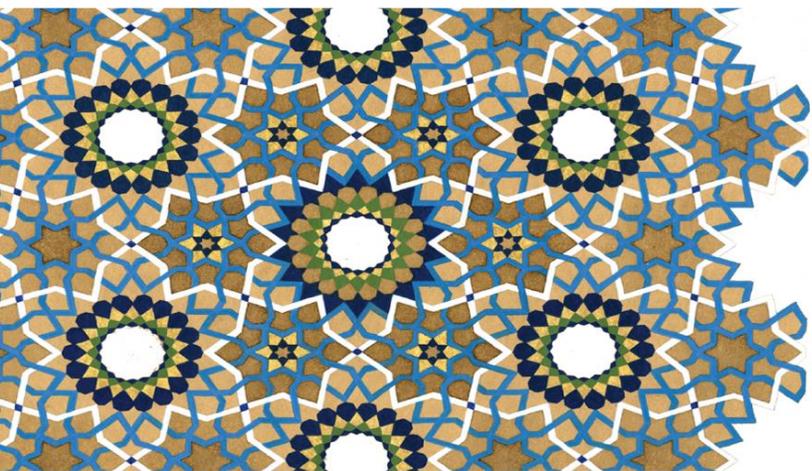




Quality of Legislation and Law-making Process
in Saudi Arabia

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In the name of Allah the Beneficent the Merciful

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*Because quality legislation is the first step to just
and bad laws are the worst form of tyranny - Layla*

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Abstract

The success of government policies depends largely on effective legislative interventions. Such legislations should be able to deliver the required results for which it was created and therefore it should be of high quality. The quality of legislation depends on its language, quality of form, legislative content and the quality of the production process.

This piece of work tries to critically identify quality legislation features in the legislation system of Saudi Arabia and analyze how they are entrenched within the Islamic value and the teachings of Quran. Then it maps the elements and processes of the law-making stages carried in the country and analyze how the process inhibits quality legislation to be achieved. The objective is to draw a theory of practice, based on the quality legislation features and the fundamentals of law-making so as to achieve quality legislation in Saudi Arabia that may be applied to any subject matter and in the Sharia legal system. The theory can help the Saudi government to identify and develop measures for the production of effective quality legislation. It will also assist the country in strengthening its legal framework in a way that supports economic and social transformation, and the progressive enhancement of governance and the rule of law.

CHAPTER ONE

1. Introduction

As “the initiative for law-making rests in most countries with the government”¹, the objective of legislative production is to provide a legal framework for policy decisions within the government so as to address changes within the economic, social and political environments. Legislations within the government should be of quality for effective legislative intervention to be achieved and policy results delivered. Voerman argues that it is imperative to note that legislative quality is very important for the effectiveness of government policies² and he further affirms that an effective legislation has to complete its lifecycle within the appropriate law-making process. These factors are very paramount to the Saudi government which is continuously progressing in their development plans. I believe quality legislative interventions are the basis for the success of any development plan through foundational policy and legal reforms that are important in developing a transformational framework. Benda-Backmann argues that most development policies entails law since legislative intervention facilitates the successful implementation of the plan’s activities according to the set objectives³.

Legislative effectiveness is mainly evaluated through legislative quality. Starting with the popular definition by Xanthaki “Quality of legislation is synonymous to effective legislation, namely legislation that is capable of leading to efficacy of regulation”⁴. Mousmouti has described legislative quality as being vague and obscure notion that “differs depending on the

¹ Ulrich Karpen, “Comparative law: Perspectives of Legislation” *Legisprudence*, Volume 6 (Number 2) Page 149 (2012).

² WimVoermans, Workshop Common quality standards for legislation in different legal traditions as an inspiration for legal reform, Legislative Quality Workshop, Cape Town South Africa, (9th April 2013).

³ Von Benda-Beckmann, “Scape-goat and Magic Charm: Law in Development and Practice” *Journal of Legal Pluralism*, 28; Page 129 (1989).

⁴ Prof.Helen Xanthaki, The Law & Politics of Legislation, “Quality of Legislation” Groningen, Netherlands (22nd August 2014).

functions and purposes of legislation, on the needs and the priorities in specific historical, political and social contexts, on the viewpoints of different actors and on different legal traditions, types of polity, drafting traditions and practices”⁵. Vanterpool also mentions that “it should be stated forthrightly that the notion of quality legislation has so far not been reduced to a single definition”⁶. Legislative quality is determined by the area of law concerned, interrelationship of the law-making process, legislative content, language and style of the legislative text, implementation and operation style as well as the country setting determines the quality of legislation.⁷ Crabbe states that: “Quality has at least 3 aspects, namely the quality of a law’s: 1. expression or form; 2. content or substance; and 3. practical operation. Achieving those ... depends, of course, on the processes followed to develop, consult on, refine, enact, and review a law”⁸.

The features of quality legislation and the fundamental process of law-making is undertaken irrespective of legislative drafting techniques, any legal tradition or the structure, size, level and procedures of the legislative and governmental system. In my view although the characteristic of quality legislation and the process of law-making systems may differ from country to another there must be some degree of consistency and uniformity in the produced legislative text desired and the process used to produce legislation. This uniformity will allow legislation to be sufficiently flexible to be capable of universal application in any country irrespective of the subject matter being handled. Mousmouti states that in most countries legislative quality can be determined by identifying the fundamental contents, standards and the existing elements in legislative processes irrespective of their legal systems and legislative styles.⁹ The expression “universality” is used by Xanthaki to relate to the universal quality in legislation.¹⁰

⁵ Maria Mousmouti, “Operationalising Quality of Legislation Through the Effectiveness Test” *Legisprudene*, Volume 6 (Number 2) Page 191 (2012).

⁶ VarenVanterpool, “A Critical Look at Achieving Quality in Legislation” *European Journal of Law Reform*, Volume 9 (Number 2) Page 167 (2007).

⁷ Maria Mousmouti, “Operationalising Quality of Legislation Through the Effectiveness Test” *Legisprudene*, Volume 6 (Number 2) Page 191 (2012).

⁸ VCRAC Crabbe, *Understanding Statutes*, Cavendish Publishing (1994).

⁹ Maria Mousmouti, “Operationalising Quality of Legislation Through the Effectiveness Test” *Legisprudene*, Volume 6 (Number 2) Page 191 (2012).

¹⁰ Prof. Helen Xanthaki, LLM in Advanced Legislative Studies, “Legislative Drafting Course” lectures notes (2013-2014).

The hypothesis of this paper is that the Law-making process in Saudi Arabia inhibits the quality of Saudi legislation. However, because both the concept of quality legislation and the law-making process have not been documented before or analyzed, I have decided to divide my thesis into two parts. First part will deal with legislative quality, I will identify the universal characteristic of quality legislation, and then will analyze and assess how those characteristics of quality legislation are valued in Islam and entrenched within the teachings of Quran. Second part I will map out the law-making process in the country, taking the five stages of law-making I will analyze the process carried in Saudi Arabia and assess how those procedures affect the quality of Saudi Legislation.

The introduction of the paper will give a briefed background on the legislative authority in the country and describes how the system works. The next chapter will initially determine the universal characteristics of quality legislation then will identify the quality legislation features in the legislation system of Saudi Arabia and lastly will analyze how they are entrenched within the Islamic values and the teachings of Quran. The following chapter will go ahead to map the Saudi processes of the law-making stages and analyze how the current procedures inhibit quality legislation and to sum up I will present suggestions for creation of quality legislation that are able to be applied in the country. The purpose is to prove the hypothesis of the paper and to offer assistance in the production of good law through promoting the adoption of methods that will enhance the ability to produce quality legislation in Saudi Arabia. I expect that this paper will be very resourceful in providing essential suggestions in the definition of quality legislation and finding the best practices and the most appropriate procedures of law-making in Saudi Arabia. These processes shall be accomplished but should put in mind the resources of the country as well as compatibility with its religion, culture, traditions, language, political and legal systems. The compatibility should also consider appropriateness to the national peculiarities and intricacies according to Xanthaki's expression.¹¹ The approach that has been recommended to be undertaken targeted to promote effective development that the country facilitates, the rule of law and good governance.

¹¹ Prof. Helen Xanthaki, LLM in Advanced Legislative Studies, "Legislative Drafting Course" lectures notes (2013-2014).

The main limitation of this paper was the scarcity of resources, although quality legislation and law-making process in Saudi are juicy subjects they are considered virgin areas of law that were never tackled and analyzed before. Therefore that backbone of this research was interviews with BOE -office empowered to draft legislation at the Cabinet- , individuals at legal departments in ministries and private law firms who have the government as their client. Getting access to governmental and non-governmental organizations was not easy and time consuming, especially that the official communication mean is not via internet (emails) but faxes!. Another core limitation is that the Saudi data archive system has a very old and poor online maintenance that are not updated regularly, so getting copies of orders, decrees or any official document was another major difficulty. The other limitation is in relation to the qualitative research in general, as in my view taking the opinion of 7 interviewees and 13 questionnaires can be misleading to take as a precise reflection of the reality.

2. Nature of the Political and Legal system

The basis of the legal system of Saudi Arabia is Sharia law. It has the monarchical type of political system where the state and government is headed by the King. According to Basic Law, the throne is under control of the sons and offspring's of the kingdom's founder. There is no formal constitution in Saudi; However, the King during 1992 issued the Basic Law through Royal Decree, which sets the governance system on the country. To a degree that the Basic Law is taken as "informal" constitution, it is stated in Article 1 of this law that the Quran and Prophetic Traditions serve as the country's "formal" constitution.¹² The Basic Law and the interpretation of Sharia forms the basis of the government's legitimacy.

3. Background of the Legislative system in Saudi Arabia

According to the Basic Law, the phrase "regulatory authority" refers to the legislative authority of the state. It is claimed that in Islam God alone has the ultimate power to legislate. Hence, the word "legislation" that signifies a secular law is usually not used in Saudi¹³. In the country, laws are initiated from the King, Cabinet (Council of Ministers) and Shura Council. Those three entities represent the legislative authority of the country.

According to the Basic Law, legislation originates from the Islamic Sharia.¹⁴ Furthermore, other constitutional laws passed in commercial, criminal as well as administrative areas add up to the Islamic Sharia set of laws. The country's laws and regulations are lawful given that they do not contradict Sharia. Such a right is practiced in situations where there is

¹² Basic Law, Article 1 (1992).

¹³ Ministerial Order, Number 1/1396 (1/3/1396H - 2nd March 1976).

¹⁴ Basic Law, Articles 1 & 55 (1992).

absence of clear text in Sharia to regulate a particular matter.¹⁵ The Basic Law states that, "the regulatory authority lays down regulations and motions to meet the interests of the state or remove what is bad in its affairs, in accordance with the Islamic Sharia. This authority exercises its functions in accordance with this law and the laws pertaining to the Council of Ministers and the Shura Council."¹⁶

In Saudi Arabia the King has a main and independent law-making role. The Basic Law recognizes the King being the highest authority over all the country's organs which include the legislative authority.¹⁷ The Head of State and Head of Cabinet is the King, who has the authority to enact, amend, and repeal legislation by Royal Order, without any consultation or any legislative proposition from either Council of Ministers or Shura Council, he only abides to the basic doctrine of the Sharia law.¹⁸ Besides, it is the Royal Decrees that approves and amends the legislative processes that include drafting, ratification of international conventions, regulations and agreements. This is carried out only after a review by the Cabinet and Shura Council.¹⁹ The King is free to acknowledge or decline bills from the Cabinet and Shura Council and when the two have a conflict it is the King who will finally decide.

The ruling of the King is assisted by the Council of Ministers (Cabinet). The cabinet is composed of 22 ministry heads. The Cabinet at the same time does legislative and executive roles together.²⁰ The Cabinet shares the legislative power with the King²¹ and Shura Council²². It is the duty of each of the ministers to propose bills related to their ministries; work and affairs.²³ Two thirds of the Council of Ministers must be present to approve a proposal for it to be considered adopted. If half of the Council of Ministers is present in a meeting, such meeting is considered valid, but decisions resulting from such meeting are only considered legal if they

¹⁵ Royal Decree, Number 19746 (22/9/1379H - 20th March, 1960).

¹⁶ Basic Law, Article 67 (1992).

¹⁷ Basic law, Article 44 (1992).

¹⁸ Ayoub AlJarbou, *Judicial Review of Administrative Actions: A Comparative Study between the United States and Saudi Arabia* (2002) -unpublished S.J.D. dissertation, University of Virginia-

¹⁹ Basic Law, Article 70 (1992); Council of Ministers Law, Articles 7 & 20 (1992).

²⁰ Council of Ministers Law, Articles 19 & 20 (1992).

²¹ Basic Law, Article 70 (1992).

²² Shura Council Law, Article 18 (1992)

²³ Council of Ministers Law, Article 22 (1992)

receive a consent of two thirds at least of the attended members.²⁴ All resolutions of the Cabinet together with what is related to the endorsement of bills and amendments will only be final after they receive approval from the King.²⁵ The Council of Ministers is accountable for making and implementing legislations in the country.

The legislative authority is also vested on Shura Council. This Council was established in 1992 after the Basic Law mandated its establishment.²⁶ Initially, the Shura Council's role was to act as an advisory body but it was given more powers to propose legislation 2003.²⁷ This is an institution that ideally intended to practice oversight roles, as it allows appointed citizens to directly take part in administrative roles as well as planning policies and monitor agency performance.²⁸ The Shura council is made up of 150 members and the Chairman. The members are chosen by the King from academics and intellectuals.²⁹ After every four years, half of the Council members must be replaced by a new lot selected by the King.³⁰

It is the Shura Council that has been mandated to give remarks on state affairs which include economic and social development, interpretation of state laws, annual ministry and government bodies' reports, charters, agreements, concessions and treaties.³¹ Within the Shura Council are some committees whose members are from the council which perform those roles within their mandate.³² Notably, the Shura Council members have the authority to suggest a draft of a bill or amending an endorsed legislation. After they make their resolutions concerning new or amended laws, the Council Speaker submits them to the King.³³ Unlike the Cabinet decisions about the two-thirds of members in-attendance, two thirds of the total Shura members have to

²⁴ Council of Ministers Law, Article 14 (1992).

²⁵ Council of Ministers Law, Article 7 (1992).

²⁶ Basic Law, Article 68 (1992).

²⁷ Royal Order, Number A/198 (2/10/1424H - 27th November 2003)

²⁸ Ayoub AlJarbou, *Judicial Review of Administrative Actions: A Comparative Study between the United States and Saudi Arabia* (2002).

²⁹ Shura Council Law, Article 3 (1992), amended by Royal Order Number A/26 (2/3/1426H - 11th April 2005).

³⁰ Shura Council Law, Article 13 (1992).

³¹ Shura Council Law, Article 15 (1992).

³² Shura Council Law, Article 19 (1992).

³³ Shura Council Law, Article 23 (1992), amended by the Royal Order Number A/198 (2/10/1424H - 27th Novembre 2003).

support a bill or amendment in order to be adopted. Final resolutions are not considered valid without the majority agreement of Shura members.³⁴

The king must review the Shura Council opinions then decides which of the resolutions should be transferred to the Cabinet. If the Cabinet agrees with the Shura then resolutions can be issued after an approval from the King. For every legislative proposal or amendment to be regarded as a law, the two Councils as well as the King must approve to it. In case the opinion of the two councils contrasts then the subject is referred to the Shura members, whom will deliver what they verdict suitable, so the new decision will be sent to the King who has the final say.³⁵

Before the statutory law being enacted, the Cabinet reviews the draft delivered by the Shura as well as the report done by the BOE (Bureau of Experts) -office empowered to draft, revise and amend legislation at the Cabinet-. If the proposal by the Shura Council is accepted by the Cabinet, the Cabinet will endorse the bill and the General Secretaries of the Cabinet will formulate a Royal Decree endorsing its consent. After the consent the responsible ministry will implement the legislation. A circular for the distribution of the Decree and copy of the law are distributed by the Presidency Chambers of the Cabinet, to related ministries and agencies as well as Shura Council.

In cases when there is a need, the Cabinet's Presidency Chambers may direct the ministries concerned to draft secondary legislation called “Implementing Regulations”³⁶. The Cabinet will then issue a final approval of these regulations but usually those regulations are not published only circulated to related ministries and agencies. The new law is published in Umm Al Qura –which is the Official Gazette- and implementation will be on a deadline mentioned mostly at the end section of the draft. An affiliate body of the Council of Ministers' Presidency Chamber-the Information and Studies Center will then receive the authentic copy of the draft while a body associated with the Cabinet called the ‘National Center for Documents and Archives’ will be mandated to publish the new legislation in Umm Al Qura Gazzette.

³⁴ Shura Council Law, Article 16 (1992).

³⁵ Shura Council Law, Article 17 (1992), amended by the Royal Order Number A/198 (2/10/1424/27th November 2003).

³⁶ Subsidiary legislation is known as Implementing Regulations in Saudi.

CHAPTER TWO

1. Universal Characteristic of Quality Legislation

A piece of legislation initiated by a government is aimed at transforming a government's policy into a legislative solution that will accomplish its objective reform. Any person taking part in the process of law-making irrespective of the country or its legal system should do so in a manner that produces quality legislation that realizes its purpose. First, one has to recognize what are the universal desired characteristics of quality legislation, ie what makes a law "a good law".

The first section of this chapter I will identify the common universal views of characteristics of legislative quality, then the second section I will determine the Saudi definition and characteristics of legislative qualities and analyze how those qualities are entrenched within the Islamic value and the teachings of Quran.

Xanthaki³⁷ explains that the universal qualitative purpose for legislation is effectiveness and this is determined by the efficacy of regulation. Regulations efficacy is the degree of legislation capability to attain the regulatory desired outcomes. This can be achieved if legislation is effective in delivering its intended changes in a way that fulfills the purpose of creating the legislation and the outcomes of its implementation. This entails legislation must be efficient and in a form that communicate its purpose. Furthermore, the ways in which the legislation brings changes must be certain, equitable, fair and predictable so as to eliminate subjective governments and allow people to carry out long-term business and personal-life activities.

³⁷ Prof. Helen Xanthaki, LLM in Advanced Legislative Studies, "Legislative Drafting Course" lectures notes (2013-2014).

Xanthaki continues and mentions that efficient legislation is resourceful and can be implemented in a way that the costs are balanced to the desired outcomes and this can be achieved by using the most suitable financial solution.

According to Xanthaki effective legislation is also when a written law communicates its purpose and the means it can achieve that purpose. This is shown by precision, clarity and unambiguity of the provisions. To achieve these characteristics, the layout and language used should be clear, plain, certain, and accurate of meaning, easily understood, grammatically correct, gender neutral and non-discriminatory. The objective is that users of the legislation are able to understand the requirements imposed and opportunities presented under the legislation, and manage their affairs with confidence.

Vanterpool³⁸ argues that there are two factors which are the benchmark of quality legislation. The first factor is the quality in the substance of the law (accuracy in representing legislative policy). He explained this as adequacy, appropriateness and precision of legislation to solve the problems and give effect to desired result through some expected and reasonable implementation. This will go in handy with a well-researched legislative policy decision which is achieved by doing an analysis of necessity for legislation, and examination of the likely impact after its implementation. The policy should be implemented using appropriate legislative instruments that precisely represent the policy and will be effectively realize the legislative aim. It further requires that the law be consistent within itself and be legally sound which should comply with the constitution and compatible with the existing laws, regulations and the legal system. Also be cost-effective and becomes practical, accountable and transparent during implementation.

The second factor described by Vanterpool is quality of law in terms of form and intelligibility. He used language and organizing material to describe this so as to come up with a legislative instrument that is able to outline and communicate the policy proposal unambiguously to those who will enforce it as well as those who will comply to it. This means that the legislative

³⁸ Varen Vanterpool, "A Critical Look at Achieving Quality in Legislation" *European Journal of Law Reform*, Volume 9 (Number 2) Page 167 (2007).

texts should be simple, clear, accurate and unambiguous, must have logical structures that will readily communicate the functions and effects of the law. The process of publication and dissemination of the legislation should be efficient so as to be easily accessible to those who should abide by as well as those who will interpret it, administer and put into effect.

Karpen³⁹ spells out the principles of transparency, necessity, accountability, subsidiary, proportionality, participation, accessibility and predictability. Some other values that have been outlined include simplicity, clarity, consistency, understandability, precision, stability, legality, unequivocal plain language and a logical structure for achieving better regulation. He further went ahead to emphasize that formal or textual quality are required in legislation, which is quality of language and structure. And substantive quality, which means effectiveness, efficiency, efficacy and stability. In addition, legislation should be clear and accessible to all so that citizens can easily learn about the law, understand what is required of them and know the resultant consequences for not abiding to it. Other characteristics that are of importance are flexibility and adaptability, certainty and precision so that people can rely and trust the law to be able to organize their lives appropriately but the law should as well be able to adjust to the natural dynamics and constant societal transformation without the need for constant amendments.

He further argues that improving effectiveness, efficacy and efficiency will provide quality and better legislation. Also providing well-structured content in clear language that promotes precision, clarity, readability, comprehensibility and avoidance of contradictions. According to him, the three main criterias for quality legislation are efficacy, effectiveness and efficiency. The legislation will have efficacy if it achieves the purpose intended for by the lawmaker, the law will be effective if it will be implemented and obeyed by many and efficiency will be achieved with a positive cost-result relation i.e. results achieved were cheaper than if any other solution were taken. Of these factors, effective implementation is the most important quality criterion of a law.⁴⁰

³⁹ Ulrich Karpen, "Good Governance Through Transparent Application of the Rule of Law" *European Journal of Law Reform*, Volume 11 (Number 2) Page 213 (2009).

⁴⁰ Ulrich Karpen, "Comparative law: Perspectives of Legislation" *Legisprudence*, Volume 6 (Number 2) Page 149 (2012).

Mousmouti⁴¹ mentions qualities as simplicity, clarity, precision, comprehensibility, unambiguity, accessibility, usability, flexibility, legality and legal certainty, plain and gender impartial language, consistency and coherence, effectiveness, transparency and accountability, efficacy, efficiency, subsidiary and proportionality, compliance with the principles of necessity and systematic participation through consultation. She claims that attaining legislative quality is dependent on achieving the specific policy goals of the legislation or effectiveness of the legislative content. She argues that effectiveness seems to be the “ultimate indicator of quality of legislative text”⁴² since it is the measure of the causal relationship between the aims of a regulation, method and ways provided for its enforcement, levels of implementation and enforcement in a way that allows achievement of its objectives.

On the other hand, Florijn⁴³ also carried out a quick study on views of legislative quality and he identified the requirements for achieving legislative quality as efficiency, effectiveness, practicability and enforceability, accessibility, simplicity, clarity, legal soundness, is at the appropriate level, using the appropriate instrument as well as balancing costs and benefits. Mader⁴⁴ also gives the features of good quality legislation as being effective and efficient, implementable, equitable, stable, intelligible, practicable, comparable to superior and like legal norms and principles.

⁴¹ Maria Mousmouti, “Operationalising Quality of Legislation Through the Effectiveness Test” *Legisprudene*, Volume 6 (Number 2) Page 191 (2012).

⁴² Ibid

⁴³ Nico Florijn, “Quality in legislation: A law and development project”, in J.Arnsccheidt, B.VanRooij, and J.M.Otto (eds), *Lawmaking for Development Explorations into the theory and practice of international legislative projects*, Leiden University Press (2008), Page 75.

⁴⁴ Luzius Mader, “Legislative procedure and the quality of legislation” in U. Karpen, P. Delnoy (eds), *Contributions to the Methodology of the Creation of Written Law*, Berlin, Nomos, page 62 (1996).

2. Quality of Saudi legislation and analysis of how these qualities are entrenched within the Islamic value and the teachings of Quran

From the sections above I think that legislation of quality should be: effective, adequate, predictable, certain, legally sound, cost effective, accessible, intelligible, necessary, proportionate, clear, simple, precise, practically implementable, comprehensible, based on impact assessment and participatory processes, and be able to promote transparency, order, accountability and fairness. These characteristics of quality legislation are very valuable when analyzing the degree to which legislation fulfil its purpose.

Saudi Arabia has no documented agreed definition of legislative quality; one of the reasons is claimed by Alansari as quality legislation has something to do with the language and the culture⁴⁵. For example a long and poety provision is sometimes appreciated in the Arab region more than short and direct provisions. For the purpose of this research I decided to carry out a questionnaire with drafters from the BOE (Bureau of Experts) -office empowered to draft, revise and amend legislation at the Cabinet-, drafters at legal departments in ministries and drafters at private law firms who have the government as their client. The aim of the questionnaire was to determine what are the top qualities of legislation the Saudi drafters value the most. I designed a questionnaire listing all the universal characteristics of legislative qualities identified by scholars presented in the previous section of this paper, and asked the Saudi drafters to scale the degree of importance. Clarity, precision and simplicity got the highest scores which all represent the quality of the form rather than the operation, accessibility and applicability got few votes but almost no votes went cost-effective as Alansari⁴⁶ commented that the budget is the least constrain in the legislative process in Saudi.

⁴⁵ Interview with Dr. Ibrahim AlNasri, former drafter at BOE and Managing Partner of AlNasri law firm (9th July, 2013).

⁴⁶ Ibid.

This section aims to analyze how the highest chosen characteristics of quality legislation by Saudi drafters are entrenched within the Islamic value and the teachings of Quran. It is extremely important when introducing a new concept in this country to be supported in Quran and Prophetic traditions and that it does not contradict Sharia.

In Islam there are no direct order to draft laws with certain qualities but there are proofs found after a long search in the divine sources of Islam which are Quran and Prophetic traditions that in Sharia the qualities that were chosen are very much valued and given praise and incites to commit to. Thus we can confidently state that the characteristics of quality legislation are supported by Islam and compatible with Sharia.

We find that Quran which is considered the constitution of the country⁴⁷ and the main book of which Muslims derive their teachings from, is featured with clarity and absence of ambiguity and complexity, God said in verse 195 in AlShuraa Chapter describing Quran that it was descendant “In a clear Arabic language”⁴⁸. The most significant interpreter Imam Ibn Katheer explained that this verse means that Quran were descendant in a clear Arabic so to achieve the maximum clarity and coherently with no vagueness and ambiguity.⁴⁹

Also God introduced Quran as being “A Book whose verses have been précised”⁵⁰ and in another verse he said “a Book whose verses are perfected and presented precisely”⁵¹. This means that verses of Quran are precisely stated to deliver one accurate meaning to Muslims. Precision is a key feature of Quran which can be noticed by any reader. The choice of words in Quran is a miracle as described by Hazem⁵², he argues that in 79000 words of Quran there are no two words that are exactly synonyms of each other, and that each unique word is used precisely to deliver the intended meaning and convey the exact one connotation. This proves that precision which is an important characteristic of quality legislation is supported in Islam.

⁴⁷ Basic Law, Article 1 (1992).

⁴⁸ Quran, Shura’a Chapter, Verse 195.

⁴⁹ Shaykh Safir Rahman, *Tafsir Ibn Kathir*, Volume 6, Darussalam (2003).

⁵⁰ Quran, Fussilat Chapter, Verse 3.

⁵¹ Quran, Houd Chapter, Verse 1.

⁵² Interview with Mr. Hazem AlGhamdi, Sharia lecturer at King Abdulaziz University (24th June, 2013).

Another fundamental characteristic of quality legislation that is entrenched in Quran is simplicity. This characteristic is reflected in something like the splendor of brevity we find in Quran, but brevity that does not prejudice the meaning, and prevent the idea of being lost. It is being simple in terms of using fewer words with high capacity to deliver the desired result. It is well worth to note that the Arabs in the Prophet days used to brag about their simple eloquence expressions. A very popular old saying in the Arab world by Altha'albi "the best talks are the simple and clear" then when Islam came it supported this saying and followed it by keeping less words that deliver the intended meaning at its fullest.

The simplicity is also further supported in Islam by discouraging the use of complex and difficult language but the comprehensible simple and clear words that a lay person can understand. The prophet companion Khalifa Ali Bin Abitalib said "talk to people with what they know and understand from their knowledge"⁵³ . Also there is a consensus that the Prophet Mohammed's sayings are called "Jawme'e Alkalim" which means texts that combines huge meanings in few words. Hence, simplicity the universal quality characteristic is strongly entrenched in Islam.

These are few models that illustrate the support of Islam to characteristics of quality legislation and its compatibility with Sharia, which can allow the Saudi drafters to comfortably adapt those characteristics, as it can set a standard of quality which then can be used to assess the effectiveness of a particular legislation in the country. Adapting the concept of quality legislation should show the suitability of a draft legislation to attain its intended purpose, to sufficiently communicate that purpose, the ways of achieving that purpose and that the compliance level of public be very high. Furthermore, it would show if the legislation in operation communicates and achieves its intended purpose and that it is enforceable and implementable. Any law making process stage should have a desire to achieve the standard of quality. A good legislation results from collaboration of all the persons who research and establish the policy, draft the written provisions, execute, monitor and evaluate the impacts of the implementation. As Vanterpool states "In pursuit of quality in legislation, it must be emphasized that there are many players who

⁵³ Mohammed AlBukhari, Sahih AlBukhari, Dar Tawq (1987)

must contribute to this achievement” and “...it is significant to note that achieving quality legislation is a standard that must be collectively pursued and can only be achieved by the efforts of all parties to the legislative process.”⁵⁴.

⁵⁴ VarenVanterpool, “A Critical Look at Achieving Quality in Legislation” *European Journal of Law Reform*, Volume 9 (Number 2) Page 167 (2007).

CHAPTER THREE

Law-Making Process in Saudi Arabia

As we firstly set the characteristic of a quality legislation that will help in attaining the government legal, political social and economic objectives, and have identified the Saudi most agreed values of quality legislation, then further analyzed how those qualities are entrenched within the Islamic value and the teachings of Quran. The second consideration is map out the law-making process to analyze its current position and outline steps and procedures to produce quality legislation.

The five stages of law-making process I took as criteria to deliver quality legislation are shown on the below diagram, they are mainly inspired by the logical policy development of five stages commonly found in parliaments around the world, which may be applicable in any subject and in whatever country regardless of the political or legal system present. Different terms have been given to the process of law-making, methodological steps of sequences⁵⁵ according to Luzius Mader, Maria Mousmouti refers to it as rational and systematic process of a number of interrelated steps⁵⁶, and Ulrich Karpen refers to it as a multi-step process⁵⁷. In this paper the methodology of producing quality legislations refers as law-making stages, which I mean by the process the Saudi government creates public policy and gives effect to this policy through legislation.

⁵⁵ Luzius Mader, "Evaluating the Effects: A Contribution to the Quality of Legislation" *Statute Law Review*, Volume 22 (Number 2) Page 119 (2001).

⁵⁶ Maria Mousmouti, "Operationalising Quality of Legislation Through the Effectiveness Test" *Legisprudene*, Volume 6 (Number 2) Page 191 (2012).

⁵⁷ Ulrich Karpen, "Comparative law: Perspectives of Legislation" *Legisprudence*, Volume 6 (Number 2) Page 149 (2012).



The above diagram displays the five stages of the process taken as the criteria for this study and shows briefed components of each stage. This chapter will explain the logic functional elements of the law-making stages that should produce quality legislation and critically examine the current set of procedures of the process in Saudi Arabia to prove how the poor practice inhibits quality legislation and results in ineffective legislation. In the final chapter of this paper I will present a theory of practice for effective law-making procedure to create quality legislation which is applicable to the Saudi social, legal and political system.

The analysis in the coming sections conceptualizes the set of processes that comprise the life-cycle of legislation and examine the function of the Saudi government in every law-making process stage. In an interview with AlQassim he mentioned that there are no official unified definition and procedure to the life-cycle of legislation in the country, or how to make quality law, these sort of information are not clear and procedures of law-making have not been analyzed and criticized.⁵⁸ He further argued that the legislative provisions provided at the Basic Law is not enough and does not give clear details on law-making nor forced the government to

⁵⁸ Interview with Dr. Abdulaziz AlQassim, managing director of AlQassim law firm who drafts laws for the government since 20 years (29th July, 2014).

draw a plan for it. This is why the legislation we have today are not consistent and sometimes contradicting. AlMudaimeegh second AlQassim and note that the law-making process to produce good legislation in this country has been always encrusted; it was not exposed to experts and was never properly analyzed.⁵⁹ In a question about the average life-cycle of legislation from initiation to commencement Alim claimed that there is no time-frame to the process, it depends on the political atmosphere of the law, for example the domestic violence legislation took more than five years whereas the anti-terrorism law was passed in few days.⁶⁰

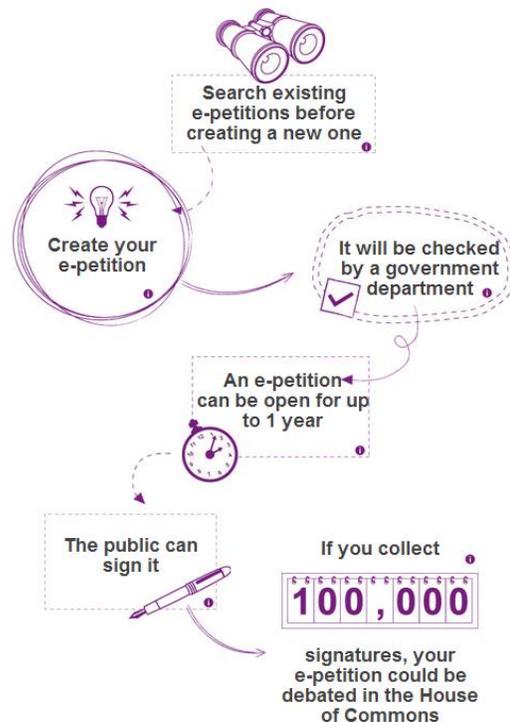
⁵⁹ Interview with Dr. Ibrahim AlMudaimeegh, activist lawyer and former drafter at BOE (18th August, 2014).

⁶⁰ Interview with Dr. Bassim Alim, Activist lawyer and managing partner of Alim law firm (15th July, 2014).

1. Stage **ONE** Identify the problem and set policy objective

Commonly the first function is identifying the problem that needs the government action and its broad policy objective, which could be addressed through ways of policy intervention. From the past records of the country, such problems could be: dealing with emergency situations like the terrorism incidents in 2003 as mentioned by AlQassim⁶¹. He adds international pressures like in the case when human right law was drafted 2004. Also problems can be: stimulation of economic growth, alleviating an economic or social difficulty, improving standards of living, or meeting a technological transformation. An example of a problem that may be identified is the high number of illiterate people and the objective would be to reduce the percentage of illiteracy and improve education facilities. Another example is the rise in the number of road carnage and the objective would be to improve safety levels on the roads and reduce the casualty rate.

The right to initiate a law is supposed to be a constitutionally defined power. In the UK for instance one of the ways to initiate a law is through petitions where a citizen can directly influence the parliament, the diagram shows how petition works in UK⁶². In Saudi petitions are there but not effective, it is simply a citizen fill a form and sends it through Shura council website, there is no known process as the UK petition system. AlMuhareb notes that there has not been a single law initiated through this way. So technically the most effective way problems are identified and tackled in Saudi is



⁶¹ Interview with Dr. Abdulaziz AlQassim, managing director of AlQassim law firm who drafts laws for the government since 20 years (29th July, 2014).

⁶² UK petition system, <http://epetitions.direct.gov.uk> (retrieved 21st June, 2014).

through ministers at the cabinet⁶³ which is considered the most popular routine government policy process to initiate legislation. I think a vital source of problems detector which should be considered by the government are the courts, as they interpret the existing laws so they are best capable to identify problems. Also another way I observed is the regional and international obligations, which persuade the country to adjust its laws to it. In the democratic countries pressure from media and interest groups or even election promises can be sources of problem identifier.

In an interview with Alim⁶⁴ he explained that the process of legislation takes into account many factors, the political factor plays a huge role in the initiating of a law in the country, it is even more important than the objective of the legislation, he claims. Any legislation in Saudi has to take into consideration the absolute power of the monarchy, and the absolute right of exceptionalism of several government agencies, those agencies can always interfere and manipulate the interpretation of the laws. This happens in Saudi because the security concerns and the independence of the law, the law ideally should be independent of any political interference, here most of laws are under such influence due to the poor legislative authority. That is why we see many laws have exceptions and an exception to the exceptions and begged at the end with what we call an “if but” sentences, anyone of the political entities can interfere by vetoing it or overriding it. In his answer to the question about the influence on the initiating of law process he mentioned that international pressure have strong impact and gave this example “Saudi Arabia stood for decades without serious drafting of trading and commercial laws, until Saudi started the negotiation process to enter the WTO, it had very old and archaic sets of laws which were in paper and not implemented, entering the WTO forced Saudi to redraft many of its laws and create new laws, ever since huge influx of laws introduced in Saudi”. He further commented that a lot of laws in major areas like family law or penal codes till this moment are not yet drafted, one of the reasons he analyzed was that “the ruler does not want to be subject to the law, even though some are playing around with it they are still afraid from it”. Also he added that there is a very backward religious authorities that are fearful from any progressive laws in the country, as any law will take away from the ultimate power given to the religious judges and

⁶³ Interview with S. AlMuharib, legal consultant at the health ministry (3rd September, 2014).

⁶⁴ Interview with Dr. Bassim Alim, Activist lawyer and managing partner of Alim law firm (15th July, 2014).

official authorities. Hence, there are mainly religious, economic and royal power base that influence the legislation process, to prove this here is an example; the law of taxation of lands, this law was postponed several times and fought numerous times because huge amount of real estates and lands are owned by influential royal family members and they did not want to subject themselves to land taxation.

An issue needs to be addressed in this stage is the broadness of the policy objectives set to resolve a particular problem. The process of identifying and accepting the appropriateness of the objective and its underlying problem, as being appropriate for application of government resources to develop and implement a policy to overcome the problem and achieve the objective, are done through very slow and archaic ministerial governmental processes. Policy objectives in my opinion should be specific, realistic and achievable which means challenging but not impossible to accomplish. The process could also include: specifying the degree of urgency, setting the agenda for the policy development and implementation processes and negotiating financial support and technical support with international organizations maybe or other development partners.

There are policy objectives set in the first stage of law-making in Saudi but it does not happen sufficiently to deliver quality legislation. The Arabic sentences usually suffers from over generality open-ended and multi-meaning issues, this is one of the reasons we find the policy objectives are stated in the most general terms. For instance the objectives are stated like: to counter domestic violence, to minimize corruption, to promote equality for disabled, to improve infrastructure or to reduce occurrence of heart disease. In my view, improper underlining of the problem and objectives to solve the problem are not clearly and precisely set, the resultant law will be greatly affected which will not produce quality effective legislation. Kelony mentions that “the law serves as an instrument for achieving its objectives; therefore the content of the rule depends on the aim that it wants to reach through law”⁶⁵.

⁶⁵ Paul Delnoy, “The Role of Legistics and Legists in the Determination of the Norm Content” in U.Karpen and P. Delnoy (eds), *Contributions to the Methodology of the Creation of Written Law*, Berlin, Nomos, Page 25 (1996).

2. Stage **TWO** Researching the problem & analyzing the preferred solution.

Researching and formulating the content of the government policy to address the problem and effect the objective, and analyzing the probable results for each solution, to be able to select the most ideal solution. For example, after carrying out research and examination, the objective to reduce illiteracy and improve the quality of education require a number of different solutions; increasing the number of education institutes, introduce compulsory education, improve teaching techniques, and reviewing provision on education. For the road safety to be improved adoption of such solutions can be taken; use of road warning signs; increasing penalties; repairing of roads; obligatory wearing of seat belts lessen speed limits; and carrying out campaigns to create awareness in public.

The second stage entails proper determination of the resources and mechanisms necessary to implement the policy. This comprises the decision on whether legislative instrument will be needed in implementing the policy and the type of legislative instrument to be adopted. In the third stage, the writing and designing of the legislative provisions takes place, which will communicate and effect the government policy, as legislation is a key instrument for achieving public policy. The process includes explaining, researching and analyzing the problem and its existing legal perspective. Here, it is assessed whether government action is required in the first place. As Xanthaki⁶⁶ mentions that legislation is always the solution of last resort because every time legislation is drafted, part of the citizen's freedom is chipped, Alim⁶⁷ agrees that legislation is a last resort in Saudi but for a different reason, which is when a law is drafted it chips away the ultimate freedom of the rulers from doing anything they want and they become subjective to the law. Furthermore, this stage entails detailing and selecting the solution as well as the ways that will lead to the achievement of the objective. According to Popelier, this process of decision

⁶⁶ Prof. Helen Xanthaki, LLM in Advanced Legislative Studies, "Legislative Drafting Course" lectures notes (2013-2014).

⁶⁷ Interview with Dr. Bassim Alim, Activist lawyer and managing partner of Alim law firm (15th July, 2014).

making is on evidence based and not on mere assumptions⁶⁸. International and local problem solving and examination is based on such processes.

AlQassim⁶⁹ asserts that legislation is a need based on quantitative and qualitative information and analysis. These kind of information are rare in this country, for example: if you want to collect data about domestic violence, you would find random statistic that are usually contradicting, or you want to address the problems with commercial contracts you would find different opinions and opposing records. He stated that setting unified criteria to collect statistical analysis for quantitative and qualitative methodologies for legislation is needed.

In Saudi the process of researching the policy is not compulsory but discretionary to the ministry suggesting the law⁷⁰. AlMarzouki stated that the reason of this because there is no legislative manual to guide the law-making process in Saudi, which leaves the choice to the responsible ministry to decide. So some ministries when suggesting a law use old statistics other outsource agencies to carry researches while some ministers get excited to regulate certain issues not based on any studies and some other ministers do not support legislation as they do not want to be regulated by any law.⁷¹ I believe such researching processes must be compulsory taken by the ministry or the government authority that hold responsibility for drafting the legislation and Implementing Regulation (subsidiary legislation), or the explanatory memoranda, those authorities ought to determine the level of importance and set priorities in the government's policy and legislative programmes.

I searched about the kind of research techniques used for this function and I found methods such as; reviewing and analyzing present national and global legal and policy systems; physical or desktop research of the current materials on the issue of problem and objective; and discovering and carrying out proper surveys, research, consultative practices and workshops with

⁶⁸ Prof. Popelier, Legal Quality Requirements, Legislative Quality Workshop, Cape Town South Africa (9th April 2013).

⁶⁹ Interview with Dr. Abdulaziz AlQassim, managing director of AlQassim law firm who drafts laws for the government since 20 years (29th July, 2014).

⁷⁰ Ibid.

⁷¹ Interview with Dr. Mohammed AlMarzouki, writer and academic lawyer and former drafter at the Shura Council, 7th September, 2014).

professionals, interest groups and stakeholders. Relevant information may be also acquired through national, local and regional dialogues and awareness campaigns.

The analysis does not have a uniform method.⁷² It can be a well-established institutionalized process or an ad-hoc requirement for particular legislative proposal. In my opinion it is better undertaken by trained experts in ministries or in some cases a suitable independent authority. Analysis must consider available resources and government capability, and make potential estimations of the implementation and enforcement requirements. It should also consider other possible effects and costs, benefits and risks of each alternative solution, making a presumption to the likely adequacy of each option to realize the objective and recommending the alternative that is likely to be the most effective and efficient way of solving the problem. There is an increasing use of social science research to discover people's interests, perceptions, values, interactions, motivations, aspirations, needs and practices so as to provide a perception of people's behavior and the factors that influence these behaviors. This understanding will enable the developers of policy, whom are the ministries in most cases, to deal with the reasons for the behavior and to suggest incentives and other policy mechanisms which could balance competing interests and encourage citizens to carry out themselves in a way that is in line with the policy objective in order to achieve the desired results. It also helps in evading or reducing the effects of unexpected outcomes of policy decisions. Seidman mentions that "Legislation will only work if based on accurate estimates of the behavioral consequences of proposed legislative interventions which depend upon accurate information about the social circumstances within which the new law will function....The information required plainly falls within the general purview of the social sciences"⁷³.

Some of the questions that arises include: can the objective be achieved by non-legislative means or legislative options required to solve the problem, how each option will be implemented, the availability of resources such as time, finances, technology, trained personnel so as to fulfill the expected tasks and responsibilities, to implement the options, and will they be

⁷² Ulrich Karpen, "Comparative law: Perspectives of Legislation" *Legisprudence*, Volume 6 (Number 2) Page 149 (2012).

⁷³ Ann Seidman and Robert Seidman, "Between Policy and Implementation: Legislative Drafting for Development" in C.Stefanou and H.Xanthaki (eds), *Drafting Legislation: a Modern Approach*, Ashgate (2008)312.

available when required? Other questions concern the risks, costs and benefits of each option and any barriers to effective implementation this includes the identification of advantaged and disadvantaged groups. For instance, if a new legislation dealing with fisheries is introduced, the coastal communities who are usually secluded may not be able to know the proposed measures and may not get any assistance on how to carry out. will implementation becomes effected gradually? Can the existing law deal with the problem adequately? shall the law be changed or other non-legislative? ways which may include not undertaking any action, carrying out education campaigns and approaches to do with public awareness, persuading and voluntary agreement. If enacting a new or amend legislation is the method that is more effective and efficient in achieving the goal, which legislative instrument is therefore the most effective in realizing the objective?

During this stage attention should also be paid to the regional and global context of the proposed policy, international standards and best practices as well as comparable regional and international policies, solutions and results. These sources can be very useful in the development of the policy. This does not mean that transplanting policies, legal norms or particular law from one jurisdiction to another is a suitable approach. It meant to find level of transferability and if workable, borrow and adjust to previous policy and legal models so as to fit to the legal, social, political and economic context of the particular problem. So transplants can work if there are good reasons to rely on policy or law from other jurisdiction, Xanthaki comments that as long as the transplant is able to serve the need it is addressed to, the transplant can work well in the new legal ground⁷⁴.

In cases when more than a country is implementing a regional or international agreement, or there is desire to achieve some level of uniformity like for instance the Gulf Cooperation Council proposed a Security Agreement⁷⁵ between the gulf countries, the countries signed initially without currying proper studies of each state's circumstances, they did not consider cautiously the local conditions of each. Reliance on adapting methods should always be based on certain criterion. Adoption should be taken after cautious study of the other jurisdiction's

⁷⁴ Prof. Helen Xanthaki, *The Law & Politics of Legislation*, "Quality of Legislation" Groningen, Netherlands (22nd August 2014).

⁷⁵ Ali Khan, "GCC security agreement signed" *Arab News* (Riyadh, 1st March 2014).

conditions and differences, and examine how the imported policy can be incorporated to fit local circumstances. For sure this process is a very long and troublesome but it is far much better than creating and enacting incompatible, unsuccessful legal transplants.

In Saudi Arabia the concept of transplanting laws are there, but it can be criticized as the method is done without setting specifications and conditions on which the decision of the adaptation rests on. Alim commented “as a lawyer in Saudi I believe there is not a single reason for us not to reinvent the wheel .. Implemented laws wherever they are we can borrow and adapt them after modifying it and streamlining it to our Islamic Sharia and social norms”. In a question about which countries are given the first consideration to transplant laws from, three interviewee stated that the government look up to the legal norms and best practices in the first world countries⁷⁶, AlQassim disagreed and said that attention is first given to the Arabic legislation in the neighboring countries with similar legal and political system, that share close cultural and social values, and same religion.

Participation of public and stakeholders during policy development are very beneficial and crucial part of this process, Karpan states that participation is a major challenge and necessity for increasing the quality of legislation⁷⁷. Some of the participatory processes include open dialogue participation, consultations, holding discussions, workshops and seminars with input from government officials and agencies, international advisers, parliamentarians, NGOs, private sector, independent specialists, academics, communities and members of the public. These processes though may not take place because of limited time and resources as well as the sensitivity and urgency of the policy initiative or the type of the political system. Some of the public participatory methods are considered democratic practices which does not fit within the political system of the country, Alansari commented that the concept is slowly getting into the Saudi society but remains limited, there are some governmental entities started to publish their regulations to hear public opinion but so far he did not come across a bill that was published to hear views before it is ratified although he knows that there are trials and the idea is present.

⁷⁶ AlNasri, AlMarzouki and AlMuharib.

⁷⁷ Ulrich Karpen, “Comparative law: Perspectives of Legislation” *Legisprudence*, Volume 6 (Number 2) Page 149 (2012).

Traditional media sometimes cover stories about laws which the government is studying, but Alim describes the coverage that it is not for taking opinion but to inform the public that a law is coming out, and even the buzz that takes place he calls it “artificial public pressure”.

The purpose of this stage is to publicize the legislation and create awareness and support for it, as well it can improve policy content and effectiveness so as to address the local and national needs better. Through the participatory processes of information exchange between government and citizens, government accountability can be strengthened and citizens in this way can contribute to the decision making and their own country’s public affairs, which will consequently create in them a sense of ownership of the outcomes. The OECD discusses the process of enhancing government-citizen relations and describes the participatory processes outcomes as: “Strengthening relations with citizens is a sound investment in better policy making and a core element of good governance. It allows government to tap new sources of policy-relevant ideas, information and resources when making decisions. Equally important it contributes to building public trust in government, raising the quality of democracy and strengthening civic capacity”⁷⁸.

The outcome of this stage is a complete researched and analyzed policy presented to the responsible decision-makers in a document that summarizes the problem and the objective with a series of options for achieving the objective and the mechanisms for their implementation. It also includes costs and benefits compares for the planned and unplanned outcomes. Therefore, the decision maker can choose the preferred option whether it was through legislation or non-legislative means, he can also decide the authority responsible to implement the legislation, the financial and administrative mechanisms should also be set at the end of this stage. In many countries this report, of research, analysis and testing the possible effects, consequences and impact, that is submitted to the decision makers are known as *Regulatory Impact assessment*, which is intended to help “narrow the gap between the expected results and actual outcomes”⁷⁹. This is a predictive process facilitates evidence based decision-making.

⁷⁸ OECD, *Engaging Citizens in Policy-making: Information, Consultation and Public Participation*; OECD Public Management Policy Brief, July 2001.

⁷⁹ Koen van Aeken, “Vision to Reality: Ex Post Evaluation of Legislation” *Legisprudence*, Volume 5 (Number 1) Page 41 (2011).

Furthermore, the analysis results should be made available for the subject and future policy processes. This action enhances the chance for information about government regulatory decisions to become publicly available and subject to comment. It also enriches the openness and accountability of government as well as public participation in government policy development and ensure both the government and the affected people understands the problem and policy objective and ways to tackle the problem and different solutions, possible administrative and enforcing mechanisms and related risks, costs and benefits. All this contribute to the production of quality legislation that delivers the desired result.

3. Stage **THREE** Designing and Drafting the legislative provisions

This third stage involves processes which include the designing and writing of legislative provisions which transform a policy to legislation. This is a step that act as a link between policy decision and policy implementation, the Seidmans refer to “legislative drafters, who design and write proposed laws, and thus purport to fill the policy-implementation gap”; and to “the key role that legislative drafters must play in designing the substantive details of a bill to bridge the gap between a policy’s broad objectives and the detailed behaviors of those who seek to implement that policy”⁸⁰. Communication is the key aspect of this step and involves communication of the determined operative content of the policy as well as form and words by which to communicate that content.⁸¹ The goal is to undertake this in a way that the interpretation, implementation and enforcement of the resultant law achieve the objective. Siedmans here states that “How well a drafter designs a bill’s detailed provisions determines whether the bill, enacted into law, works”⁸². By this the resultant law will have no frequent changes though repeal or amendment hence people will not suffer from uncertainty in their personal affairs. Laws refers to the “task of translating the language of policy into the language of the law”. He continues: “The task of the drafter is to do the analysis and balance the risks to get as close as possible to a draft that is compatible both with legal theory and with communicating the policy objectives of the policy maker. This requires not only sound analysis but also potentially some comprises; and it always comes down to the technical ability to identify, and to set out as clearly as possible, the underlying intentions of the legislators”⁸³. The result of the processes will be a draft legislation that will be provided to the lawmaker.

⁸⁰ Ann Seidman and Robert Seidman, “Lawmaking, development and the Rule of Law” in J.Arnscheidt, B.Van Rooij, and J.M.Otto (eds), *Lawmaking for Development Explorations into the theory and practice of international legislative projects*, Leiden University Press (2008), Page 91.

⁸¹ Ann Seidman, Robert Seidman and Nalin Abeyesekere, *Legislative Drafting for Democratic Social Change (A Manual for Drafters)*, Kluwer Law International (2001).

⁸² Ann Seidman and Robert Seidman, “Lawmaking, development and the Rule of Law”, in J.Arnscheidt, B.Van Rooij, and J.M.Otto (eds), *Lawmaking for Development Explorations into the theory and practice of international legislative projects*, Leiden University Press (2008), Page 91.

⁸³ Stephen Laws, “Giving Effect to Policy in Legislation: How to Avoid Missing the Point” *Statute Law Review*, Volume 32 (Number 1), Page 1 (2011).

The approach of organizing the performance of this stage in Saudi is the following: The first bill of legislation is created by either a group of officials who are lawyers and should have experience in drafting legislation from the responsible ministry or law firm that the ministry hires to carry out policy development and actually draft provisions. Usually other people like academics or lawyers from outside the public service get contracted to join the process in this stage. This supposed to be in consultation with other related ministries, experts, stakeholder representatives and other interest groups. The resultant bill will then be sent to the BOE (Bureau of Experts) -office empowered to draft, revise and amend legislation at the Cabinet- whom will revise and modify the draft before it goes to the two councils for the reading, amending and voting as we described the process of passing laws in the first Chapter of the paper. This approach is found in many countries, France for example adopts this method,⁸⁴ the draft legislation is produced by a working group of the ministry then forwarded to a central advisory office who will scrutinize the legality of the policy. This office has the power to draft the legislation which in this case include re-writing or rejecting a part or the whole of the draft legislation and then give a statement of its judgment of the proposed legislation, with justification for supporting or changing the draft legislation to the government. This process is also applied in countries such as Egypt, Thailand, Netherlands, Lebanon, Italy and Columbia.

There is also another popular approach where the legislative drafting and policy development are separated. The writing draft legislation is done at a single centralized government unit with specialist lawyers responsible to draft legislation. Research and policy determination is done by officials in the ministries and agencies then inform the central drafting unit of the determined policy, which then gives the problem, solution and the objectives of the proposed draft in the form of instructions to those lawyers. The lawyers then follow these instructions plus other additional policy inputs to produce the draft legislation. This is the case in Malaysia for example; their Attorney General Chamber has a legislative drafting division that does the designing of provisions.

⁸⁴ Jean Massot, "Legislative Drafting in France: The Role of the Conseil D'Etat" *Statute Law Review*, Volume 22 (Number 2) Page 96 (2001).

I personally prefer the approach that Saudi Arabia follows than a centralized office to draft all laws, as it offer space for ministries whom are the best to know the details of the problem and the policy, as well they are the executers of the legislation and the closest to the citizen and reality. But an issue can be raised here is that less consistency of laws are produced in the country, and non-unified style and qualities which is described by Stefanou⁸⁵ as “Mosaic” legislation. In an interview with AlMuharib⁸⁶ he stated that writing of legislative provisions allows the drafter to test and refine the proposed policy, so the officials in the responsible ministry check and scrutinize drafts as they are produced to ensure its practical operation. In an ideal world all parties including stakeholder and interest group representatives, legislation experts, and government officers, has to work together through consultations to formulate the legislative provisions that are expected to deliver the desired outcome, and produce quality legislation for presentation to the legislator of the country.

Whatever approach is followed it is important to make sure that individual/s drafting the provisions have sufficient information before the drafting process begins. It can be criticized that in Saudi when a law firm does the draft for a ministry, which is the case with 70% of drafts as noted by AlNasri, the law firm does not get proper information to enable them to visualize what the problem and objectives are and the operation of the proposed legislation. Alim argued that this is because setting objectives, researching and analyzing processes of the policy were are not done sufficiently therefore information provided to law firms are not adequate, he added that “you only give instructions when you know exactly what you want but unfortunately in most cases the vision is not clear”⁸⁷. The information they should be provided with includes: a background of the problem and the objective set, the solutions and proposed implementing strategies. This therefore does not hinder the people drafting the legislation having a role in the process of policy development. Varying from one jurisdiction to another, the drafters may have a role in determining whether effect of policy objective will need any legislative involvement, the level of legislative intervention and whether that legislation is new or to amend something

⁸⁵ Dr. Constantin Stefanou, *The Law & Politics of Legislation*, “Legislative Drafting” Groningen, Netherlands (21st August 2014).

⁸⁶ Interview with S. AlMuharib, legal consultant at the health ministry (3rd September, 2014).

⁸⁷ Interview with Dr. Bassim Alim, Activist lawyer and managing partner of Alim law firm (15th July, 2014).

available. The drafters may also suggest a legislative scheme and give an advice on possible implementation mechanisms.⁸⁸

The drafters should review the policy documents and carry out constitutional and other legal research to make sure that the legislative provisions that he/she drafts: are in line with government activities and policies; give effect to the policy; legally acceptable, fit-in with the country's law, legal and political systems, traditions, trends and events, culture and religion; accord with regional and international obligations. The challenges that are related to this: "The pluralistic and fragmented laws of developing countries reflect their history: they may typically contain some or all the following elements: local and tribal customs, religions mores, colonial law, socialist law, new national law, international law – including human rights – and a variety of foreign laws. It is indeed a daunting task to harmonize, co-ordinate and integrate the various elements into a coherent whole"⁸⁹.

Through the drafter's ability to visualize the operation of the proposed legislative provisions, the drafter can develop a legislative direction of primary and secondary legislation and come up with issues that are solved by appropriate levels of legislation. Drafters can identify the people whom are effected by the legislation their benefits, obligations and responsibilities within the legislation. Drafters can also review the applicability of the proposed mechanisms for implementing and enforcing the bill and also they can have a view on whether it is worth creating and establishing new institutions or depend on existing structures and roles. Other concerns include whether to make offences and impose sanctions for violations or to adopt a convincing approach to secure conformity as known by Websterman "goal-regulations"⁹⁰. Also whether to include feedback or review mechanism and whether is it a requirement to collect regular data collection and record keeping, auditing, inspections, and public reporting about the implementation and to monitor and measure compliance levels. Other concerns are: (i) How should State acts be restricted to reduce the chances for public officials to engage in corrupt

⁸⁸ See Constantin Steanou, "Drafters, Drafting and the Policy Process", in C.Stefanou and H.Xanthaki (eds), *Drafting Legislation: a Modern Approach*, Ashgate (2008).

⁸⁹ Jan Michiel Otto, Wilhelmina S.R Stoter, and Julia Arnscheidt, "Using legislative theory to improve law and development projects" in J.Arnscheidt, B.Van Rooij, and J.M.Otto (eds), *Lawmaking for Development Explorations into the theory and practice of international legislative projects*, Leiden University Press (2008), Page 55.

⁹⁰ Prof. Pauline Westerman, *The Law & Politics of Legislation*, "Goal Regulation" Groningen, Netherlands (20th August 2014).

conduct; (ii) whether to incorporate a provision requiring the evaluation of the legislation after it has been in place for some time, to determine whether it remains suitable for effecting its objectives; (iii) what instruments to include that endorse fairness, transparency and accountability of legislation.⁹¹

The Saudi drafter should also ensure that the provisions are integrated and consistent with the Sharia law, Basic Law and other laws and regulations, and not conflict with Quran and Prophetic traditions. The laws should follow the legislation quality in terms of form and intelligibility meaning provisions are clear, simple, written in plain language and gender neutral, consistent, coherent, comprehensible, in logical structure, legally effective, practicably implementable, concise and unambiguous. If stages were applied properly the results would be a production of a quality legislation that can be implementable and effective in attaining policy objectives.

As there are no drafting manual in Saudi there are no known guidelines, criteria or standards to follow in the drafting process and it is left to the capabilities and qualifications of the minister, noting that all ministers and government officials are appointed. Even some law firms who win the bid to draft a certain law are not qualified in terms of experienced personnel to draft legislation⁹². Xanthaki views that a manual with principles can be useful in Saudi since nothing is there, but not prescriptive guidelines so drafters do not stick by it⁹³. AlMarzouki a drafter who worked Shura council, actually proposed to work on legislation manual few years ago but never heard back from the officials.⁹⁴

As Sharia graduates can be lawyers in Saudi, AlQassim⁹⁵ argues that both Sharia graduates and law graduates are not qualified to draft legislation and the education that is taught in Saudi universities lacks the basis of legislation; therefore it does not produce individuals with

⁹¹ The Legislation Advisory Committee, Guidelines on Process and Content of Legislation, May 2001.

⁹² Interview with T. AIS, activist lawyer and academic (13th August, 2014)

⁹³ Prof. Helen Xanthaki, Disseration consultation session, (6th June, 2014)

⁹⁴ Interview with Dr. Mohammed AlMarzouki, writer and academic lawyer and former drafter at the Shura Council, (7th September, 2014).

⁹⁵ Interview with Dr. Abdulaziz AlQassim, managing director of AlQassim law firm who drafts laws for the government since 20 years (29th July, 2014).

capabilities to draft. In a study done by AlQassim he states that the law graduates are very limited in numbers, the ratio is one lawyer to every 6123 citizens whereas the average in Europe is a lawyer to every 1936 citizens. The low number of government scholarships in law degrees is also indicated. The BOE which is the office empowered to draft, revise and amend legislation at the Cabinet have only trained 37 of its legal employees since their foundation -more than 50 years ago- in contrast 7 legal employees went for professional training in Hong Kong year 2002 only. That is the reason why we see major delays in delivering legislation and the extremely slow process of amending laws, therefore ministries choose to release orders and regulations instead of laws and legislation, which leads to duplication and contradiction in many cases. AlMarzouki⁹⁶ mentioned that drafters get the skill here only by experience and practice. He adds that special trainings in legislative drafting are greatly needed in the country as the current level of drafting is not within standard. There are some entities offers their legal employee legal training but mostly on contract drafting, memorandum, and commercial side of law. He concluded that legislative drafting did not take the attention it deserves. International consultations sometimes are taken like for example when drafting the Saudi Stock Exchange Law advisors from Duke University and Allen Overy law firm in London participated in the drafting process, choosing to take an international support is also left to the responsible ministry to decide and select.

In my view to become an expert in the field of legislative drafting, it is a collection of knowledge in administrative law, constitutional law, statutory interpretation and parliamentary procedures, and most importantly a lot and a lot of hand-on-experience in writing legislative provisions. OECD reported that: “The actual drafting of legislation ... is somewhat more expert work than is generally recognized. It cannot be assumed that it can be undertaken by every lawyer ... Law drafting is a type of specialist legal practice ... which demands special skills and relevant experience”⁹⁷. Lortie comments that “legislative drafting is a specialized type of legal practice that demands particular skills and relevant experience”, and that “writing legislation is a complex task that requires extensive knowledge of the law and an understanding of the law

⁹⁶ Interview with Dr. Mohammed AlMarzouki, writer and academic lawyer and former drafter at the Shura Council, 7th September, 2014).

⁹⁷ SIGMA-OECD, Law Drafting and Regulatory Management in Central and Eastern Europe, SIGMA Papers Number. 18 (OECD, 1997).

adoption processes together with mastery of language, intellectual rigour and an organized mind”⁹⁸. Laws notes the need for legal expertise when speaking about the policy proposition being reduced to a more acceptable by an impartial adjudicator, usually a court or tribunal⁹⁹. The goal of their collaboration work is to produce laws expressed as quality legislation.

As draft legislation is a valuable consultative document. To achieve quicker results, consultation with related other ministries, external stakeholders and other interested persons - on proposed drafts, from as early a stage as possible, to harness their views on the content of the proposed law. The outcome of applying those procedures would be a production of a quality draft legislation that is likely to be implementable and effective in achieving policy objectives.

⁹⁸ Serge Lortie, “Providing Technical Assistance on Law Drafting” *Statute Law Review*, Volume 31 (Number 1) Page 1 (2010).

⁹⁹ Stephen Laws, “Giving Effect to Policy in Legislation: How to Avoid Missing the Point” *Statute Law Review*, Volume 32 (Number 1) Page 1 (2011).

4. Stage **FOUR** Implementation of legislation

The main duty of a government is implementing and delivering its policy initiatives “on time, within budget and in accordance with expectations as to outcomes”¹⁰⁰. This stage involves the ministry undertakes the implementation of legislation that are expected to affect its policy objectives. There should be estimation, assessment and planning of resources, mechanisms, processes and time that will be used, this is all done at the research stage and presented in the drafting stage¹⁰¹. In my opinion the key character of quality legislation is tested at this stage, as the provisions being implementable and enforceable with high possibility of achieving its policy objective.

In Saudi the implementation of legislation is completely done by the responsible ministry, so it is subject to the capability and efficiency of the minister. This can be clearly observed between ministries, for example the Labor minister in few years affected many legislation to lower the unemployment rate, whereas the housing minister did not affect any of the plans set therefore the housing crises keep growing every day. So I believe the effectiveness of implementation depend greatly on the executer, which in the Saudi case mainly the minister. AlMarzouki mentioned that the degree of legal awareness in the country has a major effect on the implementation of the law, which is significantly absent in Saudi Arabia.

An important aspect in my view is proper monitoring of implementation which Saudi lacks. The implementation process should be monitored after it begins so that regular checks on available resources and their usage. These supervisions are also crucial in: (1) assesses progress or lack on legislative implementation; (2) evaluates compliance with its terms; (3) identifies and picks problems or possible risks; and (4) take timely corrective measures. This type of

¹⁰⁰ Australian Government, Implementation of Programme and Policy Initiatives Making Implementation Matter, Better Practice Guide October 2006.

assessment helps the responsible ministry to determine how effective and efficient the implementation process is so as to monitor the allocated personnel and financial resources and their usage. It will also help in projecting challenges and risks so that the government adjusts its expectations accordingly for the future in adopting new approaches. In Saudi there are several governmental scrutinizing agencies like the General Auditing Bureau who does the financial audit, the Financial Ministry who scrutinize the expenditures, Supervisory and Investigation Board who makes sure that the power has not been abused by any authority, and lastly the National Anti-corruption association which included in its duties to supervise that the laws, decrees and regulations has been implemented and executed effectively. These agencies are there but a study needs to be done to measure their effectiveness specially in the implementing of legislation arena.

An attempt to analyze the constrains in implementing legislation. T.S claimed that the huge constrain to properly implement legislation is the lack of personnel in the judiciary system, as the judiciary system is controlled by religious conservative persons and they do not want to open the system for development, case in point in the judiciary system they only accept Sharia graduates to become judges, in around the Islamic world judges are have to do both Sharia and law studies, if only this idea is adapted the whole bottleneck of the judiciary system will get better. Another constrain is the leniency in applying laws on certain influential people and their circle of friends and family. For instant; although the government passed an Anti-bribery Law recently but the implementation of the law was not effective and bribes are still very popular in the country. Surprisingly sometimes it seems socially acceptable for an official to break the law when it comes to powerful persons or relatives.

5. Stage **FIVE** Post evaluation of legislation & Decision

The evaluation of legislation and decision is the final stage. This is undertaken after the legislation has been in operation for a while to ascertain the real impact of the legislation and if the objectives have been realized¹⁰². According to Van Aeken, the effects of the legislative action might not be realized till after many years of implementation. He clarifies that it must be acknowledged that a law has only a probability of reaching its purpose. The Seidmans also state that “No law ever works as exactly as anticipated. Pressures to pass legislation quickly frequently preclude adequate research. Constantly changing circumstances inevitably accompany transformation”¹⁰³.

This step is done to find out if the legislation is effective or not, and why. It is a descriptive stage, as it describes the undertakings since the commencement of the legislation. Schaffer argues that this functions as a successive examination and analysis of the actual consequences and achievements of legislation¹⁰⁴. It is a research methodology for quality evaluation and efficacy of the legislation and public policy. It is also used to test legislative-effectiveness exposing any discrepancies between the purpose of legislation and actual results attained. Mader mentions “The best and most reliable (ex post) evaluations use the different qualitative and quantitative methods and techniques familiar in the field of social sciences, for example interviews, observation, text analysis, synchronic and diachronic statistical comparisons between target populations and populations not exposed to the change”¹⁰⁵.

¹⁰² Van Aeken, “Legal Instrumentalism Revisited”, in L.J. Wintgens (eds), *The Theory and Practice of Legislation Essays in Legisprudence*, Ashgate (2005) Page 67.

¹⁰³ Ann Seidman and Robert Seidman, “Using Reason and Experience to Draft Country-Specific Laws” in A. Seidman, R.B. Seidman and T.W. Walde (eds), *Making Development Work: Legislative Reform for Institutional Transformation and Good Governance*, Kluwer Law International (1999) Page 249.

¹⁰⁴ Heinz Schaffer, “Evaluation and Assessment of Legal Effects Procedures: Towards a More Rational and Responsible Lawmaking Process” *Statute Law Review*, Volume 22 (Number 2) Page 132 (2011).

¹⁰⁵ Luzius Mader, “Evaluating the Effects: A Contribution to the Quality of Legislation” *Statute Law Review*, Volume 22 (Number 2) Page 119 (2001).

In Saudi Arabia AlQassim noted that there is no known mechanism to carry post evaluation, and when it rarely happens it is not professional and below the international standards. Alim describes the evaluation process as “haphazard situation”, and he further explained that the government amend a law when they see people start talking about it specially in social media. There is no specific reason on why there is not a recognized evaluation process for legislation. It is very important for the Saudi government to introduce the evaluating stage to complete the legislation lifecycle. This evaluation in my view should be able to give answers to whether legislation induced the required conduct and solved problems that raised the need for such legislation and achieved the policy objectives. It should also look into any unintended social, legal and economic consequences of the legislation. Other measures includes: whether all legislative provisions were useful, effective and enforceable, any challenges noted and any amendments needed to the legislation and why. This will therefore raise other issues such as whether it is essential to improve legislative operations, how appropriate are the implementation and enforcement mechanisms, decision to make whether the legislation is still needed or maybe repealed or some other different actions should be undertaken to attain the objectives.¹⁰⁶ This knowledge can then be used to improve quality of legislations that will follow. Schaffer argues that legislative evaluation is based on notion that legislative effects and results can be studied and used to improve legislation.¹⁰⁷

Evaluation involves comparing expected results with the results that are achieved as well as results realized with pre-legislation conditions. This process depends on data collection and social science research methodologies to carry out a systematic and analytical study so as to determine if legislation successfully achieves its policy objective.¹⁰⁸ This process should be undertaken with a lot of caution so as to achieve transparency and accountability. It should offer analysis on how the legislation was practiced and how judges in courts interpreted the provisions. The evaluation should be based on all groups whom were affected and can provide

¹⁰⁶ The Law Commission, Post-Legislative Scrutiny, Law Com 302, October 2006.

¹⁰⁷ Heinz Schaffer, “Evaluation and Assessment of Legal Effects Procedures: Towards a More Rational and Responsible Lawmaking Process” *Statute Law Review*, Volume 22 (Number 2) Page132 (2011).

¹⁰⁸ Van Aeken, “Legal Instrumentalism Revisited” in L.J.Wintgens (eds), *The Theory and Practice of Legislation Essays in Legisprudence*, Ashgate (2005) Page 67.

their view on its operation and effect. It is true this process might be much easier in a democratic environment as it involves transparency and scrutiny, but it can also be adapted in any political system. In Saudi there is a special law for “minister’s trials” support the idea of ministers being accountable.¹⁰⁹

I have been trying to find out an appropriate mechanism to conduct ex post evaluation in Saudi Arabia, whether each piece of legislation maybe should have ex post-evaluation, under-legislation of general application or as a prerequisite for jurisdictional procedures. AlNasri and AlMarzouki suggested that the most effective way to evaluate the laws and make it compulsory is to add a post evaluation request provision in the legislation (or secondary legislation), to oblige the responsible ministry to make an evaluation report of the legislation. Mousmouti claims that some techniques like sunset clauses that will provide for reporting responsibility and carrying out ex post-evaluations at specified periods of time into legislation¹¹⁰.

This process depends on the availability of time and resources and therefore a flexible approach is essential, and accepting that it may be important to have effective review and evaluation of just some pieces of legislation not everything. In my view, all legislations that are identified as mainly important during the policy development, commitment for its evaluation should be made and then specified in its provisions. Furthermore, review of other legislative pieces can be made ad-hoc if it is discovered that there are resources or where public demand elicits the need for carrying out an evaluation. The evaluation time depends on specific legislation. The Law Commission reported that “3 years was not too short a time frame but represented sufficient time in which to identify any serious, unanticipated issues or operational problems”¹¹¹. Other matters like: the legislative policy objectives should be known and the gathering of relevant data provided for to make a decision on the legislation. This process maybe carried out by the ministry responsible, independent government agency or Shura committees. The results should be made public through reports that will show the information collected, conclusions reached and the respective recommendations.

¹⁰⁹ Ministers Trial Law, Article 5 (1960).

¹¹⁰ Maria Mousmouti, “Operationalising Quality of Legislation Through the Effectiveness Test” *Legisprudence*, Volume 6 (Number 2) Page 191 (2012).

¹¹¹ The Law Commission, Post-Legislative Scrutiny, Law Com 302, October 2006.

The outcomes and effects of the legislation are measured by the post evaluation processes so a decision can be made on whether repealing or amending legislation is necessary. These processes also show the ability of legislation to attain the desired objective hence establish quality of legislation through the assessment of the efficacy of legislation. To assess the efficacy of legislation, its effectiveness and efficiency, substantive and operational quality is assessed. Aeken illustrates the effective and efficient of legislation as research questions for evaluating legislation¹¹² while Mader labels efficacy, effectiveness and efficiency as the three key criteria of evaluation.¹¹³ Xanthaki explains that efficacy is the extend of achieving the policy objective set by the government and realize intended social impact, effectiveness is the ability of the legislative text to translate the policy appropriately and deliver desired results, and efficiency is presented by the relative relationship between the costs of implementation and in terms of form which means provisions are drafted clearly, precisely, unambiguously, gender neutral and in plain language.¹¹⁴ All these characteristics can be tested in the post evaluation stage to measure whether legislation is of quality and government objective is accomplished.

¹¹² Koen van Aeken, “Vision to Reality: Ex Post Evaluation of Legislation” *Legisprudence*, Volume 5 (Number 1) Page 41 (2011).

¹¹³ Luzius Mader, “Evaluating the Effects: A Contribution to the Quality of Legislation” *Statute Law Review*, Volume 22 (Number 2) Page 119 (2001).

¹¹⁴ Prof. Helen Xanthaki, LLM in Advanced Legislative Studies, “Legislative Drafting Course” lectures notes (2013-2014).

CHAPTER FOUR

Conclusion

The focus of this paper is to identify quality legislation features in the legislation system in Saudi Arabia and analyze how they are entrenched within the Islamic value and the teachings of Quran. Then it maps the elements and processes of the law-making stages carried in the country and analyze how the process inhibits quality legislation to be achieved. This paper is meant to give suggestions on achieving quality legislation that will be useful in building a framework that enables the Saudi legal system to develop in a way that is in conformity with country's knowledge and resources. I believe legislative development will help improve standards of living, deliver good governance and promote the rule of law. However, there is a great need for proper guidance on the nature of the process and how to produce quality legislation in a way that utilizes the available resources responsibly.

John Griffith's definition of theory as "generalized insight resulting from experience and useful for guiding intelligent action"¹¹⁵ this paper tries to identify the characteristics of quality legislation in Saudi Arabia and analyze how they are entrenched within the Islamic values, as well as it maps and analyses the functional elements of the law-making process as it was not examined before and show how it hinders the quality legislation to be produced. This is carried out so as to give a clear picture and build some knowledge that can be a guide to activities being undertaken by the Saudi government in trying to produce quality legislation. Through this guidance, the analysis provides an approach that enables effective legislation to produce quality legislation. This paper provides a guidance that is hoped would help in understanding the correlation between policy design and legislative content. This will help in enhancing country's skills and processes as well as aggravate administrative efficiency in identifying and prioritizing policy and legislation in a way that it meets the country's needs. The diagram on the next page

¹¹⁵ John Griffiths, John, "The social working of legal rules" *The Journal of Legal Pluralism and Unofficial Law*, Volume 35 (Number 48) Page 1 (2003).

suggests a particular form and methodological activities for producing quality legislation in the Saudi government.

It is important that empirical investigations to be conducted to test the legislative qualities and elements of the law-making process identified in this paper. This includes testing the applicability of the proposed approach for creating quality legislation against what is actually happening in Saudi Arabia so as to determine its ability in delivering the desired results. This will therefore help to draw conclusions about fundamental elements of the processes for producing effective quality legislation and a flexible legislative methodology that can generally be applied and promote consistency in the design and delivery regardless of the subject or the ministry's specific resources, constraints, intricacies and peculiarities. This must be done thoroughly, since implementation and effectiveness of legislation is a bit complicated to judge as institutional changes might be very time consuming.

Various questions have to be considered while carrying out these investigations. Are the processes outlined in the paper relevant in producing quality legislation in Saudi Arabia? Does the country have a capacity to perform the processes proposed adequately and the laws generated have the features of quality legislation? What resources were available and how did it affect the produced legislation? Was the suggested process in line with the country's political, legal and administrative systems? What role and competencies were played by the local and international advisers -if any-? What relationship existed between writing legislations and processes of policy development?

Suggested methodological activities to achieve legislative quality in Saudi Arabia

<p>STEP ONE Identification of a problem</p>	<p>It starts with the problem being identified by the government of Saudi Arabia either as part of its general policy processes (by ministries) or the national development plan. Saudi can also extend the problem identification through diagnostic study and process of needs assessment carried out by international organization. Such organizations notifies discussions between the organization and the government for helping the government implement its reforms to achieve its development plan in a way that is in line with context, interest and priorities of the nation. The program should be align with the legal systems of the country and the administrative processes of the government. The program should also include the activities to be undertaken during the creation and implementation of the law as outlined in points 2-5 which are appropriate according to the needs of Saudi and its resource availability. Furthermore, the program should look into any lack of resources as well as the capacities to carry out law-making and implementation functions, provide technical assistance for each of the diverse competencies necessary to undertake these functions in a way that is sufficient so that the resultant law is of quality. The technical assistance must give an opportunity for capacity building to acquire new knowledge, skills and better understanding about the process by Saudi nationals.</p>
<p>STEP TWO Development of the policy.</p>	<p>This stage involves problem analysis and explanation. This includes evaluating the existing laws and institutions and explanation of their failures then coming up with solutions that will regulate the situation. This is an evidence based research which is dependent on stakeholder and public consultation, social science research methods as required by the subject, and finally producing the best solution to the problem. Attention is given to the local, national, regional and global context, also international best practices and first world standards, as well as comparing laws of other jurisdiction may be given consideration.</p>
<p>STEP THREE Designing and Drafting of the legislation</p>	<p>Qualified lawyers who have training and experience in legislative drafting design legislative provision to implement the law. The drafting of a law is critical to attaining the law's objective and deliver quality product that promote accountability and transparency processes. This stage should also entails participatory processes for commenting and scrutinizing the draft law and making final amendments before submission to the legislature.</p>
<p>STEP FOUR Implementation of the legislation</p>	<p>Effectiveness of a law and its implementation are attached. Saudi government must not ignore implementation of legislation. The periodic review of implementation commences as soon as implementation begins, to allow regular checks that adequate resources continue to be available and are properly used, also to determine the progress or lack of progress in implementation of legislation and the compliance with its terms.</p>
<p>STEP FIVE Ex post evaluation</p>	<p>The final stage studies the impact and effects of the legislation and presents information of whether the desired results have been achieved or not and why. A decision is made on whether repealing or amending legislation is necessary to succeed the purpose.</p>

Law-making is known as a challenging, complex and unpredictable process. The drafted legislation can be subject to compromise for purposes of political survival as well as budgetary and personnel deficiencies that interfere with the implementation. Therefore, in most cases the resultant law is different from the draft legislation presented to the parliament and other cases like legislation is not accorded its effect hence the policy objectives not achieved. However, it is hoped that the approaches suggested in this paper will offer practical assistance to produce quality legislation for the officials of the Saudi government who are responsible for overseeing policy and law reform. Such approaches will be also useful to both local as well as international advisors who help in analyzing and improving the country's legislation system and law-making process.

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I declare that the essay/dissertation is my own work and that all sources quoted, paraphrased or otherwise referred to are acknowledged in the work.