ground on which corruption at all levels, particularly political corruption thrives. It is argued that by distorting the rule of Law and weakening the institutional foundation of economic growth corruption is the single greatest obstacle to economic and social development.¹⁷⁸ The Corruption Perceptions Index 2018 presents a grim picture, but reality in the Middle East, including the Arab countries. With a score of 70, United Arab Emirates (UEA) leads the region on the CPI, followed by Qatar 62. At the bottom of the region, Syria scores 13, followed by Yemen 14 – these two countries are also in the bottom five of the entire index.¹⁷⁹ In the region any attempt at democratisation proves an impossible task, civil liberties are under suppressive state control and the social contract between States and their citizens has been wrecked for decades; it is therefore, no surprise that corruption remains headstrong.¹⁸⁰ Survey carried out in four Arab countries, including Jordan, Algeria and Lebanon shows that politicians, businessmen and high-ranking officials head the list in the spread of corruption, while corruption is considered prevalent among the judiciary and in social relations.¹⁸¹ Bribery is deemed necessary to secure

¹⁷⁷ B. Ikejiaku, supra note 59

¹⁷⁸ United Nations Office on Drug and Crime '*Crime and Development in Africa*' (UNODC New York, 2005) p.81.

¹⁷⁹ Transparency International '*Middle East & North Africa: Corruption Continues as Institutions and Political Rights Weaken*' available at www.transparency.org (27 July 2019).

¹⁸⁰ In many Arab governments, powerful individuals have actively influenced government policies and diverted public funds and state assets for their own self-interest and enrichment at the expense of the citizens. Ibid.

¹⁸¹ Corruption in the Arab Countries adapted from Brian Whitaker '*What's Really Wrong with the Middle East*' Saqi 2011.

a contract from any public institution.¹⁸² But there is argument put forward that diversification strategies can constrain elite interest and their exploitative tendencies, deliver sustained, job intensive, inclusive growth and economic development.¹⁸³

On another angle, Hernando de Soto, in his works ‘the Mystery of Capital’ rightly rationalised that ‘Capital’ is a legal institution; and, made us to see reasons that everything in a market is built on the foundations of norms and mapped out regulations. The more these norms and regulations are streamlined to suit indigenous needs, the more efficient and active the Law becomes.¹⁸⁴ A good illustration is an event titled: “The Rule of Law in Afghanistan”, which was organised in 2013 – what was known in German as ‘Rechtskultren’ program of the Forum Transregionale Studien.¹⁸⁵ The event had invited the head of a Rule-of-Law promotion project of the GIZ, the leading German agency for development cooperation, to a project called ‘Strengthening Administrative Education in Afghanistan’.¹⁸⁶ The project aimed at a more efficient public administration by helping to establish basic and advanced training for senior-level public service staff in Afghanistan.¹⁸⁷ Two Fellows of the Rechtskulturen program were also invited to comment on the presentation of the project. The project, which was (may be naively) meant to show as an example of ‘encounter between theory and practice’, however ended up (may be predictably) in a show-case of the ‘abyss that separates the two world’ (developed and developing) about how the notion of legal reform works in theory and in practice.¹⁸⁸ The motivation of representative of the GIZ,

¹⁸² Ibid.

¹⁸³ See C. Fruman, *supra*, note 165

¹⁸⁴ See Hernando de Soto, *The Mystery of Capital: Why Capitalism Triumphs in the West and Fails Everywhere Else*, (Basic Books: New York, 2012).

¹⁸⁵ C. Boulanger, *Law and Development as Practice and as Theory* (2015) Max Planck Institute for European Legal History Research, p. 4-5.

¹⁸⁶ Ibid

¹⁸⁷ Ibid

¹⁸⁸ Ibid

sent to Afghanistan with a mission to implement the project with pre-defined goals, was to present success of the project and to ask for scholarly advice about how to address the very specific difficulties and failures encountered so far. The representative was open to criticism, but not in a position to change the fundamental structure of the project with pre-defined goals (that is '*transplanted*').¹⁸⁹ In contrast, the scholarly advice criticized the underlying assumption of development projects in general and the specific intervention in Afghanistan in particular. They questioned based on their own empirical research and indigenous experience in Afghanistan, the basic concepts used in the project description and presentation, such as 'corruption' or the 'rule of law'.¹⁹⁰ They pointed out to the damage that was done by the presence of Western experts on the ground (in Afghanistan), such as surge of prices for food or rent. Or by the artificial economy that was created by the demands of these experts for interpreters, drivers or bodyguards, which were destined to collapse once the experts left – in this sense the reform project was not designed based on indigenous needs. In this direction, it agrees with the argument that the aim of the rule of Law promotion more often than not was to transform local economies to better serve the interest of global investors, rather than improve the living standards of the local population.¹⁹¹ This direction is not functional and does not serve the interest of the indigenous populations – it is therefore against the stipulations of the functional legal theory as presented in this paper. Equally, this is not the proposition of this paper that is seeing Law as a facilitator will help take into consideration indigenous needs and distinctiveness, thereby remove disagreements over reform priorities and improve efficiency and accountability (in this context, within the Arab region).

¹⁸⁹ Ibid

¹⁹⁰ Ibid

¹⁹¹ Ibid

Section 5: Summary and Conclusion

This paper examines the role of Law and the formal legal system in the economic development process, with a focus on the Islamic Arab World, particularly the stable oil-rich Gulf States. The central argument of the paper is that weaknesses or deficiencies in Gulf State legal systems (that is on general respect for the rule of law, and, to the specific content of legal rules and quality of legal institutions) distort the ability of these States to diversify their economies beyond oil and gas and there is the need for legal reform in the Gulf States, but also the reform should be tailored to the needs of the local people.

The paper finds that even though there appears to be a close correlation between efficient rule of Law and economic growth – a very essential attribute of economic development, and between respect for the rule of Law, justice, political stability, and sustainable development. In extremely exceptional cases, societies can still experience economic development with or without the rule of Law depending on the culture, political leadership, and attitudinal belief of the indigenous population, just as the case of China suggests. However, the general understanding based on majority views of scholars and most empirical studies is that societies can hardly experience ‘real’ economic development without the rule Law, irrespective of the culture, political leadership and belief of the indigenous population.

The paper finds that empirical evidence could be drawn from the chart presented, which in part, portrays variations in economic diversification across Gulf States. The

economies of four States (Algeria, Bahrain, UAE, and Yemen) show lower dependence on oil, and consequently higher economic diversification, than the other six States. Also the UAE and Algeria are in the top five ranked Arab States (Middle East and North Africa region) on rule of Law and corruption records according to countries assessed by the World Justice Project (WJP) Index 2019 and Transparency International Index 2018.¹⁹² This may suggest that countries with better or improving rule of Law records have tendency to greater economic diversification and countries with evidence of economic diversification have better chances of experiencing economic development.¹⁹³ This establishes there is a casual relationship between the rule of Law, economic diversification and economic development; though, the relationship is not strong. Thus, the countries of the Arab region should focus their attention on legal reform that is sufficiently tailored to the local context, reflecting the peculiar realities and needs of each State.

The focus on Law as a development policy directed to suit the distinctiveness of a particular local community, shares a great deal with other efforts to replace political and economic thinking with a general appeal to technical expertise and ideas about best practice, which serves the interests of the indigenous people as an aid or facilitator to both economic and political approach to development.¹⁹⁴ The countries in the Arab region by refocusing their attention to rebuild their legal system (beyond the

¹⁹² The rule of Law according to WJP is a framework of Laws and institutions that embodies four universal principles – accountability, just Laws, open government and accessible and impartial dispute resolution; see The World Justice Project Rule of Law Index 2019. See also Middle East and North Africa: Corruption Continues as Institutions and Political Rights Weaken, Transparency International Rankings 2019.

¹⁹³ Economic diversification can be defined as the shift toward a more varied structure of domestic production and trade with a view to increasing productivity, creating jobs and providing the base for sustained poverty reduction and economic growth – See OECD/WTO, Aid for Trade at a Glance 2019: Economic Diversification and Empowerment (OECD Publishing, 2019) Paris. Thus, diversification strategies can deliver sustained, job intensive and inclusive growth – See C. Fruman, Economic Diversification: A priority for action now more than ever, World Bank, Private Sector Development Blog.

¹⁹⁴ See J. Lane, Good Governance: The Two Meanings of 'Rule of Law', (2010) International Journal of Politics and Good Governance Vol. 1 No. 1. Quarter.

realm of business) and establish workable legal and institutional frameworks that serve indigenous needs and, supported with local value creation as an alternative to an economy build on oil and gas.