Applying Good Governance Practices in the Middle East in the Case of Environmental Protection:

A Saudi Arabian Case Study

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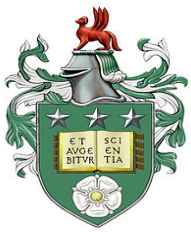

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The candidate confirms that the work submitted is his/her own and that appropriate credit has been given where reference has been made to the work of others.

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Abstract

Granting proper protection to environmental assets is now a globally recognised goal. However, different states, systems and regions have reacted differently in attempting to attain this goal. The theory of environmental governance was developed mainly in the literature addressing western democracies and developed countries and is believed to be able to address complex environmental challenges. This research explores the concept of environmental governance and some of the principles built around it in a quite distinctive context, the Middle Eastern region, taking the KSA as a case study. Although many of the environmental challenges existing in the KSA, are due to its geography and its environmental conditions, a major contribution to such environmental problems can be attributed to issues with environmental governance, especially its legal and regulatory dimensions.

The project was motivated by a number of observed factors, including the rising trend in environmental challenges being encountered in Middle Eastern countries, and the belief that these environmental problems might be addressed by improving governance-related practices. Hence, this thesis seeks to bring the well-developed notion of environmental governance into an uncharted territory, by investigating the current practices, norms and regulations in the KSA's environmental protection domain. The study also provides for consideration an appropriate theory for better environmental governance in that country and observes how the current literature approaches environmental governance issues. To compensate for the lack of existing studies, the research has adopted a number of methodologies and data collection methods, including empirical face-to-face semi-structured interviews.

Thus, this study examines the applicability of some of the principles built around environmental governance, including the concept of good governance, and whether they can be applied in the KSA. It also asks if, ultimately, the environment can be protected in practice via this conceptual framework.

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1. Chapter One: Introduction to the Study

1.1 Introduction

This chapter identifies the key aspects of the thesis as a whole and presents the overall rationale, together with the aims, objectives and structure of the thesis. It begins by briefly introducing some background to the research. Following this, the main research question and sub-questions are stated and the overarching aims discussed. It discusses the research methodology, and identifies the data sources and resources underpinning the thesis. The original contributions the thesis aims to make to the relevant field of law and practice are then explained, followed by an outline of the thesis structure.

1.2 Research Background

1.2.1 Governance and Environmental Governance

This thesis is about governance and dealing with a term like "governance" is daunting. It has attracted the attention of many authors in different areas of scholarship and its constituent parts are believed to be the cure for many challenging contemporary problems, notably in the field of environmental protection. Paradoxically, however, the term "governance" has no fixed content or single definition, therefore it is potentially a vague notion.[1] Nonetheless, there have been some attempts to define interactive governance as:

> "*The complex process through which a plurality of social and political actors with diverging interests interact in order to formulate, promote, and achieve common objectives by means of mobilizing, exchanging, and deploying a range of ideas, rules, and resources*"[2].

In the case of environmental governance, the International Union for Conservation of Nature, IUCN, defines environmental governance thus:

> *"Environmental Governance is the means by which society determines and acts on goals and priorities related to the management of natural resources. This includes the rules, both formal and informal, that govern human behavior in decision-making processes as well as the decisions themselves. Appropriate legal frameworks on the global, regional, national and local level are a prerequisite for good environmental governance"*[3].

Some commentators, however, rather than tailoring an elaborate single definition, tend to frame their discussion in terms of the essential components of the term "governance", such as collective decisions, accountability and openness[4]. These understandings and components suggest some degree of movement from a state-centric command and control approach

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[1] Elizabeth Fisher, Bettina Lange and Eloise Scotford, *Environmental Law: Text, Cases, and Materials* (Oxford University Press 2013).
[2] Jacob Torfing, *Interactive Governance : Advancing the Paradigm* (Oxford University Press 2012)
[3] https://www.iucn.org/theme/environmental-law/our-work/governance-and-meas "Environmental Law" (The International Union for Conservation of Nature (IUCN) Website, accessed in 2/7/2018).
[4] B Guy Peters, 'Governance as Political Theory' [2011] 5 Critical Policy Studies 63.

toward more collaborative governance, and a corresponding shift to a more flexible and socially inclusive type of environmental regulation.[5] Thus, it can be recognised that there is little consensus on the definition of what concepts such as governance, good governance or environmental governance entail. However, such vague, contested and varying understandings are typical of many other political or environmental concepts, which also lack a single definition,[6] something which will be returned to in later chapters.

It is not surprising to find a prominent relationship between the general notion of governance and environmental governance. Both terms, for example, address and are considered alongside social, economic and political issues.[7] In fact, environmental governance can be perceived as an integral aspect of governance, with a special focus on the protection of the environment, which has come to be regarded as a fundamental issue for maintaining human health and natural resources.[8]

Understanding the obstacles to good environmental governance can be one feasible means to better clarify the notion of good environmental governance itself. According to the UNPD Regional Bureau for Europe and the CIS/Regional Environmental Governance Programme, these challenges primarily arise from shortcomings related to the weakness of the existing national and subnational environmental bodies and institutions. They include the need to advance the competence of these environmental bodies, by enhancing the capacities of these institutions to both design and implement environmental policies effectively. This involves the need to award environmental issues higher political concern, as well as identifying environmental goals and priorities and consolidating and reassessing environmental policies, while also establishing political power for the environmental institutions and developing effective mechanisms for the public, in order to facilitate their access to environmental information, leading to real participation in the environmental decision-making process.

The priorities also include issuing or amending existing legislation to meet the requirements of international legal provisions and accepting the need for effective engagement with the relevant regional and international activities and processes. In many cases, there may be a need to further decentralise environmental management to a lower level, considering and integrating environmental issues in the development plans and strategies, and allocating

[5] Neil Gunningham, 'Environment Law, Regulation and Governance: Shifting Architectures' [2009] 21 Journal of Environmental Law 179.
[6] David Schlosberg, *Defining Environmental Justice: Theories, Movements and Nature* (Oxford University Press 2007).
[7] We can elicit an analogy between these principles of good governance and good environmental governance on one hand, and other current and marketable principles such as democracy and sustainable development, which seem to share similar aspects but with different emphases.
[8] United Nations Development Programme (UNDP): Regional Bureau for Europe and the Commonwealth of Independent States, *Environmental Governance Sourcebook* (UNDP: Regional Bureau for Europe and the Commonwealth of Independent States Publications 2003).

sufficient budgets for solving environmental problems, by recognising the linkage between the environment and the economy and formulating policies accordingly.[9]

1.2.2 The Need for Environmental Governance in the Kingdom of Saudi Arabia

Numerous factors have led to certain major environmental problems in the Kingdom of Saudi Arabia (KSA) and rendered the environmental conditions susceptible to further degradation.[10] These factors include the KSA's heavy economic reliance, on oil production and the fact that GDP is constituted largely from the oil trade, together with the significant energy and oil consumption and the growing domestic demand for these,[11] including by the energy and transportation sectors.[12] The latter sector has also been placing great pressure on the environmental assets of the state, as a result of a constantly growing demand for private vehicles.[13] Further environmentally degrading impacts have also been brought about either by human hostilities such as the Arabian Gulf War (1991),[14] or frequent, negative, natural phenomena striking the state in a massive way, primarily sandstorms.[15]

More importantly a major part of the environmental dilemma in the state relates to issues with governance, and in particular environmental governance. The legal structure of environmental institutions, the environmental legal tools and legislations, practices and mechanisms have fallen short of their legally stated ends, due to the prevailing traditional, and bureaucratic style of environmental governance.[16] The far-reaching influence of the recently introduced Vision 2030 project seems also to have prompted these administrative concerns, which will be discussed in later chapters. Fortunately, Vision 2030 has the potential to improve

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[9] United Nations Development Programme (UNDP): Regional Bureau for Europe and the Commonwealth of Independent States.

[10] Habib M. Alshuwaikhat, 'Strategic Environmental Assessment Can Help Solve Environmental Impact Assessment Failures in Developing Countries' [2005] 25 Environmental Impact Assessment Review 307.

[11] Syed Masiur Rahman and A. N. Khondaker, 'Mitigation Measures to Reduce Greenhouse Gas Emissions and Enhance Carbon Capture and Storage in Saudi Arabia' [2012] 16 Renewable and Sustainable Energy Reviews 2446. Mohammed M. Damoom and others, 'Adding Sustainable Sources to the Saudi Arabian Electricity Sector' [2018] 31 The Electricity Journal 20.

[12] Antoine Waked and Charbel Afif, 'Emissions of Air Pollutants from Road Transport in Lebanon and Other Countries in the Middle East Region' [2012] 61 Atmospheric Environment 446 and see also Saleh Abdulaziz Al-Fouzan, 'Using Car Parking Requirements to Promote Sustainable Transport Development in the Kingdom of Saudi Arabia' [2012] 29 Cities 201.

[13] ibid.

[14] Ronald H. White and others, 'Premature Mortality in the Kingdom of Saudi Arabia Associated with Particulate Matter Air Pollution from the 1991 Gulf War' [2008] 14 Human and Ecological Risk Assessment: An International Journal 645 see also Peter Literathy, 'Considerations for the Assessement of Environmental Consequences of the 1991 Gulf War' [1993] 27 Marine Pollution Bulletin 349.

[15] Mohamed M Ibrahim and Gehan A El-Gaely, 'Short-Term Effects of Dust Storm on Physiological Performance of Some Wild Plants in Riyadh, Saudi Arabia' [2012] 7 African Journal of Agricultural Research 6305.

[16] Ambalam Kannan, *Global Environmental Governance and Desertification: a Study of Gulf Cooperation Council Countries* (Concept Publishing 2012).

the overall environmental quality and governance outcomes, as will also be discussed in later chapters.[17]

1.3 Research Questions

This section explains the construction of the thesis and what it will discuss. First, it is crucial to mention that the entire thesis will revolve around the primary research questions, which are: "Can good governance practices be applied in Saudi Arabia in regard to the protection of the environment? If so, how can they be implemented?"

In addition, in order to address these central questions comprehensively and systematically, the following sub-questions were posed:

i. What are governance and environmental governance? What do the terms mean?
ii. How is the KSA environmentally governed? What are the KSA's legal systems and its main legislations in this regard?
iii. What models of environmental governance exist and prevail in the KSA?
iv. How does the environmental governance framework in the KSA respond to the issues of climate change and the special characteristics of environmental challenges?
v. How, and to what extent does the environmental governance domain in the KSA comprehend and incorporate environmental good governance standards or norms?
vi. What are the status and the structure of the Environmental Impact Assessment (EIA) in the KSA?
vii. What is the position or the legal status of environmental principles in the KSA? And to what degree are they present in the environmental governance arrangement?

These sub-questions are broken down into two broad sections. The first concerns the generic background on governance and environmental governance issues, i.e. the literature review. The second section of the sub-questions concerns the KSA as a case study of the Middle East Region. Thus, these sub-questions are addressed over separate independent chapters, apart from Question ii, which does not have a separate, dedicated chapter but (for practical reasons of space and the structure of the argument) is addressed in an embedded way within the discussion of each of the core chapters. The aims and objectives of each chapter are derived from the sub-question that forms the focus of the chapter, as explained in the sections below.

1.4 Research Methodology[18] - Development of the Method

As anticipated when contemplating this study, there was limited disclosure of environmental governance data by the pertinent regulatory bodies. Therefore, the use of

[17] Habib M. Alshuwaikhat and Ishak Mohammed, 'Sustainability Matters in National Development Visions-Evidence from Saudi Arabia's Vision for 2030' [2017] 9.
[18] Not to be confused with the term "research methods", although they are frequently, including in this research, used interchangeably. See Jonathan Grix, *The Foundations of Research* (2 edn, Palgrave Macmillan 2010) P 32 and 126.

interviews, as a socio-legal methodology to explore the reality of how legal actors in the legal environmental domain behave fills the gap created by this lack of data.

Overall, a combination of qualitative and doctrinal methodology has been employed to combine an empirical and theoretical approach. The research takes the environmental governance jurisdiction as a case study, from the Middle East. In general, primary sources are used to undertake a 'doctrinal' study. These primary sources mainly comprise laws and provisions, together with government announcements, statements and official publications. Secondary materials are also used, mainly from the extensive body of scholarly literature in this area, but also from media sources and publications and websites of NGOs and various international bodies. Since the KSA is not a common law jurisdiction, there is little reference to case law for this research.

The findings from the paper-based part of the research have been combined with the findings from the qualitative empirical part of the study. This was based on semi-structured interviews with representatives of the relevant environmental regulatory body, the General Authority of Meteorology and Environmental Protection (GAMEP) together with representatives from industries, environmental organisations and environmental societies. Triangulating the descriptive and doctrinal analysis with these empirical findings has added significant value to the thesis and its analytical framework and enriched the findings with the perspectives of real world stakeholders.

The interviews were carried out over a period of 90 days starting from 25 May 2016. Major relevant bodies were accessed, and senior officials and environmentalists were interviewed during this period. Individuals from four relevant environmental governance categories were interviewed, namely, civil servants or officials, representatives from industries, academics and scholars and representatives from semi-NGOs. Twenty-seven individuals were interviewed, representing 30 parties (stakeholders and experts).[19]

Those participants were selected purposively, according to their real-life experience, knowledge, and involvement in areas related to environmental protection. The interviews were conducted in venues suitable to the participants and according to their preference. Therefore, the researcher had to travel from Leeds to a number of cities, including Riyadh, Dammam, Jubail, Jeddah, Al-Madinah Al-Munawarah, all in the KSA, and also Edinburgh.

1.5 Significance and Contribution of the Study

There are two primary contributions of this thesis to the literature. The first, is concerned with environmental governance. The second contribution concerns the KSA's environmental

[19] The number of parties represented was greater than the number of participants (See Appendix A): this is because 3 of the academics interviewed were categorised at the same time as representing semi-NGOs. The reason for this is that there are no independent self-funded environmental NGOs in the KSA. Thus, people affiliated to semi-NGOs have to be sustained by their main jobs, typically universities.

jurisdiction, as a case study of the research, and this is one of the first such studies to address and explore the “in-action” practices, experience and reality of the KSA’s environmental governance arena.

The literature that is currently available does indeed indicate a genuine need for studies focused on the KSA’s environmental law and governance, which considered this area more seriously. Therefore, the contribution of the study is potentially substantial. A particularly significant, but secondary, contribution is the effective examination of governance and good governance principles with reference to environmental protection within the legal setting of the KSA. The literature currently available clearly demonstrates that ongoing discussion regarding environmental governance has largely focused on liberal western democracies, where relatively recent theories of governance have been developed.

The principal contribution of the thesis, however, is to bring the scholarly discussion and theorisation available in the literature, into a distinct Middle Eastern legal jurisdiction, namely the KSA, as the case study of this research. By exploring and analysing the environmental governance domain of the KSA, in the light of the conceptualisations and theories put forward and discussed by key environmental thinkers and academic researchers on law and governance, this thesis aims to facilitate a theoretical extension of such theories and debates to the jurisdiction under study i.e. the KSA. This allows the author to assess the relevance and applicability of the available body of literature to the status quo of the case study. This theoretical development is the major contribution the research aims to be achieved.

Moreover, in the KSA, environmental protection has predominantly been addressed by environmentalists, while the attention of lawyers has been peripheral, if it exists at all. Unfortunately, legal academics and practitioners in the KSA have preferred to direct attention towards other areas of the law and governance. Thus, this project adds to the significant existing academic and theoretical gap within the body of available literature by addressing the existing environmental challenge in the case study of the KSA from a purely legal angle.

In addition, this thesis endeavours to introduce an analytical framework, in order to explain how the environmental protection process can be supported and empowered by operating good governance principles in a distinct legal system. This is important in the Saudi context, since the available literature is widely about western democracies and, to a lesser extent, East Asian countries, but less frequently addresses the Middle East and there are no examinations of the situation in the KSA, or even jurisdictions that are similar.

Further, the study offers an original contribution by clarifying and investigating the current legal policy-making framework that regulates environmental issues in the KSA, in particular those in which the current available literature also demonstrates a significant gap. This in itself offers a potential valuable contribution to the foundation of knowledge. In addition, the project aims to fill theoretical gaps existing in the current limited body of literature available

on environmental governance topics in the KSA. Such topics encompass issues such as good governance principles, environmental governance models, levels, regulatory approaches and environmental principles, as well as climate change issues in a holistic rather than executively narrow or confined approach.

1.6 Research Aims and Objectives

Based on the research background described earlier, it is evident that environmental challenges have been increasing in the KSA, threatening substantial socio-economic problems in the arid part of its territory. Given that numerous government endeavours have been undertaken and considerable finance directed towards managing environmental problems without achieving any overarching effective or robust solutions, the approach of this thesis will be based on the notion that the chief problem arises from the legal governance aspect. The thesis aims to play a positive role in the process of searching for an appropriate model of environmental governance that aligns well with the legal regime being operated in the KSA.

By addressing the questions laid out above, the research also meets a number of set objectives. The first of these is to identify the inherent weaknesses in the current regulatory approach adopted by the respective environmental regulatory agencies and the legislative bodies in the KSA when fulfilling their duty to conserve the environment. In addition, it also examines the current form of governance and legal obstacles to appropriate environmental governance practices. These are further facilitated by, inter alia, speaking with and interviewing key individuals who are working in and are interested in the environmental protection domain in the KSA.

This thesis therefore aims to discuss how the KSA's relevant authorities can, in future, initiate and implement more appropriate environmental governance practices that are in harmony with its legal tradition. The project also aims to suggest ways to promote environmental governance practices within the KSA, to manage the environment better, which would constitute a step forward in terms of what are widely accepted and recognised as good governance standards and practices. The focus, however, is a critique of environmental governance with the KSA. The research also aims to engage with the available scholarly literature, and bring the thoughts and theorising of leading environmental law and governance writers into the discussion about the KSA, and its environmental governance framework. The thesis also enriches the Saudi legal literature, in which there is a noticeable lack of publications on environmental governance and law that discuss the issue from a national perspective.

1.7 Thesis Outline and Structure

1.7.1 Chapter Two: Governance and Environmental Governance: Theoretical Accounts

The first section of this chapter is devoted to an exploration of the phenomenon of governance. The primary objective is to shed light on the concept of "governance", notably in

the political, public-law and policy-making arena. It addresses the first sub-question laid out by the thesis i.e. “What is governance? What does the term mean?” The various uses and meanings of the concept are also examined, exhibiting its wide scope, and discursive and expansive nature. The chapter also draws attention to some of the theories and concepts associated with the notion “governance”, and which are discussed in relation to it in the literature. Finally, some pertinent conclusions are drawn to relate this section to the purpose of the thesis, together with some observations.

The second section explores and clarifies various theories of environmental governance to provide a clearer picture of the role of environmental governance. This starts with a critical review of a diverse range of definitions of environmental governance. It then explores a wide array of distinct but mutually-relevant issues concerning environmental governance. These issues include modes of environmental governance, good environmental governance norms, trends in environmental governance, examples of wide-scale environmental risks, and fundamental environmental principles, and other pertinent issues.

1.7.2 Chapter Three: Methodological Approach

The focus of this third chapter is on the methodology, research design and methods to be employed by this research to achieve its aims and objectives. As there is a shortage of available legal and environmentally-focused studies and data regarding the context of the case study, this research is founded on documentary data, which are supported by empirical data generated by semi-structured, face-to-face interviews. Generating and employing these different genres of data requires certain academic standards and requirements to be rigorously observed.

The purpose of this chapter is, therefore, to describe and discuss the main methodological and contextual aspects that need to be taken into account. This is to address a range of methodological and good practice issues that are widely deemed as necessary to meet certain academic standards respecting quality, integrity and ethical criteria.

1.7.3 Chapter Four: Models of Environmental Governance

This chapter examines the presence of the three main governance modes in the KSA. These three principal models or forms of governance are: state-centric or hierarchical governance, the market-based form of governance, and the network or network-based form of governance. The aim of this chapter is to investigate how and to what extent these models of governance exist in the environmental governance domain in the country, and in the way that environmental governance is advanced by the scholarly literature. This exploration is undertaken by examining the principal Saudi hard and soft law documents, as well as by utilising empirical data generated from the face-to-face semi-structured interviews introduced earlier, and analysing them against the findings and theories in the literature.

1.7.4 Chapter Five: Environmental Governance, Climate Change and the Special Characteristics of Environmental Challenges – Integration Principle Focus[20]

Focussing on the KSA as a key Middle Eastern case study, this chapter addresses the unique challenge of climate change and the complex, uncertain and trans-boundary characteristics of environmental ills, from a legal and environmental governance perspective. The chapter investigates and analyses how the environmental governance and legal arrangements respond to these peculiar challenges.

To ensure depth and quality, the analysis is first based on a doctrinal approach, unpacking hard and soft law and policy instruments and identifying several legislative and regulatory issues and gaps inherent in these documents. In addition, as in the other four core chapters, this chapter utilises a qualitative approach using original data generated by the semi-structured interviews with practitioners and scholars. This genre of analysis facilitates "digging-deep" and discovering challenges which may be less "legal or law-related", such as psychological factors, which feed into and influence either the formation or implementation of the law.

1.7.5 Chapter Six: Good Environmental Governance

As the case in the other four core chapters, the contribution pursued by this chapter is in a two-layer design. The first layer of contribution, which represents the secondary contribution, is to identify the existence and manifestation of three main criteria of good governance, namely public involvement, accountability and transparency, in the uncharted territory of the Saudi environmental governance framework. In addition, the extent to which these three widely acknowledged norms of good governance are present and applied in the environmental governance arrangements of the case study is explored.

The second layer of analysis, which is the main contribution targeted by the chapter, is undertaken by taking the discussion to another level by engaging with the thoughts and theories of leading environmental governance scholars and bringing them into the discussion about the case study. This primary contribution allows the analysis to go beyond the case study jurisdiction and to engage in a discussion about the extent to which the voluminous existing literature, represented by scholarly theories and discussions, can be said to be relevant to and applicable in a quite legally and culturally distinct and under-researched part of the world i.e. the KSA.

1.7.6 Chapter Seven: Environmental Impact Assessment

This chapter focuses on environmental impact assessments (EIAs) in the KSA. The EIA is an important environmental protection tool introduced into the environmental governance framework to evaluate and inform decision-making processes concerning whether or not

[20] It might be relevant here to distinguish between the integration principle whereby environmental concerns are incorporated in the policy-making process, and other ideas such as 'integrated' framework, which emphasises the concept of coordination and joined-up approach.

certain developments or projects are to be allowed. The EIA's legal status and procedures in the KSA are examined in this chapter.

The main contribution of the chapter is in examining and synthesising the current states of theories and debates in the literature, through a discussion concerning the generally undocumented EIA jurisdiction of the KSA. This allows a theoretical development to be realised through the assessment and examination of the extent to which the available body of literature can be said to be relevant and applicable to the on-the-ground state of the EIA in the KSA. This theoretical expansion, which brings the thoughts and arguments offered by leading scholars and authors into the uncharted territory of the KSA's EIA system is the principal contribution targeted by the chapter.

1.7.7 Chapter Eight: Environmental Governance and Environmental Principles

This chapter explores the existence and nature of principal environmental principles in the under-researched context of the Middle East, taking the jurisdiction of the KSA as a case study. These widely acknowledged principles are sustainable development, the precautionary principle, the preventive principle and the polluter pays principle. The analysis in this chapter focuses on to what extent these principles are present in and embodied by the Saudi environmental law jurisdiction, and what are their manifestations, if any, and their legal status and role, in environmental protection in the environmental law and governance framework.

1.7.8 Chapter Nine: Conclusion

This chapter presents a general summary of the research, the final findings of the thesis and the conclusions drawn. The overall contribution of the research is identified and the policy implications are discussed. Finally, the limitations of the study are explained and recommendations and directions for future research are provided.

2. Chapter Two: Governance and Environmental Governance: Theoretical Accounts

Abstract

Although the concepts of "Governance" and "Environmental Governance" have been employed across multiple disciplines, no single fixed definition has emerged that researchers agree on. This literature review aims to shed light on these concepts and some of their key meanings and features, particularly in the area of social science and environmental law. This review will provide a foundation for the analysis and therefore findings in the later chapters about the KSA, i.e. the secondary contribution of this research. Thus, this chapter will constitute the theoretical framework on which this study is premised and extend and develop the existing theoretical accounts, which is the primary contribution sought by this project.

2.1 First Part of the Literature Review: The concept of Governance

2.1.1 Introduction

The primary aim of this first section is to illuminate the concept of "governance", and some of its associated diverse theories and meanings. The principal objective here is to demonstrate the wide scope, lack of consensus and evolving nature of the term. More importantly, these two parts of the literature review chapter will constitute the theoretical platform upon which the later core chapters reflect, to extend the discussion and observations with the support of evidence brought from the case study. This theoretical development is intended to be a primary contribution to this research, with the intention to extend the scholarly discussion and theories to the so far unexplored area of the legal jurisdiction of Saudi Arabia (KSA). Thus, this chapter represents the theoretical fundamentals of this thesis that inform the analysis of the core subsequent chapters.

Governance, as a concept, has given rise to debate in many disciplines and sub-disciplines, without an agreement on its nature, scope or definition. This is partly because researchers from different disciplines approach the concept in different ways.[21] In many cases, however, it can serve as a potential bridge between otherwise quite separate disciplines.[22] This first part also concludes by raising doubts and questioning some of the existing debates that seem, explicitly or implicitly, to align the concept of governance more with the mechanisms of change in the capitalist Western democratic world.

[21] Jon Pierre and B. Guy Peters, *Governance, Politics and the State* (Macmillan 2000).

[22] Kees Van Kersbergen and Frans Van Waarden, ''Governance' as a Bridge between Disciplines: Cross-disciplinary Inspiration Regarding Shifts in Governance and Problems of Governability, Accountability and Legitimacy' [2004] 43 European Journal of Political Research 143.

2.1.2 Origin and Popularity of the Term "Governance"

The term "governance" is believed to have an ancient Greek origin signifying meanings such as directing, leading and steering. However, the notion of governance gained widespread popularity only after the middle of the twentieth century,[23] between about 1979[24] and 1985, when the term governance, became a catchword,[25] thanks especially to the issue of corporate governance.

The shift around the 1980s towards including notions of governance in discussions of political issues, public law and policy making has been given various explanations. These include the pressure by the private sector to reduce the regulatory authority held by the formal state, the promotion of neo-liberal ideology, the financial deficits which struck some states during the 1970s and 1980s, and the concurrent emergence of concepts including the New Public Management (NPM).[26]

2.1.3 Governance vs. Government

The concept of governance is not synonymous with "government", nor does it have the same connotations. However, this does not mean one cannot accommodate the other. The concept of "Governance" was originally intended to redress the deficit and powerlessness associated with the narrow idea of government. Simply put, what is aspired to is a flexible, competent and inclusive governance to steer and control society and address its multiple challenges; thus, governance supersedes the coercive, narrow and out-dated notion of government.[27] Nonetheless, that does not mean that these concepts are necessarily mutually exclusive. Thus, the separation of these notions does not suggest that traditionally governance was carried out exclusively by government, nor does it suggest there are no applications of governance undertaken by government. Figure 1 below illustrates the possible spectrum of levels of government involvement in governance.

Among those who clearly accept the co-existence of governance with government are Osborne and Gaebler. For example, they found ten shared merits of many successful experiences of governance prompted or carried out by government. In these instances, the government is not all-providing, but rather works within an effective environment and style of governance. They provide these ten principles in the following passage:

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[23] David Levi-Faur, 'From Big Government to Big Governance?' in Levi-Faur David (ed), *The Oxford Handbook of Governance* (Oxford University Press 2012) P 5.

[24] When Williamson published his exceedingly influential paper "Transaction-Cost Economics: The Governance of Contractual Relations".

[25] Levi-Faur, n 22, P 5.

[26] Andrew Jordan, *Climate Change Policy in the European Union : Confronting the Dilemmas of Mitigation and Adaptation?* (Cambridge University Press 2010) P 13-14.

[27] David Osborne and Ted Gaebler, *Reinventing Government : How the Entrepreneurial Spirit is Transforming the Public Sector* (Addison-Wesley 1992) P 15.

"*Most entrepreneurial governments promote competition*[28] *between service providers. They empower citizens by pushing control out of the bureaucracy, into the community. They measure the performance of their agencies, focusing not on inputs but on outcomes. They are driven by their goals - their missions - not by their rules and regulations. They redefine their clients as customers and offer the choices . . . They prevent problems before they emerge, rather than simply offering services afterwards. They put their energies into earning money, not simply spending it. They decentralize authority, embracing participatory management. They prefer market mechanisms to bureaucratic mechanisms. And they focus not simply on providing public services, but on catalysing all sectors - public, private, and voluntary - into action to solve their community's problems.*" [29]

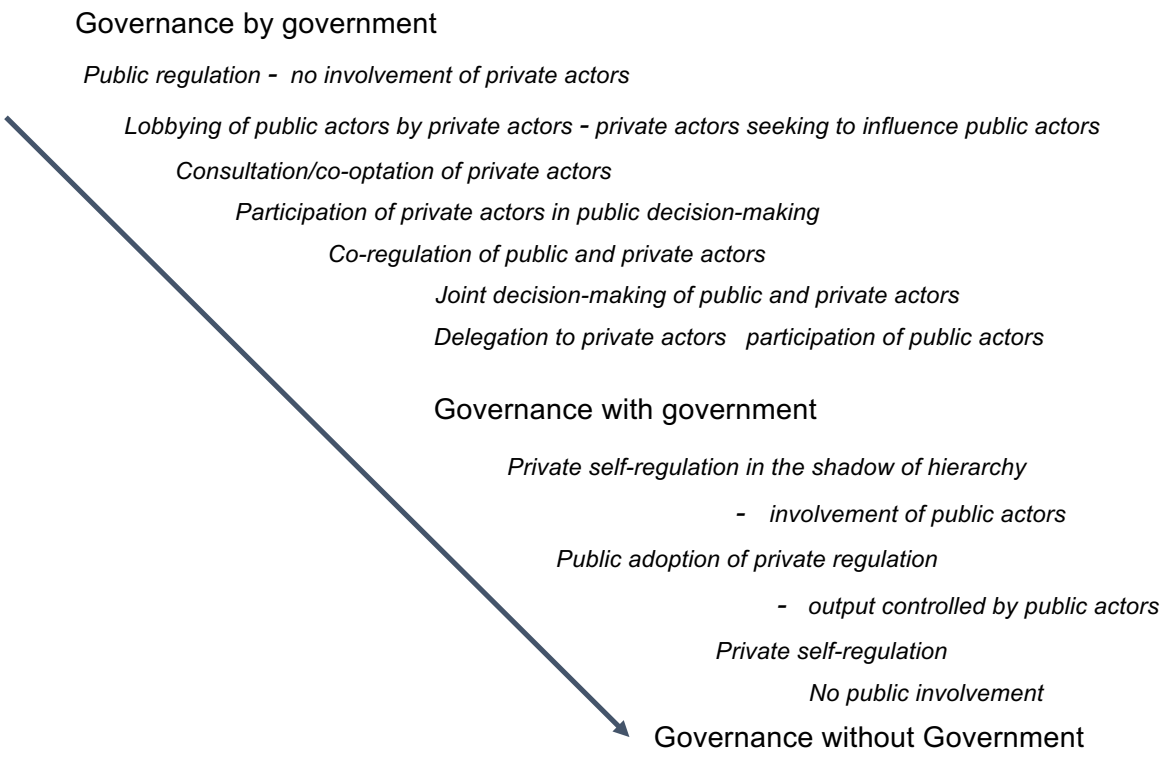

Figure 1: The various degrees of the involvement of government in the dynamics of governance from the typical form of hierarchical governance to the non-hierarchical style[30]

2.1.4 The Ambiguity of Governance

Despite the fact that the rigid and traditional conception of government is now considered out-dated and out of place in the complex contemporary era, governance does not clearly emerge as an unambiguous alternative in the literature. Its conceptual vagueness is widely acknowledged, yet is also deemed the "*secret of its success.*"[31] This secret appears to lie in

[28] Original Author's emphases.
[29] Osborne and Gaebler, n 26, P 19-20.
[30] Tanja A. Börzel and Thomas Risse, 'Governance Without a State: Can it Work?' [2010] 4 Regulation & Governance 113 P116 (adopted but slightly amended from the original reference).
[31] Volker Schneider, 'State Theory, Governance and the Logic of Regulation and Administrative Control' in Andreas Warntjen and Arndt Wonka (eds), *Governance in Europe: The Role of Interest Groups*

its quality "*to be shaped to conform to the intellectual preferences to the individual author and therefore to some extent obfuscate meaning at the same time that it perhaps enhances understanding.*"[32] This thesis will therefore endeavour to capture this ambivalent character and perceived "secret of success" of governance theory in order to investigate how non-western, Middle Eastern states, notably the KSA, might fruitfully utilise this theory in the domain of environmental protection.

As pointed out above, the theory of governance is by definition inter-disciplinary,[33] and has been associated with a broad range of contexts. This has brought about sometimes interrelated terms, such as good governance, public governance, environmental governance, economic governance, hierarchical governance, interactive governance, participatory governance, network governance, corporate governance, private governance, governance without government, local governance, global governance, multi-level governance and even cultural governance.

Each of these terms is understood differently according to the context, and the term frequently symbolises different ideas to different writers. Pierre and Peters have observed this "tricky" nature of the term and the consequent conflicting, or at least varying, views and understandings of the term; they state "*The concept of governance is notoriously slippery; it is frequently used among both social scientists and practitioners without a definition which all agree on. To be sure, even within each of these groups there are many different definitions and connotations of governance.*"[34] However, this is not to imply a lack of commonalities or mutual relevance.

In addition, Kohler-Koch and Rittberger recently acknowledged that the term is conceptually imprecise, even when used in EU studies, despite decades of attempts to investigate its nature.[35] Moreover, the term governance might refer to different content and ideas according to the location where it is being applied or discussed. A typical example of this would be the legal and political usage of the term by Western Europeans to refer generally to

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(Baden-Baden :Nomos Publishers 2004) P 25, and also see Volker Schneider, 'Governance and Complexity' in David Levi-Faur (ed), *The Oxford Handbook of Governance* (Oxford University Press 2012) P 129.

[32] B Guy Peters, 'Oxford Handbook of Governance' in David Levi-Faur (ed), *Governance as a Political Theory* (Oxford University Press 2012) P 19.

[33] Governance is perceived to emphasise different themes in different fields of knowledge. For instance, in law or politics it may highlight primarily issues and queries regarding "*choice, hierarchy, polarity, conflict or dispute*". Nevertheless, the *transformative* concept "governance" would lose its value if it was rigidly confined to a particular demarcated discipline and its framework. Therefore, although different fields have different uses and approaches to governance, the governance concept by its "*bridging element*" brings these approaches together forming an interdisciplinary understanding. See Peer Zumbansen, 'Governance: An Interdisciplinary Perspective' in David Levi-Faur (ed), *The Oxford Handbook of Governance* (Oxford University Press 2012).

[34] Pierre and Peters, n 20, P 7.

[35] Beate Kohler-Koch and Berthold Rittberger, 'Review Article: The 'Governance Turn' in EU Studies' [2006] 44 Journal of Common Market Studies 27.

the phenomena of the dynamic engagement of various societal actors in the process of governing, whereas in US literature it, "*retains much of its original steering conception.*" [36] It is therefore, apparent that, despite the non-consensus over a specific frame of reference for the term governance, it is well recognised as a general and broad "*umbrella concept encompassing a range of varied phenomena.*"[37,38] In addition, the concept has been employed within discourses about both the public and private sectors, where it has been praised for both its genuine potential and wide applicability.[39] Finally, much could be said about the ambiguous character of the concept of governance, as will be shown in the next section.

2.1.5 Governance Spans Everything

It is important to reference the tremendously broad scope of the term, which cuts across diverse disciplines, notably intersecting with various branches of the social sciences.[40] As Levi-Faur puts it:

> *"Governance is said to be many things, including a buzzword, a fad, a framing device, a bridging concept, an umbrella concept, a descriptive concept, a slippery concept, an empty signifier, a weasel word, a fetish, a field, an approach, a theory and a perspective … [and] an interdisciplinary research agenda."*[41]

Examples of this breadth of scope are illustrated in the following subsections, exploring various contexts where the term governance can and has been used to signify certain connotation or ideas.

2.1.5.1 International Organisations

In the domain of economics and development, for example, the contribution of leading international organisations is prominent. For instance, the World Bank, in its 1992 "Governance and Development" report, defined the term as "*the manner in which power is exercised in the management of a country's economic and social resources for development. Good governance is synonymous with sound development management.*"[42] Despite the inherent nexus between the political and economic dimensions of the term governance, the World Bank unsurprisingly concerns itself with the latter,[43] emphasising issues such as the

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[36] Pierre and Peters, n 20, P 7.
[37] Jacob Torfing, 'Governance Network Theory: Towards a Second Generation' [2005] 4 European Political Science 305 P 305.
[38] Though some might argue that the similarity between several uses of the term is insignificant or probably even non-existent. See Rod A. W. Rhodes, 'Understanding Governance: Ten Years On' [2007] 28 Organization Studies 1243.
[39] Laurence E Lynn Jr, Carolyn J Heinrich and Carolyn J Hill, *Improving Governance: A New Logic for Empirical Research* (Georgetown University Press 2001)
[40] Jan Kooiman, 'Social-Political Governance' [1999] 1 Public Management: An International Journal of Research and Theory 67.
[41] Levi-Faur, n 22, P 3.
[42] World Bank, *Governance and Development* (1992) The World Bank.
[43] Having said that, some envisage that being a democratic political system is an important prerequisite or at least parallel to attaining development and better governance practices. See Adrian Leftwich, 'Governance, Democracy and Development in the Third World' [1993] 14 Third World Quarterly 605.

performance of management in the public sector, enhancement of accountability, transparency and accessibility of information, and the consolidation of legal frameworks for developmental purposes.[44]

The United Nations Economic and Social Commission for Asia and the Pacific (ESCAP) underlines the differences between governance, poor governance and good governance. It represents the concept of good governance as relatively normative in nature, with eight principal ingredients: consensus orientation; a participatory nature; application and adherence to the rule of law; equity and social inclusiveness; being effective and efficient, and showing accountability, transparency and timely responsiveness.[45]

2.1.5.2 Governance and the Economy

In addition, there is the connotation of the concept governance within studies of the "economy" i.e. "Economic Governance." This use of governance is found in specialised fields of economic disciplines, including economic history, institutional economics, economic sociology, comparative political economy and the labour economy.[46] One of the central debates within the field of "economic governance" is to what extent the state should intervene and control, or even create a healthy atmosphere to allow the market to function appropriately, or whether the market functions best spontaneously, free from formal interference.[47]

2.1.5.3 Self-Regulation

Kersbergen and Waarden also mention a third meaning and use of governance as related to community "self-organisation" without direct intervention from governments or markets, as suggested by Ostrom, who proposes that neither the state, through coercion, nor the market, through privatisation, can consistently resolve issues associated with the depletion and mismanagement of natural resources. However, local communities, under some circumstances (based on some genuine success stories), have the potential to successfully manage challenges with "common pool resources,"[48] through governance arrangements dominated by values such as negotiation, collectivism, mutual understanding and trust, and informal arrangements.

2.1.5.4 Further Conceptualisations of Governance

Milward and Provan discuss the concept in the context of the "hollow state", which theorises changing the bureaucratic political structure of governments by granting third parties

[44] Mike Stevens and Shiro Gnanaselvam, 'The World Bank and Governance' [1995] 26 IDS Bulletin 97
[45] The United Nations Economic and Social Commission for Asia and the Pacific (ESCAP), *What is Good Governance?* (2009) UNESCAP.
[46] Kersbergen and Waarden, n 21.
[47] Ibid.
[48] Elinor Ostrom, *Governing the Commons: the Evolution of Institutions for Collective Action* (Cambridge University Press 1990).

and non-profit organisations a prominent role in the provision of public services.[49] Warner employs this term in discussions about market-based approaches to governance and in reference to the principles of privatisation and decentralisation of government.[50] Benn is among those who introduce discourse about governance into the context of social capital and societal ethics, and their overall influence on the formation and direction of public policy.[51,52] Osborne and Gaebler present a governance model, which they classify as "entrepreneurial" governance. They argue against a powerfully rigid official bureaucracy, and do not favour market-driven government in isolation but in association with an enabled community.[53]

By virtue of its intuitive and inherent appeal, the term governance can be associated with other "catchwords" such as "modernisation" to convey quite complex ideas accommodating interlocked social, political and economic relations.[54] For instance, the "third way" form of governance in countries such as the UK and the USA seeks to maintain economic acquisition and add value to the global economy, while simultaneously stressing the central role of civil society and cultural values.[55] As Blair articulated at the European Socialists' Congress in Sweden 1997: "*Our task today is not to fight old battles but to show that there is a third way, a way of marrying together an open, competitive and successful economy with a just, decent and humane society.*" [56]

Others invoke the term governance as a response to the excessive use of New Public Management (NPM) and the over use of the market and market-like mechanisms to deliver public services (approaches which gained currency most notably during the 1990s), highlighting the wide scope and inclusivity of this paradigm. They observe that the theory might be applied to overcome the known weaknesses of NPM.[57] For example, governance, unlike

[49] H. Brinton Milward and Keith G. Provan, 'Governing the Hollow State' [2000] 10 Journal of Public Administration Research and Theory [HWWilson - SSA] 359.
[50] Mildred E. Warner, 'Market-Based Governance and the Challenge for Rural Governments: US Trends' [2006] 40 Social Policy & Administration 612.
[51] The writer used the definition of "governance" provided by The United Nations Development Programme (UNDP), through the policy paper 1997, which is "*the exercise of economic, political and administrative authority to manage a country's affairs…"* See United Nations Development Programme (UNDP), *Governance for Sustainable Human Development* (1997) p 12.
[52] Denis Benn, 'Ethics, Social Capital and Governance: Implications for Public Policy' [2009] 58 Social and Economic Studies 141.
[53] http://cms.mildredwarner.org/summaries/osborne1992 'Book Summary' Cornell University: College of Art Architecture and Planning Website, accessed in 8/2/2015). See also Jim Cowan, 'Book Review: Reinventing Government David Osborne and Ted Gaebler' [1994] 27 Long Range Planning 136.
[54] Janet Newman, *Modernising Governance: New Labour, Policy and Society* (Sage 2001) P 40.
[55] Janet Newman, *Modernising Governance: New Labour, Policy and Society* (Sage 2001).
[56] Blair in Stephen Driver and Luke Martell, 'Left, Right and the Third Way' [2000] 28 Policy & Politics 147 P 2 .
[57] Gianluca Andresani and Ewan Ferlie, 'Roundtable: Understanding Current Developments in Public-Sector Management - New Public Management, Governance or Other Theoretical Perspectives?' [2006] 8 Public Management Review 389.

NPM, is perceived not to emphasise central steering nor political control.[58] Frederickson discusses this, citing many thinkers, and succinctly provides a list of possible meanings of the notion, thus:

> *"Governance is the structure of political institutions. Governance is the shift from bureaucratic state to the hollow state or to third party government… Governance is a market-based approach to government…Governance is the development of social capital, civil society, and high levels of citizen participation…Governance is the work of empowered, muscular, risk-taking public entrepreneurs… Governance is … a political packaging of the latest ideas in new public management, expanded forms of political participation, and attempts to renew civil society…Governance is the new public management or managerialism…Governance is public sector performance…Governance is interjurisdictional cooperation and network management…Governance is globalisation and rationalisation…Governance is corporate oversight, transparency, and accounting standards."*[59]

2.1.5.5 Rhodes and Six Connotations of Governance[60]

Rhodes, a key writer on the concept of governance, identifies at least six meanings or uses to which the "fashionable" term might refer.[61] He observes that governance might refer to a "*minimal state,*" citing the belief that less government intervention and more use of the market to deliver public services is preferable. The second aspect is "corporate governance," which, according to the European Central Bank, can be defined as:

> "[*P]rocedures and processes according to which an organisation is directed and controlled. The corporate governance structure specifies the distribution of rights and responsibilities among the different participants in the organisation – such as the board, managers, shareholders and other stakeholders – and lays down the rules and procedures for decision-making."*[62]

He also points out the use of the term governance within NPM literature, to mean either the employment of incentive standards in the process of public service supply, employing values such as professional performance assessment and result-driven management, or as the relatively more modern meaning of introducing the competitive market into the process of public service delivery, i.e. the concept of "the new institutional economics."[63] The fourth use of the term relates to "good governance," consistently highlighted by leading international organisations such as the World Bank and the United Nations. The fifth use of the term

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[58] Erik-Hans Klijn, 'New Public Management and Governance: A Comparison' in David Levi-Faur (ed), *Oxford Handbook of Governance* (Oxford University Press 2012) Especially P 209.
[59] H. George Frederickson, 'Whatever Happened to Public Administration? Governance, Governance, Everywhere' in Ewan Ferlie, Laurence E. Lynn and Christopher Pollitt (eds), *The Oxford Handbook of Public Management* (1st edn, Oxford University Press 2005) P 285.
[60] As a clear signal of the evolving and indefinite nature of the governance concept, Kooiman has observed roughly double this number of governance conceptualisations. See, Kooiman.
[61] R. A. W. Rhodes, 'The New Governance: Governing Without Government' [1996] 44 Political Studies 652.
[62] European Central Bank, *Annual Report 2004* (2005) European Central Bank .
[63] Rhodes, n 60, P 655.

governance mentioned by Rhodes describes a "socio-cybercentric" style, expressed by Kooiman as:

> "*Based on the recognition of (inter)dependencies. No single actor, public or private, has all knowledge and information required to solve complex, dynamic and diversified problems; no actor has sufficient overview to make the application of needed instruments effective; no single actor has sufficient action potential to dominate unilaterally in a particular governing model.*" [64]

This style is clearly dominated by its lack of central management and control, interdependence, and the equality of the various actors, denying the sovereignty of formal actors and blurring the frontiers between the multiple engagers.[65] The sixth use of governance discussed by Rhodes is "Self-organising Networks Governance." This model is generally perceived to be less formal and more cooperative, characterised by trust, a distinct alternative to hierarchical and market modes.[66] In this case, governance concerns the management of networks in which all the actors are interdependent, but not dependent, while delivering services.[67]

2.1.6 Components of Governance

Some authors argue that the term governance can represent different components or aspects simultaneously. For instance, Leftwich distinguishes three patterns or levels, excluding "bad" governance that is non-inclusive and largely arbitrary. These components or layers of governance refer to its "systemic," "political," and "administrative or managerial" meanings. The systemic meaning of governance denotes a broader concept than merely government, referring to the "*distribution of both internal and external political and economic power … it refers to a system of political and socioeconomic relations.*" [68]

The "political" perspective of good governance, which is widely adopted by Western governments, is that which adheres to a democratic political ideology which derives its perceived legitimacy and authority from its democratic character and the people's elected representatives.[69] This "traditional" form of democracy can, however, be challenged on various grounds, including the complexity of contemporary societies; therefore, it has been thought of as a "democratic government" rather than "democratic governance."[70]

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[64] Jan Kooiman, *Modern Governance: New Government-Society Interactions* (Sage Publications UK 1993) P 4.
[65] Rhodes, n 60.
[66] Grahame Thompson, 'Networks: Introduction' in Grahame Thompson, Jennifer Frances and Rosalind Levacic (eds), *Markets, Hierarchies and Networks: The Coordination of Social Life* (Sage Publications 1991).
[67] Rhodes, n 60.
[68] Leftwich, n 42, P 611.
[69] Ibid.
[70] Pratima Bansal and Andrew J. Hoffman, *The Oxford Handbook of Business and the Natural Environment* (Oxford University Press 2012)Especially P 472-474.

Finally, there is the narrower administrative understanding of good governance. This is embraced by some international organisations (perhaps most notably the World Bank) and implies:

> *"[A]n efficient, open, accountable and audited public service which has the bureaucratic competence to help design and implement appropriate policies and manage whatever public sector there is. It also entails an independent judicial system to uphold the law and resolve disputes arising in a largely free market economy"*[71].

Although this is probably an effective and practical manner in which to approach and define the term and its nature, it is arguable that some of the authors who have discussed the term do not themselves always appear to have a well-defined understanding of it. Lynn, Heinrich, and Hill express this as follows:

> "*The term 'governance' is widespread in both public and private sectors, in characterizing both global and local arrangements, and in reference to both formal and informal norms and understandings. Because the term has strong intuitive appeal, precise definitions are seldom thought to be necessary by those who use it. As a result, when authors identify 'governance' as important to achieving policy or organizational objectives, it may be unclear whether the reference is to organizational structure, administrative processes, managerial judgment, systems of incentives and rules, administrative philosophies, or a combination of these elements.*" [72]

2.1.7 Governance and Contexts

Thus, to improve precision, some authors, including Rhodes, favour determining the context and the domain prior to any discussion about the theory of governance. Domains include the role of governance in public administration, studies of international relations, governance within the realm of European Union politics and governance in the context of comparative politics. He points out that the definition he has established was produced "wearing public administration and public policy spectacles", and relates to:

> "*1. Interdependence between organizations. Governance is broader than government, covering non-state actors. Changing the boundaries of the state meant the boundaries between public, private and voluntary sectors became shifting and opaque.*
> *2. Continuing interactions between network members, caused by the need to exchange resources and negotiate shared purposes.*
> *3. Game-like interactions, rooted in trust and regulated by rules of the game negotiated and agreed by network participants.*
> *4. A significant degree of autonomy from the state. Networks are not accountable to the state; they are self-organizing. Although the state does not occupy a privileged, sovereign position, it can indirectly and imperfectly steer networks."*[73]

Although seemingly a positive phenomenon, the widespread debate about governance complicates it further, together with the evolving nature of contemporary challenges in most fields, which have resulted in diverse explanations of the concept. Treib, Bahr and Falkner, for

[71] Leftwich, n 42, P 611.
[72] Lynn Jr, Heinrich and Hill, n 38. See also Frederickson, n 58, P 285.
[73] Rhodes, n 37, P 660.

instance, tackle the concept by distinguishing between the three dimensions of governance: politics, polity and policy.[74] They argue that the common classification of different modes of governance, under the labels "old" and "new", are no longer workable and do not increase the attainability of analytical outcomes, given that what is "new" now might not be so subsequently.[75] The fact that some contemporary publications are still unpicking the concept, is a clear indication of its evolving nature and the uncertainty that continues to surround it.

As pointed out above, some authors choose to explain the phenomenon of governance according to which facets are emphasised the most, saying

> *"Politics represents the process of how (collective) actors translate different preferences into policy choices and different interests into unified actions. Policy denotes the political steering and decisions made for and implemented in a society. Polity is the framework of formal and informal rules of the game (i.e. institutions) that direct the behaviour of actors within a society."*[76]

Treib, Bähr and Falkner conclude that, when emphasis is directed mostly towards the policy dimension, modes of governance can be categorised with regard to the "*legal bindingness versus soft law, rigid versus flexible approach to implementation, presence versus absence of sanctions, material versus procedural regulation and fixed versus malleable norms.*" [77] In regard to politics, governance modes can be categorised thus: "*Only public actors involved versus only private actors involved.*" [78] Finally, when the focus is on the dimension of polity, interest is on "*Hierarchy versus market, central locus of authority versus dispersed loci of authority and institutionalised versus non-institutionalised interactions.*"[79]

2.1.8 Governance and Democracy

It is important in this context to avoid the potential blurring between the key terms, governance and democracy. In fact, perfect implementation of the western principle of representative democracy still fails to attain the standard quality of governance. Unlike governance, representative democracy quintessentially retains top-down legally-binding forms of regulation, determined by a "limited" number of parliamentary representative "elites," and enforced and implemented by public administrative bureaucrats. This model of representative democracy, unlike governance, does not, in theory at least, accentuate values such as co-operation and negotiation and socially collective action as falling within the conceptual framework of governance. Thus, governance in some of its versions, can be understood to be something that builds on but definitely exceeds the traditional idea of representative

[74] See below.
[75] Oliver Treib, Holger Bähr and Gerda Falkner, 'Modes of Governance: Towards a Conceptual Clarification' [2007] 14 Journal of European Public Policy 1.
[76] Margot Hill, 'A Starting Point: Understanding Governance, Good Governance and Water Governance' in *Climate Change and Water Governance*, vol 54 (Springer Netherlands 2013) P 18.
[77] Treib, Bähr and Falkner, n 74, P 5-7.
[78] Ibid, P 7.
[79] Ibid, P 9.

democracy, by maximising the role of civil society and adopting the deliberative, rather than representative version of democracy. This is perceived by some as governance "*in its new clothes*."[80] However, the association between democracy and governance is not always at the forefront. Stoker sets out some complementary propositions about governance, thus:

> "*Governance identifies the power dependence involved in the relationships between institutions involved in collective action. Governance is about autonomous self-governing networks of actors. Governance recognises the capacity to get things done which does not rest on the power of government to command or use its authority. It sees government as able to use new tools and techniques to steer and guide.*" [81]

In this context of governance, "*Institutions"* should not be perceived as synonymous with formal actors, but primarily include, inter alia, informal arrangements and non-state actors, cultural norms and beliefs, personal relationships and networks, traditions and unwritten codes of behaviour.[82] Through this approach to interpreting governance, the focus becomes more relevant to the micro-level of individuals' actions, reactions and behaviours, rather than, for example, to the formal institutions and their dynamics as a whole. Hence, parallels and crossovers with theories of governance, such as the rational choice theory, and the new institutionalism theory[83], can be identified.[84]

2.1.8.1 Governance and exclusivity

Interestingly, Chotary and Stoker argue that a monocratic or autocratic style of governance, which is characterised by coercion and lack of negotiation, is not a form of governance, but is, in fact, its antonym.[85] They acknowledge the wide scope of the term and examine its connotations in multiple disciplines, then attempt to offer a basic definition as follows:

> *"Governance is about the rules of collective decision-making in settings where there are a plurality of actors or organisations and where no formal control system can dictate the terms of the relationship between these actors and organisations."*[86]

In addition, they attribute the popularity of the concept to two developments: "globalisation," and the spread of "democracy." [87]

Similarly, Kersbergen and Waarden review numerous definitions and applications of the notion of governance across a variety of disciplines, focusing primarily on different sectors of

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[80] Laurence E. Lynn Jr, 'The Many Faces of Governance: Adaptation? Transformation? Both? Neither?' in David Levi-Faur (ed), *Oxford Handbook of Governance* (Oxford University Press 2012) P 49.
[81] Gerry Stoker, 'Governance as Theory: Five Propositions' [1998] 50 International Social Science Journal 17 P 18.
[82] Hill, n 75.
[83] I.e. rational choice theory.
[84] Mark Bevir, *Key Concepts in Governance* (SAGE Publications Ltd 2009) P 16-19.
[85] Vasudha Chhotray and Gerry Stoker, *Governance Theory and Practice: A Cross-Disciplinary Approach* (Palgrave Macmillan 2010).
[86] Ibid, P 3.
[87] Ibid.

the society. They identify shared qualities such as challenging traditional modes of governance, and explain a "shift in governance."[88] They regard good governance in the arena of economic development as pertaining to issues such as:

> *"*[*R]educing wasteful public spending; investing in primary health, education and social protection; promoting the private sector by regulatory reform; reinforcing private banking; reforming the tax system; and creating greater transparency and accountability in government and corporate affairs.*"[89]

The second meaning of governance that they identify is governance without government in the realm of international relations. This is characterised by a lack of a hierarchy or one single authority dictating rules which other actors must obey in international society. It refers to independent states managing their relationships collectively through cooperative acts and international treaties and organisations. Rosenau sees governance as "*systems of rule, as the purposive activities of any collectivity, that sustain mechanisms designed to ensure its safety, prosperity, coherence, stability, and continuanc*e." [90] This understanding of governance also emphasises the aspect of "collectivity" which seems to have become quite a common theme in many conceptions of governance in the literature.

2.1.9 Conclusion of the First Section

This part of the chapter has introduced the theory of governance. The main objective is to appreciate the nature and scope of this notion. Governance as a concept can be analysed both individually and in association with other concepts. It has been associated with diverse of disciplines, issues and contexts. What seems striking, however, about the theories of governance, and environmental governance alike,[91] is that the majority of the literature is produced by Western sources and key experts and authors.[92] Therefore, the applicability or even relevance of such theories to non-Western or Middle Eastern countries, notably the KSA, is questionable and needs to be tested rather than taken for granted.

More importantly, when it comes to the study and examination of the term "governance" in the context of the Middle East, let alone the KSA, one is entering an almost uncharted territory in many aspects. It is clear from the discussion in this section that the theories, components, uses, definitions, contexts and even the origin and history of the term have been developed, framed, "cooked" and offered for the world's consumption in a "kitchen" serving the Western capitalist democracies. Interestingly, it is apparent from the discussion above that the term

[88] Kersbergen and Waarden, n 21.
[89] Ibid, P 145.
[90] James N Rosenau, 'Change, Complexity, and Governance in a Globalizing Space' in John Pierre (ed), *Debating Governance: Authority, Steering, and Democracy* (Oxford University Press 2000) P 171.
[91] As will be seen in the following section of this chapter.
[92] This does not mean, however, that there are no Asian or Middle Eastern organisations that have ever invoked the term "governance".

governance is rather open, or even vulnerable, to numerous interpretations, and in extreme cases potentially contradictory ideologies.

Moreover, it is apparent that the Western democratic countries and writers' in their theorising of governance have been surrounded and indulged by their own social, cultural, legal, political and economic ends, and even their own historical circumstances and particularities. This what makes evaluating the applicability and suitability of the term governance as a distinct reality in the Middle Eastern and the KSA's context not a straightforward undertaking.

To take a direct example from the discussion above: those conceptualisations that view the term "governance" as something inevitably associated with democracy and the democratic theory, would automatically render the pertinence of this concept to the Middle East, or at least to a significant part of it, as not viable or applicable. Similarly, those interpretations of governance that link this concept of "governance" to philosophies or theories such as neo-liberalism or the free market, would also render the notion of "governance" inappropriate to a centrally planned market, and largely fossil-fuel-based economy similar to those in a number of Middle Eastern states.

Hence, there seem to be major questions in this regard left unanswered. The currently available literature appears to be lacking analysis and discussions that theorise the notion of governance, or even a better-suited alternative term, if there are any, for such a distinct context as the Middle Eastern one. Although, this proposition might be challenged by the "globalist" thinkers of governance, theories or concepts such as cultural relativism could add value, and support this suggestion. This recommendation could be tackled by future studies but cannot be addressed here, since it falls outside the scope of this research.

As the primary focus of the thesis is with the "environmental" aspect of the theories of governance, this issue will be examined in the next part, on Environmental Governance.

2.2 Second Part of the Literature Review: Towards a Theory of Environmental Governance for the Middle East, Using the KSA as a Case Study

2.2.1 Introduction

Diverse issues, paradigms and theories cut-across the overarching term "environmental governance," further complicated by the social, cultural, or legal diversity in different regions and countries. Thus this second part of the chapter visits the well-charted territory of environmental governance, however, in the uncharted territory of the Middle East, and primarily the KSA.

This part of the chapter aims to explore the multiple issues that have been associated with the term "environmental governance," in order to underpin the argumentation and discussion put forward in the rest of the thesis, and also to provide the grounds for a clearer relationship

between the existing literature, and the findings reached by the research.[93] By identifying and examining the principal theories, topics and areas of discussion regarding environmental governance, this chapter will set the stage to extend the current boundaries of the existing literature by introducing the KSA as a case study from the Middle East and identify the significant gaps in the literature regarding the KSA, and the Middle Eastern region generally.

This is an essential part of the targeted contribution, as it is clear from the currently available body of literature that there has been very limited research for this region of the world in relation to environmental law and governance. In addition, this chapter, aims to form a basis for the addition of an extra layer of analysis by conducting qualitative research via the interviews undertaken in the subsequent stages of this research. Thus, the crafting of the interviews and their content was directly and substantially guided by this chapter.

The wide scope of the concept "environmental governance" renders a comprehensive coverage of all the related issues and topics unrealistic within the limited scope of this thesis and the inevitably selective nature of literature review chapters in general.[94] Such selectivity, however, should be guided by the sense and spirit of a judge, who appraises and ponders over the subject matter in order to take the decision fairly and objectively, rather than via the mindset of a lawyer, who pursues an already pre-determined side of the debate.[95] Therefore, the principal objective of this main part of the chapter is to address selectively the most pertinent environmental governance issues and debates that might be relevant to the case study of the thesis, i.e. the environmental governance of the KSA as a case study of the Middle East. Hence, the cohesion and coherence between this chapter, as a literature review, and the aims and objectives of the research set out at the beginning of the writing, will become even more evident and well-established, which is one of the cornerstone purposes of literature review chapters in general.[96]

Thus, a number of environmental governance issues that might be regarded as significant and inescapable within the prevailing Western literature on environmental governance are deliberately omitted as less pertinent to this study. Conversely, this thesis raises some issues which might never, or rarely, have been tackled in the predominant current[97] Western literature. The decision on what to include, and the scope of the literature is thus informed by

[93] Uwe Flick, *An Introduction to Qualitative Research* (4 edn, SAGE Publications 2009) P 53.
[94] William Lawrence Neuman, *Social Research Methods: Qualitative and Quantitative Approaches*, (6 edn, Pearson 2006) P123. And Maggie Walter, *Social Research Methods*, (2 edn Oxford University Press 2010) P 36.
[95] Roy F. Baumeister, 'Writing a Literature Review' in Mitchell J. Prinstein (ed), *The Portable Mentor: Expert Guide to a Successful Career in Psychology* (Springer New York 2013)
[96] Chris Hart, *Doing a Literature Review: Releasing the Social Science Research Imagination* (SAGE Publishing 1998) P 16.
[97] This is because some of the issues highlighted by this research, although very alive and relevant to the current situation of the case study, were discussed very long ago in the western literature concerning the developed countries.

criteria such as the *topicality*, *relevance* as well as *breadth* of the literature, due to the diversity of issues and disciplines involved.[98]

2.2.2 Brief Historical Account

The aim of this section is to provide a brief historical account of how environmental concerns have been incorporated into, and evolved within, international legal events and through the publication of major declarations and other relevant documents.

Environmental Governance is a central issue at national, regional and global levels in the present era.[99] It is one of the six priority areas of the United Nations Development Programme in the current millennium. Historically and globally, the advent and evolution of the concept of environmental governance has not been an easy process. Since the 1972 United Nations Conference on the Human Environment (UNCHE), the interplay between the North's "environmental" aspirations and the South's "developmental" concerns and resulting scepticism about the global environmental governance project, has been present and influential.

This North-South conflict is regarded as a key trigger to the notion of what was later called "Sustainable Development", which accommodates not only environmental considerations and other considerations of a social nature, but also the developmental goals of all nations; this was also evident from the title of the 1992 conference, the United Nations Conference on Environment and Development (UNCED).[100] It is not surprising, therefore, that, although various countries have participated in a number of international "environmental" events, such as the World Summit on Sustainable Development, both the focus and emphasis have differed between the developed and developing countries:[101] the former tend to focus on "environmental" issues, whereas the latter have recurrently highlighted the need for development rather than ecological conservation only.[102]

In relation to environmental governance in the KSA, as a case study representing the Middle East, it seems that the primary concern in the region as well as in the KSA remains more with developmental and economic issues, and environmental considerations appear to be relatively secondary. The question here is, should they have been conflicting and mutually

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[98] Christine Bruce, 'Interpreting the Scope of their Literature Reviews: Significant Differences in Research Students' Concerns' [2001] 102 New Library World 158.

[99] http://www.unep.org/environmentalgovernance/Introduction/tabid/341/language/en-US/Default.aspx 'Introduction: Environmental Governance' (United Nations Environment Programme Website accessed in 13/7/2015).

[100] Adil Najam, 'Developing Countries and Global Environmental Governance: From Contestation to Participation to Engagement' [2005] 5 International Environmental Agreements: Politics, Law and Economics 303.

[101] Wolfgang Sachs and others, *The Jo'burg Memo : Fairness in a Fragile World ; Memorandum For the World Summit on Sustainable Development* (World Summit Papers, 2002) Heinrich Böll Foundation .

[102] Najam, n 99.

exclusive in the first place? The hope is that suitable environmental governance for the state can accommodate both these concerns simultaneously.

2.2.3 Defining Environmental Governance

2.2.3.1 Introduction

It should be pointed out at the outset of this section that the amount of literature available suggests that there has been relatively less discussion of environmental governance in comparison to the theory of governance. Another issue worth mentioning is that the theory of environmental governance has been investigated and discussed under a range of different terminologies and topics. For example, it can be found under the banner of terms such as new environmental governance, collaborative or participatory environmental governance, multi-actor environmental governance or interactive environmental governance. The purpose of this chapter section is to review and critique a number, of attempted definitions of environmental governance in the growing body of literature.

2.2.3.2 Critical Review

Although various definitions can be found across the literature, including by various authors and from a number of international organisations, many discussions on environmental governance do not appear to explicitly define this concept.[103] In addition, definitions and discussions concerning the notion of environmental governance may stress different themes and dimensions of this concept, as well as drawing different parallels with other social theories.[104] The suitability of a particular definition of environmental governance should therefore be measured against the purpose of the discussion and the context in which this concept has been invoked. In addition, it has to be taken into account that the concept of environmental governance has been associated with a variety of disciplines and sub-disciplines, and also to various theories of social science.[105]

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[103] Surprisingly, a number of specialised publications about environmental governance do not conclusively delineate what environmental governance is, nor what the author(s) specifically mean by this term, although some connotations of the terms governance and environmental governance may be laid out. In such works, the discussions are expanded in terms of numerous pertinent dimensions, including legal, political, economic, cultural issues, themes and principles of environmental governance at all levels. This reflects the complexity and the vagueness of the term environmental governance, even amongst experts, who might indiscriminately use other terms such as environmental management interchangeably with environmental governance. See for example Jona Razzaque, *Environmental Governance in Europe and Asia: A Comparative Study of Institutional and Legislative Frameworks* (Routledge 2013) esp P 1-32, and Jacob Park, Ken Conca and Matthias Finger, *The crisis of global environmental governance: towards a new political economy of sustainability* (Routledge 2008).

[104] For example, the nexus between environmental governance and regulation in one hand, and other theories such as "reflexive law", new social-political governance and policy-learning dynamics on the other. See for example, D. J. Fiorino, 'Rethinking Environmental Regulation: Perspectives on Law and Governance' [1999] 23 Harvard Environmental Law Review 441.

[105] Disciplines and sub-disciplines include geography, political ecology or economic geography. Theories include institutional theories, ecological modernisation and neoliberal theories. See for example Matthew Himley, 'Geographies of Environmental Governance: The Nexus of Nature and Neoliberalism' [2008] 2 Geography Compass 433.

There are many factors that contribute to the complexity of the study of environmental governance. These factors include the inherently interdisciplinary character of the concept of governance itself.[106] Moreover, as numerous disciplines and theories draw on or are associated with the concept of environmental governance,[107] the main emphasis within each discipline might not always be the same. For example, legal research studies may frequently tend to underscore legal and political issues of environmental governance, such as public involvement in the process of environmental decision-making, the employment of more socially inclusive and flexible regulatory approaches, enhancing legitimacy, access to environmental information and access to justice.[108] In contrast, more geography-oriented writings, for instance, may often highlight other aspects of environmental governance such as the scales, levels and spatial issues of environmental governance.[109]

With regard to the definitions and themes that lie behind the concept of environmental governance, Bulkeley and Mol, for example, approach what they refer to as "*governance with the environmental problems*" mainly from the perspective of the involvement of public and non-formal actors without which, they argue, major questions regarding legitimacy, effectiveness and democratisation will arise.[110]

Lemos and Agrawal discuss environmental governance more broadly, defining it as "*the set of regulatory processes, mechanisms and organisations through which political actors influence environmental actions and outcomes.*"[111] Although this definition highlights the legal aspect quite well, its potential weakness is the exclusion of the non-political actors, who, in

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[106] Zumbansen, n 32.

[107] For example, there is the heavily legalistic and conventional approach that largely places the environmental protection responsibility on the bureaucratic state, and there are various theories that focus on the environment-economic theories of environmental governance, such as the traditional neoclassical environmental economics, the institutional theory of the environment-economy relationship, and the environmental protection by free-market mechanisms theory. See for example, Lenka Slavíková, Tatiana Kluvánková-Oravská and Jiřina Jílková, 'Bridging Theories on Environmental Governance: Insights From Free-market Approaches and Institutional Ecological Economics Perspectives' [2010] 69 Ecological Economics 1368, Jacqueline Medalye, 'Neoclassical, Institutional, and Marxist Approaches to the Environment-Economic Relationship' [2010] Encyclopedia of Earth Washington, DC, can be found at http://www.eoearth.org/view/article/154812/ , Roy E. Cordato, 'Market-Based Environmentalism and the Free Market - They Are Not the Same' [1997] 1 The Independent Review 371, and Jouni Paavola and W. Neil Adger, 'Institutional Ecological Economics' [2005] 53 Ecological Economics 353.

[108] Stuart Bell and Donald McGillivray, *Environmental Law* (7th edn, Oxford University Press 2008) P 32, and Maria Lee, *EU Environmental Law: Challenges, Change and Decision Making* (Hart Publishing 2005) P 113-149.

[109] Harriet Bulkeley, 'Reconfiguring Environmental Governance: Towards a Politics of Scales and Networks' [2005] 24 Political Geography 875, and Maureen G Reed and Shannon Bruyneel, 'Rescaling Environmental Governance, Rethinking the State: A Three-Dimensional Review' [2010] 34 Progress in Human Geography 646.

[110] Harriet Bulkeley and Arthur P. J. Mol, 'Participation and Environmental Governance: Consensus, Ambivalence and Debate' [2003] 12 Environmental Values 143.

[111] Maria Carmen Lemos and Arun Agrawal, 'Environmental Governance' [2006] 31 Annual Review of Environment and Resources 297.

reality, might considerably impact environmental outcomes and quality. In other words, environmental governance is seen in terms of interventionist political actions only, which seems to downplay the potential contribution of the civil society in safeguarding the environment.[112]

Environmental governance can also be viewed as a reactive or responsive approach to the wide range of environmental challenges and global environmental change. Paavola, for example, defines environmental governance as "*the establishment, reaffirmation or change of institutions to resolve conflicts over environmental resources.*"[113] Although it is rather broad and somewhat ambiguous, this definition underscores the ultimate nature of environmental governance as an institutional process aimed to protect natural resources against various potentially conflicting interests. However, it does not clarify the establishment of such institutions, or by whom and through which means, although this might be interpreted positively, leaving it open to accommodate different possible answers to these questions.

Gunningham suggests certain qualities that should be present in modern environmental governance. These are dialogue and participation, flexibility, inclusiveness of different actors, devolution of power and authority, transparency, consensus-oriented character, and less hierarchy and more horizontality. In this view, new collaborative governance can be perceived as "*an enterprise that involves collaboration between a diversity of private, public and non-government stakeholders who, acting together towards commonly agreed goals, hope to achieve far more collectively, than individually.*"[114] This definition seems useful in stressing the need not only to collaborate procedurally, but also in setting the environmental targeted goals. Environmental governance can also be understood as:

> "*The interrelated and increasingly integrated system of formal and informal rules, rule-making systems, and actor-networks at all levels of human society (from local to global) that are set up to steer societies towards preventing, mitigating, and adapting to global and local environmental change and, in particular, earth system transformation, within the normative context of sustainable development*".[115]

This definition has a number of advantages that are in line with the complexity of many environmental challenges. It acknowledges the mutual dependence of both formal and informal rules to ensure effective environmental protection. It considers both the rules themselves and the rule-making processes which are, perhaps, more procedural. This

[112] Although in their discussion, Lemos and Agrawal seem to appreciate the importance of the roles of non-state actors.
[113] Jouni Paavola, 'Institutions and Environmental Governance: A Reconceptualization' [2007] 63 Ecological Economics 93.
[114] Neil Gunningham, 'The New Collaborative Environmental Governance: The Localization of Regulation' [2009] 36 Journal of Law and Society 145.
[115] Frank Biermann and others, *Earth System Governance: People, Places and the Planet. Science and Implementation Plan of the Earth System Governance Project* (Earth System Governance 2009), Can be found at http://www.earthsystemgovernance.org/publication/biermann-frank--earth-system-governance-science-plan accessed in 3/1/2016.

definition also refers to the levels of environmental governance, local, national, regional or international. Perhaps the most remarkable aspect of this definition is the accentuation of the often implicit, or at least less prominent, link between environmental governance and sustainable development.

Not all the discussions about environmental governance, however, adopt this conceptualisation of environmental governance. For example, some theories view environmental governance through the lens of the relationship between the business sector and society. In this approach, the concept of environmental governance becomes more focused on resorting to private politics between NGOs and individuals, and how the private sector can be incentivised to improve its environmental actions and outcomes. Through this lens, environmental governance can be defined "*to include the full set of pressures and incentives that motivate business to improve its environmental performance. This includes markets for green products and investments, regulatory relationships, and NGO/corporate engagements*."[116] This conceptualisation of environmental governance seems heavily centred on firms and the business sector, without giving due weight to the formal actor, or the "government" and its roles and responsibilities, despite its potential role in coping with the environmental risks brought about by industries and private sector activities.

Even in the arena of international relations, conceptualisations about "global" environmental governance vary. Notably, differences are seen between, on one hand, the conventional school of governance that deems the government as the predominant actor through its top-down approach and, on the other hand, the non-traditional understanding of global environmental governance, to primarily accommodate non-state actors, NGO's, scientific communities and other civil society and non-governmental entities.[117]

Fisher and others have chosen to define environmental governance[118] according to Rose's definition of "governance" as a "*catch-all [term] to refer to any strategy, tactic, process, procedure or programme for controlling, regulating, shaping, mastering or exercising authority over others in a nation, organization or locality*."[119] This clearly indicates the suitability of some definitions and understanding of the concept of "governance" to be used in the environmental arena. According to this definition, governance or "environmental" governance can take place through the exercise of power and authority, either wisely or arbitrarily, for good or otherwise.

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[116] David P Baron and Thomas P Lyon, 'Environmental Governance' in Pratima Bansal and Andrew J. Hoffman (eds), *The Oxford Handbook of Business and the Natural Environment* (Oxford University Press 2012) P 124.

[117] Michele M. Betsill and Harriet Bulkeley, 'Transnational Networks and Global Environmental Governance: The Cities for Climate Protection Program' [2004] 48 International Studies Quarterly 471

[118] Fisher, Lange and Scotford, n 1, P 501-502.

[119] Nikolas Rose, *Powers of Freedom: Reframing Political Thought* (Cambridge University Press 1999) P 15.

Consequently, governance of environmental issues, according to this definition,[120] will not, by itself, lead to favourable environmental ends, but has to be supplemented by certain criteria or measures to reach such goals.

As discussed earlier, the definition of environmental governance does not always differ a great deal from the concept of governance; but in fact many definitions of governance can be used in the context of the discussion about environmental protection or an aspect of it. Among these understandings of governance that seem to have been frequently used in the context of environmental protection, is the definition coined by Kooiman and Bavink that "*Governance is the whole of public as well as private interactions taken to solve societal problems and create societal opportunities. It includes the formulation and application of principles guiding those interactions and care for institutions that enable them.*"[121] This definition of governance has been invoked in many contexts concerning environmental issues.[122]

However, as this thesis is addressing environmental protection governance in hierarchical legal and political systems such as the KSA's system, the definition of governance from more of a state-centric viewpoint[123] will be perhaps more pertinent, and the following might be relevant: "*the continuous political process of setting explicit goals for society and intervening in it in order to achieve these goals,*"[124]

Environmental governance can also be more procedurally and normatively perceived. This can be exemplified by definitions such as the following:

> "*Environmental governance refers to the processes of decision-making involved in the control and management of the environment and natural resources. It is also about the manner in which decisions are made – are they made behind closed doors or with input from the broader public? Principles such as inclusivity, representivity, accountability, efficiency and effectiveness, as well as social equity and justice, form the foundation of good governance*.[125]"

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[120] This also applies to some of the above discussed definitions.

[121] Jan Kooiman and Maarten Bavinck, 'The Governance Perspective' in Jan Kooiman and others (eds), *Fish for Life: Interactive Governance for Fisheries* (Amsterdam University Press : Centre for Maritime Research 2005) P 17.

[122] See for example Fikret Berkes, 'Social Aspects of Fisheries Management: The Broader Issues of Fisheries Governance' in Kevern L. Cochrane and Serge M. Garcia (eds), *A Fishery Manager's Guidebook* (2nd Edition edn, Wiley-Blackwell 2009) P 68 , Kabiri Ngeta, 'Theoretical Deliberations on Understanding Natural Resource Governance' in Merle Sowman and Rachel Wynberg (eds), *Governance for Justice and Environmental Sustainability : Lessons Across Natural Resource Sectors in Sub-Saharan Africa* (Routledge 2014) P 26, David Symes, 'Fisheries Governance: A Coming of Age for Fisheries Social Science?' [2006] 81 Fisheries Research 113, and Derek R. Armitage and Ryan Plummer, 'Adaptive Capacity and Environmental Governance' in *Springer Series on Environmental Management* (Springer 2010) P 4.

[123] Alessandra Goria, Alessandra Sgobbi and Ingmar von Homeyer, 'Introduction' in Alessandra Goria, Alessandra Sgobbi and Ingmar von Homeyer (eds), *Governance for the Environment: a Comparative Analysis of Environmental Policy Integration* (Edward Elgar 2010).

[124] Markus Jachtenfuchs and Beate Kohler-koch, 'Governance and Institutional Development' in Antje Wiener and Thomas Diez (eds), *European Integration Theory* (Oxford University Press 2004) P 99.

[125] Saliem Fakier and others, *National State of the Environment Project: Environmental Governance: Background Research for the South Africa: Environment Outlook Report* (2005) Department of Environmental Affairs and Tourism P 4, Can be found at

This conceptualisation of the concept is, to some extent, akin to the approach of the European Commission to good governance, which, according to the commission's interpretation, has to satisfy principles of "*openness, participation, accountability, effectiveness and coherence.*"[126] Environmental governance has also been introduced as:

> "*The means by which society determines and acts on goals and priorities related to the management of natural resources. This includes the rules, both formal and informal, that govern human behavior in decision-making processes as well as the decisions themselves. Appropriate legal frameworks on the global, regional, national and local level are a prerequisite for good environmental governance.*"[127]

The emphasis on society as the leading agent in environmental governance is the distinctive feature of this definition. Moreover, this definition is also useful in emphasising the significance of the proper legal structure as the vehicle for realising environmental governance, which is crucial for the ultimate objective of protecting environmental assets.

2.2.3.3 Concluding Remarks

The main ideas and underlying principles of all these various definitions regarding the governance of the environment and its challenges generally appear to have something in common. They almost all seem to deny the rigidly exclusive power and supremacy of the bureaucracy and the formal agents over the natural resources, thus blurring, or at least mitigating, the previously perceived rigid boundaries between government actors, and the other societal actors.

These have, per se, significant legal impacts, and, in their real application, will entail other profound implications for the legal and regulatory approach. The question arises here, however, whether this is relevant or convenient in a hierarchically structured legal system such as that in the KSA. If so, to what extent may this be attainable, in the environmental protection context, in a state-centric legal jurisdiction such as that in the KSA? And, finally, what might be an appropriate definition of environmental governance to be selected or even custom-tailored in these types of legal systems?

2.2.4 Models of Environmental Governance

2.2.4.1 Introduction

When it comes to the modes of governance pertaining to the environment or the environmental protection sphere, there are certain modes of governance which appear more significant than others when it comes to the protection of environmental assets, and thus most

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http://soer.deat.gov.za/dm_documents/Environmental_Governance_-_Background_Paper_WU45Q.pdf .

[126] European Commission, *White Paper on European Governance* (COM 428, 2001) Page 10.

[127] https://www.iucn.org/about/work/programmes/environmental_law/elp_work/elp_work_issues/elp_work_governance/ 'Environmental Governance' (International Union for Conservation of Nature Website, accessed in 13/6/2015).

relevant to the purpose of this chapter. It should be noted that discussion about the types and theories of governance, and specifically environmental governance, cannot be purely confined to a certain domain - either legal, social, economic, geographic or any other discipline. This is due largely to the socially inclusive and interdisciplinary nature of the concept.[128]

Thus, as articulated by Durant, Fiorino and O'Leary, environmental governance is *"…a combination of important, interrelated, and complex issues involving environmental policy, economics, democratic theory, political science and public administration."*[129] and also has considerable overlap with the widespread concept of "sustainable development.[130] As a result, it is not surprising to discover that there are a variety of ways of classifying the environmental governance concept.

In fact, approaches of the theory of governance in relation to the environment can be presented from several different angles, depending on the perspective taken by the author. Enevoldsen, for instance, through the study of what he names "*the rational approach*" and "*the institutionalist approach*" to environmental governance, identifies four main, somewhat overlapping, types of environmental governance paradigms.[131] The first is characterised by its "*high public-private interaction,*" including the "*regulation by consensus*" approach, and "*joint environmental policy-making.*"[132] The second is the voluntary type of environmental governance, encompassing the "*joint environmental policy-making*" and "*self-regulatory*" approaches. The third type of environmental governance is characterised by "*low public-private interaction*" and includes "*self-regulation*", and "*economic instruments*" as well as "*command-and-control regulation.*"

Finally, the obligatory type of environmental governance, combines the previous two, with the addition of the "*regulation by consensus*" paradigm. According to Enevoldsem, these environmental governance approaches should not be perceived as parallel alternatives or equivalent counterparts, given that some of them are very broad and ideological and some are very specific. The commentator also stresses that they are not necessarily mutually contradictory, but rather that it might be more effective and fruitful to employ a blend of styles

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[128] Zumbansen, n 32.

[129] Robert F. Durant, Daniel J. Fiorino and Rosemary O'Leary, 'Preface' in Robert F. Durant, Daniel J. Fiorino and Rosemary O'Leary (eds), *Environmental Governance Reconsidered: Challenges, Choices, and Opportunities* (Massachusetts Institute of Technology 2004) P 16.

[130] René Kemp, Saeed Parto and Robert B Gibson, 'Governance for Sustainable Development: Moving From Theory to Practice' [2005] 8 International Journal of Sustainable Development 12.

[131] Martin Enevoldsen, 'Rationality, Institutions and Environmental Governance' in Suzanne C. Beckmann and Erik Kloppenborg Madsen (eds), *Environmental Regulation and Rationality: Multidisciplinary Perspectives* (Aarhus Universitetsforlag 2001) for the types of environmental governance, see especially P 103.

[132] According to him "*joint environmental policy-making*" involves instruments such as voluntary environmental agreements, eco-labelling, mediation ….

in tackling particular environmental problems. All of this, however, according to Enevoldsem, must be determined on a case-specific basis.

Durant, Fiorino and O'Leary point out three primary environmental governance approaches, which are chronologically ordered according to the three generations of environmental problems mentioned above.[133] The first type is the genre that includes first-generation approaches to environmental governance. This style is predominantly designed by the elected officials, largely bureaucratic and fragmented, and inherently adversarial. This approach is focused on single-pollutant environmental problems, and combats them by command and control regulations as well as by technology-oriented solutions to environmental challenges. The second-generation form of environmental governance is characterised by utilising an information and market-based environmental regulatory style. The third-generation is result-based rather than compliance-focused. It is the "*approach that sees important complementary and synergistic roles in building a results-based sense of common purpose for markets and mandates, for expert and laypersons, for science and popular sentiments, for bureaucrats and communities, and for tradition and learning.*"[134,135]

Evans underlines a number of governance models that are pertinent to the environmental sphere.[136] These are the hierarchy, network, market and transition management modes, and also the adaptive model of governance.[137] The latter two are, as noted by Evans, still emerging and perhaps less prominent in the literature. This presentation of the models of environmental governance, will be adopted here, in preference to the other classifications suggested in the literature, mainly due to its emphasis on the legal dimensions, e.g. on regulatory style, which makes it more amenable for analytic purposes in legal studies.[138]

2.2.4.2 Hierarchical Model

The hierarchical model of governance is mostly associated with traditional administrative government and its tools.[139] This style of government and its top-down regulation has been

[133] Robert F. Durant, Rosemary O'Leary and Daniel J. Fiorino, 'Introduction' in Robert F. Durant, Daniel J. Fiorino and Rosemary O'Leary (eds), *Environmental governance reconsidered: challenges, choices, and opportunities* (MIT Press 2004) P 1-4.
[134] ibid P 2.
[135] Further details regarding the generations and evolution of environmental regulations can be found in Bill L Long, *Environmental Regulation: The Third Generation* (1997) OECD Observer.
[136] Having in practice, diverse modes of governance that can interact with each other, and each mode can be predominant in some circumstances. See V. Lowndes and C. Skelcher, 'The Dynamics of Multi-Organizational Partnerships: An Analysis of Changing Modes of Governance' [1998] 76 Public Administration 313.
[137] James P Evans, *Environmental Governance* (Routledge 2012) P 34-44.
[138] Although, in the real world, thinking about environmental governance in "*taxonomic terms*" and drawing on pure forms of governance is generally regarded negatively, and has been subjected to criticism. See for example Magali A. Delmas and Oran R. Young, *Governance for the Environment: New Perspectives* (Cambridge University Press 2009) P 6-8.
[139] Evans, n 136, P 34-35. Since the state will employ strategies such as statutory obligations, standard-setting enforcement tools and subsequently be subject to judicial review, environmental law can be seen

subject to intense criticism in diverse contexts, as out-dated and belonging to the past, both in the environmental sphere and in other discussions about the public sector, and governance.[140] This type of state-centric and centrally-planned type of regulation has been attacked on various grounds, including lack of cost-effectiveness and inefficiency in comparison with other types of environmental regulation, lack of flexibility and case-by-case consideration, as well as lack of incentives for over-compliance and for innovation.[141] It also suffers from inherent complexity, in that the regulator (central planner) has to gather accurate information and take environmental decisions for every individual case.[142]

In addition, excessive adherence to the top-down style of environmental regulation promotes a somewhat aggressive relationship between the environmental regulator and regulated entities. This effect may be even worse with the regulation associated with criminal liability and the probability of prosecution.[143] This "adversarial legalism" is likely to lead the environmental regulator and the regulated parties to challenge each other in the courts and through litigation, rather than primarily seeking mediation and dialogue.[144] This is not to say, however, that the traditional regulatory approach does not have any merits. In fact, command and control methods are not always bad,[145] and can be, in some cases, quite successful.[146]

The challenge here is not with the top-down environmental regulations per se, since a blended mixture of environmental regulatory approaches can be applied simultaneously, but

largely as public and administrative law. See for example Mark Stallworthy, *Understanding Environmental Law* (Sweet & Maxwell 2008) P 4.

[140] See for example Osborne and Gaebler, n 26, P 15.

[141] See for example, Richard B. Stewart, 'United States Environmental Regulation: A Failing Paradigm' [1996] 15 Journal of Law and Commerce 585, and Thomas H Tietenberg, *Emissions Trading, an Exercise in Reforming Pollution Policy* (Resources for the Future 1985).

[142] See for example Stewart, n 140, and Tietenberg, n 140.

[143] Some command and control regulations are backed up with criminal prosecution with, however, considerable opportunity for selectivity, due to the discretionary authority given to the environmental regulator in some countries such as the UK, notably England. See Susan Wolf and Neil Stanley, *Wolf and Stanley on Environmental Law* (6th edn, Routledge 2014) P 8-9. The prosecution is however very widely agreed to be rarely carried out, and definitely not first choice. Keith Hawkins, *Law as Last Resort: Prosecution Decision-Making in a Regulatory Agency* (Oxford University Press 2002) P 16.

[144] Daniel J. Fiorino, *The New Environmental Regulation* (Massachusetts Institute of Technology 2006) P 27-36.

[145] Daniel H. Cole and Peter Z. Grossman, 'When is Command-and-Control Efficient - Institutions, Technology, and the Comparative Efficiency of Alternative Regulatory Regimes for Environmental Protection' [1999] 1999 Wisconsin Law Review 887.

[146] http://www.econport.org/content/handbook/Environmental/pollution-control-revised/Traditional-Pollution-Techniques/Traditional-methods-sub-page.html 'Benefits and Drawbacks of Command-and-Control' (EconPort Website, accessed in 3/1/2016). Some authors defend this mode of governance and seem to disagree with the "*pejorative*" term command and control, and prefer to give it its original label "direct regulations", due to their practical advantages in many practical cases. See for example Richard Macrory, *Regulation, Enforcement and Governance in Environmental Law* (2nd edn, Hart Publishing 2014) P 135-136.

rather the concern is about legal systems, such as that in the KSA that apparently largely embrace this static approach towards environmental regulation[147].[148]

2.2.4.3 Market-based Model[149]

While the previous model favours the role of the administrative state, the literature about this mode of governance focuses more on the role of industries and the private sector in conserving the environment,[150] although the state may play a role in setting the stage for the market-based mechanisms to operate. Such a market mechanism-based style encompasses "*all approaches that seek to use prices, or economic incentives and deterrents, to achieve environmental objectives.*"[151] These approaches can be exemplified by product and environmental pollution charges and taxes, state subsidies,[152] and perhaps the most unique technique, tradable pollution permits.[153]

In contrast to the traditional centralised top-down environmental regulations, these market-oriented incentives are perceived to have a number of distinct merits. Primarily, they are much more efficient to "internalise" the "externality" problems, and to demonstrate, by properly pricing the market, the whole social cost that the polluter incurs upon society by using and impacting natural resources, rather than only the actual cost of the service or product the polluters[154] produce.[155] As such, the pricing system will reflect more accurately the social cost, by making less environmental friendly products more expensive than their environmentally

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[147] However, prudent and legally-oriented appraisal and analysis of the types of environmental regulation tools used in the KSA seems currently unavailable. Thus, future legal studies are strongly suggested in this regard.

[148] Roger D. Congleton, 'Political Institutions and Pollution Control' [1992] 74 The Review of Economics and Statistics 412, Eric Neumayer, 'Do Democracies Exhibit Stronger International Environmental Commitment? A Cross-country Analysis' [2002] 39 Journal of Peace Research 139, and PerG Fredriksson and Jim R Wollscheid, 'Democratic Institutions Versus Autocratic Regimes: The Case of Environmental Policy' [2007] 130 Public Choice 381.

[149] This approach appears to be generally favoured by economists who view environmental problems through the lens of the theory of "externalities", whereas the former model was originally introduced by regulators who primarily conceived of environmental problems as cases of institutional failure by regulatory institutions. See Owen Lomas, 'Environmental Economics and Regulations' in Owen Lomas (ed), *Frontiers of Environmental Law* (Chancery Law 1991) Especially P115. Further details about the techniques and the "toolkit" of the approach will be provided later.

[150] Especially in the case of the tradable emission permits. See for example, Fisher, Lange and Scotford, n 1, P 492-493.

[151] Bell and McGillivray, n 107, P 239.

[152] Environmental civil liability e.g. in the tort of negligence, and the polluter pays environmental principle can also be categorised as belonging to this model of governance. See for example, Fisher, Lange and Scotford, n 1, P 493, and Lee, n 107, P 204.

[153] Jane Roberts, *Environmental Policy* (Routledge 2004) P 159.

[154] Especially firms and industries in the private sector. See for example Robert W Hahn and Robert N Stavins, 'Incentive-Based Environmental Regulation: A New Era from an Old Idea' [1991] 18 Ecology Law Quarterly 1, and Jerold S Kayden, 'Market-Based Regulatory Approaches: A Comparative Discussion of Environmental and Land Use Techniques in the United States' [1991] 19 Boston College Environmental Affairs Law Review 565.

[155] Richard B Stewart, 'Models for Environmental Regulation: Central Planning Versus Market-Based Approaches' [1991] 19 Boston College Environmental Affairs Law Review 547.

benign counterparts.[156] Unlike the technology-based command and control regulatory style, incentive-based environmental tools provide a significant motivation for firms' technological innovation, as they do not prescribe a certain technology to be used for reducing pollution, nor do they set particular environmental objectives and standards according to specific technology.[157]

Thus, in contrast to regulation, such decentralised economic tools, are perceived to be more efficient, cost-effective and flexible, since they utilise price and fiscal signals to orientate the conduct of firms and industries, giving them the freedom to decide which method to use to control their pollution, and given that pollution reduction costs may differ from one plant to another.[158] As Short puts it, fiscal incentive tools "*provide a mechanism for government to influence the direction of behaviour without determining solutions.*"[159] Moreover, the market incentives governance style is argued to be closer to democracy[160] than the centralised command and control regulation.[161] Despite these advantages of the market-based instruments, they are not claimed to be a panacea for all kinds of environmental challenges or to be the exclusive governance model in operation.[162]

The questions arising in this context are, regardless of the merits and defects of this style of governance: Is this model suitable for countries where the private sector does not seem to be the only considerable emitter of pollution? Is this style of pollution reduction really effective for countries in which the whole economy is unsustainably constructed and widely based on burning fossil fuels, such as that in the KSA? And would this regulatory approach be suitable for a state-centric legal and political constitution, where a significant part of the oil sector is owned by the state itself? More fundamentally, to what extent has this model style been utilised in such countries, in the KSA for example? These are example questions suggested for future studies, in order to cover gaps in the existing body of the literature. These questions, however, are not intended to overlook the potential contribution of some of the fiscal instruments in controlling pollution in some particular applications, such as in the cases of pollution from

[156] Bell and McGillivray, n 107, P 239.
[157] Hahn and Stavins, n 153.
[158] Richard B Stewart, 'Controlling Environmental Risks through Economic Incentives' [1987] 13 Columbia Journal of Environmental Law 153.
[159] Macrory, n 145, P 136-137.
[160] This is not necessarily attractive to states that do not see democracy as a goal.
[161] Richard B Stewart and Bruce Ackerman, 'Reforming Environmental Law: The Democratic Case for Market Incentives' [1988] 13 Columbia Journal of Environmental Law 171.
[162] Macrory, n 145, P 136-140, and Stewart, 'Controlling Environmental Risks through Economic Incentives'.

automobiles and waste disposal,[163] and certain market instruments such as taxes on some polluting environmental services and products.[164]

2.2.4.4 Network Model

The notion of net-based or network governance is among the prominent and frequently recurring models of governance in the literature.[165] Although justice cannot be done to this topic in this short section,[166] it is important to introduce some of the distinguishing features of this form of governance as a basis for the analysis in subsequent chapters, which is the main goal of this section.

For the purpose of this research focus,[167] one quite convenient definition is that which portrays it as "*interfirm coordination that is characterized by organic or informal social systems, in contrast to bureaucratic structures within firms and formal contractual relationships between them.*"[168] This definition, although open to criticism,[169] is preferred here, firstly because it refers to the informal aspect, which is rarely mentioned in discussion of top-down governance and market-based governance. Perhaps, more importantly, it accentuates coordination, which is pivotal to confronting environmental challenges, and fits the unique characteristics of the

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[163] Daniel J Dudek, Richard B Stewart and Jonathan B Wiener, 'Environmental Policy for Eastern Europe: Technology-Based versus Market-Based Approaches' [1992] 17 Columbia Journal of Environmental Law 1.

[164] Despite the criticism of environmental taxes as a "*licenses to pollute*". See Robert N Stavins, 'What Can We Learn from the Grand Policy Experiment? Lessons from SO2 Allowance Trading' [1998] 12 The Journal of Economic Perspectives 69.

[165] This network governance theory is often discussed in conjunction with the perceived more conventional market and top-down styles of governance. See for example Jacob Torfing, 'Governance Networks' in David Levi-Faur (ed), *The Oxford Handbook of Governance* (Oxford University Press 2012) P 99.

[166] For example there is no discussion of the forms and sub-forms of this type of governance. Keith G. Provan and Patrick Kenis, 'Modes of Network Governance: Structure, Management, and Effectiveness' [2008] 18 Journal of Public Administration Research and Theory 229. Also the thematic topics existing in the literature about network governance including "*starting conditions; … meta-governance; the outcome of network governance"* are outside the scope of this brief section. See Martina Dal Molin and Cristina Masella, 'From Fragmentation to Comprehensiveness in Network Governance' [2016] 16 Public Organization Review 493. See in particular P 497.

[167] The theory of governance network is particularly relevant to the so-called "wicked problems", particularly environmental challenges and their management, with their unique complexity, which begs for innovation and adaptation, thus going beyond tradition mechanisms. See for example, Christopher Koliba and Joop Koppenjan, 'Managing Networks and Complex Adaptive Systems' in Tony Bovaird and Elke Loeffler (eds), *Public Management and Governance* (3rd edn, Routledge 2015) P 263.

[168] Candace Jones, William S. Hesterly and Stephen P. Borgatti, 'A General Theory of Network Governance: Exchange Conditions and Social Mechanisms' [1997] 22 The Academy of Management Review 911 P 913.

[169] There are other more elaborate and sophisticated definitions in the literature. For example, "*A stable articulation of mutually dependent, but operationally autonomous actors from state, market and civil society, who interact through conflict-ridden negotiations that take place within an institutionalized framework of rules, norms, shared knowledge and social imaginaries; facilitate self-regulated policy making in the shadow of hierarchy; and contribute to the production of 'public value' in a broad sense of problem definitions, visions, ideas, plans and concrete regulations that are deemed relevant to broad sections of the population*". Eva Sørensen and Jacob Torfing, 'Making Governance Networks Effective and Democratic Through Metagovernance' [2009] 87 Public Administration 234. P 236. See also Molin and Masella P 494.

environmental problems discussed later in this chapter, even though it does not automatically guarantee a certain level of effectiveness.[170]

In particular reference to the collective nature of the environmental challenges, network governance has a great potential, due to its unique advantages in comparison to the other two models of governance. These advantages include its capability to enhance cooperation and diffusion of innovation, its appeal to social capital, due to its multi-actor friendly nature, as well as its ability to facilitate social learning and thus cultural evolution and change.[171] Decisions reached by this process, notably environmental decisions, are likely to be better in quality and more robust, as information and influence are exchanged and disseminated.[172]

In conclusion, there are common key characteristics accompanying this mode of governance. As acknowledged by Kersbergen and Waarden and many other authors, this form of governance is collective and multi-actor by nature. It does not depend on a single societal actor (formal actors for example). The actors are conceived and treated as independent but interdependent. The presence of the formal actor (the government) might be favourable but not necessarily essential. This model of governance is conceived to be horizontally inclusive, rather than vertically coercive, so its important premises comprise "*negotiation, accommodation, concertation, cooperation,*"[173] informality, and trust between the network constituents.[174]

2.2.4.5 Concluding Remarks

This section has discussed three prominent models of governance that are relevant to the environmental protection domain, top-down, market-based and network governance. It has shown that while they are not always necessarily mutually exclusive, each model has its own logic, tools and priority, as well as preferring different actors.

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[170] The issue of gauging the effectiveness of these models is a distinct issue. See for example, Keith G. Provan and H. Brinton Milward, 'Do Networks Really Work? A Framework for Evaluating Public-Sector Organizational Networks' [2001] 61 Public Administration Review 414, and Garry Robins, Lorraine Bates and Philippa Pattison, 'Network Governance and Environmental Management: Conflict and Cooperation' [2011] 89 Public Administration 1293.

[171] Mark Lubell and Allan Fulton, 'Local Policy Networks and Agricultural Watershed Management' [2008] 18 Journal of Public Administration Research and Theory 673.

[172] Mark T. Gibbs, 'Network Governance in Fisheries' [2008] 32 Marine Policy 113.

[173] Kersbergen and Waarden, n 21, P 152.

[174] ibid, P 149,151,152. See also see Evans, n 136, P 104-121. And for a brief account of the advantages and disadvantages of this style of governance see particularly P 35 and P 119. See Henrik Enroth, 'Policy Network Theory' in Mark Bevir (ed), *The SAGE Handbook of Governance* (SAGE Publications Ltd 2011) P 27.

2.2.5 Environmental Governance and Unique Characteristics of Environmental Problems

2.2.5.1 Introduction

These are only an illustrations of special features of the environmental challenges, and not an all-encompassing list. For example, some attributes, such as irreversibility are omitted because of space constraints.

2.2.5.2 Climate Change

Climate change governance is a massive topic with multiple dimensions predicated on different contexts and approaches. For instance, climate change issues can be discussed in association with abstract concepts such as risk[175] and justice.[176] It can also be perhaps more practically approached with reference to associated legal and political arenas.

For example, in the national context it can be approached, for example, through the role of the state as the most present and powerful actor in most current societies.[177] It can also be addressed in terms of the regulatory approach in dealing with the climate change challenge.[178] In the global dimension, it can be approached by highlighting the international legal instruments concerning the governance of the challenges posed by climate change.[179] The climate change issue can also be viewed through an economic lens, in which the focus is more directed to the cost and economic effects of climate change and the release of greenhouse gas emissions.[180]

Thus, the gravity of the issue and amount of the literature available make a detailed discussion of this issue far beyond the capacity of this subsection. However, it will attempt to indicate the general themes involved in the climate change issue, its global governance system, and also some of its national dimensions, as well as the reasons why this issue is strongly relevant to, and worth serious consideration by developing countries such as the KSA.

There are two extensive themes under which the analysis and discussion of climate change can be classified. These overarching themes are *mitigation* of the emissions of greenhouse gases on one hand, and *adaptation* which can be understood as "*adjustments in*

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[175] As in *The Oxford Handbook of Governance*, see for example part VI, P 415 and 441 in 'Microscopic modeling of large-scale pedestrian–vehicle conflicts in the city of Madinah, Saudi Arabia' [2012] Journal of Advanced Transportation.

[176] Steve Vanderheiden, *Atmospheric Justice: A Political Theory of Climate Change* (Oxford University Press 2008) P 81.

[177] Pierre and Peters, n 20.

[178] See, for example, Ian Bartle, 'Regulatory Approaches to Climate Change Mitigation' in David Levi-Faur (ed), *Handbook on the Politics of Regulation* (Edward Elgar 2011), and Kirsten H. Engel, 'Harmonizing Regulatory and Litigation Approaches to Climate Change Mitigation: Incorporating Tradable Emissions Offsets into Common Law Remedies' [2007] 155 University of Pennsylvania Law Review 1563.

[179] Thomas Bernauer and Lena Maria Schaffer, 'Climate Change Governance' in David Levi-Faur (ed), *The Oxford Handbook of Governance* (Oxford University Press 2012) Especially P 442 to 445.

[180] Richard S J Tol, 'The Economic Effects of Climate Change' [2009] 23 The Journal of Economic Perspectives 29.

ecological, social, or economic systems in response to actual or expected climatic stimuli and their effects or impacts. It refers to changes in processes, practices, and structures to moderate potential damage or to benefit from opportunities associated with climate change;"[181] or more succinctly, as explained by the United Nations Environment Programme, mitigation can be conceived as "*moving towards low carbon societies*", whereas adaptation is simply, but more profoundly, "*building resilience*."[182]

Due the nature and scope of the climate change phenomenon, it has gained interest from practitioners from a wide array of disciplines. In the field of legal studies, the issue can be discussed at different levels, including the global and national scales. In regard to the global governance system for climate change, a major part of the discussion may be about the principal international scientific and legal instruments and entities mandated to address such global issues, notably the Intergovernmental Panel on Climate Change (IPCC), the leading designated body for scientifically investigating, reviewing and assessing climate change knowledge,[183] and the United Nations Framework Convention on Climate Change (FCCC), an international treaty,[184] as well as the Kyoto Protocol agreement on climate change (KP).[185,186] At the domestic level, however, the analysis has many ramifications. For example, different political systems have different legal and policy arrangements,[187] the local natural and climatic states also vary between different countries and regions, and of course developed and developing countries have different challenges.

The critical questions here are: given the perceived considerable impact on climate change mitigation issues of, inter alia, the fossil fuel resources and transportation sectors,[188] to what

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[181] http://unfccc.int/focus/adaptation/items/6999.php 'Adaptation' (United Nations Framework Convention on Climate Change Website accessed in 2/7/2015).
[182] http://www.unep.org/climatechange/adaptation/ 'Climate Change Adaptation' (United Nations Environment Programme Website accessed in 2/7/2015).
[183] http://www.ipcc.ch/activities/activities.shtml 'Activities' The Intergovernmental Panel on Climate Change (IPCC) Website accessed in 3/7/2015).
[184] http://unfccc.int/essential_background/convention/items/6036.php 'The Convention' (The United Nations Framework Convention on Climate Change Website, accessed in 3/7/2015)
[185] http://unfccc.int/kyoto_protocol/items/2830.php 'Kyoto Protocol' (The United Nations Framework Convention on Climate Change Website accessed in 3/7/2015).
[186] Bernauer and Schaffer, n 178, P 442-444.
[187] In the US for example, the federal government generally have a notable role in, for example, setting the environmental standards, but in the particular issue of climate change, it is left to state governments to take actions. See for example, Kirsten Engel, 'State and Local Climate Change Initiatives: What Is Motivating State and Local Governments to Address a Global Problem and What Does This Say about Federalism and Environmental Law' [2006] 38 The Urban Lawyer 1015. There are also ongoing arguments about the link between democracy and climate change. See for example, David Held and Angus Hervey, 'Democracy, Climate Change and Global Governance: Democratic Agency and the Policy Menu Ahead' in David Held, Marika Theros and Angus Fane-Hervey (eds), *The Governance of Climate Change* (2011).
[188] Thomas Bernauer, 'Climate Change Politics' [2013] 16 Annual Review of Political Science 421, and Eric Neumayer, 'Can Natural Factors Explain any Cross-Country Differences in Carbon Dioxide Emissions?' [2002] 30 Energy Policy 7.

extent have these developing countries, including the KSA, integrated climate change considerations into their regulations, policies and strategies? What are the governance system and practices embraced in confronting climate change challenges? Have these practices been effective? To what extent does the existing legal and political culture contribute, positively or negatively, to the problem or to the solution? And what regulatory approaches are in place to deal with climate change adaptation and mitigation issues? Have they been successful, and why? If not, how and what should they be?

These pressing questions are examples of future research studies that are needed in order to fill what appears to be a significant gap in the currently available literature. The starting point, however, should arguably be the conviction of these highly fossil fuel-dependent countries that it is possible to focus on the potential opportunities of climate change[189] and not exclusively on the loss side.[190]

2.2.5.3 Complexity and Uncertainty

Environmental problems interact with or are ramifications of peoples' life systems and established practices. They are uncertain, in some cases, because the knowledge about them is not definitive or not conclusive. As put neatly by Dryzek, environmental problems:

> "*Do not present themselves in well-defined boxes… [They] tend to be interconnected and multidimensional… Ecosystems are complex and our knowledge of them is limited … Human social systems are complex too… Environmental problems by definition are found at the intersection of ecosystems and human social systems, thus doubly complex.*"[191]

In addition, the complexity of environmental issues is not restricted to real-world biological or physically interrelated interactions of the ecosystem, but is also reflected in the philosophical underpinnings of the abstract arguments regarding environmental protection. For example, the various debates in favour or less in favour of environmental protection can be viewed on the scale of anthropocentrism versus ecocentrism.[192] These two ideologies can be perceived as opposite poles with a wide range of orientations between them.[193]

Uncertainty is also a unique feature of many environmental issues, and a cause of many heated controversies among both scientists and policy-makers. In fact, such properties of

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[189] Michele M Betsill, 'Mitigating Climate Change in US Cities: Opportunities and Obstacles' [2001] 6 Local Environment 393.

[190] This seems a pivotal stepping stone for such countries since it is the fear of loss which seems to induce or even compel them to adopt an "obstructionist" attitude in climate change negotiations. See Joanna Depledge, 'Striving for No: Saudi Arabia in the Climate Change Regime' [2008] 8 Global Environmental Politics 9.

[191] John S. Dryzek, *The Politics of the Earth: Environmental Discourses* (3rd edn, Oxford University Press 2013) P 9.

[192] The latter indicates human-centred orientation, whereas ecocentrism signifies ecology-centred perspective. Robyn Eckersley, *Environmentalism and Political Theory: Toward an Ecocentric Approach* (UCL Press 1992) P 3.

[193] Ibid, P 33.

environmental issues are inherently embedded in thematic environmental law topics, such as risk, and a reason for producing legal principles such as the precautionary principle.[194] The uncertainty of environmental issues can be regarded both as a feature of environmental matters and a challenge for taking relevant decisions. Here is where the central role of the scientist comes to the fore, to generate the required environmental knowledge and present it to the policy makers in a "bridging-the-gap" way, between the science and policy-making domains.[195] Such interface or bridging bodies can be viewed as "*boundary organisations*"[196].

As to the concept of governance, how can these unique properties of environmental issues be reflected in environmental governance as a whole? Although it can be argued that this question is already tackled by books on environmental law and governance, there might be less available literature when this question focuses on the Middle Eastern context, and particularly the KSA's arena. This is especially the case when one bears in mind the fact that culture and values[197] are argued to play a salient role in shaping what could be perceived as an environmental problem or environmentally-wrong actions. It is apposite to conclude this sub-section with Bell and McGillivary's telling point that the regulation of environmental issues "*does not take place in a vacuum, but rather within its own 'matrix' of values, practices, and moral standpoints relating to our interaction with the natural environment.*"[198]

2.2.5.4 Trans-boundary Character

The trans-boundary aspect is a well-recognised feature of environmental problems. In fact, the entire existing environmental international law can be understood as a response to this unique characteristic of environmental law.[199] Otherwise, why does it not suffice that every single nation tackles its environmental challenges merely at a national scale and without burdening itself with adherence to regional and international codes and agreements?

The transboundary attribute of many environmental problems can also be understood in connection to the famous "tragedy of the common" narrative.[200] In explaining this tragedy Hardin employs a metaphor of primitive villagers, their cattle and a common grazing land. Over time, every individual shepherd, in pursuit of his own interest, adds one more sheep in order to maximise his private benefit from this common pastureland and:

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[194] Elizabeth Fisher, 'Precaution, Precaution Everywhere: Developing a 'Common Understanding' of the Precautionary Principle in the European Community' [2002] 9 Maastricht Journal of European and Comparative Law 7.
[195] Silke Beck, 'Scientists and Experts' in Philipp H. Pattberg and Fariborz Zelli (eds), *Encyclopedia of Global Environmental Governance and Politics* (Edward Elgar Publishing 2015) P 234.
[196] David H. Guston, 'Boundary Organizations in Environmental Policy and Science: An Introduction' [2001] 26 Science, Technology, & Human Values 399.
[197] This will be further discussed when addressing "risk" below.
[198] Bell and McGillivray, n 107, P 71.
[199] Patricia W. Birnie, Alan E. Boyle and Catherine Redgwell, *International Law and the Environment* (3rd edn, Oxford University Press 2009) P 8.
[200] Which can also be theoretically applied at the global scale. See Nives Dolšak and Elinor Ostrom, *The Commons in the New Millennium: Challenges and Adaptation* (MIT Press 2003) P 3-8.

> "*Therein is the tragedy. Each man is locked into a system that compels him to increase his herd without limit – in a world that is limited. Ruin is the destination towards which all men rush, each pursuing his own best interest in a society that believes in the freedom of the commons. Freedom in a commons brings ruin to all*"[201].

Such a "tragedy of the commons" scenario is also relevant to the transboundary nature of several environmental challenges. Climate change, air pollution and acid rain, for example, are all problems to the global commons,[202] in which absolute freedom accorded to sovereign national states will have an environmentally-degrading impact. However, this is not to advocate despair among environmental lawyers and environmentalists and the whole society, since the tragedy of the commons and the majority of environmental challenges should be perceived as "*real, but not inevitable*."[203]

2.2.5.5 Concluding Remarks

This research is not "reinventing the wheel" by bringing in the discussion about these unique, widely acknowledged features of environmental problems. It is interesting, however, to pose some questions concerning their manifest or latent reflection both in the regional Middle Eastern environmental treaties or instruments, and in the national laws and regulation of the KSA. In other words, to what extent are such special facets of the environmental problems reflected in the regional legal and socio-legal arrangements of the Middle East? And to what degree does the KSA's environmental law and environmental governance structure in general recognise and effectively respond to such characteristics? This research, although not designed to fully answer these questions aims to at least trigger the scholarly discussion in these widely overlooked areas of environmental governance in this regional context.

2.2.6 Good Environmental Governance

2.2.6.1 Introduction

As with the concepts governance and environmental governance, there are multiple understandings of this concept,[204] according to which source or discipline the writer starts reading from. However, good environmental governance appears to be significantly less discussed in the literature compared with both environmental governance and good governance.

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[201] Garrett Hardin, 'The Tragedy of the Commons' [1968] 162 Science 1243 P 1244.
[202] Neil Carter, *The Politics of the Environment: Ideas, Activism, Policy* (2nd edn, Cambridge University Press 2007) P 176.
[203] Elinor Ostrom and others, 'Revisiting the Commons: Local Lessons, Global Challenges' [1999] 284 Science 278 P 281.
[204] However, this fluid nature has been criticised, thus: "*Unfortunately, governance theorists allowed their central concepts of governance and networks to undergo concept stretching to the point that it became difficult to discern what would not fall within their scope*." Perri 6, 'Governance: If Governance is Everything, maybe it's Nothing' in Andrew Massey and Karen Johnston Miller (eds), *The International Handbook of Public Administration and Governance* (Edward Elgar Publishing 2015) P 74.

This section of the chapter will draw on the widely accepted normative nature of the term "good governance", discussing indicators or criteria such as participation, accountability and openness, as widely followed in the literature, including in law,[205] and even environmental law[206] books.

2.2.6.2 Public Involvement

Within the framework of environmental governance, the issue of public participation interrelates with many subjects; for example, in this context of environmental good governance, it connects with[207] risk,[208] community-led or bottom-up governance and democratic theory,[209] and is also discussed in law sources, as this issue is positioned at the heart of public law.[210]

From a legal standpoint, this principle of public involvement in the environmental process and decision-making is widely acknowledged. Principle 10, for example, of the Rio Declaration on Environment and Development (1992), sets out that:

> "*Environmental issues are best handled with the participation of all concerned citizens, at the relevant level. At the national level, each individual shall have appropriate access to information concerning the environment that is held by public authorities, including information on hazardous materials and activities in their communities, and the opportunity to participate in decision-making processes. States shall facilitate and encourage public awareness and participation by making information widely available. Effective access to judicial and administrative proceedings, including redress and remedy, shall be provided.*"[211]

[205] Which also confirm the lack of universally-accepted standards and criteria of good governance. Mark Elliott and Robert Thomas, *Public Law* (2nd edn, Oxford University Press 2014) P 348.
[206] And some of them may depend of the standards of good governance adopted by the EU White Book on Governance. Mariachiara Alberton and Francesco Palermo, 'Introduction' in Mariachiara Alberton and Francesco Palermo (eds), *Environmental Protection in Multi-Layered Systems: Comparative Lessons from the Water Sector*, vol 1 (Martinus Nijhoff Publishers 2012) P 7-8. See also European Commission, *European Governance - A White Paper* (2001) Office for Official Publications of the European Communities.
[207] Benjamin J. Richardson and Jona Razzaque, 'Public Participation in Environmental Decision Making' in Benjamin J. Richardson and Stepan Wood (eds), *Environmental Law for Sustainability: A Reader* (Hart Publishing 2006) P 167.
[208] Karin Bäckstrand, 'Civic Science for Sustainability: Reframing the Role of Experts, Policy-Makers and Citizens in Environmental Governance' [2003] 3 Global Environmental Politics 24, Jason Chilvers, 'Environmental Risk, Uncertainty, and Participation: Mapping an Emergent Epistemic Community' [2008] 40 Environment and Planning A 2990 and Sheila Jasanoff, 'The Songlines of Risk' [1999] 8 Environmental Values 135.
[209] Karin Bäckstrand, 'Democratizing Global Environmental Governance? Stakeholder Democracy after the World Summit on Sustainable Development' [2006] 12 European Journal of International Relations 467, Marcus B. Lane and Tony Corbett, 'The Tyranny of localism: Indigenous Participation in Community-based Environmental Management' [2005] 7 Journal of Environmental Policy & Planning 141, and Ciaran O'Faircheallaigh and Tony Corbett, 'Indigenous Participation in Environmental Management of Mining Projects: The Role of Negotiated Agreements' [2005] 14 Environmental Politics 629.
[210] Fisher, Lange and Scotford, n 1, P 264.
[211] The Rio Declaration on Environment and Development (1992).

The discussion on public participation in environmental issues normally touches on three closely connected prerequisite issues. In Principle 10, these three fundamentals are explicit, for example, in the title of Aarhus (1998) as "[A] Access to Information, [B] Public Participation in Decision-Making and [C] Access to Justice in Environmental Matters"[212]. Nevertheless, securing these three "pillars" is merely a procedural element and does not guarantee a substantial enhancement of quality of the environment. This is, inter alia, "*because the public are apathetic*"[213] and need encouragement to effectively participate when it comes to environmental protection issues, where the harm is not normally directly inflicted by a single individual or a relatively small group of people, such as is the case of harm and loss in criminal law cases or traditional trade and contractual law dealings.

Despite its great potential, public involvement in environmental issues initially appears to be more pertinent to the western democratic states, as the bottom line of democracy is to be led by the public, and opening the doors for them to participate. In countries with extensively state-centric legal and political systems, the grounds for legitimising such participation are somewhat different.

The scarcity of studies in the current literature relating to environmental public participation needs to be addressed in future studies in many aspects of the context of the Middle East, and also in that of the KSA. Examples of the questions that await answers are: To what extent are environmental public participation tools and forms available, and why are they available or not available? What is the scale of their potential, considering the legal and political environment to be operated in? There are also more law-centred questions about their constitutionality and justiciability.

2.2.6.3 Accountability

This broad thematic principle appears to be even more consensual among thinkers and practitioners than the "public participation" principle, in the sense that in certain "complex" domains,[214] the feasibility of the "public involvement" principle seems to attract some degree of controversy,[215] whereas the accountability of power-holders seems to be rarely contested.

Nevertheless, the large amount of literature and evolving and uncertain nature of science related to this topic renders accountability within the environmental public law sphere even

[212] *United Nations Economic Commission for Europe adopted the Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (the Aarhus Convention)* (1998).
[213] Jeremy Rowan-Robinson and others, 'Public Access to Environmental Information: A Means to What End?' [1996] 8 Journal of Environmental Law 19 P 38.
[214] The energy sector for example, see below.
[215] See for example 'Public Engagement and Low Carbon Energy Transitions: Rationales and Challenges' in Raphael J. Heffron and Gavin F. M. Little (eds), *Delivering Energy Law and Policy in the EU and the US: A Reader* (Edinburgh University Press 2016) P 549-551.

more challenging to write about.[216] In the context of research related to the Middle-East, and the KSA, one other interesting challenge crops up, which is the very strong association of the accountability principle with democracy and democratic theory in the available western literature. In a long-established western model "*it is representation that provides accountability,*"[217] and, thus, accountability is "*fundamentally democratic in aspiration*."[218]

This association will not be helpful for a global region that does not proclaim democracy, at least in quite a large part of it. It might be helpful here also to recall that the standard of accountability has a number of categories and can be conceived in different forms.[219]

Regarding the environmental sphere in several states in the Middle Eastern region, and certainly in the KSA's context, the literature indicates a pressing need for future environmental law and governance research projects to address the issue of accountability, even at a descriptive level. For instance, the inquiries posed by Mashaw and his "*accountability regime*" can be used as a guide to the introductory questions hoped to be unpacked in the future. These six questions concern: "*Who is liable or accountable to whom; what they are liable to be called to account for; through what processes is accountability to be assured; by what standards is the putatively accountable behaviour to be judged; and with what effect*"[220].

2.2.6.4 Transparency

This term is akin to a number of already discussed fluid and dynamic terms, including governance and environmental governance, in terms of, paradoxically, both its importance and vagueness.[221] Despite its undisputed centrality to any good environmental governance regime, transparency, is regarded "*the scholar's worst nightmare*" [222] in terms of theorisation and

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[216] Elizabeth Fisher, 'Drowning by Numbers: Standard Setting in Risk Regulation and the Pursuit of Accountable Public Administration' [2000] 20 Oxford Journal of Legal Studies 109.
[217] Mark Considine and Kamran Ali Afzal, 'Legitimacy' in Mark Bevir (ed), *The SAGE Handbook of Governance* (SAGE 2011) P 371.
[218] R. Mulgan, *Holding Power to Account: Accountability in Modern Democracies* (Palgrave Macmillan UK 2003) P 1.
[219] Patricia Day and Rudolf Klein, *Accountabilities: Five Public Services* (Tavistock 1987) P 4-29, Jerry L. Mashaw, 'Accountability and Institutional Design: Some Thoughts on the Grammar of Governance' in Michael D. Dowdle (ed), *Public Accountability: Designs, Dilemmas and Experiences* (Cambridge University Press 2006) P 120-126, and Jerry L. Mashaw, 'Administrative Law and Agency Accountability' in David S. Clark (ed), *Encyclopedia of Law and Society: American and Global Perspectives* (Sage Publications 2007) P 31-32. This focus in this section is primarily on what could be called the classical conceptualisation of accountability, which is in line with the principal-agent nexus, rather than what may be conceived as beyond a principal-agent relationship. An example of the latter brand of accountability can be found, for example, in relation to experimentalist governance and the EU-member state connection. See for example Fisher, Lange and Scotford, n 1, P 521- 525 and Charles F Sabel and William H Simon, 'Epilogue: Accountability Without Sovereignty' in G. De Búrca and Joanne Scott (eds), *Law and New Governance in the EU and the US* (Hart Publishing 2006) P 398- 402.
[220] L. Mashaw Jerry, 'Structuring a "Dense Complexity": Accountability and the Project of Administrative Law' [2005] 5 Issues in Legal Scholarship P 16-17.
[221] Alasdair Roberts, 'Transparency in Government' in Tony Bovaird and Elke Löffler (eds), *Public Management and Governance* (Routledge 2016).
[222] Elizabeth Fisher, 'Transparency and Administrative Law: A Critical Evaluation' [2010] 63 Current Legal Problems 272 P 274.

conceptualisation. This may explain the relative rarity of work in the literature addressing the definition and nature of this principle in comparison to accountability and legitimacy, for example.[223] In fact, even those books on environmental law or governance that expressly include this principle in their table of contents tend to provide quite loose definitions of or mechanisms for transparency.[224] However, Florini, for example, provides a flexible definition, using the insider and outsider dichotomy to define transparency thus: "*'transparency' refers to the degree to which information is available to outsiders that enables them to have an informed voice in decisions and/or to assess the decisions made by insiders.*"[225] Similarly, Heald argues that transparency can be realised "*when those outside can observe what is going on inside the organisation.*"[226]

For the purpose of this study, transparency indicates something closely linked to the accessibility of environmental data held by environmentally-mandated entities. Therefore, transparency here signifies "*the opposite of secrecy …* [i.e.] *deliberately revealing* [environmental information and] *actions*,"[227] and thus it is equivalent to "*regulation by revelation*"[228] (of environmental data).

The literature gives little indication as to what transparency means for environmental law and governance in the Middle Eastern region and whether it could be any different to the meanings provided by the western institutions and thinkers, nor does it answer many other pertinent questions. What mechanisms are available for the public, if any, and to what extent are they effective and beneficial? Does the prevailing legal culture facilitate or effectively compel the holders of environmental data to disclose such information? Do public institutions hold such data in the first place? To what extent are the environmental agencies capable of obtaining reliable environmental data? Do the roles of the "in-place" environmental governance institutions address all of these queries? Some of these questions will be addressed in later stages of this project; others are recommended for future studies.

2.2.6.5 Concluding Remarks

As with the terms governance and environmental governance, what makes the normative concept of good governance and its standards promising is its adjustability for a variety of environments and legal and cultural backgrounds and contexts. As Elliott and Thomas rightly conclude, good governance and its standards "*should not therefore be understood as being*

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[223] Aarti Gupta, 'Transparency Under Scrutiny: Information Disclosure in Global Environmental Governance' [2008] 8 Global Environmental Politics 1.
[224] See for instance, Macrory, n 145, P 94-95.
[225] Ann Florini, 'Introduction: The Battle over Transparency' in Ann Florini (ed), *The Right to Know: Transparency for an Open World* (Columbia University Press 2007) P 5.
[226] David Heald, 'Varieties of Transparency' in Christopher Hood and David Heald (eds), *Transparency: The Key to Better Governance?* (Oxford University Press 2006) P 28.
[227] Ann Florini, 'The End of Secrecy' [1998] Foreign Policy 50.
[228] Ibid.

either fixed or static; rather, since these standards develop over time, they are both fluid and dynamic."[229]

2.2.7 Trends in Environmental Governance

2.2.7.1 Introduction

In this section of the chapter, some important environmental law instruments and approaches are identified and discussed, as a key basis for the development of the analysis and discussion in the later core chapters of the research.

2.2.7.2 Environmental Impact Assessment

This is a crucial and interesting environmental law and governance mechanism, crucially because it is concerned with pre-empting environmental damage and can thus can be seen as a practical application of the abstract precautionary and preventive principle. This topic is also interesting due to its multi-dimensional nature. For example, the literature suggests that this issue can be discussed in a more law-oriented or "doctrinal" approach as a statutory obligation prior to the foundation of any likely-to-impact-the-environment project.[230] The EIA may also be addressed within the area of public participation in the environmental decision-making procedure,[231] and, in addition, in terms of its detailed stages of implementation.[232] It can also be analysed within international law, both in its instruments,[233] and its organisations, such as the World Bank.[234] This topic can also be tackled within the framework of regional institutions, such as the European Union context, including the recent new developments.[235]

As a bottom line, the environmental impact assessment is generally understood to be something like "*A formal procedure through which decision makers gather environmental information about projects and take this information into account in decision making*."[236] This might convey deceptively simple assumptions and the impression of consensus about the

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[229] Elliott and Thomas, n 204, P 361.
[230] See for instance Chapter 9 in Richard Burnett-Hall and Brian Jones, *Burnett-Hall on Environmental Law* (2nd edn, Sweet & Maxwell (Thomson Reuters) 2009), and Stallworthy, n 138, P 115-119.
[231] See for example Ciaran O'Faircheallaigh, 'Public Participation and Environmental Impact Assessment: Purposes, Implications, and Lessons for Public Policy Making' [2010] 30 Environmental Impact Assessment Review 19, Anne N. Glucker and others, 'Public Participation in Environmental Impact Assessment: Why, Who and How?' [2013] 43 Environmental Impact Assessment Review 104, and Helen Ross, Claudia Baldwin and R. W. Carter, 'Subtle Implications: Public Participation Versus Community Engagement in Environmental Decision-Making' [2016] 23 Australasian Journal of Environmental Management 123.
[232] See for example Christopher Wood, 'Environmental Assessment' in Christopher Miller (ed), *Planning and Environmental Protection: a Review of Law and Policy* (Hart Publishing 2001).
[233] For example, Principle 17 of the Rio declaration sets out "*Environmental impact assessment, as a national instrument, shall be undertaken for proposed activities that are likely to have a significant adverse impact on the environment and are subject to a decision of a competent national authority*."
[234] Kevin R. Gray, 'International Enviromnental Impact Assessment - Potential for a Multilateral Environmental Agreement' [2000] 11 Colorado Journal of International Environmental Law and Policy 83, and Birnie, Boyle and Redgwell, n 198, P 137-138 and P164-189.
[235] Kalina Arabadjieva, ''Better Regulation' in Environmental Impact Assessment: The Amended EIA Directive' [2016] 28 Journal of Environmental Law 159.
[236] Bell and McGillivray, n 107, P 432.

EIA's essence and purpose. This is far from being the case. Although this environmental legal technique is largely about gathering and publicising the relevant environmental information about the proposed project, the theorisation and conceptualisation of the environmental knowledge upon which EIA is premised vary considerably among experts, and even legal systems. This has a central role in explaining and determining the nature of the EIA approach in each distinct national or regional context. For example, there is the school of thought that views obtaining the required environmental knowledge as an "elite exercise", an expert-originated and rational activity undertaken behind the closed doors of the laboratories.[237]

In contrast, there is the camp that considers environmental knowledge and the EIA as a value-laden and socially-constructed exercise and an opportunity for social learning process.[238] Consequently, the EIA can be conceived as a largely scientific activity, or it can be viewed as a social and deliberative activity.[239] In practice, however, EIA studies can be neither of these, but just a "bureaucratic exercise"[240] conducted mainly by officials. Hence, different authors present a variety of conceptualisations and ideologies regarding its role and nature resulting in different classifications.[241]

Despite the large amount of western literature analysing the EIA, in terms of its nature, operation, relation to the administrative law, and the varying interpretations of embedded notions such as "risk"[242], there is no corresponding body of Middle Eastern literature, including studies in the KSA context. Examples of questions recommended for future studies include queries about the nature of the EIA within the KSA's administrative law system and the subsequent role of the administrative courts. There are also questions about the scope and nature of the role given to individuals within the EIA framework. Future research studies can also be more descriptive and reveal the mechanisms by which the EIAs and their stages are conducted and by whom, as well as the nature of the interests represented or captured by the

[237] However, some contest this rigidly rationalistic and value-free style of EIA based on faith in experts and science. See Joe Weston, 'EIA in a Risk Society' [2004] 47 Journal of Environmental Planning and Management 313.
[238] Heli Saarikoski, 'Environmental Impact Assessment (EIA) as Collaborative Learning Process' [2000] 20 Environmental Impact Assessment Review 681 and some would even contend that the whole EIA regime was originally created driven by the societal shift in their beliefs and values towards the environment. See David P. Lawrence, 'The Need for EIA Theory-Building' [1997] 17 Environmental Impact Assessment Review 79.
[239] These different conceptualisations will be discussed below, e.g. the concept of "risk".
[240] Elizabeth Brito and Iara Verocai, 'Environmental Impact Assessment in South and Central America' in Judith Petts (ed), *Handbook of Environmental Impact Assessment: Impact and Limitations*, vol 2 (Wiley 2009) P 196.
[241] For example, Fisher and others present views of EIA as bureaucratic, deliberative or scientific. Whereas Gulbrandsen, for example, suggests a terminology of "rational-instrumental approach, a political-institutional approach and a political economy approach". See chapter 19 in Fisher, Lange and Scotford, n 1, and Lars H. Gulbrandsen, 'The Role of Science in Environmental Governance: Competing Knowledge Producers in Swedish and Norwegian Forestry' [2008] 8 Global Environmental Politics 99 P 100.
[242] Will be discussed further below.

EIA studies: are they, for example: societal? Exclusively scientific and environmental? Bureaucratic and captured by bureaucrats? Or captured and influenced by corporations and the private sector?

2.2.7.3 Criminal Liability in Environmental Law

The interjection of criminal liability into the largely administrative nature of environmental law is prominent within the environmental law governance literature. The need to consider criminal law aspects for environmental protection purposes has generated a vast body of literature. However, it should also be pointed out that such criminalisation does not seem to be a matter of consensus.[243] This controversy can be explained on the grounds of some of the central differences between the nature or conditions of the crime in criminal law, and its counterpart in environmental law. For instance, unlike criminal law, the concept of *mens rea* or the mental awareness of wrongdoing, the identifiability of the specific victim, and also the precise recognisability of damage are absent in environmental crimes.[244] This might explain why some legal systems have still not entrenched such criminalisation in their laws. However, this omission of criminal liability and procedures can be argued to maintain the perceived underlying trivialisation of environmental contraventions.[245]

Moreover, despite the considerable body of literature addressing the rubric of "environmental crime", in practice, even in systems that criminalise types of environmental behaviours "*relatively few environmental crimes … are resolved in criminal proceedings.*"[246] This under-use of criminal prosecution can be attributed to the lower likelihood of the violator being detected, prosecuted and convicted, which can weaken the deterrence value of criminalising environmental violations.[247] Additionally, although criminalisation of environmental violation is a widely recognised trend of environmental law and governance among western developed countries, some legal systems grant the environmental regulator much wider discretion. Accordingly, more selectivity is allowed on whether to invoke the criminal law and whether to prosecute only serious and large-scale environmental infringements.[248]

Finally, instead of making such forms of command and control regulation as the first choice, priority is often granted to more friendly and educative approaches, which should also enhance

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[243] Kathleen F. Brickey, 'Environmental Crime at the Crossroads: The Intersection of Environmental and Criminal Law Theory' [1996] 71 Tulane Law Review 487, and Mark Halsey, 'Against 'Green' Criminology' [2004] 44 The British Journal of Criminology 833.
[244] David Hughes and others, *Environmental Law* (4th edn, Butterworths 2002) P 44.
[245] P. de Prez, 'Excuses, Excuses: the Ritual Trivialisation of Environmental Prosecutions' [2000] 12 Journal of Environmental Law 65.
[246] Neal Shover and Aaron S. Routhe, 'Environmental Crime' [2005] 32 Crime and Justice 321 P 351
[247] Michael G. Faure and Katarina Svatikova, 'Criminal or Administrative Law to Protect the Environment? Evidence from Western Europe' [2012] 24 Journal of Environmental Law 253.
[248] William Wilson, *Making Environmental Laws Work: An Anglo American Comparison* (Hart Publishing 1998) See P 15 and Chapter 6.

rather than hindering economic and business activities.[249] Although such approaches are not argued to completely replace the conventional deterrence style, it is contended that they go further and are more effective than the top-down approach, since they are premised on quality of performance rather than compliance. This development was not driven by law alone, but also by social and economic pressures, including aversion to the deterrence style by the regulated parties, and also due to developments in economic theories.[250] From an environmental governance perspective "*today, law* [including criminal law] *is no longer centre stage but simply one instrument among others in the environmental regulator's toolkit. And talk of regulation may itself be giving way to the broader concept of environmental governance*"[251]. This is a primary reason why this research does not strictly confine itself to environmental law in its narrow sense, but rather with environmental governance with some sort of legal orientation.

In relation to the Middle East and the KSA, it would be interesting to investigate issues such as to what extent, if any, criminal law has been integrated and considered in environmental governance, and its current or potential effectiveness. Questions could also be asked regarding the attitude of both the environmental regulator and the regulated parties in respect of the use of criminal law and whether such a deterrent strategy would be more or less environmentally protective than more benign, flexible and hierarchical governance tools. Moreover, would it be feasible in the first place to consider the criminal law for environmental protection purposes, when considerable parts of the economic entities and business are owned or semi-owned by the state itself? It could also be asked whether the environmental regulator is powerful enough and what could be the alternatives, together with a wide array of questions regarding the feasibility of dedicated courts or tribunals to deal with such environmental "but criminal" cases in the Middle Eastern arena and in the KSA in particular.

2.2.7.4 Enforcement of Environmental Law

Unlike the themes and trends discussed above, the issue of enforcement is addressed by almost all environmental law books, either explicitly or implicitly. This is maybe due to the fact that ensuring compliance and enforcement is pertinent to all forms of governance and law, either in its classical and doctrinal or legislation-based style, or less formal styles encompassing more socially inclusive and addressee-friendly approaches.

For the purpose of this research, enforcement denotes something akin to the act, tools or strategies by which the environmental regulator and/or the environmentally-entrusted bodies

[249] Neil Gunningham and Peter Grabosky, *Smart Regulation: Designing Environmental Policy* (Oxford University Press 1998).
[250] Thomas Dietz and Paul C. Stern, 'Exploring New Tools for Environmental Protection' in Thomas Dietz and Paul C. Stern (eds), *New Tools for Environmental Protection: Education, Information, and Voluntary Measures* (National Academy Press) P 3.
[251] Gunningham, 'Environment Law, Regulation and Governance: Shifting Architectures' P 179.

can ensure compliance of the regulated parties, whether the approach is by threat of punishment or sanctions, or via more friendly approaches.[252] Although this broad understanding might seem straightforward, in the real world compliance can never be that simple, due to its dynamic nature. Compliance, within the environmental protection arena, is not always an instant or present state, and also involves moral and mutual relational aspects. As Hawkins observed:

> "*Compliance, however, is an elaborate concept, one better seen as a process, rather than a condition. What will be understood as compliance depends upon the nature of the rule-breaking encountered, and upon the resources and responses of the regulated. The capacity to comply is ultimately evaluated in moral terms… Compliance is negotiable and embraces actions, time and symbol… it may in some cases consist of present conformity. In others, present rule-breaking will be tolerated on an understanding that there will be conformity in future… since the enforcement of regulation is a continuous process, compliance is often attained by increments.*"[253]

A further challenge in enforcing environmental regulation concerns striking a balance between traditional legal principles and principles more related to environmental law: for example, the fundamental legal principle of the rule of law against any excessive or barbaric exercise of state power on one hand, and the implementation of the precautionary principle to pre-empt any potential harm likely to afflict the environment on the other.[254]

In all cases, the options available for the regulator to ensure compliance appear to be diverse and even open to innovation. In the literature, enforcement tools and styles are classified according to various manners of implementation, through terms such as friendly or formal, deterrent or educative, punitive or incentive, while in terms of procedure they can be presented as civil, administrative or criminal sanctions. These styles of enforcement reflect the types and forms of regulation.

Thus, in order to ensure the regulated parties' compliance, the environmental regulators, using their balanced and informed discretion, and bearing in mind their various costs, can select the proper instrument from the available toolkit comprising tools such as "*revocation or modification of the licence, issuing cautions, prosecution and service of formal notices… [or] formal and informal warnings and education and persuasion … [or] the use of strategic publicity to encourage compliance … bargaining … [and] acting like salesman …[or] forms of*

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[252] For an introduction to enforcement and its closely related term "compliance". see Bridget Hutter, *Compliance: Regulation and Environment* (Clarendon Press 1997)P 12-19. Also, this procedural definition is in line with Richardson, Ogus and Burrows' definition of enforcement as "*the process whereby compliance is sought*" in Genevra Richardson, Anthony Ogus and Paul Burrows, *Policing Pollution: a Study of Regulation and Enforcement* (Clarendon Press 1983) P 118.

[253] Keith Hawkins, *Environment and Enforcement: Regulation and the Social Definition of Pollution* (Oxford University Press 1984) P 126-127.

[254] Annika K. Nilsson, 'Enforcing Environmental Responsibilities: An Environmental Perspective on the Rule of Law and Administrative Enforcement' in Christina Voigt (ed), *Rule of Law for Nature: New Dimensions and Ideas in Environmental Law* (Cambridge University Press 2013).

court action"[255]. Finally, it is crucial to bear in mind that the choice of which enforcement tool to have recourse to, or which is made the default, is not only determined by its cost or even by the gravity of the law-breaking activity, but also the potential effect on the regulated businesses and their sector, and accordingly on the national economy as a whole.[256]

When it comes to the Middle Eastern countries, and especially the KSA, there are many questions that need updated answers, including identifying the statutory and non-statutory enforcement tools and styles available in the environmental regulators toolkits. It should be asked what are the default tools that the environmental regulator/s tend to have recourse to at first, and whether there is a specific incremental order, going from the informal to the strictly formal tools, for example, in the case of persistent non-compliance. It is also a concern to discover if the environmental regulators are powerful and equipped enough and if they are neutral and unbiased or captured by particular interests.

Even larger-scale questions exist in terms of the impact of the environmental regulator's enforcement tools and practices on the economy at large, bearing in mind the vast difference between the western situation, as described by the western environmental regulation and enforcement literature, and the Middle Eastern states, including the KSA's situation. In the case of the latter, a great number of the pollution-emitting private sector businesses and potentially polluting industrial projects are either state-owned or semi state-owned. Thus, the question is: what is the position of the environmental regulator (the state) in confronting such potentially polluting projects (the state)? It also needs to be asked to what extent each of the enforcement tools mentioned above, including criminal prosecution, is relevant and applicable or whether there is any potential tool or enforcement mechanism which has not yet been identified by the capitalist western literature.

2.2.7.5 Concluding Remarks

This section has tackled a number of key tools and approaches for adequate delivery of environmental protection. The trends of environmental governance highlighted by this section have an evident connection with environmental law, even in its conventional understanding- the issue of enforcement, for example. However, due to time and space constraints, the later core chapters will build on only some of the topics explored here. However, having brought to

[255] Hughes and others P 43-44. For suggestions on whether to resort to strong formal regulation, and in which order to use such tools see Ian Ayres and John Braithwaite, *Responsive Regulation: Transcending the Deregulation Debate* (Oxford University Press 1992) notably the enforcement pyramid on P 35.

[256] This is because environmental regulations and their enforcement can have a considerable effect on the costs and prices of the private businesses and industries. John Cridland, 'Meeting the Cost of Environmental Regulation' in Alan E. Boyle (ed), *Environmental Regulation and Economic Growth* (Oxford University Press 1994), and 'The Growth of US Environmental Regulation and the Cost of Compliance: a Model for Europe?' in Alan E. Boyle (ed), *Environmental Regulation and Economic Growth* (Oxford University Press 1994).

attention all of these issues and the lack of studies in the KSA's context, it is hoped that future studies may be encouraged to address these aspects.

2.2.8 Environmental Governance and Environmental Principles

2.2.8.1 Introduction

It is not intended here to offer a comprehensive overview of the environmental principles, nor is it proposed to discuss the history of their emergence and salience.[257] In fact, there is no clear consensus in the literature as to what are the key environmental principles. Nevertheless, there are a number of principles that are almost always present in discussions about environmental principles, which are identified below.

As with the concepts of governance and environmental governance, the fluid and vague nature of the environmental principles has prompted a large body of literature addressing this point. What is important here, however, is to realise they are not rules or laws themselves; thus contravening them cannot be viewed as an illegal act per se. However, as they generally underpin environmental law by virtue of their normative value, they can serve to guide actions and facilitate interpretations of laws.[258]

2.2.8.2 Sustainable Development

Sustainable development is a clear manifestation of these multiple conceptualisations of environmental principles. It is presented in the literature in diverse forms, including as a concept or theory,[259] principle,[260] discourse,[261] or even as a dilemma of governance[262]. Moreover, some commentators seem more reluctant to use such categorising nouns, so they refer to sustainable development merely as a "term"[263]. This is quite similar to what is encountered in commentaries on governance, and environmental governance.

Indeed, had this research project to change its topic, I cannot think of any suitable, overarching, flexible and catch-all topic better than sustainable development to substitute for environmental governance. Several broad similarities are shared by these two marketable terms. For instance, most of the themes, trends and principles identified in this research as pertaining to environmental governance can also be similarly seen to be integral components

[257] Which seems to be strongly driven from the international level by some of its soft law instruments and declarations, including the Rio Declaration on Environment and Development (1992) and Brundtland Report (1987).
[258] John Alder and David Wilkinson, *Environmental Law and Ethics* (Macmillan Press 1999) P 146-149, Hughes and others P 20, Bell and McGillivray, n 107, P 53-56 and P 74, and see also Winfried Lang, 'UN-Principles and International Environmental Law' [1999] 3 Max Planck UNYB 157 notably P 159
[259] Joyeeta Gupta and Isa Baud, 'Sustainable Development' in Philipp H. Pattberg and Fariborz Zelli (eds), *Encyclopedia of Global Environmental Governance and Politics* (Edward Elgar Publishing 2015)
[260] As in this research and in the sources referred to in the introduction of this section "Environmental Governance and Environmental Principles".
[261] Dryzek, n 190, P 147.
[262] James Meadowcroft, 'Sustainable Development' in Mark Bevir (ed), *The SAGE Handbook of Governance* (SAGE Publications 2011).
[263] Andrea Ross, 'Why Legislate for Sustainable Development? An Examination of Sustainable Development Provisions in UK and Scottish Statutes' [2008] 20 Journal of Environmental Law 35.

of the umbrella concept "sustainable development". As with the concepts governance and environmental governance, this appears to be because it is "*wrong to claim there is a unified theory of sustainable development*"[264]. When O'Riordan comments on sustainable development saying that: "*sustainable development has become a universal phrase. It means everything, and is in danger of meaning nothing*"[265], he appears to echo almost identically the words of some commentators on governance.

As such, it should come as no surprise that sustainable development is defined in several ways in the literature. Consequently, it has also generated different reactions and responses to different issues.[266] As early as 1996, some commentators noted that no less than 80 definitions of sustainable development had been identified, and that they were, in fact, not always consonant with each other but sometimes conflictual.[267] The competing ideas and principles analysed within the framework of sustainability and sustainable development[268] led some commentators to view this principle as almost no more than a battlefield underlying deep-rooted contradictions.[269]

Even the widely recognised definition provided by Brundtland ("Our Common Future") that sustainable development is "*development that meets the needs of the present without compromising the ability of future generations to meet their own needs*"[270] is not immune from criticism. For example, Lee bluntly contends that "*sustainable development is an unashamedly anthropocentric concept*"[271].

At the bottom line, sustainable development, prompted by international instruments,[272] can serve as a reconciling medium for discourses previously perceived as contradictory and

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[264] Giles Atkinson, Simon Dietz and Eric Neumayer, 'Introduction' in Giles Atkinson, Simon Dietz and Eric Neumayer (eds), *Handbook of Sustainable Development* (2nd edn, Edward Elgar 2014).
[265] Tim O'Riordan, 'Faces of the Sustainability Transition' in Jules Pretty and others (eds), *The SAGE Handbook of Environment and Society* (SAGE Publications 2007) P 325.
[266] Bill Hopwood, Mary Mellor and Geoff O'Brien, 'Sustainable Development: Mapping Different Approaches' [2005] 13 Sustainable Development 38.
[267] Raymond Fowke and Deo Prasad, 'Sustainable Development, Cities and Local Government: Dilemmas and Definitions' [1996] 33 Australian Planner 61, and Ross, n 262.
[268] However, some writings actually differentiate between sustainability and sustainable development. See for example Stephen Dovers and Robin Connor, 'Institutions and Policy Change for Sustainability' in Benjamin J. Richardson and Stepan Wood (eds), *Environmental Law for Sustainability: A Reader* (Hart Publishing 2006).
[269] Stephen R. Dovers and John W. Handmer, 'Contradictions in Sustainability' [1993] 20 Environmental Conservation 217.
[270] Report of the World Commission on Environment and Development, *Our Common Future* (1987) World Commission on Environment and Development.
[271] Keekok Lee, 'Global Sustainable Development: Its Intellectual and Historical Roots' in Keekok Lee, Alan Holland and Desmond McNeill (eds), *Global Sustainable Development in the Twenty-first Century* (Edinburgh University Press 2000) P 32.
[272] Jamie Benidickson and others, 'Introduction: Environmental Law and Sustainability after Rio' in Jamie Benidickson and others (eds), *Environmental Law and Sustainability after Rio: The IUCN Academy of Environmental Law series* (Edward Elgar 2011).

classical theses, such as the "limits to growth."[273] It brings together the ostensibly conflicting debates of "only-choose-one" development or care for the environment, even adding in consideration of social issues.[274]

With regard to sustainability or sustainable development in the Middle East and especially the KSA, there are several questions and research areas, within the environmental law and governance arena, which seem still under researched. Two main directions of inquiry highlighted by Richardson and Wood,[275] seem to be a good starting point for recommended future studies in such distinct legal and cultural contexts.[276] These two broad socio-legal questions ask to what extent environmental law, in the Middle East generally and in the KSA in particular, guides and influences sustainable development patterns and practices at the societal level. It is also asked to what degree, if any, the existing framework or discourse of sustainable development has impacted the choice of environmental law and governance approaches and their institutions and instruments, in order to properly safeguard the natural environment.

2.2.8.3 The Precautionary Principle

Many environmental and health problems, or more precisely threats, are surrounded by uncertainty. If precautionary actions have not been taken in advance, the threats may turn into real harm and damage to people's heath or their environment, or both. However, adopting such precautionary measures in advance, may incur considerable extra costs and burdens, without full certainty that such bad consequences will appear. In such cases, should policy-makers and decision-takers embrace such precautions and preventive measures despite their costs? For those opting for "yes", the precautionary principle is normally their justification and legal basis.[277]

This precautionary principle inherently entails regarding the concept of risk which has not yet occurred as a real harm or damage.[278] This principle started gaining prominence as a legal

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[273] Duncan French, *International Law and Policy of Sustainable Development* (Manchester University Press 2005) P 10-11.
[274] Fisher, Lange and Scotford, n 1, P 185.
[275] Benjamin J. Richardson and Stepan Wood, 'Environmental Law for Sustainability' in Benjamin J. Richardson and Stepan Wood (eds), *Environmental Law for Sustainability: A Reader* (Hart Publishing 2006) P 13.
[276] These are only examples of questions, for future studies. For example, similar questions about the role of sustainable development in enhancing the role of law for environmental protection objectives are also viable for future research in the Middle Eastern and KSA's jurisdictions. See Louis J Kotzé, 'Sustainable Development and the Rule of Law for Nature: A constitutional Reading' in Christina Voigt (ed), *Rule of Law for Nature: New Dimensions and Ideas in Environmental Law* (Cambridge University Press 2013) especially P 131.
[277] Jules N. Pretty, 'The Precautionary Principle in Environmental Policies' in Jules Pretty and others (eds), *The SAGE Handbook of Environment and Society* (SAGE Publications 2007) especially P 590-592.
[278] To elucidate this underlying link, one can ask "precautionary approach or measures from what?" Then the answer comes "from risk", prompting other central questions: "What is risk, exactly?" Is it what

principle in international environmental law instruments from around 1987, in concurrence with the Vienna Convention and Montreal Protocol, and subsequently became increasingly widespread[279].[280] However, this principle evokes heated disputes in many aspects, notably when it comes to its real applications, interpretation, definitions and to what extent should systems be precautionary.[281] Some commentators have put forward critical statements, for example: "*Few legal concepts have achieved the notoriety of the precautionary principle … the principle is deeply ambivalent and infinitely malleable*"[282]. Moreover, Wildavsky claims throughout his book that science outcomes and, accordingly, the precautious taken based on them are quite often exaggerated.[283]

Sunstein also harshly criticises the principle both in theory and practice. He argues that this principle is "*literally incoherent*" and those who invoke the precautionary principle are often merely against selective risks, as whatever decisions they reach are not without their own risks.[284] Beckerman argues that average people by their inherent instinct and common sense are sensible and precautious, so that the precautionary principle is "*nothing new at all*"[285]. Nevertheless, the precautionary principle is largely approved and well-entrenched in a large number of legal and policy documents at all levels, notably in the developed states.

Hence, the question begged here is what about the Middle Eastern legal and environmental governance systems, and the KSA's environmental policies, laws and regulations in particular? To what extent are health and environmental risks dealt with before the advent of actual problems? Do the environmental governance practices embrace the "being safe rather than sorry" approach? If so, how is this principle being applied and understood, and how strict is the version of the principle in operation? Thus, in this thesis

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prestigious scientists dictate to be risk? Or rather, is risk what the society and its individuals and their culture perceived to be so? This will be addressed under the "risk" subsection later.

[279] James E. Hickey and Vern R. Walker, 'Refining the Precautionary Principle in International Environmental Law ' [1995] 14 Virginia Environmental Law Journal 423.

[280] Locally, the precautionary principle can be traced back to Germany in 1970s-1980s and its *Vorsorgeprinzip* concept that empowered government to embrace preventive measures to problems. 'The Precautionary Principle in Germany - enabling Government' in Timothy O'Riordan and James Cameron (eds), *Interpreting the Precautionary Principle* (Earthscan Publications Ltd 1994).

[281] Kenneth R. Foster, Paolo Vecchia and Michael H. Repacholi, 'Science and the Precautionary Principle' [2000] 288 Science 979.

[282] Joanne Scott and Ellen Vos, 'The Juridification of Uncertainty: Observations on the Ambivalence of the Precautionary Principle within the EU and the WTO' in Christian Joerges and Renaud Dehousse (eds), *Good Governance in Europe's Integrated Market* (Oxford University Press 2002) P 253.

[283] And interestingly he entitles the conclusion of his argument as "*rejecting the precautionary principle".* See Aaron B. Wildavsky, *But is It True? A Citizen's Guide to Environmental Health and Safety Issues* (Harvard University Press 1995).

[284] Cass R. Sunstein, *Laws of Fear: Beyond the Precautionary Principle* (Cambridge University Press 2005) P 4.

[285] Wilfred Beckerman, *Small is Stupid: Blowing the Whistle on the Greens* (Gerald Duckworth & Co Ltd 1995) P 2.

recommendations are made for future research studies to address the multiple gaps falling under the scope of this under-researched principle.

2.2.8.4 The Preventive Principle

Perhaps due to its evidently less contentious nature, there is less debate in the literature about the prevention principle compared to the closely related precautionary principle. This lower level of controversy seems to be because the preventive principle deals with the harm that is *going to happen*, by simply preventing it, or preventing the existing damage from worsening. This "common sense" approach, does not trigger as much argument as the precautionary principle. Therefore, it should not be surprising to find some scholarly statements, such as "*While modern environmental regulations are anticipatory and preventive they are not necessarily precautionary. They generally aim to prevent known risks rather than anticipate and prevent uncertain potential harm."* [286]

The older version of the preventive principle was the "too late" curative approach, concerned with trying to rectify the problem after its occurrence, and this primitive approach was engrained in the content of the very early environmental law.[287] Like the precautionary principle, the preventive principle is articulated in countless national and international legal instruments. Principle 2 of the 1992 Rio Declaration, for example, sets out that states have "*the responsibility to ensure that activities within their jurisdiction or control do not cause damage to the environment of other States or of areas beyond the limits of national jurisdiction*."[288]

When it comes to the Middle Eastern states, however, and the KSA in particular, questions arise regarding how, and to what extent the environmental governance system as a whole prevents environmental harm before it arises and whether the principle of prevention is applied and legally recognised at all, or if the curative approach is still predominant. The mechanisms by which the governance system prevents and deals with the problem prior to its existence need to be identified, and when exactly the damage is prevented, if at all. It is also important to ask who is or should be the producer of such knowledge upon which the preventive decisions are taken.

2.2.8.5 The Polluter Pays Principle

This is a central and underlying principle of numerous environmental law provisions at different levels. In fact, it is one of the very few principles that can be deemed as a common

[286] Sharon Beder, *Environmental Principles and Policies: An Interdisciplinary Introduction* (Earthscan 2006) P 47.
[287] Nicolas De Sadeleer, *Environmental Principles: From Political Slogans to Legal Rules* (Oxford University Press 2002) P 61.
[288] Rio Declaration (1992).

language or *lingua franca* between environmental law experts.[289] What makes this principle quite distinctive, according to Fisher, Lange and Scotford, is its economic elements. They neatly present this principle as "[the] *principle that seeks to correct market failures by internalizing the costs of environmental pollution - in broad terms, it requires that polluters should pay for the environmental harm they cause*"[290]. Further, the OECD has recognised this principle since 1974; the Recommendation of the Council on the Implementation of the Polluter-Pays Principle C (74) 223, articulates:

> "*The polluter should bear the expenses of carrying out the measures … to ensure that the environment is in an acceptable state. In other words, the cost of these measures should be reflected in the cost of goods and services which cause pollution in production and/or consumption."*

This a widely recognised principle at all levels; however, despite sounding fair and logical by requiring those who pollute to bear the cost relevant to the damage they cause, in practice, it may cause some confusion and inconsistency with some environmental governance mechanisms.[291] Progressively, the applications of the principle have been extended to cover a number of expenses and costs beyond the simple cost of the pollution caused.[292]

Based on the clear economic dimension of this principle, many outstanding questions arise in the context of Middle Eastern, GCC countries, and especially the KSA, bearing in mind their largely fossil fuel-based economy. These polluter-pays questions include investigating what are the legal definitions of the different types of pollution, if any, and, accordingly, who can be legally captured as a polluter. The scope of application of this principle in the KSA's environmental system and those of the other countries needs to be delineated. Does it cover only the costs of prevention or does it include other control and improvement costs and measures? If so, to what extent and who determines such answers? It is also necessary to examine whether the principle is clearly stressed in the environmental policies and regulations or implicitly manifested (or neither), and whether the prices of such oil-based economies internalise and reflect the real damage or pollution released to the environment. Thus we need to ask what, originally, is the proper understanding and application of the principle and what should it look like in such forms of economies? These are examples of recommended research questions that are likely to enrich the literature concerning the KSA's and the whole region.

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[289] Michael G. Doherty, 'The Judicial Use of the Principles of EC Environmental Policy' [2000] 2 Environmental Law Review 251.
[290] Fisher, Lange and Scotford, n 1, P 413.
[291] Jonathan Remy Nash, 'Too Much Market: Conflict between Tradable Pollution Allowances and the Polluter Pays Principle' [2000] 24 Harvard Environmental Law Review 465.
[292] Ling Zhu and Yachao Zhao, 'Polluter-pays Principle - Policy Implementation' [2015] 45 Environmental Policy and Law 34.

2.2.8.6 Concluding Remarks

This section has reviewed a number of salient principles that underpin many environmental laws and policies around the world, notably in developed countries. This review suggests, inter alia, that these principles are of a complementary and, in the best cases, of a mutually supportive nature, rather than forming a contrasting nexus. Despite the closeness of some of the principles and their similarities, for example in the case of the precautionary principle and the preventive principle, which sometimes share similar qualities, each one of these principles has its own distinctive potential role that is important to the environmental protection process.

This section has also provoked some thoughts and questions that are potentially fruitful for future fellow researchers to consider, as well as providing an essential basis for the subsequent theoretical development in later core chapters.

2.2.9 Environmental Justice

2.2.9.1 Introduction

This section captures several important issues and concepts and principles[293] that might be discussed in the literature under the rubric of environmental governance or associated with it. Each one of these theories or concepts has its own potential and dimension to serve for better safeguarding of the environment, and it is difficult to prioritise them, especially as their historical emergence and thus their momentum varies. The concept of the "Anthropocene", for instance, is the relatively most recent concept among them, and therefore the least discussed in the literature concerning environmental governance.

2.2.9.2 About Environmental Justice

Environmental justice, like social justice, is a subcategory of justice theories. It is also a topic of social movements relating to situations in which unfortunate people in the lower levels of society are environmentally discriminated against and environmental harms are disproportionately placed upon these groups.[294] Inevitably, the concept of environmental justice is not without ambiguity and disagreement. Anton and Shelton clarify that:

> "*There are many meanings attached to this term. To some, justice is the fundamental source or rationale providing the moral underpinnings from which law emerges. Environmental justice can also be seen not a source of law but as its ultimate goal or outcome. Justice has also been presented as an alternative to law, with a meaning akin to fairness or equity [and there are also narrower usages of the term] …*"[295]

Arguably, and similarly to the terms governance and environmental governance, one reason for such ambiguity and variety of meanings is its expansive and "stretchy" nature, which allows it to evolve substantially over time, covering constantly-changing and evolving

[293] As some authors might argue that environmental justice is among the environmental principles.
[294] Robert D. Bullard, *Dumping in Dixie: Race, Class and Environmental Quality* (3rd edn, Westview 2000).
[295] Donald K. Anton and Dinah Shelton, *Environmental Protection and Human Rights* (Cambridge University Press 2011) P 56.

relationships.[296] More recently, for example, there has been a discussion of energy justice, providing an analytical framework for assessing energy-related issues, producing practical recommendations and facilitating decision-taking processes.[297]

This concept has its own "*historical and philosophical backgrounds* … [as well as] *legal, practical, and philosophical solution*s,"[298] which are beyond the scope of this small section. Environmental justice, at least its original meaning, can be explained by reference to its antonym, which is "environmental racism". According to Chavis, environmental racism can be understood as "*racial discrimination in environmental policy-making. It is racial discrimination in the enforcement of regulations and laws*…"[299] It also "*refers to any policy, practice, or directive that differentially affects or disadvantages (whether intended or unintended) individuals, groups, or communities based on race or color,*"[300]

One important reason for the use of the term "environmental justice", is the capability of the environmental justice framework to widen the scope of the issues encompassed, going beyond the narrow focus only on "race".[301] Thus, environmental justice has proved successful in highlighting issues including procedural, geographic and social equity, and in addition it can be employed as a normative concept highlighting certain "good" principles.[302] Environmental justice can be seen to exist at two different levels: the grass-roots domestic activist level,[303] and the high government level that entails no public decisions should be taken in disregard to any community or particular group.[304] The term environmental justice has " ... *become used in many different ways – as a campaigning slogan, as a description of a field of academic*

[296] David Schlosberg, 'Theorizing Environmental Justice: The Expanding Sphere of a Discourse' [2013] 22 Environmental Politics 37. Environmental justice is both a concept and social movement. For a brief overview of the evolution of this concept and some associated issues it addresses see also Agyeman Julian, 'Environmental Justice and Sustainability' in Giles Atkinson and others (eds), *Handbook of Sustainable Development* (Edward Elgar Publishing 2007) P 189- 192.

[297] Raphael J. Heffron, Darren McCauley and Benjamin K. Sovacool, 'Resolving Society's Energy Trilemma through the Energy Justice Metric' [2015] 87 Energy Policy 168, Darren McCauley and others, 'Energy justice in the Arctic: Implications for Energy Infrastructural Development in the Arctic' [2016] 16 Energy Research & Social Science 141.

[298] Nicole C. Kibert, 'Green Justice: A Holistic Approach to Environmental Injustice' [2001] 17 Journal of Land Use & Environmental Law 169.

[299] Benjamin F. Chavis, 'Foreword' in Robert D. Bullard (ed), *Confronting Environmental Racism: Voices from the Grassroots* (South End Press 1993)

[300] Robert D. Bullard, 'Environmental Justice in the 21st Century' in John S. Dryzek and David Schlosberg (eds), *Debating the Earth: the Environmental Politics Reader* (2nd edn, Oxford University Press 2005)

[301] Robert D. Bullard, 'Overcoming Racism in Environmental Decision Making' in Louis P. Pojman and Paul Pojman (eds), *Environmental Ethics: Readings in Theory and Application* (5th edn, Thomson Wadsworth 2008) P 643- 656

[302] Ibid.

[303] This level can provide a powerful framework for symbolic claim-making, mobilising activity for bringing about social change, even without decisive backup from objective scientific studies and results. See for example Stella M Čapek, 'The "Environmental Justice" Frame: A Conceptual Discussion and an Application' [1993] 40 Social Problems 5

[304] Julian Agyeman and Bob Evans, ''Just Sustainability': The Emerging Discourse of Environmental Justice in Britain?' [2004] 170 The Geographical Journal 155

research, as a policy principle, as an agenda and as a name given to a political movement … [and] as part of … the policy-making around the world"[305].

In focusing on the environmental justice agenda, future studies concerning the Middle Eastern Region can fruitfully formulate questions through conceptualising justice as distributive, procedural and involving recognition[306]. For the first dimension of justice, questions such as: Is pollution often, though unintentionally, directed against social groups perceived as the lower levels of a society? To what extent are environmental advantages and goods as well as ills distributed among all the people and is any segment or group of the community exposed disproportionately to more contamination? For procedural justice, which is strongly relevant to the public involvement standard of good governance discussed above, questions arise such as: Who is involved in environmental decision making? How are environmental policies crafted, and do the most affected people, in particular, have their voice effectively heard? There are also questions about environmental justice as an issue of recognition.

In brief, and borrowing from McCauley, Heffron, Stephan and Rehner, [307] the pertinent questions on environmental justice for that region, including the KSA, can be summarised as: "*Where are the injustices and How should we solve them?". For the procedural dimension of environmental justice, the questions include: "Is there a fair process?" and for the recognition side of justice: "Who is ignored and how should we recognise them?*"

2.2.9.3 Rights-based Approach for Environmental Purposes

Should this be called human rights approach, or environmental rights approach? Is there any difference? The section is entitled rights-based approach, to encompass both. The rights-based approach to safeguarding the environment is a topic that has been widely unpacked and debated since the Stockholm Declaration in 1972. The link between human rights and environmental issues has been investigated in various frameworks, including through more legal doctrines, addressing laws at different levels from international law to domestic laws.

This topic is analysed within more value-based and ethical spheres, and even more narrowly through the technical divisions of procedural and substantive environmental-protection rights. Perhaps more interestingly, other materials focus on the progressive, incremental and evolutionary interpretation of human rights to include, over time,

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[305] Gordon Walker, *Environmental Justice: Concepts, Evidence and Politics* (Taylor & Francis 2012) P 1

[306] Distributional justice concerns mainly the diffusion or distribution and sharing of goods and negatives. Procedural justice, revolves around decision-making process, while recognition justice concerns tolerating, respecting and valuing individuals. See David Schlosberg, 'The Justice of Environmental Justice: Reconciling Equity, Recognition, and Participation in a Political Movement' in Andrew Light and Avne De-Shalit (eds), *Moral and Political Reasoning in Environmental Practice* (MIT Press 2003) P 77-92, more briefly see Walker, n 304, P 10.

[307] Kirsten Jenkins and others, 'Energy justice: A Conceptual Review' [2016] 11 Energy Research & Social Science 174 P 175.

considerations that might not have been there when the original respective legal documents were crafted. The bottom line is, however, that "*Pollution destroys health and thus not only destroys the environment, but infringes human rights as well.*"[308]

In all cases, the central question raised here is: Why is this approach needed in the first place? We might wonder why this topic occupies a great deal of the literature when other, perhaps more mature and institutionalised environmental governance styles and mechanisms exist, including both environmental laws and regulations and fiscal tools.

First of all, one mechanism, or style of governance is never going to be sufficient to deal with the ever-changing and intricate environmental risks and problems. Therefore, the more paradigms of environmental governance the system employs, the better the environmental outcomes it is likely to attain. There are also other reasons ingrained in the rights-based paradigm of environmental governance that can overcome the failure of conventional legal regimes that are "*hampered by multiple, often insuperable legal hurdles of justiciability …* [or in other cases] *legal decisions reflect a balancing of short-term economic benefits with often vaguely understood or scientifically uncertain long-term consequences* [and eventually] *economic/or market considerations usually triumph over the environment*…"[309] This approach stresses that rights are distinctive in many ways. Among other advantages, the recourse to rights, according to Aderson, grants the environmental discourse a kind of supremacy and sacredness that, conceptually at least, trumps any short-sighted economic or greedy counterarguments that are often presented in bureaucratic decisions. In terms of procedure, the claim-making exercises that are based on rights are normally more powerful in gaining access to justice, in a way that conventional environmental legislation-based or tort law-based paradigms fall short of.[310]

Nevertheless, legal documents as well as scholars differ as to how to depict the link between the rights and the environment. Shelton neatly identifies four major conceptualisations as accentuated by the Stockholm Declaration. She puts it thus:

> "*1. International environmental laws incorporate and utilize those human rights guarantees deemed necessary or important to ensuring effective environmental protection. 2. Human rights law re-casts or interprets internationally-guaranteed human rights to include an environmental dimension when environmental degradation prevents full enjoyment of the guaranteed rights. 3. International environmental law and international human rights law elaborate a new substantive right to a safe and*

[308] Dinah Shelton, 'Human Rights and the Environment: Substantive Rights' in Malgosia Fitzmaurice, David M. Ong and Panos Merkouris (eds), *Research Handbook on International Environmental Law* (Edward Elgar 2011) P 279. See also the introduction in Jan Hancock, *Environmental Human Rights: Power, Ethics, and Law* (Ashgate 2003) notably P 6.
[309] Burns H. Weston and David Bollier, *Green Governance: Ecological Survival, Human Rights, and the Law of the Commons* (Cambridge University Press 2014) P 27.
[310] Michael R. Anderson, 'Human Rights Approaches to Environmental Protection: An Overview' in Alan E. Boyle and Michael R. Anderson (eds), *Human Rights Approaches to Environmental Protection* (Oxford University Press 1996) P 21-22.

healthy environment. 4. International environmental law articulates ethical and legal duties of individuals that include environmental protection and human rights."[311]

Inherent in the incremental move from 1 to 4 is the shift in conceptualisation from the protection of the environment (using the rights-based approach) as essential for safeguarding people's rights and dignity (a human-centred or anthropocentric paradigm), to the ideology that employs "ecological or environmental rights"[312] because humans are only part of existence and they share life with "nature", i.e. an "eco-centred" approach.[313]

One of the difficulties of employing the human rights claim in the environmental sphere is related to the validity of such claims. One of the most challenging prerequisites is to establish the link between the environmental harm incurred and certain recognised and accepted human right/rights on the other hand.[314]

As with the other aspects discussed, there are several questions which would address the obvious gaps in the current literature concerning the Middle Eastern context and specifically the KSA. Most broadly, how is the nexus between human rights and the environment crafted in such a region? Does the rights regime encompass environmental rights, and if so, is it procedural or substantive? Are such rights, if any, drafted in anthropocentric terms, or more aligned to the ecocentrist dogma? What role does Sharia law play, and to what extend does it underpin the rights approach to environmental protection in that context? With regard to the justiciability, to what degree are courts are willing to accept environmental cases based on rights-claiming?

2.2.9.4 Risk and Environmental Law

Environmental governance and law would hardly mean anything without the central concept of "risk". This concept of risk transcends the environmental domain, and shapes the basis of security regimes at large, which attempt to prevent undesirable events from occurring.[315] Bringing together the complex and multi-dimensional notions of risk and governance complicates the discussion even further, since they are "*different concepts that are referring to a different set of changes in the process of governing.*"[316] In fact, contemporary

[311] Dinah Shelton, 'Human Rights and the Environment: What Specific Environmental Rights Have been Recognized?' [2006] 35 Denver Journal of International Law and Policy 129.
[312] Although environmental rights can be defined differently. See for example Robin Churchill, 'Environmental Rights in Existing Human Rights Treaties' in Alan E. Boyle and Michael. R. Anderson (eds), *Human Rights Approaches to Environmental Protection* (Oxford University Press 1996) P 89.
[313] Prudence E. Taylor, 'From Environmental to Ecological Human Rights: a New Dynamic in International Law?' [1998] 10 Georgetown International Environmental Law Review 309, and Alan Boyle, 'Human rights or environmental rights? A reassessment' [2007] 18 Fordham Environmental Law Review 471.
[314] Linda A. Malone and Scott Pasternack, *Defending the Environment: Civil Society Strategies to Enforce International Environmental Law* (Island Press 2006) P 10.
[315] Pat O'Malley, *Risk, Uncertainty and Government* (GlassHouse Press 2004) P 1.
[316] Elizarbeth Fishe, 'Risk And Governance' in Levi-Faur David (ed), *The Oxford Handbook of Governance* (Oxford University Press 2012) P 426.

environmental laws and regulations are greatly influenced by the elusive concept of risk, and environmental law is often referred to as risk regulation.[317]

Further, the themes and principles existing in the territory of environmental governance often have an underlying and indivisible link with the concept of "risk". These include the precautionary principle, the preventive principle, experimental scientific studies, environmental knowledge, risk assessment, and administrative discretionary power exercised by environmental agencies.

Interestingly however, the concepts of risk and risk assessment have different meanings in various contexts and legal systems, since the respective political, legal and cultural agents contribute in many cases to the formulation of the conceptualisation of risk in different places in the world.[318] This disparity also hampers communication between risk scholars from different fields, because: "*The regulation of a threat requires the integration of science, law, and socio-political discourses but few scholars or policy makers have expertise in all these.*"[319]

One quite straightforward scenario is where there is a risk that a problem might occur as a result of the use of this substance or carrying out an activity, but we are not sure. The questions that arise include: What are these risks? How bad are they? What is the likelihood that such operations will cause these problems? It is all about anticipation and the likelihood of environmental threats; however, this includes the notion that "*indeed that might never occur.*"[320,321]

These are all risk-related dimensions of environmental governance which raise the challenge that "*environmental risks cannot be easily defined, but they have been recognised in many contexts as distinctive. They raise in a stark fashion notions of uncertainty and of subjective evaluation.*"[322] This indicates that different decision makers can arrive at different

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[317] Jasanoff, n 207, and see also Elizabeth Fisher, 'Is the Precautionary Principle Justiciable?' [2001] 13 Journal of Environmental Law 315.

[318] Elizabeth Fisher, 'Risk and Environmental Law: A Beginner's Guide' in Benjamin J. Richardson and Stepan Wood (eds), *Environmental Law for Sustainability: A Reader* (Hart Publishing 2006).

[319] Elizabeth Fisher, 'Framing Risk Regulation: A Critical Reflection' [2013] 4 European Journal of Risk Regulation 125 P126.

[320] Jane Holder, *Environmental Assessment: The Regulation of Decision-Making* (Oxford University Press 2006) P 76.

[321] And even though a problem occurs, in some cases it is unattainable to determine the causal relation between the action and the environmental problem: the typical and probably extreme example, is the climate change issue. This causality challenge is, inter alia, due to the fact that environmental problems have a "*polycentric, interdisciplinary, normative and scientifically uncertain nature*". Elizabeth Fisher, 'Environmental Law as 'Hot' Law' [2013] 25 Journal of Environmental Law 347 P 347.

[322] Jenny Steele and Tim Jewell, 'Law in Environmental Decision-Making' in Tim Jewell and Jenny Steele (eds), *Law in Environmental Decision-Making: National, European, and International Perspectives* (Clarendon Press Oxford 1998) P 27. Such subjectivity can be exemplified by "*the ideals of the individual scientist, the nature of the issue, the configuration of power and interests among actors, and established socio-political discourse*". Jonathan Hastie, 'The Role of Science and Scientists in Environmental Policy' in Jules Pretty and others (eds), *The SAGE Handbook of Environment and Society* (SAGE Publications 2007) P 519.

conclusions on the same issue, albeit both rightly claim legitimacy. Taking the incorrect decision which leads to "risk" materialising as "damage" is likely to undermine confidence and belief in science and the scientific community. Thus, as an opposite to the exclusive paradigm of experts, plus policy-makers, some commentators advocate the "civic science" model, where the public are empowered to join the process of decision making.[323] This is positive in restoring people' confidence, and even more relevant, as humanity is entering the "post-normal" age of environmental risk, and considerably higher uncertainty regarding environmental issues.[324]

The intriguing question begging future scholarly study is how the concept of risk is conceived and assessed in the Middle East and in the KSA in particular, with reference to environmental issues? That is, to what extent do the social values or the society play a role in delineating such central notions or is it solely up to the bureaucrats to determine what the risks are? If so, to what extent do these officials have the capacity and knowledge to do so? We also need to ask how these conceived risks are coped with once they are detected and whether there is any room for the courts, via judicial review for example, to take part in the definitions, determination, and treatment of such risks?

2.2.9.5 Global Environmental Governance

This term has been used quite frequently in the literature indicating, however, different things.[325] In addressing contemporary environmental problems, it is no longer feasible to set strict boundaries between national, regional and international levels. Thus, global governance can be viewed as a conceptual framework for analysing the qualities of, and responses to, the contemporary environmental challenges that are characterised by their complexity, and cross-disciplinary, and transboundary nature.[326]

Emphasising a framework of "global environmental governance" is important when addressing issues such as environmental challenges; this is because it breaks out of the formidable and long-lasting nationalism-based analysis. As put by Coleman "… *nation-states have been the center of our analytical universe since the inception of policy studies.*"[327] This is very much in line with attempts to address many contemporary challenging environmental

[323] Bäckstrand, n 207. However, Fisher criticises this science/experts vs democracy/ public participation/ values paradigm, as discounting the key role played by Public administration and Law, and suggests a new paradigm of "administrative constitutionalism". See Elizabeth Fisher, *Risk Regulation and Administrative Constitutionalism* (Hart Publishing 2010) notably P 3.
[324] Silvio O. Funtowicz and Jerome R. Ravetz, 'Three Types of Risk Assessment and the Emergence of Post-Normal Science' in Sheldon Krimsky and Dominic Golding (eds), *Social Theories of Risk* (Praeger 1992) P 267.
[325] Frank Biermann and Philipp Pattberg, 'Global Environmental Governance: Taking Stock, Moving Forward' [2008] 33 Annual Review of Environment and Resources 277.
[326] Although this concept of global governance has been criticised on various grounds. Arie Kacowicz, M. , 'Global Governance, International Order, and World Order' in Levi-Faur David (ed), *The Oxford Handbook of Governance* (Oxford University Press 2012).
[327] William D. Coleman, 'Governance and Global Public Policy' in Levi-Faur David (ed), *The Oxford Handbook of Governance* (Oxford University Press 2012) P 685.

problems and threats, which have been driven largely by international instruments and institutions.[328]

2.2.9.6 The Anthropocene

The Anthropocene is relatively a new concept, introducing the notion that humanity has entered a new era or "epoch" in which human activity has been conducive to the earth's system being degraded and driven to deterioration.[329] This proposed epoch, which is argued to have started in the 1800s or with the advent of the industrial revolution,[330] can be conceptualised to accommodate the relationship between humanity and the rest of the living creatures on the planet.[331] This temporal concept is often discussed within the planetary boundaries framework, which captures nine major problems and challenges to the global earth system, in which each problem or threat is interdependent with its counterparts. Respecting these planetary thresholds is proposed by some thinkers to mean "*humanity can operate safely.*"[332]

The concern here is to introduce this relatively new term, rather than deal with the way in which it should be treated,[333] or with the multiple political and academic debates it invokes.[334] However, it is relevant to highlight its underlying connection with many of the themes and strands discussed above within the environmental governance field. For example, the concept of risk and the role of science, and the global governance issue are all indispensable when addressing the Anthropocene discourse. Thus, the inherent qualities of the Anthropocene and planetary boundaries as theoretical concepts or conceptual frameworks are very much in tune with the interdisciplinary quality of both the challenges and solutions in the dynamics of current environmental governance. This is why some scholars are calling for a further cross- and interdisciplinary cooperation and harmonisation, including lawyers and the scholarship of law in general. As stressed by Little:

> "*Determining how humanity responds to the existential risks created by its own actions cannot be left to the scientific and technological disciplines. While they can develop understanding of the environment and devise new energy technologies to*

[328] Philippe Sands and others, *Principles of International Environmental Law* (3rd edn, Cambridge University Press 2012), and Geir Ulfstein, 'International Framework for Environmental Decision-Making' in Malgosia Fitzmaurice, David M. Ong and Panos Merkouris (eds), *Research Handbook on International Environmental Law* (Edward Elgar 2010).

[329] Will Steffen and others, 'The Anthropocene: From Global Change to Planetary Stewardship' [2011] 40 Ambio 739, Will Steffen and others, 'Planetary Boundaries: Guiding Human Development on a Changing Planet' [2015] 347 Science.

[330] Paul J. Crutzen, 'Geology of Mankind' [2002] 415 Nature 23.

[331] Will Steffen and others, 'The Anthropocene: Conceptual and Historical Perspectives' [2011] 369 Philosophical Transactions: Mathematical, Physical and Engineering Sciences 842.

[332] Johan Rockström and others, 'Planetary Boundaries: Exploring the Safe Operating Space for Humanity' [2009] 14 Ecology and Society 302.

[333] Griggs and colleagues, for instance, argue for the integration of these concepts (Anthropocene and planetary boundaries) and global sustainable development endeavours. David Griggs and others, 'Policy: Sustainable Development Goals for People and Planet' [2013] 495 Nature 305.

[334] Victor Galaz, 'Anthropocene and Planetary Boundaries' in Philipp H. Pattberg and Fariborz Zelli (eds), *Encyclopedia of Global Environmental Governance and Politics* (Edward Elgar Publishing 2015) P 5-7.

improve climate change mitigation, man-made climate change is, nonetheless, an essentially human and social happening. A range of disciplines from across the humanities and social sciences –including law– should therefore work with each other and science and technology to address it through the development of new, interdisciplinary ways of thinking."[335]

It is also interesting to envisage the dominance of the Anthropocene discourse on the future environmental governance literature and research studies which might render the exclusive nationally-based environmental governance model sound quite naïve and even antipathetic.

2.2.9.7 Concluding Remarks

This section has explored a miscellaneous range of terms and concepts found in the available body of literature regarding the umbrella concept of environmental governance, each with its own unique nature that qualifies it to address different dimensions, challenges and concerns in the environmental protection jurisdiction. The principal purpose of highlighting these thematic ideas is to set the ground for the subsequent analysis in the later core analytical chapters.

2.2.10 Conclusion of the Second Section

Although it does not claim to be an exhaustive review,[336] this second section of the literature review chapter has addressed a number of prominent themes and dimensions of the concept of environmental governance to make sure that the analyses of the KSA context in the subsequent chapters do not exist in a theoretical vacuum but are premised on theories and scholarly findings and debates examined by this chapter, in particular by its second section. Thus, the discussion embarked on here about the range of challenges and issues will be extended and built on, while introducing the KSA as a Middle Eastern case study, and also substantiated by providing evidence from the case study. This section has included a discussion of the nature, definitions, and interpretations associated with the term environmental governance and its central themes and topics. The strengths and weaknesses of a number of environmental governance issues and principles have also been discussed following a thematic organisation.

In addition to the overview provided, a number of gaps in the existing body of knowledge have been identified, and questions for further future research studies formulated. These gaps are

[335] Gavin F. M. Little, 'Energy and Environment Studies: the Role of Legal Scholarship' in Raphael J. Heffron and Gavin F. M. Little (eds), *Delivering Energy Law and Policy in the EU and the US: A Reader* (Edinburgh University Press 2016). In similar vein, but with more focus on environmental law, see Gavin Little, 'Developing Environmental Law Scholarship: Going Beyond the Legal Space' [2016] 36 Legal Studies 48.

[336] For example, the constitutionalisation of environmental protection, and the role of tort law in protecting the environment. James R. May and Erin Daly, *Global Environmental Constitutionalism* (Cambridge University Press 2014), and Jenny Steele, 'Assessing the Past: Tort Law and Environmental Risk' in Tim Jewell and Jenny Steele (eds), *Law in Environmental Decision-Making* (Oxford University Press 1998).

mainly due to the fact that the principles and cross-cutting issues in the existing literature have been mainly originated and analysed in the context of Western democracies or developed countries, with very little study generated and produced in the context of a Middle Eastern or GCC country, let alone the KSA. As highlighted earlier, building on this scholarship and extending the existing literature is a *primary contribution* targeted by this research. Moreover, this part of the chapter constitutes an indispensable part of the thesis, as it tackles one of the research questions laid out in the introductory chapter, namely: "What are governance and environmental governance? What do the terms mean?" In addition, it is crucial to systematically attain the one important aim of this research, which is to formulate practical recommendations for the realisation of better and more effective governance of environmental protection in the case study country i.e. the KSA.

2.3 General Conclusion

In the first section of this chapter, the nature and multiple applications and forms of the theory of governance were examined as a basis for introducing the second fundamental constituent of the chapter, "environmental governance". This key section on environmental governance forms the theoretical framework that guides the analysis and argument of this research, notably in the subsequent core, analytical and empirical chapters. More importantly, the theoretical framework presented in this chapter, particularly in its second part, will form the basis for accomplishing the *primary contribution* of this study i.e. guiding the analytical *extension and development of the currently available theories* and scholarly discussion within the literature on environmental governance. This will facilitate the achievement of the *secondary contribution*, represented by the analysis of environmental governance in the particular jurisdiction of the case study, i.e. the KSA.

3. Chapter Three: Methodological Approach

Abstract

The focus of this third chapter on methodology will be on the research design and the methods utilised by this research to achieve its aims and objectives. This is important to understand the rationale for the adoption of the research design, and for the employment of the chosen methods and methodological approach in particular, as well as the selection of participants and the organisations represented.

A lack of available legal and environmentally-focused studies and data regarding the case study, was identified in previous chapters. Thus, this research is established on documentary data, which are backed up by empirical data generated by semi-structured and face-to-face interviews. In generating and employing these different genres of data, certain academic standards and requirements need to be rigorously observed and respected. As an essential part of this PhD study, the purpose of this chapter is, therefore, to describe and discuss the main methodological and contextual aspects and considerations that need to be taken into account. This involves addressing a range of methodological and good practice issues that are widely deemed necessary to meet certain academic standards respecting quality, integrity and ethical criteria. Several main issues in this regard are discussed below.

3.1 Introduction

The preceding chapter reviewed the literature on which this research is founded, covering the different definitions, approaches and theories of governance and environmental governance. The focus of this third chapter will be on the research design and the methods to be utilised in order to achieve its aims and objectives.

The primary aim of this thesis, as explained earlier, is to improve environmental governance in the KSA, which is chosen as a case study from the Middle East. This is simply because, as discussed earlier, the current state of the environment in the KSA has been placed under pressure, and is still in need of more effective protection mechanisms.

This problem can be largely attributed to issues of law and more generally governance. As such, the nature and general approach of the thesis is empirical, as will be discussed below, and normative[337] rather than, for instance, philosophical or abstract.[338] In other words, the outcome of the thesis is, to a great extent, interested in prescribing how things in the environmental governance sphere in the KSA could be approached and dealt with, and how environmental challenges can better be confronted and handled. This is predicated, to an extent, on ascertaining what is the state of things in practice.

In order to systemically reach the proposed outcome of the thesis, a number of research methods have been deployed. This mixture of methods has been dispersed between the various phases of the research.[339] The selection and distribution of the various legal and social science research methods was determined according to the purpose of each distinct research stage, as well as the data that underpin it. The nature of the data and their sources, as well as the methods embraced are diverse, as will be explained below.

This research is a qualitative study, in the sense that it does not draw mainly on numerical data, and is empirical, in the sense that its main focus and investigation is pragmatic, based on facts derived from the real world. As explained by Epstein and King

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[337] At the core of the normative approach is the "*answer to the question what to do*". See for example, Jaap Hage, 'The Method of a Truly Normative Legal Science ' in Mark van Hoecke (ed), *Methodologies of Legal Research: What Kind of Method for What Kind of Discipline?* (Hart Publishing 2011) P 27.

[338] Therefore, the philosophical paradigms and assumptions inevitably present and deep-rooted in all qualitative studies, such as epistemology and ontology will be omitted in the discussion of this thesis and in the discussion of its methodological approach. For more discussion about these philosophical school of thoughts see for example John W Creswell, *Qualitative Inquiry and Research Design: Choosing Among Five Approaches* (3 edn, SAGE Publications 2013) P 15-41, Yvonna S Lincoln, Susan A Lynham and Egon G Guba, 'Paradigmatic Controversies, Contradictions, and Emerging Confluences, Revisited' in Norman K Denzin and Yvonna S Lincoln (eds), *The SAGE Handbook of Qualitative Research* (4 edn, SAGE Publications 2011) P 97-128, and Brent D Slife and Richard N Williams, *What's Behind the Research?: Discovering Hidden Assumptions in the Behavioral Sciences* (Sage Publications 1995).

[339] This mixture of methods is accepted in empirical legal studies. As advocated by Nielsen "*Research that employs multiple tactics for observing and understanding is more reliable than a single study if the studies are of comparable quality*". Laura Beth Nielsen, 'The Need for Multi-Method Approaches in Empirical Legal Research' in Peter Cane and Herbert M Kritzer (eds), *The Oxford Handbook of Empirical Legal Research* (Oxford University Press 2010) P 953.

> "*The word 'empirical' denotes evidence about the world based on observation or experience. That evidence can be numerical (quantitative) or non-numerical (qualitative)… what makes research empirical is that it is based on observations of the world-- in other words, data, which is just a term for facts about the world.*"[340]

Thus, this research utilises primary data mainly, from in-depth semi-structured interviews, and various governmental and other formal documents, as well as secondary data. Another general but important point to make is that many general methodology resources and books are referred to, not specifically concerning law methodology, since legal empirical research normally adheres, to a large extent, to the rules of empirical research in other knowledge fields.[341]

As will be explained below, the research will deploy mixed methods, as each "legal" qualitative research method has its own strengths and shortcomings.[342] Thus, a combination of valid methods will contribute to the validity and reliability of the outcome of the research. Borrowing Patton's terminology, a triangulation[343] approach will be deployed, given the fact that no single research method will be sufficient to adequately uncover the empirical reality of the subject under investigation.[344]

In terms of the essence of the argument of the thesis, the use of the legal deductive and inductive methods, as well as analogous reasoning methods, will be embedded in the discussion of the thesis, in order to logically support the arguments made.[345] Different genres of data will be accessed and analysed in order address the questions targeted by the thesis.

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[340] Lee Epstein and Gary King, 'The Rules of Inference' [2002] 69 The University of Chicago Law Review 1 P 2-3. See also, Lee Epstein and Andrew D Martin, *An Introduction to Empirical Legal Research* (Oxford University Press 2014).

[341] Lee Epstein and Andrew D Martin, 'Quantitative Approaches to Empirical Legal Research' in Peter Cane and Herbert M. Kritzer (eds), *The Oxford Handbook of Empirical Legal Research* (Oxford University Press 2010).

[342] Note that the adjective "legal" does not imply that legal qualitative methods are very different from usual qualitative methods, but to highlight, as Cane and Kritzer suggest, that the focus of the investigation is law and legal phenomena. Regarding the word "empirical," this thesis opts for the meaning that relates to that quoted here from Epstein and King. Rather than resting exclusively on legal doctrines, empirical legal research is interested exploring and investigating how legal system/s and their legislations operate in practice, and how certain legal system/s allow actors to behave and work. It is about the supply, delivery and pragmatic effects and enforcement of laws and regulations. In short, it is premised on "*law in the real world*" rather than in constitutions, legislations and libraries. Caroline Morris and Cian Murphy, *Getting a PhD in Law* (Hart Publishing 2011) P 35, and Peter Cane and Herbert M Kritzer, 'Introduction' in Peter Cane and Herbert M. Kritzer (eds), *The Oxford Handbook of Empirical Legal Research* (Oxford University Press 2010) especially P 1.

[343] Especially triangulation of methods, and data sources. Triangulation as a concept has many dimensions; all seem to contribute positively to rigorous research. For this particular context, embracing more than one methodology, even though they are all qualitative, is a form triangulation that contributes to the quality of research studies. See, for example, Uwe Flick, *An Introduction to Qualitative Research* (5 edn, SAGE Publications 2014) P 182.

[344] Michael Quinn Patton, 'Enhancing the Quality and Credibility of Qualitative Analysis' [1999] 34 Health Services Research 1189 Especially P 1192.

[345] See for example, Sharon Hanson, *Legal Method, Skills and Reasoning*, vol 3 (Routledge- Cavendish 2010) P 240- 246.

The empirical data collected by undertaking fieldwork contributes to the originality of the research. By generating and analysing data from semi-structured interviews and close contact with the participants it was aimed to obtain original insights into the subject matter of the case study, and raise a number of issues that have not been prominently covered or are not found within the currently available literature concerning the case study of the thesis, i.e. environmental governance in the KSA.

3.2 Doctrinal Methodology[346]

The black-letter-law approach will be applied in this research. Despite some criticism,[347] this traditional legal methodology, is useful in extracting and identifying inherent principles, rationales and values from legal cases and legislation, since it is extensively predicated on raw legal materials, such as constitutional provisions, laws and judicial decisions.[348,349] As such, a range of legislations and law instruments[350] will be considered in this thesis on various scales: internationally, regionally and nationally (the prime focus) as well as locally.[351]

3.3 Empirical Research (Qualitative Methods and the Case Study Approach)

3.3.1 Qualitative Research

The discussion on the nature, threads, characteristics, philosophical and sociological aspects of qualitative research in the social sciences, is almost endless in the literature.[352] The meaning adopted here, as a law-driven methodology, is quite straightforward, as "*simply non-*

[346] Although the term "doctrinal research" is evolutionary and contested, the meaning of "doctrinal methodology" for the purpose of this research is simply to indicate a considerable reliance on legislations and legal instruments. To obtain some idea about the meaning and evolution of the term doctrinal research, methodology or method see for example Terry Hutchinson and Nigel Duncan, 'Defining and Describing What We Do: Doctrinal Legal Research' [2012] 17 Deakin Law Review 83.

[347] The doctrinal approach, as opposed to an interdisciplinary approach, has been portrayed by some as "intellectually rigid, inflexible, and inward-looking". Douglas W Vick, 'Interdisciplinarity and the Discipline of Law' [2004] 31 Journal of Law and Society 163 P 164.

[348] Resort to legal cases and court judgments and decisions will, however, be minimal, given that the publication of such legal material is noticeably limited and not systematic in the KSA.

[349] Mike McConville and Wing Hong Chui, 'Introduction and Overview' in Mike McConville and Wing Hong Chui (eds), *Research Methods for Law* (Edinburgh University Press 2007) Especially P 1-4.

[350] Surprisingly, it was challenging and time-consuming to identify and inventory the environmental international and regional treaties and legal documents that the KSA is bound by. There is no available national comprehensive up-to-date list clearly enumerating the relevant environmental treaties and conventions, the KSA has signed or ratified. This might indicate the lack of disclosure of environmental information, and/or a degree of negligence towards environmental legal considerations by the environment agency. Conducting the interviews was quite useful to at least obtain a clearer picture in this regard. Otherwise, perhaps the only feasible way to try to identify the relevant international environmental legal instrument is by looking at the preamble/s of regional environmental legal instruments that the KSA is part of, Jeddah Commitments for Sustainable Development (2006) is an example.

[351] Local environmental regulations especially in major cities such as Riyadh, will be referred to.

[352] See for example Max Travers, *Qualitative Research Through Case Studies* (SAGE 2001), Creswell, Catherine Marshall and Gretchen B Rossman, *Designing Qualitative Research* (6th edn, SAGE Publication 2015), Flick, Amos J Hatch, *Doing Qualitative Research in Education Settings* (State University of New York Press 2002), Jerome Kirk and Marc L Miller, *Reliability and Validity in Qualitative Research*, vol 1 (Sage Publications 1986), and John W Creswell, *Research Design: Qualitative, Quantitative, and Mixed Methods Approaches* (4th, International Student edn, Sage Publications 2014).

numerical and contrasted as such with quantitative (numerical) research;"[353] thus the entire thesis and its methodologies can be classified under the umbrella of "qualitative research".

3.3.2 Qualitative Case Study

This thesis is mainly about a real-life phenomenon, i.e. environmental governance, with a focus on the KSA as a case study from the Middle East. Thus, among its main objectives is to provide an in-depth understanding of the current reality and practices of the main environmental governance institutions or actors in the KSA. This is in order to address the major research inquiry, namely the applicability of good governance practices in the case of environmental protection in the KSA, and to explore and explain the underlying causes and challenges that have precluded or failed to facilitate the application of such good environmental principles in the KSA. This first necessitates identifying what can be viewed as good environmental governance principles or practices in this case study.

The case study research approach is well-acknowledged and well recognised in the literature, as will be seen below. Inevitably, however, the distinctiveness of the case study research approach has been challenged by some writers. This is due to the perceived ambiguity regarding its nature and essence. To resolve this ambiguity, probably the best way to think of it is as an overarching research *strategy*, as advocated by Verschuren, or even *design*, as suggested by Bryman, rather than a concrete detailed methodology or method. Tight, for instance, challenges the distinctness of the case study approach. According to this view, the term 'case study' is often used due to its intuitive academic appeal rather than more substantive reasons. He argues that:

> *"its status remains unclear. Is it a method, a methodology, a strategy, a design, an approach or what? ... we simply use case study as a convenient label for our research – when we can't think of anything 'better' – in an attempt to give it some added respectability. ... So, why don't we just call this kind of research what it is – small-sample, in-depth study, or something like that? And, instead of using 'a case study of' in our sub-title, try something like 'a detailed examination of' or 'an analysis of X'?"*[354]

The adjective "qualitative" in the subheading is there to highlight the nature of the methods and data employed to investigate and analyse the case study of this thesis (i.e. "the KSA in the context of environmental governance" or just simply "environmental governance in the KSA"). The literature addressing the "case study" approach is replete with diverse perspectives, even with regard to the defining features and generic characteristics of the case

[353] 'Qualitative Legal Research' in Mike McConville and Wing Hong Chui (eds), *Research Methods for Law* (Edinburgh University Press 2007).
[354] Malcolm Tight, 'The Curious Case of Case Study: a Viewpoint' [2010] 13 International Journal of Social Research Methodology 329. Further discussion about the clarity versus the ambiguity of the case study approach can also be found in Piet Verschuren, 'Case Study as a Research Strategy: Some Ambiguities and Opportunities' [2003] 6 International Journal of Social Research Methodology 121, and Alan Bryman, *Social Research Methods* (5th edn, Oxford University Press 2015).

study approach.[355] However, probably one of the key merits of the case study approach is its commitment to and association with gaining and delivering an intensive and deep understanding of the unit under study. For example, Hammersley and Gomm state in their definition that "*case study' refers to research that investigates a few cases, often just one, in considerable depth*"[356] (emphasis added).

Bryman also stresses that "*The basic case study entails detailed and intensive analysis of a single case*"[357] (emphasis added). Flyvbjerg, in addition, asserts that "*the case study is a detailed examination of a single example*"[358] and defends its reliability, if carried out properly. Thus, the proper conduct of this approach leads to a profound grasp and comprehension of environmental governance in the KSA and how it works. In fact, the case study approach, which has been frequently used in studying law-oriented topics,[359] is inherently empirical in nature and draws on the intensive study of an existing observable reality and this property is at its core.[360] Yin, for example in his discussion accentuates this characteristic and states "*a case study is an empirical inquiry that investigates a contemporary phenomenon (the "case") in depth and within its real-world context; especially when the boundaries between phenomenon and context may not be clearly evident*"[361] (emphasis added).

In this research the environmental governance in the KSA is the case under analysis. One of the key aims of the thesis is to explore and examine such a governance system through a holistic approach, in order to produce a model for good environmental governance practices in the KSA. It is crucial, however, to briefly establish key issues for good case study research practice that will be seriously considered throughout the study of the case. These issues include reliability and validity.

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[355] John Elliot, 'Validating Case Studies' [1990] 13 Westminster Studies in Education 47.

[356] Martyn Hammersley and Roger Gomm, 'Introduction' in Roger Gomm, Martyn Hammersley and Peter Foster (eds), *Case Study Method: Key Issues, Key Texts* (SAGE Publications 2000) P 3. See also Punch who also stresses the depth in the case study approach in Keith Punch, *Introduction to Social Research: Quantitative and Qualitative Approaches* (3rd edn, SAGE Publications 2014) P 120.

[357] Bryman, n 353.

[358] Bent Flyvbjerg, 'Case Study,' in Norman K Denzin and Yvonna S Lincoln (eds), *The Sage Handbook of Qualitative Research* (4 edn, SAGE Publications 2011) P 301.

[359] Among other political and social science research studies, see Pranee Liamputtong, *Qualitative Research Methods* (4 edn, Oxford University Press 2013) P 199.

[360] This explanatory introduction to case study is key to the purpose of this thesis. However, this research is not about the case study research design per se, thus I will not discuss the typologies and categorisations provided by some authors. For example, Stake identifies three principal categories of case study as intrinsic, instrumental, and multiple or collective case study, while Yin distinguishes other designs: single verse multiple case on one hand, and holistic versus embedded on the other. This does not necessarily imply superior validity or rigour of any type over the other, but rather that, as Mitchell declares "…*case studies of whatever form are a reliable and respectable procedure of social analysis…*". J Clyde Mitchell, 'Case Study and Situation Analysis' in Roger Gomm, Martyn Hammersley and Peter Foster (eds), *Case Study Method: Key Issues, Key Texts* (SAGE Publications 2000) P 183. See also Robert Stake E, 'Qualitative Case Studies' in Norman K Denzin and Yvonna S Lincoln (eds), *The SAGE Handbook of Qualitative Research*, vol 3rd (Sage Publications 2005), Robert K Yin, *Case Study Research: Design and Methods* (5 edn, SAGE Publications 2014) P 50.

[361] Ibid.

3.3.2.1 Reliability and Validity,[362] and Good Practice in Qualitative Study

The amount of literature addressing this subject is literally massive. Although reliability and validity are matters of consensus, in terms of their centrality to any social qualitative research,[363] nonetheless, across the qualitative research field, scholars, differ in their recommendations, presentation and even terminology regarding these topics. It is necessary here to acknowledge that perfection is probably unattainable in this regard, due to the limitations of time and resources.

Although these issues of reliability and validity,[364] which sometimes cut across other similar or related terms, such as trustworthiness, credibility and authenticity, were industriously taken into account throughout the thesis development, it always seems that it could have been better! As an illustrative example, it has been argued that conducting a follow-up interview with participants and taking the portion of the principal findings to them and allowing them to reflect and comment on such findings would enhance the accuracy and validity of the research.[365] This might not be feasible due to reasons of time and accessibility. For the same reasons, although generally it is a positive and consolidating factor,[366] the enrichment of this thesis by involving more researchers is not possible for a doctoral thesis. This is, probably, why some key qualitative research scholars, such as Miles, Huberman and Saldaña, appear to discuss the issue of validity or trustworthiness of qualitative research from the angle of boosting the "goodness" of the research, and increasing both the researcher's and the readers' confidence in the outcomes and findings of his or her research, rather than being totally impeccable.[367] Yin identified four guiding principles that boost the quality of case study research, if observed in the data collection process. These have been respected in this thesis research as:

"(a) using multiple, not just single, sources of evidence;
(b) creating a case study database;
(c) maintaining a chain of evidence; and

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[362] It should be noted that the issues of objectivity and reliability are philosophically contested and argued by some epistemological schools as unsuitable criteria for evaluating qualitative research. See for example, Anna Madill, Abbie Jordan and Caroline Shirley, 'Objectivity and Reliability in Qualitative Analysis: Realist, Contextualist and Radical Constructionist Epistemologies' [2000] 91 British Journal of Psychology 1.

[363] As opposed to quantitative and natural sciences. Reliability and validity concepts, for example, used in "*non-qualitative*" research studies do not seem generally appropriate to qualitative social scientists. See, for example, Kirk and Miller, n 351.

[364] Gibbs suggests that validity in qualitative research is more about the accuracy of the data, whereas reliability can be pursued in a single researcher project via being self-consistent in the analysis of data gathered- a considerable challenge, as in the case of this thesis. Graham Gibbs, *Analysing Qualitative Data* (SAGE Publications 2007) P 93, 94, and 98.

[365] Creswell, *Research Design: Qualitative, Quantitative, and Mixed Methods Approaches P 201-202.*

[366] Peter Swanborn, *Case Study Research: What, Why and How?* (SAGE Publications 2010) P 109-110.

[367] Matthew B Miles, A Michael Huberman and Johnny Saldaña, *Qualitative Data Analysis: a Methods Sourcebook* (3 edn, SAGE Publications 2014).

(d) exercising care in using data from electronic sources of evidence, such as social media communication"[368]*.*

Obviously, some of these issues advocated by Yin have already been taken care of or planned for. For example, the use of a variety of data sources has been already explained and considered, and the additional contribution by the in-depth interviews will take this further. Addressing the issues of the "soundness" and quality in undertaking a qualitative case study can occupy extensive space. In all cases, it appears that there is not a single paradigm or any definitive hard rules in this regard. The bottom line, however, is to remain throughout the various stages of the development of the research, as bias-free[369] as possible and to recognise that "*research requires detachment from oneself, a willingness to look at the self and the way it influences the quality of data and reports; in particular research demands a capacity to accept and use criticism, and to be self-critical in a constructive manner.*"[370]

In addition, and particularly concerning the interviewing method, a number of important factors were borne in mind throughout the stages of the interviews. These include the right selection of participants with the necessary knowledge, which has a direct link to the enhancement of the credibility of the research; being explicit and reflexive about the way by which the data is processed and analysed, which will contribute to the transparency; responding to the new directions and issues raised by the participants, which will contribute to the thoroughness of the research, and being sensitive to the possible degree of correctness or truthfulness of the information given by the participants, which will increase the believability of the study.[371]

Triangulation of data also has a very positive effect in enhancing some dimensions of validity and confidence in the thesis.[372] Finally, as the interviews of this thesis were to be carried out in Arabic, the transcripts of the recorded discussions, if recording was permitted by the participants, needed to be translated into English when quoted in the thesis text; this issue is likely to touch upon the issue of reflexivity as good practice in qualitative research.[373]

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[368] Yin, n 359, P 118-130.

[369] Tolerating such bias may disorientate the entire research. This not merely degrades the quality of qualitative studies, but also infringes the ethical aspect of such research studies. See Yin, n 359, P 76-77.

[370] Nigel Norris, 'Error, Bias and Validity in Qualitative Research' [1997] 5 Educational Action Research 172.

[371] There is much to be said about such overarching and umbrella concepts of credibility, transparency, thoroughness, and believability. See for example, Herbert J Rubin and Irene Rubin, *Qualitative Interviewing: the Art of Hearing Data*, vol 2 (Sage Publications 2005) P 64-78.

[372] Yin, n 359, P 120-122.

[373] Reflexivity has been subject to multiple dimensions and definitions. It suffices to say that it is relevant to all the phases of the development of the thesis, including when translation is needed. It has an evident link to the bias issue in research. It can be understood as "*the recognition that the product of research inevitably reflects some of the background, milieu and predilections of the researcher*". Graham, n 363, P 91. See also Tim May and Beth Perry, 'Reflexivity and the Practice of Qualitative Research' in Uwe Flick (ed), *The SAGE Handbook of Qualitative Data Analysis* (SAGE Publications 2014).

3.4 Empirical Method: Semi-Structured Interviews

Interviews have been proven useful in empirical law-focused research projects, since they allow an entry to the experts' insights and experience regarding the legal phenomenon being explored.[374] As noted above, decent quality case study research should enable a deep understanding of certain phenomena or of the unit being investigated. One avenue to reach such depth in understanding is not to rely solely upon a single type of qualitative data source, such as documents, although these may be a cornerstone, but actually to diversify the forms of data being utilised, in order to achieve intellectual depth.[375] Here is where the importance of the interview as a data gathering strategy comes into this thesis. However, one of the driving forces to resort to interviews in this research, beside the recognised advantages of the interview method in case study projects,[376] is the lack of environmental governance data disclosed or even documented by the relevant environmental agencies in the KSA, as previously discussed.

Thus, to cope with this scarcity of environmental data and environmental governance studies, primary data obtained via semi-structured in-depth interviews was generated and analysed. The potential of the interview strategy in this regard is great, since it can "*reach areas of reality that would otherwise remain inaccessible.*"[377] Yin, for example, asserts the usefulness of interviews to gain deep understanding in case study research, if the researcher carries out his or her mission effectively[378] and focuses on the "line of inquiry" and does not get deviated.[379] It is equally important to pose the questions in an unbiased manner.[380] The issue of the line of inquiry, as well as the issue of who to interview can be, and was in this thesis, driven by the theoretical framework and literature review (regarding environmental governance), as well as by the research questions.[381]

There are numerous definitions in the literature of the interview as a strategy for data collection. One of the helpful definitions that associates interviews with their primary aim, i.e. gaining knowledge, is that of Kvale: "*the interview is a specific form of conversation where*

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[374] Lisa Webley, 'Qualitative Approaches to Empirical Legal Research' in Peter Cane and Herbert M Kritzer (eds), *The Oxford Handbook of Empirical Legal Research* (Oxford University Press 2010) P 936
[375] Creswell, *Qualitative Inquiry and Research Design: Choosing Among Five Approaches* P 98*, and 100*.
[376] Yin, n 359, P 106.
[377] Anssi Peräkylä and Johanna Ruusuvuori, 'Analyzing Talk and Text' in Norman K Denzin and Yvonna S Lincoln (eds), *The Sage Handbook of Qualitative Research* (4 edn, Sage Publications 2011).
[378] Though the interviewing method is not flawless. Yin, n 359, P 106.
[379] Facilitating the pursuit of the line of inquiry was the leading purpose of the interview guide, which contains the set of question posed to the different interview respondents. See, for instance, Michael Quinn Patton, *Qualitative Research and Evaluation Methods* (3 edn, SAGE Publications 2002) P 343.
[380] Yin, n 359, P 110.
[381] Ben K Beitin, 'Interview and Sampling: How Many and Whom' in Jaber F Gubrium and others (eds), *The Sage Handbook of Interview Research: the Complexity of the Craft*, vol 2nd (SAGE Publications 2012).

knowledge is produced through the interaction between an interviewer and interviewee."[382] Thus, researchers who decide to employ the qualitative interviewing method for gaining knowledge should not underestimate their personal role in the interaction between them and the interviewees. Conducting in-depth interviews is not a one-way flow.

Mason, for instance, suggests that the interviewer is a co-producer of understanding, hand in hand with the interviewees.[383] As such, the researcher must not take the outcome of the interviews for granted, but rather has to be aware of the variety of subtle details of the in-depth interviews, including why the qualitative interview method has been selected and, in particular; what kind of questions are to be posed, and where and how to analyse them.[384] Brinkmann and Kvale suggest the sequential order of conducting the interview as *"(1) thematizing an interview project, (2) designing, (3) interviewing, (4) transcribing, (5) analyzing, (6) verifying, and (7) reporting*"; all these stages should be carried out responsibly and ethically[385].[386]

All types of interviews, including those in this thesis, require special care and dedication in order to be useful. Wengraf, for example, highlights three main stages for properly conducting semi-structured interviews in particular as, sufficient preparation beforehand, discipline and creativity during, followed by analysis and interpretation afterwards. Although conversing with people is a daily practice and might be easily underestimated, undertaking semi-structured interviews for academic research actually involves "*high-preparation, high-risk, high-gain, and high-analysis operations.*"[387] In addition, unlike interviews conducted by non-academic interviewers and those unconnected to institutions, interviewing for academic purposes entails special procedural constraints which have to be gone through to satisfy the requirement of the relevant committees.[388]

3.4.1 Sampling and Analysis

As far as the sampling strategy of the interview subjects is concerned, this thesis does not employ the "formal criteria" involving the issue of representativeness or random sampling, but rather "substantial criteria," with selection of the interviewees based on their special characteristics and knowledge regarding environmental governance in the KSA, i.e. through purposive sampling.[389] In addition to the above discussion, the developmental issue of making

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[382] Steinar Kvale, *Doing Interviews* (SAGE Publications 2008) P xvii.
[383] Jennifer Mason, *Qualitative Researching* (2 edn, SAGE Publications 2002) P 62-63.
[384] Bridget Byrne, 'Qualitative Interviewing' in Clive Seale (ed), *Researching Society and Culture* (3rd edn, SAGE Publications 2012).
[385] Svend Brinkmann and Steinar Kvale, *InterViews: Learning the Craft of Qualitative Research Interviewing* (3 edn, SAGE Publications 2015) P 23-24, and 85-86.
[386] Ethics in qualitative research is designated a sub-section, below.
[387] Tom Wengraf, *Qualitative Research Interviewing: Biographic Narrative Methods and Semi-Structured Methods* (SAGE Publications 2001) P 5.
[388] Carol A B Warren, 'Interviewing as Social Interaction' in Jaber F Gubrium and others (eds), *The Sage Handbook of Interview Research: The Complexity of the Craft* (2 edn, SAGE 2012) P 132.
[389] Flick See Chapter13, especially, n 342, P 168.

sense of the qualitative data collected, i.e. data analysis, has been discussed and presented differently among the experts, although a notable overlap is discernible between them. Thus, as they are generally in harmony with each other, and they all are relevant to this research. Miles, Huberman and Saldaña, for instance, highlight three largely systematic, synchronous and iterative analytic procedures for qualitative data, which are *"(1) data condensation, (2) data display, and (3) conclusion drawing/verification."*[390,391] Roulston suggests three steps for analysing data generated through interviews as *"(1) data reduction; (2) data reorganisation; and (3) data representation."*[392]

3.4.2 Ethical Considerations

Although, strictly speaking, this aspect does not belong to the knowledge aspect of the thesis, this section is of critical importance towards establishing its ethical soundness, to achieve which is nowadays considered no less significant than rigorously reaching the conclusion. As an illustration to this point, the ethical standards that have to be considered in all stages of qualitative research studies, can sometimes be found embedded in chapters addressing issues related to good practice of conducting qualitative studies, such as reliability, validity and accuracy.[393] Thus it is important in this context to report that this research secured final official ethical approval from the University of Leeds on the 14th of April 2016. The application was reviewed by the University's respective independent panel (ESSL, Environment and LUBS (AREA) Faculty Research Ethics Committee; with ethics reference no. AREA 15-104).

There is not sufficient space and time to discuss all the ethical codes in qualitative research studies. The focus here will be primarily on three main ethical considerations, namely informed consent, confidentiality and anonymity, and the principle of harm and risk avoidance.[394,395] The

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[390] Miles, Huberman and Saldaña, n 366, P 12.

[391] Each one of these three phases has been discussed extensively in a separate publication. For example, according to Miles, Huberman and Saldaña, this first stage is an analysis process and a continuous activity throughout the progress of the research. One of its important parts is the coding which should be clearly distinguished from the categorisation step that occurs afterwards. Coding, according to Salañda, is a cyclical, heuristic and interpretive activity that ignites "*a rigorous and evocative analysis and interpretation... [it is more than merely] labeling, it is linking*". Richards and Morse strikingly express this linking quality of the coding process as "*It leads you from the data to the idea and from the idea to all the data pertaining to that idea*". See Johnny Saldaña, *The Coding Manual for Qualitative Researchers* (3 edn, SAGE Publications 2015), and Lyn Richards and Janice M Morse, *README FIRST for a User's Guide to Qualitative Methods* (3 edn, SAGE Publications 2013) P 154.

[392] Kathryn Roulston, 'Analysing Interviews' in Uwe Flick (ed), *The SAGE Handbook of Qualitative Data Analysis* (SAGE Publications 2014) P 301.

[393] Gibbs, for instance, addresses ethical aspects within quality and good practice considerations. Christians also considers the accuracy of data per se as an ethical issue, in hand with issues such as confidentiality and privacy, informed consent and the avoidance of deception. Gibbs, n 366, P 90-104, and Clifford G Christians, 'Ethics and Politics in Qualitative Research' in Norman K Denzin and Yvonna S Lincoln (eds), *The Landscape of Qualitative Research* (4 edn, SAGE Publications 2012).

[394] These three overarching principles are of key importance. See, for instance, Liamputtong P 39-43

[395] As well as the conflict of interest consideration. See David Silverman, *Doing Qualitative Research* (SAGE Publications 2013) P 161-163.

selection of these principles is not only due to their ubiquity in the literature on conducting ethical qualitative research, but also owing to their direct relevance to the stipulations set out in the "University of Leeds Research Ethics Committee Application Form", as well as their general applicability to the type of research carried out in this study.

The informed consent procedure applied to the interviewees of this thesis, basically involves:

> *"Provision of information to subjects [research participants] about [the] purpose of the research, its procedures, potential risks, benefits, and alternatives, so that the individual understands this information and can make a voluntary decision whether to enrol and continue to participate"*[396].

Thus, the objective behind this is to make sure the interviewees are fully aware of what they are about to take part in. Various issues surrounding this thesis were stated and rendered clear to them, including the general idea and goal of the thesis, the basis on which the participants were being selected, their absolute freedom to accept, reject or withdraw at any time during the stages of conducting the research, whether they accepted voice recording, and the way their names and data would be dealt with. In addition, they were told who is funding and supporting the thesis, and given personal information about me as the researcher, and my own contact details, in case they needed to get in touch later on. Guaranteeing these considerations is ethically important, and they are usually enforced by the pertinent committees,[397] in this case, by the University of Leeds.

Confidentiality is also the participants' right and researcher's obligation. In this thesis, confidentiality of the interviewees' names and identities as well as private aspects of their life, if revealed, is of crucial importance. Thus it was key that in this research and in the writing of this thesis the protection of the confidentiality of those taking part in its interviews was strictly guaranteed. This researcher is aware that any breach of their confidentiality rights would not only have a significant degrading impact on his own research ethics, but damaging leverage would also be likely to be transferred to fellow researchers and to the academic community as a whole. As Israel and Hay put it: "*researchers who break confidences might not only make it more difficult for themselves to continue researching but, by damaging the possibility that potential participants will trust researchers, might also disrupt the work of other social scientists.*"[398] In writing this thesis I am also attentive to the fact that protecting confidentiality comprises subtle issues and not only not disclosing the interviewees' names. [399]

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[396] David Wendler, Ezekiel J Emanuel and Christine Grady, 'What Makes Clinical Research Ethical?' [2000] 283 JAMA 2701 P 2703.

[397] Marco Marzano, 'Informed Consent' in Jaber F Gubrium and others (eds), *The SAGE Handbook of Interview Research: The Complexity of the Craft* (2 edn, SAGE Publications 2012).

[398] Mark Israel and Iain Hay, *Research Ethics for Social Scientists: Between Ethical Conduct and Regulatory Compliance* (SAGE Publications 2006) P 78

[399] Martin Tolich, 'Internal Confidentiality: When Confidentiality Assurances Fail Relational Informants' [2004] 27 Qualitative Sociology 101, Karen Kaiser, 'Protecting Respondent Confidentiality in Qualitative Research' [2009] 19 Qualitative Health Research 1632, and Karen Kaiser, 'Protecting Confidentiality'

3.4.3 Interview Selection and Questions

3.4.3.1 How and Why Interviewees Were Selected

Participants were chosen on the basis of their perceived knowledge and/or practical involvement in environmental protection circles and the environmental governance field in general. This required first identifying the main authorities and institutions that have a clear involvement in the dynamics of environmental protection. Based on the types of institutions identified, interviewees were divided into four categories as:

- Bureaucrats or civil servants (I-A)
- Representatives from industries and the private sector (I-B)
- Academics (I-C)
- Representatives of environmental societies (I-D)

Due to the practical nature of the environmental societies and the requirements of their foundations, representatives from the (I-D) category can also be categorised as belonging to other groups, such as (I-C), where they had other, roles, as shown in Appendix A below.

3.4.3.2 Semi-structured style of interviewing

The semi-structured form of interviews is an "in-between" type of interview that is not rigidly structured. Therefore, by the merits of its open-ended questions, it allows more freedom for both the informants and interviewer to probe and extend their dialogue in a way that is "closer to conversation and is more natural than a formal interview with a highly structured schedule".[400] The use of the semi-structured interviewing technique in this research was in line with the portrayal of this type of interview by Fielding and Thomas as one in which "*the interviewer asks major questions the same way each time, but is free to alter their sequence and probe for more information in their own words*".[401]

Moreover, as the interviewees normally have various backgrounds, expertise, and specialisations, and thus different levels of understanding, as is the case in this research, this semi-structured format enables the interviewer to "*adapt the research instrument to the respondent's level of comprehension and articulacy…*".[402] This facilitates generation of in-depth data for the researcher which is informative and highly relevant to the issue under study.[403] In addition, as pointed out by Miles and his co-authors, "*one major feature of well-*

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in Jaber F Gubrium and others (eds), *The SAGE Handbook of Interview Research: The Complexity of the Craft* (2 edn, SAGE Publications 2012) P 457

[400] David J. Hall and Irene M. Hall, *Practical Social Research: Project Work in the Community* (Palgrave Macmillan 1996) P 157-158.

[401] Nigel Fielding and Hilary Thomas, 'Qualitative Interviewing' in G. Nigel Gilbert and Paul Stoneman (eds), Researching Social Life (4th edn, Sage 2016) P 282.

[402] Ibid, P 282.

[403] This form of interview with its open questions assumes that participants have certain level of knowledge about the theory or topic under study. Uwe Flick, *An Introduction to Qualitative Research* (4th edn, SAGE 2009) P 156.

collected qualitative data is that they focus on naturally occurring, ordinary events in natural settings, so that we have a strong handle on what "real life" is like"[404] (emphasis added).

Despite its benefits, this form of data collection is not free from limitations. For example, it provides less scope for analysis than unstructured interviews,[405] while the results of structured interviews, by virtue of their close-ended questions, are generally perceived as easier to handle in terms of data processing and accuracy.[406]

3.4.3.3 Contacting Interviewees

The interviews were undertaken over a period of 90 days, commencing on 25/5/2016. Although 40 participants were targeted based on the categorisation of interviewees into 4 identified categories,[407] only 27 were accessible, for different reasons. The majority of the interviews were conducted face-to-face: one participant preferred online correspondence, and two others favoured telephone interviews, due to their practical commitments: one of them was abroad on sabbatical leave and the other two were occupied by business commitments. All, however, showed a kind interest in participating. Several potential interviewees did not seem to be interested in taking part, and some did not even respond to the interview invitation or request. Only one respondent withdrew after I had travelled to his location in Jeddah and after the interview process had already started. This individual interview was discounted, and its data have not been used in the study.

Nevertheless, representatives from each of the principal environmental bodies were interviewed. These institutions included the Ministry of Environment, Water and Agriculture and the environment agency, the Ministry of Municipal and Rural Affairs, the Royal Commission for Jubail and Yanbu – Environmental Protection Department and the Saudi Industrial Property Authority (MODON) Environmental Protection Department, as well as representatives from major national industries and companies, in addition to professors from principal universities in the KSA, as shown in Appendix A below. Thus, the interview process encompassed participants from a broad range of specialisations or fields of scholarship, including Environmental Science, Environmental Engineering, Petroleum Engineering, Biological Science, Nanotechnology and Toxicology, Civil Engineering, Environmental International Relations (see Appendix A below).

However, there was no opportunity to interview environmental lawyers, as this specialisation has not so far gained currency and attracted researchers wishing to specialise in this area. It is hoped that this research may contribute to highlighting this under-researched

[404] Miles, Huberman and Saldaña, n 366, P 11.
[405] Hall and Hall, n 399, P 159.
[406] Alan Bryman, *Social Research Methods* (5th edn, Oxford University Press 2016) P 200.
[407] Initially, it had been proposed to include 10 respondents in each category, a total of 40 participants.

area of knowledge and attract the attention of researchers to conduct future studies in the context of Saudi Arabia or its regional neighbours.

3.4.3.4 The Questions Asked

The interviewees were asked a total of 35 questions. As shown in Appendix B below, these questions were crafted to cover a wide array of issues identified from the literature on environmental governance, emerging from various "environmental governance" themes extracted from the literature. These themes were identified as among the issues that have a profound effect on the shape and effectiveness of any environmental governance system and represent important issues of environmental governance that have been prominent in discussions and debates from numerous scholars in the literature. Thus, the 35 interview questions were classified under these themes, which included: environmental governance modes, environmental governance and risks; good environmental governance; scales or levels of environmental governance; trends in environmental governance; environmental governance and societal actors; environmental governance and the unique characteristics of environmental problems; environmental principles.

The interviews were carried out with the representative participants shown in Table 1. The value of their participation was explained to them and they were thanked for volunteering their time and knowledge. The interviews took place in their own locations and at their preferred meeting places, so it was necessary to travel to different cities, including Riyadh, Jeddah, Jubail, Dammam and Al-Madinah Al-Monawarah. These cities and notably the first three, are major cities in the ambit of environmental protection and governance. For instance, Riyadh (or Arriyadh) is the capital city where the main ministries are located, and where certain important environmentally-mandated authorities, including the High Commission for the Development of Arriyadh City were founded.[408] Jeddah is the city where the environmental agency has its headquarters and undertakes its central planning and where its main committee convenes. The industrial city of Jubail is a principal industrial city, arguably the most important industrial city in the KSA, currently, which is exclusively designated to attracted heavy and large-scale national and international projects and industries to be supervised and under the surveillance, notably environmentally, of the Royal Commission for Jubail and Yanbu (RCJY).[409].

As mentioned elsewhere, the selection of the respondents was based on their knowledge and/ or practical experience and involvement in the environmental governance domain, and was decided in line with the categorisation system of the interviewees which appears in Table 1. This encompasses, inter alia, environmental consultants, environmental inspectors,

[408] http://www.ada.gov.sa/ADA_E/AboutADA/index.htm 'Overview' (The High Commission for the Development of Arriyadh Website, accessed in 10/1/2018).
[409] https://www.rcjy.gov.sa/en-US/Pages/default.aspx 'Main Page' (Royal Commission for Jubail and Yanbu Website, accessed in 18/1/2018).

executives, planners, operators, professors and other academics, as well as investors. The interviews lasted an average of 2 hours and some went on longer than this, lasting up to approximately 3 hours. Efforts were made to keep the focus of the interview concise and to minimise any deviation from the main topics of the conversation.

In keeping with the semi-structured approach to interviewing, the respondents were allowed to raise new issues or discuss other ideas relevant to the particular question posed to them. Thus, although it was initially intended to ask interviewees the entire set of questions (35 questions), some addressed and subsumed several answers in their response to a single question. In these cases, the number of questions asked was less than 35.

3.5 Conclusion

This chapter has described and explained the different methodologies, and methodological aspects, as well as the sources and methods of collection of the data employed in this study. It provided the principles and academic basis of the approaches for collection and treatment of the data, gathered from both documentary sources and empirical research that involved contacting and interviewing the participants. The chapter also identified and answered methodological concerns and questions regarding the doctrinal methodology. It discussed the qualitative methods used and the case study approach, as well as issues with good practice in qualitative studies. The empirical methods, namely the semi-structured interviews, were explained, including the sampling procedure and analysis of the data obtained, as well as important ethical considerations and issues related to the selection of interview participants and the questions devised.[410] The issue of selection and "who to interview" was also discussed. The aim of this was to identify the most relevant institutions to target and interview as potentially providing the important empirical and in-depth practical data for the purposes of this study.[411]

[410] See Appendix A.
[411] See Appendix B.

Chapter Four: Models of Environmental Governance in Saudi Arabia

Abstract

This chapter examines the presence in Saudi Arabia of the three main governance modes. These three principal models or forms of governance, as advanced by the predominantly western and European-based literature, are state-centric or hierarchical governance, the market-based form of governance, and the network or network-based form of governance. The aim of this chapter is to investigate whether and to what extent these models of governance exist in the environmental governance domain in the country. This exploration is undertaken by examining the principal Saudi hard and soft law documents, together with the support of empirical data generated from the face-to-face semi-structured interviews introduced earlier, which are analysed against the findings and theories in the literature.

The contribution pursued by this chapter is two-layered. The primary contribution is to broaden the discussion and understanding of the existing theories identified in the literature regarding models of environmental governance and their mechanisms. This analysis is carried out by examining them in a largely unexplored context, i.e. the Saudi context. The secondary contribution constitutes observations made and discussion regarding the Saudi environmental domain, as this has been clearly an under-researched jurisdiction, notably when it comes to the subject of environmental governance and protection.

4.1 Introduction

As presented in Part 2 of the literature review in Chapter 2, there are three main models for the governance of environmental issues, which have been extensively discussed by multiple authors in the literature. These principal styles are the top-down or hierarchical model, the fiscal or market-based model and the network model of governance.

As its label suggests, the first model is designed hierarchically or vertically in a top-down approach. In this model, environmental matters are predominantly governed and prescribed by the state. Thus, the stakeholders are tied by formal bonds, and the rules are largely authoritative and coercive and in many cases backed up by sanctions. This rather inflexible style of governance is typically exemplified by the command and control regulation, where the rules are planned centrally, and the formal regulator has a direct interventionist power.

The market-oriented paradigm of governance is distinctively different, in that the state has no interventionist role, at least directly. Rather, it relies on prices and fiscal mechanisms as a way to orient stakeholders' behaviours. Ideally, in this style of governance, pressures exerted on the environment are reflected in the prices of the respective goods and services at stake. Typical tools employed by this form of governance are taxes and subsidies, through which stakeholders are either incentivised or discouraged to behave in a certain way.

In the network governance model the conditions are quite different from those in the other models. The actors forming the network are perceived horizontally, with no special authority or power granted to a particular network participant. As such, this governance model is characterised by a kind of informality and voluntary cooperation and, hence, actors are autonomous, independent, and guided and driven by mutual trust and shared goals.

The aim of this chapter is to explore to what extent these forms of governance, exist in the environmental governance field in Saudi Arabia (KSA) and what position they occupy. In doing so, an investigation of several of the KSA's principal hard and soft law documents is carried out, together with significant input from the analysis of the interviews.

4.2 Analysis of Environmental Governance Models in the KSA

4.2.1 Legal Analysis

It is probably not surprising to point out that the environmental legislations in the KSA do not expressly mention the terminology used here, i.e. the "Hierarchical, Market-based and Network" forms of governance; however, the principal mechanisms or applications of each type are present and can be observed or inferred by examining the key environmental regulations and documents in the KSA.

4.2.1.1 The General Environmental Law (GEL)

As explained earlier, the General Environmental Law (GEL) is the main and the most important reference for environmental legal provisions in the KSA. As it is drafted in quite a

brief manner, the Rules for Implementation (RI) followed the establishment of the GEL, in order to provide details of how the national environment agency, i.e. The General Authority for Meteorology and Environmental Protection (GAMEP), should operationalise and implement the GEL. Thus there are two[412] distinct but interrelated instruments.

In fact, a straightforward examination of the GEL clearly reveals how prevalent the top-down style of governance is in the KSA's present environmental governance. This can be confidently asserted, not merely by observing how many command and control types of provisions or regulations are mentioned, but also by noticing the almost complete absence of other models of environmental governance. It is thus clear that the GEL is based on a typical state-centric command and control style.

In Chapter 2, entitled "Duties and Obligations", the GEL exclusively specifies GAMEP's scope of responsibility.[413] Article 3 of this Chapter sets out that:

> *"The Competent Agency Shall be entrusted with the duties of preserving the environment and preventing its deterioration, which comprise the following:*
> *… 3- Prepare, review, develop, interpret and issue environmental protection standards. …*
> *5- Ensure that public agencies and individuals abide by the environmental regulations, standards and criteria…"* (Official translation).

Here, the legislator mandates GAMEP to issue the environmental standards to which the regulated parties have to adhere. GAMEP is also entrusted to ensure compliance by the respective regulated entities. Thus, it is a two-layered command system: GAMEP is commanded to instruct those addressed by the law.

Having almost the entire governance system premised on a state-centric model assumes, inter alia, sufficient expertise, knowledge, financial resources, and technological infrastructure; yet there is a serious question concerning GAMEP's ability and competence to meet this massive mandate in a huge territory with an ever-increasing number of development and industrial projects. In fact, there is a glaring mismatch between the breadth of responsibility and authority accorded to GAMEP on one hand, and its competence and available resources on the other hand. This will become more evident as the discussion unfolds in this chapter.

Unfortunately, many of the disadvantages reported in the literature regarding the excessive use of the command and control regulatory style, which is a typical manifestation of the hierarchical governance model, were also reported by the interviewees and seem to persist in the KSA's current environmental system. Drawbacks of the top-down style of environmental governance, such as inflexibility, lack of incentives for regulated entities to comply or over-

[412] The Rules for Implementation (IR) is addressed below.
[413] Exclusively because GAMEP acts strictly in a legislation-based manner. In other words, its roles are both created and restricted by the drafting of the GEL, which automatically entails considerably confined discretionary power. This is not to say it has no margin for practising discretion. However, this discretion has to be backed up by legal provisions. Which confirms the original point!

comply, and the high cost of ensuring implementation of the regulations and adherence by the regulated entities are among the reasons that have led some writers to portray this style of governance and regulation as the "*crisis of the interventionist state*"[414] or, in more environmentally-driven discussions, as the "*crisis of administrative rationalisms*"[415]. These flaws were also highlighted by the interviewees as existing challenges within the KSA's environmental governance system. This quote by (I-B-7) is an example of the difficulties stemming from the top-down command and control system which requires, inter alia, close monitoring from GAMEP, for which it lacks capacity and sufficient financial resources:

> "*some organisations or businesses may carry out significant extensions to the plant and its operation without prior approval of GAMEP. Those conducting industrial projects seem aware of the inherent deficiency of the monitoring mechanism used by GAMEP, and also aware of the severe shortage of well-qualified personnel and technology at GAMEP's disposal. For example, after obtaining the environmental certificate from GAMEP, which legally allows them to initiate their industrial project, the management in some industries regard GAMEP as an "ended story", and there is nothing needed to be done until they need to renew their permit the next year or the year after. This is due to the failure and incompetence of GAMEP in dealing with the various and constantly increasing businesses operating in the state, not to mention the very large territory of the KSA*."

Having said that, the above comments about this style of governance, namely as the "*crisis of the interventionist state*"[416] or, as the "*crisis of administrative rationalisms*"[417]. provided by Teubner and Dryzek respectively, would be exaggerations when referring to the KSA's environmental context. This is because the intervention of the state in the KSA's jurisdiction is still extremely important and currently inevitable, not least because the state still possesses the required and necessary human and financial resources. And equally important is the huge influence and power of the political will that backs up the new environmentally-affirmative paths, as will be seen in the discussion below about the quite recently launched Vision 2030. Therefore, these descriptions of "crisis" cannot be extended in the Middle Eastern context of the KSA, even though these statements may be relevant and welcomed in contexts of the environmental protection domain in which the authors were writing.

As to the employment of the fiscal tools, the GEL does not endorse any type of fiscal mechanism, other than post-violation penalties, and compensation for the damage caused. However, these monetary punishments are relatively trivial. For example, they are confined to three types of extremely major environmental infringements. Article 18/1 of the GEL states:

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[414] Gunther Teubner, 'Substantive and Reflexive Elements in Modern Law' [1983] 17 Law & Society Review 239 P 267.
[415] Dryzek, n 190, P 92.
[416] Teubner, n 413, P 267.
[417] Dryzek, n 190, P 92.

"… whoever violates the provisions of Article fourteen[418] of the General Environmental [Law] shall be punished by imprisonment for a term not to exceed five years, by a fine not to exceed SR 500,000 or both. An appropriate compensation shall be ordered and the violator shall be obliged to eliminate the violation" (Official translation).

This is an important point in the GEL, where forms of fiscal instruments are used to influence the behaviour of environmental actors and potential perpetrators. Nevertheless, the article is drafted rather narrowly, to apply only to extremely serious environmental offences. Other than these three major environmental crimes, Article 18/2 provides for merely a maximum of SR 10,000 for any acts that break any other GEL provisions (other than those in Article 14).

There are a number of points to be made here. First, the market-based governance instruments provided for by the law are entirely reactive, namely fines and compensation, rather than precautionary and preventive, which is clearly not the ideal situation. Second, the GEL sets the maximum cap that the fine cannot exceed. This legal provision clearly underestimates the value of the environmental assets, since, according to this Article, the decision-maker/judge cannot impose more than this figure on the violator, regardless of the gravity, scale and intention of the perpetrator, let alone the fact that this capped amount of money (SR 500,000), although not insignificant for many, especially private industrial projects, is rather paltry for giant private sector projects or government-owned enterprises.

This illustrates a considerable problem in the environmental sector. Moreover, it is questionable whether GAMEP is, in practice, powerful enough even to impose and collect these relatively trivial fiscal penalties imposed on these "economically significant" entities, as will be explained below, based on the interviewees' responses. Further, for the infringement of any Article other than Article 14, the judge is bound by the SR 10,000 cap, which is rather measly for potential violators. Moreover, the categorisation of these crimes by the GEL as either Article 14 and non-Article14 is substantially flawed. In addition to what has already been discussed, this categorisation does not respect the fact that environmental crimes and even major infringements cannot be exclusively or definitively listed. Thus, the drafting should be more flexible to accommodate a much wider variety of potential environmental crimes, and punitive decision-taking should not be narrowly confined, as in the current status quo.

When it comes to the network paradigm of governance, it can be determined that the absence of this concept is one of the major shortcomings in this important environmental legislation. There is no mention whatsoever of this model, which is very important to supplement the other two forms. That being said, the network paradigm appears to be potentially a new trend in GAMEP's practice on the ground, by virtue of the master national

[418] Article 14 of the GEL deals with three major environmental acts addressing highly hazardous, poisonous and radioactive waste, including their disposal and treatment.

plan Vision 2030, which has, inter alia, the goal of mobilising civil society. Seemingly,[419] GAMEP, as part of the public sector, has started to develop a new attitude, in which it extends its hands to civil society. For example, quite recently, GAMEP announced on its official Twitter webpage (on the 14th of June 2017)[420] that it had launched a new page on its website entitled "social responsibility".[421] This clearly affirms the emerging trend in the environmental governance domain that encourages citizen participation[422] and appeals to their ethical "spirit". Whether or not this can be regarded as an example of or even a platform for a network style of governance in the future, or even to what extent, may be arguable. However, it is certainly not a top-down approach nor a market-based one. Possibly, the potential for mature environmental network governance applications to materialise is now more likely than ever before, due to the dynamics of the transformative Vision 2030, as discussed previously.

4.2.1.2 Rules for Implementation (RI)

As explained earlier, the purpose of the RI is not to create completely new rulings but rather to expand on the legal provisions articulated by the GEL and to clarify how they should be implemented. As such, it should come as no surprise that the RI is very much in tune with the style of governance adopted by the GEL. As in the account above, the governance style is predominantly formal and authority-based. This can be illustrated by the multiple articles dictating to GAMEP what to do, and how the rulings should be followed and adhered to. It also obliges the regulated private and public projects to respect these two principal environmental legal instruments i.e. the GEL and the RI, with a threat of punishment in case of transgression.

This consistency of approach between these two legal instruments is also applicable to the fiscal tools embraced. As discussed above, the utility of the market-based tools is very limited, in terms of either their variety or their deterrent potential, and in their being applied post-problem. What is interesting here, however, is that in addition to the already confined mandate for the use of the fiscal tools, the implementation procedures even complicate and hinder the situation and lessen the potential use of the financial penalties provided by the GEL and RI. Complying with Article 20, Item 2 of the GEL, Article 20, Item 2-20 of the RI stipulates that:

> *"Subject to paragraph (1) of this Article, one or more committees shall be formed by a decision of the Competent Minister comprising three members each, with at least one member specialized in [Law] to review the violations and apply penalties set forth*

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[419] One of the themes on the Vision's agenda is what can be translated as "ambitious nation with responsible enabled citizens" under which issues such as social roles and impact, voluntarism, and collective efforts are underscored. See http://vision2030.gov.sa/en/node/12 'An Ambitious Nation Responsibly Enabled' (Vision 2030 Kingdom of Saudi Arabia Website, accessed in 20/6/2017).

[420] https://twitter.com/pmemediacen/status/875130874534273024 'GAMEP Official Account' (Twitter Website, accessed in 19/6/2017). (Arabic).

[421] http://www.pme.gov.sa/Social%20Responsibility/ 'Social Responsibility' (GAMEP Website, accessed in 19/6/2017). (Arabic).

[422] Although it is still vague as to how and to what extend they can participate in the environmental protection field.

herein. Decisions of the committee shall be decided by majority vote of its members and approved by the Competent Minister" (Official translation).

This, de facto, means that the environmental (GAMEP's) inspector cannot issue the penalty for the violation he detects at the site immediately. Instead, he is only mandated to prepare the paperwork, including the violation control record and submits it to GAMEP which then has to assign it to the respective committee, following an order by GAMEP's chairman, to consider such cases. Hence, this decision has to be endorsed by GAMEP's head. This unwieldy and cumbersome loop procedure seems, inter alia, to be overlooking the unique characteristics of environmental problems. Moreover, in theory at least, it is likely to raise disputes, notably concerning evidential issues, bearing in mind that neither the GEL nor the supposedly elaborated RI specifies a definitive timescale within which the resolution must be issued. This, according to (I-A-9) can, in practice, waste up to three years. (I-A-1) bluntly indicated that:

"when the environmental damage is relatively significant, and culprits fear the legal consequences of their negligence, especially in relatively small industrial businesses, and they suspect the clean-up costs and the financial penalties that might be inflicted on them, exceeds their near future profits, some projects might opt for closing down the project. So, they prefer to withdraw and disappear, rather than to face the repercussions of their own actions. They know, GAMEP is unable to chase after them!"

As far as network governance is concerned, like its parent legislation the GEL, the RI can be said to overlook the network concepts and, accordingly, their governance role. As already mentioned, Vision 2030 might exercise its leverage on the RI sometime in the future. The question of when, however, is rather difficult to tackle so far.

4.2.1.3 The State of the Environment Report (2017)

In comparison with the principal environmental legislations and in terms of the diversity of the toolkits highlighted, this report, presumably because it was released in the post-Vision era, is quite unique. Although far from ideal, several pertinent issues are addressed in this national environmental report.

This report can be read and approached in many different ways. In terms of the purpose of this chapter, it can be inferred that the report is both affirming and blaming the dominantly formal and state-centric style of governance adopted in the environmental domain in the KSA. This can be read in numerous contexts of this relatively comprehensive environmental document. For example, in terms of the environmental inspection duty, which is a principal responsibility of GAMEP, GAMEP explicitly confesses its inability to fulfil this statutory mandate in a way that guarantees a satisfactory level of environmental protection. It clearly announces in this report that:

"The environmental inspection duty proved a significant challenge, notably due to the dramatically growth and expansion of such activities over the last decades. The active

industrial activities soared from 198 industrial enterprises in 1974, to 4645 factories in 2010. This was accompanied by a surge in the number of the workers therein from roughly 34,000 in 1974, up to around 530,000 in 2010. This is in addition to the KSA's establishment of the Saudi Industrial Property Authority (MODON) which supervises the foundation of 29 industrial zones across the country, covering a total area of about 111 million square meters…"[423]

This quote, from the State of the Environment Report (2017), shows that a more cost-effective and flexible style of governance is needed in order to deal effectively with the surge in the number of regulated entities. However, these desired characteristics are known to be not in keeping with the top-down style of governance. Thus, maintaining the highly administrative style of governance has brought about several challenges, some of which have been highlighted earlier in this chapter, and will be further discussed below.

The report also identifies other problems of a diverse nature encountered in the environmental sector, which could probably be overcome or at least alleviated by either market-based mechanisms or techniques from the network form of governance. In other words, this report underlines a number of obstacles which can be attributed to the excessively top-down style of governance currently in place. The report plainly highlights the need for more collaborative work in all dimensions of the environmental protection domain, with its fellow public institutions, the business sector, and the wider society, as well as with research centres.[424] In the same vein, which is also relevant to the utility of the market-based style of environmental governance, the report calls for urgent endorsement of economic incentives and fiscal tools in the form of "*monetary value imposed as a result of the depletion caused to the natural resources.*"[425] This suggestion by the report is in harmony with Bell and McGillivray's definition, which views the market-based mechanisms broadly, as "*all approaches that seek to use prices, or economic incentives and deterrents, to achieve environmental objectives.*"[426]

However, the report overlooks how and on what basis such resources could be appraised in financial terms. In all cases, the stringent introduction of the economic or market-based style of governance, as defined by Bell and McGillivray, holds quite good potential to improve the overall environmental quality in the KSA, due to its inherent merits in incentivising polluters to reduce or cease their pollution. However, this potential cannot be taken for granted, since the size of the market and industries in the KSA have not been the only causes of its environmental problems. At the end of the day, the KSA is not yet an industrialised state that largely survives from revenues from industrialisation and manufacturing activities. Moreover, as discussed by

[423] The General Authority for Meteorology and Environmental Protection (GAMEP), 'The State of the Environment: Responsibilities and Achievements' (2017). P 206. (Arabic). Translated by the author.
[424] Ibid, P 200.
[425] Ibid, P 222 (Arabic).
[426] Bell and McGillivray, n 107, P 32.

Macrory[427] and Lee[428], the potential success of economic tools or market-based governance rests on the assumption that the cause of the environmental damage is the failure of the market. In the KSA, however, other significant environmental challenges have been triggered by more substantial drivers, such as the entire economy being, to a great extent, unsustainable and oil-based. Having said that, the consideration of economic instruments should be taken seriously, notably with the goals supported and advocated by Vision 2030, to encourage industrialisation and private sector investments. This can be demonstrated by, for example, this statement by the Saudi Industrial Property Authority (MODON):

> *"MODON also provides several economic advantages and attracting incentives for industrial, technical, service, residential and commercial projects; as competitive annual rent of developed industrial land in some cities prices is just one riyal per square meter. Industrial investors also find attractive financing opportunities offered by government financing funds and banks to lend to industrial projects, as well as other facilities to support exports by providing export guarantee and Customs exemption for imports of raw materials and machinery."*[429]

As to GAMEP, it could be validly queried here what precludes GAMEP from embracing the use of prices and fiscal tools, i.e. the mechanisms of market-based governance, more widely and innovatively? The answer leads us back to the original issue that GAMEP can only act on a statutorily granted power, which the GEL does not so far make available. This was also confirmed by (I-A-3), who stated plainly: "*We would really wish to use fiscal tools and prices, but this is beyond our GEL's authorised power.*"

Moreover, even the command and control or state-centric governance system currently in operation suffers from internal deficits. For instance, it is widely accepted that environmental law and governance is largely and conventionally a public law area, replete with the exercise of administrative discretion (typically by the environment agency) in a wide array of issues, such as environmental-standard-setting, licensing and permitting projects, and issuing administrative sanctions to environmental-law breakers.[430] Therefore, this wide exercise of administrative discretion is subsequently subject to judicial review. However, this administrative and bureaucratic form of environmental governance, despite being clearly hierarchical in nature, does not reach its full maturity in the KSA. This can be manifested by the lack of effective judicial review and involvement in environmental issues which was agreed amongst the majority of respondents across all the interviewed categories. This does not mean that, in those rare cases in which environmental cases are considered by the court, the court

[427] Macrory, n 145, P 136.
[428] Lee, n 107, P 185.
[429] https://www.modon.gov.sa/en/aboutmodon/Pages/about_modon.aspx 'About MODON' (the Saudi Industrial Property Authority (MODON) Website, accessed in 15/3/2018). (Arabic).
[430] Stallworthy, n 138, P 4.

cannot be effective and decisive in addressing the problem, as confirmed by (I-A-1) and (I-C-6), legally at least.

Interestingly, the report does not seem to recognise the need for the network governance model in the environmental sector. It is even arguable whether the policy-makers are aware of such a style of governance, as it appears to be totally absent from all the principal environmental documents in the KSA, either the legally binding ones or those that are less authoritative. That said, there are emerging trends which could potentially be stepping stones to the realisation of a more mature form of network governance of environmental protection, notably after the advent of Vision 2030. This may or may not be in the very near future.

4.2.1.4 Annual Report (2016) of the Ministry of Environment, Water and Agriculture (MEWA)

As a historical account of the development of the environmental sector is not an objective of this chapter, earlier reports released before the most recent one (2016) will not be explored. Thus, the aim is to give a snapshot of the current situation concerning the models of governance currently existing in the environmental sector.

What renders this 2016 report quite intriguing is its appearance after the introduction of the cross-cutting umbrella national plan Vision 2030. It is also important because it is crafted by MEWA, the parent Ministry of GAMEP, (with the advent of the Vision 2030, GAMEP was annexed under the ambit of MEWA). In this report, although it addresses the strategic goals consonant with the Vision and the road-map for their implementation, this Environment Ministry still predominantly opts for the formal top-down design of governance. It is clear that the Ministry and the relevant government institutions, including GAMEP, are planned to be by far the most powerful leaders and the only decision-makers and the most enabled actors in the environmental domain. As a stark example, all the 19 initiatives introduced by the Ministry as a part of the National Transition Program for the environment sector are of a bureaucracy-led nature.[431] This is not to deny its great potential, but to point to the omission of diversified forms of environmental governance.

Surprisingly, advocacy or discussion of the rationale and tools of market-based governance are absent in the report. For example, the report does not offer any account on the issue of the environmental externalities being internalised by the pollution producer, nor how privatisation, which is a theme in the Vision, could boost the outcomes and quality of environmental protection.

[431] The Ministry of Environment, Water and Agriculture, 'Annual Report' (2016) (Arabic) P 40-41, can be found at https://www.mewa.gov.sa/ar/InformationCenter/DocsCenter/YearlyReport/YearlyReports/AnnualRep_1437_1438.pdf accessed in 21/6/2017.

4.2.1.5 5-Year Development Plans

As has been the practice in former plans, the most recent 5-Year National Development Plan, covering the period 2015-2019, openly acknowledges that formidable challenges exist, notably in the environmental sector. However, despite such confessions of various formal reports, over decades, regarding the rapidly increasing environmental pressure and consequent problems, it seems that even the entrusted environmental bureaucracies do not recognise a major grassroots problem of the environmental sector, i.e. the model of governance applied. No key report, including these 5-Year Plans, has expressly advanced different styles of governance, including networks and effective pricing systems, as a potential solution or even able to contribute to addressing these environmental challenges.

For example, goals for the previous ($9^{th)}$ Plan, for the period 2010-2014, were poorly and narrowly stated to include proposals like establishing some centres and installing environmental monitoring radar equipment, air quality monitoring stations, and other items of equipment for environmental protection purposes.[432] However, none of these proposals indicated a shift in governance approach as a goal, or even a need, even though the challenges identified were in line with those highlighted above in this chapter and in Chapter 2 as shortcomings of excessive dependence on the hierarchical mode of environmental governance. For instance, the inflexibility, excessive reliance on formal actors, and lack of incentives for the private sector and industries to innovate and employ new environmentally-friendly technologies were examples of the current flaws in the environmental protection field, which were also reported by several respondents amongst the interviewed categories.

In a similar vein, the current (10^{th}) Plan for 2015-2019, does not include the desired change or even the proper recommendations in this regard. Despite its conjunction with the Vision 2030 epoch, the plan's proposal for governance of the environmental sector remains evidently suboptimal. To exemplify this, in its chapter "Building Development Security", the 10^{th} Plan endorses a national environmental initiative. This initiative is predicated on issues such as activation of environmental monitoring, resorting to higher financial penalties, ensuring compliance of the regulated parties with the licence and regulatory conditions and implementing more stringent environmental inspection mechanisms. These are obviously predominantly bureaucracy-led and top-down undertakings, which have proved rather ineffective for a very long time.[433]

Interestingly, despite the prevalence of the bureaucratic model of governance being a matter of consensus, some respondents, notably (I-C-1) and (I-A-5), did not seem to recognise this as a sub-optimal situation. (I-A-5) for example, argued that "*To me, the GEL is successful.*

[432] Ministry of Planning, 'The 9th National Development Plan (2010-2014)', P 231 (Arabic).
[433] Ministry of Economy and Planning, 'The Executive Summary of the 10th National Development Plan and its priorities (2015-2019)', P 25 (Arabic).

It has standards and statutory benchmarks. And even those issues which are not stipulated by the law, I say my opinion on the matter and it gets endorsed by GAMEP, because I provide my view as a specialist…" Furthermore, some of them, mistakenly argued that the present environmental problems are primarily due to issues such as scarcity of resources and technological under-advancement. For instance, (I-A-1) contended that "*the main environmental protection challenge is the inadequacy of the fund available to make the efforts in this respect successful*." Despite the need for sufficient financial support, this statement by (I-A-1) seems to ignore a more fundamental issue, which is the dominance of the traditional governance style, which is extensively and rightly argued by scholars, as shown in Chapter 2 and in this chapter, to be incapable of preserving the environment properly on its own.

Thus, it can be firmly concluded that this report clearly indicates the persistent deadlock of the environmental sector in the traditional governance model rather than seriously considering the potential of fiscal tools and also the bold introduction of the network form of governance. What also illustrates this perplexity and deadlock is that rather than calling for more radical change in the existing governance model in the environmental domain, the 10th National Plan proposes, inter alia, more stringent enforcement of the GEL, which is, as discussed earlier, massively top-down in nature.

4.2.1.6 A Regional Document

As pointed out earlier, the "Draft Document on Environment Governance for Environmental, Sustainability in the Islamic World" adopted in ISESCO's 6th Islamic Conference of Environment Ministers "Climate Change: Future Challenges for Sustainable Development" is not the only regional document that addresses environmental issues. However, the reason it is the only one focused on here is because it is, perhaps, the only regional document relevant to the KSA that completely concentrates on the topic of environmental governance, and defines its nature and characterises its dimensions. Unfortunately, in this specialised document, the different models of governance are not discussed. However, it appears that this instrument approaches "environmental governance" mainly in two modes: normatively and in a largely hierarchical conceptualisation. The first mode is preached as predicated on a set of desirable standards, such as transparency and participation. The second, as demonstrated by the recommendations for the Islamic World level, advocates what can be described as a mixture of a hierarchical and a technical model.

In general, this latter model highlights issues such as knowledge and information dissemination, establishing a shared understanding of environmental governance practices among respective countries, developing strategies for confronting potential environmental disasters, building stronger ties with regional bodies, and catching up with relevant UN and international developments. The report omits the reality that these recommended practices cannot be properly pursued in an excessively state-centric manner. As well as being rather

vague and broadly-drafted in many places, this report omits the potential significance of pricing systems as well as the power of the network model of governance in the environmental arena.

The interesting finding was that none of the interviewees showed awareness of this regional document or its content. All of them, however, agreed that the regional level of environmental governance was still ineffective and that the documents produced by such organisations had no obvious influence on the national environmental policy-making process.

4.2.1.7 Vision 2030

As explained earlier, the Vision is intended be a turning point in the KSA's socio-economic history. It is meant to be a radical solution to the myriad challenges at different scales that confront the KSA and its economy, which is sustained primarily by an unsustainable "extractivist" approach. Although the Vision is largely an economy-driven reformist plan, nevertheless, it is likely to have, sooner or later, a variety of repercussions on almost every aspect of the KSA's national and international policies. This Vision 2030 is believed to be unique, as it is launched from the top level of the state, "integratively" addressing all the government executive bodies, which distinguishes it from the multiplicity of "sectoral-based" corrective endeavours that the KSA or its institutions have introduced over its past history. Thus, Vision 2030 can be deemed to be a response to the previous abortive attempts.

The Vision does not expound expressly on the issue of the governance model in the environmental sector. It can be rightly contended that the topic of a governance model is inevitably, but not exclusively, a political issue, and yet, technically-speaking, the Vision distinctly refrains from indulging in political affairs. Having said that, it can be argued that the Vision is a plan that advocates primarily a state-centric governance model, including in the environmental field, however, with some neo-liberal-flavoured ideas. This statement is supported by the fact that the Vision per se is a centrally planned policy document. In addition, its entire range of initiatives, objectives and also means are largely of a bureaucratic nature; however, it does use or suggest pricing system mechanisms to some extent. In this sense, it can be said that the Vision is thus consistent with Macrory's statement that economic tools "*provide a mechanism for government to influence the direction of behaviour without determining solutions*."[434] Thus, this can be recognised as some sort of start in diversifying governance styles or tools from a direct bureaucratic interventionist approach to a more indirect and fiscally-based form of control, which, if implemented properly in the environmental protection arena, has a great potential for abating pollution and reducing waste.

As to the claim of a sense of neoliberalism rooted in the Vision, this can be supported by the fact that the Vision clearly endorses strategies and proposals that eventually produce relatively "less government". In other words, the Vision embraces ideas that end up in rolling

[434] Macrory, n 145, P 136-137.

back the role of the state as directly in charge of doing everything. Thus, these strategies and initiatives aim at more privatisation, contracting out public services, deregulation, a freer market, and more utilisation of pricing and taxation instruments to direct social behaviour.[435] This neo-liberal sense[436] can be demonstrated by this statement put forward by the "Thriving Economy Open for Business" Theme in the Vision documents, as:

> "*Opening Saudi Arabia further for business will boost productivity and smooth our journey to become one of the largest economies in the world. We will improve our business environment, restructure our economic cities, create special zones and deregulate the energy market to make it more competitive … We will further pursue public-private partnerships, continue to facilitate the flow of private investment and improve our competitiveness. We will develop the necessary capabilities to increase the quality and reliability of our services. … improving the business environment and enforcing contracts. … We will allocate prime areas within cities for … retail and entertainment centers, large areas along our coasts will be dedicated to tourist projects and appropriate lands will be allocated for industrial projects. We will enable banks and other financial institutions to adapt their financial products and services to the needs of each sector … We will also facilitate and expedite licensing procedures … We will … create a business environment conducive to long-term investment. We will strive to facilitate the movement of people and goods, and to simplify customs procedures at our ports. As a result, we will create an environment attractive to both local and foreign investors, and earn their confidence in the resilience and potential of our national economy …"*[437]

The Vision recognises the crucial role that environmental protection occupies in achieving the desired national economic and social objectives. Interestingly, however, the focus has been directed towards ambitious environmental goals per se, without coupling these with diversifying the means, i.e. the governance models required to pursue such environmental targets. This suggests that one key cause of the persistence of, and increase in the scale and diversity of the environmental problems afflicting the country is the drivers and the grounds, in terms of both quality and quantity, of the governance models applied in the environmental sector. For example, the Vision sets out that:

> *"We will seek to safeguard our environment by increasing the efficiency of waste management, establishing comprehensive recycling projects, reducing all types of pollution and fighting desertification. We will also promote the optimal use of our water resources by reducing consumption and utilizing treated and renewable water. We will direct our efforts towards protecting and rehabilitating our beautiful beaches, natural reserves and islands, making them open to everyone. We will seek the participation of the private sector and government funds in these efforts."*[438]

[435] The potential for the success and effective pursuance of such neo-liberal terms in the particularity of the KSA's context is a fertile area of scholarship so future studies in this area are strongly encouraged.
[436] Of course, being a neo-liberal in a quite pure form is out of question in the KSA. So this might be very arguable for economists studying the capitalist western economies.
[437] http://vision2030.gov.sa/en/node/7 'Thriving Economy Open for Business' (Vision 2030 Kingdom of Saudi Arabia Website, accessed in 25/6/2017).
[438] http://vision2030.gov.sa/en/node/10 'Vibrant Society with Fulfilling Lives' (Vision 2030 Kingdom of Saudi Arabia Website, accessed in 25/6/2017).

This is an evident example where the Vision recognises the need for tremendous efforts to improve various aspects of the environment, and also sets specific important goals. However, the inevitable preconditions of developing the environmental governance itself are left obscure, implying that there will be no significant change in this regard and the status quo will be sustained.

There is a recognisable absence of any of the network governance mechanisms in the Vision. None of the characteristics of network governance identified in Chapter 2 and highlighted in this chapter are expressly adopted by the Vision. These include premises such as inclusivity and horizontality of environmental actors, negotiation and cooperation between the network members, informality between actors, and the emphasis on trust between them. Thus, the Vision would have much grassroots potential for environmental protection if this mode of governance was to be considered in the future. According to the interviewees in all categories, network governance is a style of governance that is unknown to many workers, leaders and practitioners within the KSA's environmental governance sphere.

4.2.2 Qualitative Analysis

4.2.2.1 Introduction

Nine main themes and sub-themes were identified from the responses received from the interviewees and resulting from the prepared questions put to them,[439] which were premised on the literature review conducted in Chapter 2. Because of the nature of the semi-structured form of interviewing, participants were flexibly allowed to raise issues they deemed significant and related to the issue at stake. This allow the researcher to investigate the KSA's approaches to environmental governance in a way that both builds on the literature and extends and develops the theories proposed by existing scholarly discussions into a new context. This in itself is a primary contribution pursued by this chapter.

4.2.2.2 The Prevailing Mode of Governance in the Environmental Protection Domain

It is clear from the interviewees' comments amongst all the categories that the current environmental model is overwhelmingly of a top-down style, in terms of both structure and mechanisms. From the aggregate responses of the participants, it can be concluded that the current environmental system in the KSA is closer to environmental "government" than environmental "governance". This can be exemplified by the great predominance of direct regulations rather than economic instruments, and network governance strategies. This significant reliance on the administration-led model is equally applicable in the zones perceived to be more environmentally advanced and stringently administered, namely the RCJY; this organisation has largely embraced the same form of governance, though with closer attention

[439] See Appendix B.

and more monitoring stringency backed up by a higher level of technology than that at GAMEP's disposal. Thus, the finding of the qualitative analysis was in perfect correspondence with the legal analysis conducted above in this regard.

The prevalence of this model of environmental governance brings about the problems discussed by Stewart which led him to describe this model as a "*Failing Paradigm*".[440] Indeed, the disadvantages he highlights are relevant and can be observed in the KSA's environmental framework. The disadvantages identified by Stewart include the infeasibility of central environmental planning because of the inability of the central planners to continuously collect up-to-date data regarding the regulated entities and their changing circumstances. This model also fails to enhance innovation, allow flexibility and incentivise the regulated entities to willingly adhere to environmental protection considerations. Another disadvantage arises from the problem of issuing a uniform set of environmental regulations for diverse activities and various regulated entities, resulting in regulations with an obviously "procrustean character"[441], that are not necessarily well-suited to some of those regulated parties.

Interestingly, several participants from all the interviewed categories did not recognise these flaws as existing challenges. Despite generally acknowledging the sub-optimal situation of the environmental protection field, and the inability of GAMEP to deal with the types of environmental changes, they suggested technical reforms within the same hierarchical model. The argument of many of the participants, similarly to some recommendations of official environmental reports, included suggestions such as empowering GAMEP with more "forcing power", providing it with higher funding and boosting its monitoring ability. Thus, although interviewees clearly recognised the situation as imperfect, they were surprisingly unware of the more overarching issue related to the "model of governance" being implemented rather than merely as a technical problem. This is also in line with the arguments and suggestions presented by some governmental environmental reports issued, for example, by GAMEP.

Finally, but importantly, the depiction by Stewart of the very strong presence of the administration in environmental governance procedures as a "failing paradigm" in western jurisdictions such as the US is hardly or even not applicable to the distinct Middle Eastern context such as the KSA's jurisdiction. As discussed earlier, this is because of the pivotal and inevitable fact of the strong presence of and maybe also leadership of the state in the environmental protection domain. The argument is that, as with the historical evolution of environmental governance in advanced western countries and regions, until a certain level of maturity of environmental protection is achieved through command and control mechanisms

[440] Richard B. Stewart, 'United States Environmental Regulation: A Failing Paradigm' [1996] 15 Journal of Law and Commerce 585.
[441] Stewart, 'United States Environmental Regulation: A Failing Paradigm' P 587.

and the state-centred environmental governance model, the adoption of a relatively more advanced and newer paradigm cannot be conceived and may not be effective.

Indeed, the literature clearly shows that the introduction of more advanced mechanisms that are not inherently state-interventionist was normally preceded by securing a certain level of maturity and a considerable degree of success in enhancing overall environmental quality and abating pollution by the largely effective application of environmental top-down regulatory mechanisms. The subsequent need for a more varied regulatory toolkit and for more advanced styles of environmental governance emerged mainly as a result of the evolution of environmental challenges and the environmentally-stressing level of urban development reached by these countries. Thus, as a Middle Eastern case study, the KSA's environmental governance is likely to follow this natural incremental evolution. Thus, the direct regulation style remains very important for the KSA and the state-centred environmental governance paradigm might not agree with its portrayal by Stewart as an automatically "failing paradigm". Rather, it is an important and natural stage that needs to be significantly improved in moving towards certain level of maturity. Then the historical, natural, and perhaps inevitable result is the emergence of different forms environmental governance.

4.2.2.3 The Position of GAMEP

Beside the maintenance of a highly top-down style of governance of the environmental sector, one of the remarkably controversial recurring issues among the respondents from the different categories was whether or not the Environment Agency, i.e. GAMEP, still holds a high position in the environmental hierarchy. After the recent significant restructuring of the government introduced in conjunction with Vision 2030, GAMEP has been amalgamated under the newly created Ministry of Environment, Water and Agriculture (MEWA).[442] Thus, it has become a semi-independent entity, rather than the previous situation, in which it was totally administratively independent. According to some participants, this is likely to constrain its discretion and freedom of action against and surveillance of projects belonging to the agricultural and water sectors. This is especially likely due to the fact that the leadership is now given to the Minister of Agriculture[443] rather than to GAMEP's president, who is now administratively subordinate to the former. (I-C-2), for example, argued that "*the environmental agency [GAMEP] is now amalgamated and included under MEWA's administration. This looks like it has been downgraded in the sense that it was independent and now belonging to a ministry and under its management.*"

[442] Previously each sector was independent. Formerly, GAMEP was entrusted for the environment, the Ministry of Agriculture was mainly for agricultural and grazing affairs, and the Ministry of Water was for water delivery and desalination and tariff pricing affairs. In practice, however, the restructuring of government still needs time to take effect.

[443] He is now the Minister of Environment, Water and Agriculture.

Thus, participants of all categories had divergent views as to the feasibility of the new major restructuring of the environmentally-entrusted bodies, coinciding with, and a substantial part of Vison 2030. For instance, in contrast to the above quote from (I-C-2), (I-C-4) stressed that the amalgamation of GAMEP with MEWA has led to a great result of having a Ministry of Environment. (I-C-4) stated that "*before this amalgamation we had not ministry of environment which had been reflected in weak tools in the hands of GAMEP, now the situation has changed.*" Although a few hoped this will enhance coordination of efforts and goals and harmonisation of strategies, others, deemed this as a downgrading of GAMEP's independence, constraining its discretion and subjecting it to other, supposedly lower, executive authorities. According to the latter camp, GAMEP should be an independent, superior and powerful supervisory and regulatory entity, to which all government bodies, including the Ministry of Agriculture, should be answerable and accountable. Therefore, it appears that even within the same hierarchical or state-centric model of governance, some versions within the same model are better than others. To put it differently, a good state-centric model leads to better environmental protection outcomes than a "poor or immature" state-centred governance model.

These inter-model differentiations are absent from the theorisation of the formal model of governance by writers such as Evans,[444] who discussed the top-down model of governance as if it were solely one version, with no discrepancies and no differentiated versions. In this respect, the responses from many interviewees revealed that they were advocating better and more effective versions of the existing bureaucracy-led model. A smaller number of the participants across the categories additionally emphasised the need for the use of a pricing system to conserve the environment. Surprisingly, a few interviewees, including (I-B-1), openly rejected the use of a pricing system on the grounds of keeping the cheap cost of living and the level of welfare in the society untouched. This camp mistakenly argued that the top-down model in its best possible form can sufficiently provide effective environmental protection.

4.2.2.4 More than only a Preferred Style of Governance:

One other interesting issue highlighted by some interviewees on the question of the model of governance, is that a number of participants, including (I-A-1) and (I-B-4), strongly contended that this centralised top-down style of governance has been robustly reflected in the internal functioning and performance of GAMEP. It can be concluded from their responses that this excessively centralised model of governance has now become a culture or cultural code rather than merely an application of one model of governance over others. A number of interviewees stressed that the way in which GAMEP conducts and fulfils its duties is characterised by rigid centralisation, which causes a sluggish performance in many cases.

[444] Evans, n 136, P 34-35.

According to several participants, including (I-A-5) and (I-B-4), despite the fact that it has a number of centres or branches in some regions of the country, in practice, the only decision-making centre is the headquarters in Jeddah. Issues such as the issuing of environmental certificates, endorsements of monetary penalties, EIA ratification, and enforcement decisions are all exclusively undertaken in Jeddah, with no notable authority given to the various branches scattered in the state. Probably the only role worth mentioning undertaken by these branches is merely procedural, taking notes about violating entities and sending the recommendations to Jeddah. Whether the headquarters will act on these recommendations or not, however, is an issue no one can guarantee. Even more surprisingly, in some cases, after the recommendations have been sent to Jeddah, a representative from the headquarters might visit the site under question to confirm the situation, which might indicate a lack of confidence in the capacity of its own branches, and which was reported by (I-A-4) to be "*irritating and disappointing for those working in these dispersed branches.*"

This kind of inner-relationship or interfirm relationship involving challenges between the regulator and its branches do not seem to be frequently mentioned in the discussions in the international literature. This confirms the fact that, despite some degree of similarity, Middle Eastern states such as the KSA still have their own unique challenges, which are part of their own legal reality, culture and institutional setup. For example, Fiorino's discussion of the United States' environmental regulation challenges, similarly to those by many European pundits, seems to focus on the regulator-regulated relationships, including issues such as the legalistic nature of their relationship, the issue of ensuring compliance, and the problem of the limited discretion or degree of freedom given to the regulated by the regulator to abide by specific detailed rules rather than the wider discretion given to the regulated to meet broad goals, and other challenges.[445] Hence, it is clear that to advance the scholarly discussion about the particular challenges facing Middle Eastern countries such as the KSA, it cannot be automatically carried out in the same terms as existing debates and analysis conducted by western authors, and stemming from their own particular socio-legal challenges.

4.2.2.5 Various Causes of the Sub-optimal use of the Market-based Governance and Tools

The use of market-based governance tools elicited diverse responses from the different groups. In general, they all agreed on the potential of its protective value to the environment; however, they had divergent views on why the conditions are sub-optimal in this regard. Their responses in this context despite their variety, seemed to be widely complementary and compatible with each other, rather than contradictory and irreconcilable. Overall, their explanation of the imperfect status quo of the pricing system in the environmental sphere can

[445] Fiorino, n 143, P 29.

be classified as relating to social, procedural, regulatory or statutory, economic or competence-related, and power-related defects, as mentioned by (I-C-1), (I-C-2), (I-A-4).

4.2.2.5.1 Procedural Drivers

In a nutshell, the procedural shortcomings can be exemplified by the rigidly centralised management of GAMEP. As explained earlier, GAMEP's environmental inspectors have no authority even to fine the detected violators; they thus have to send their findings and recommendations to the headquarters in Jeddah; their job ends there. This is unwieldy and ineffective in a state as big as the KSA, with almost all types of environmental challenges: industrial, municipal and concerning air, water and land contamination. This was put squarely by interviewee (I-A-9) as:

> *"Unlike more environmental advanced systems, we take an exceptionally prolong period before something as simple as environmental fine can be issued. It is very extended time with multiple paperwork and signatures on them regardless of the type and indisputability of the violation. It is more than sufficient time for the violator to relaxedly disappear unpunished. The situation gets even worse when the environmental offender is a government agency or public-service provider. I personally have witness a case where the fine issuing procedure squanders approximately three years to be finally issued!"*

More significantly, the issue does not arise solely out of the lack of fining authority granted to inspectors but, more profoundly, the statutory options in front of GAMEP to adopt the economic-based tools are rather restricted. The fiscal tools in their economic-based toolkit provide very poor and limited choices. For example, the mechanisms or tools advanced by authors such as Hahn and Stavins,[446] and Fisher, Lange and Scotford[447] remain, so far, inapplicable to the KSA. For instance, more than two decades ago, Hahn and Stavins, proposed fiscal tools such as pollution taxes, marketable or tradable allowances or permits and refundable environmental surcharges known as deposit-refund schemes.[448] These environmental developments are clearly absent from the environmental protection domain in the KSA. The more surprising aspect, is that some interviewees were either unaware of such techniques, or argued against their introduction into the KSA's environmental governance domain, due to their perceived negative repercussions on prices and the welfare of the members of society.

4.2.2.5.2 Regulatory Challenges and lack of Vision 2030 Awareness

Regarding the regulatory demerits, it was widely accepted amongst the interviewees, including by (I-A-4), (I-A-8) and (I-C-3), that the GEL governs this issue rather poorly, due to the manner in which it was drafted more than a decade ago. However, the real problem does not seem to be just the exclusive classification of the major crimes, which deserve significantly

[446] Hahn and Stavins, n 153.
[447] Fisher, Lange and Scotford, n 1, P 492-493.
[448] Hahn and Stavins, n 153.

higher fiscal sanctions, nor the very low financial caps dictated by the GEL, which any dispute settlement panel or court cannot exceed in any condition whatsoever. What appears more dissatisfying was the interviewees' very limited understanding of Vision 2030 and its influence on the environmental arena, and more directly on the GEL. For example, none of the interviewees from any of the groups showed awareness of the fact that the Ministry of Economy and Planning, through its periodic 5-Year Development Plan Report, has actually adopted an initiative that proposes raising the fiscal environmental penalties and also introducing a new ones.[449] This lack of awareness could be due to the well-known challenge of the lack of coordination and systematic communication among public institutions, which was also reported by several participants in different contexts, as well as being confirmed by several government reports. This issue will be discussed elsewhere in this thesis.

Regarding the issue of bearing the financial liability of the environmental harm caused, the new direction set by the Vision actually aligns with the principle of environmental liability as presented by Lee. The duty of the offender to pay for the environmental damage caused is in tune with the logic and spirit of Vision 2030, and also more specifically with what the Ministry of Economy and Planning has quite recently announced. This new attitude is likely to make the principle of environmental liability that has been in place in Europe for long time[450] more relevant and bearing a higher potential for the KSA in the 2030 timeline scale.

4.2.2.5.3 Economic and market Issues

As far as the economic cause is concerned, it can be clearly inferred from the responses that part of the reason for the low use and sub-optimal application of the fiscal tools is due to issues related to competition and the market itself. For instance, instruments such as tradeable pollution permits automatically assume a large and strong enough market that is able to exchange such permits among competing manufacturers, and further, it creates "*a brand new market*".[451] This is not yet the case in the KSA, where the market is quite immature, due partly to the monopoly of some producers, as well as a strong governmental presence in the market. Market tools by their name suggest a real free-market! Such unique or context-specific challenges relevant to the KSA's context do not seem to have be highlighted by authors coming from different jurisdictions, including Holder and Lee. Another example, is where Roberts identifies different challenges to the application of the tradable permits, notably their tendency to concentrate certain pollution in specific geographical locations.[452] These types of challenges existing, for example, in the USA have little relevance to the KSA's environmental

[449] Ministry of Economy and Planning, 'The Executive Summary of the 10th National Development Plan and its priorities (2015-2019)', P 25 (Arabic).
[450] Lee, n 107, P 204.
[451] Jane Holder and Maria Lee, *Environmental Protection, Law, and Policy: Text and Materials* (2nd edn, Cambridge University Press 2007) P 428.
[452] Roberts, n 152, P 201.

governance, which significantly lags behind in terms of the economic toolkit options available for achieving environmental ends.

What provokes concern in this regard is the unawareness among several of the interviewees about the variety of tools provided by the pricing system. The exception is the Royal Commission for Jubail and Yanbu (RCJY) administration and some industries located there. Although the market mechanisms are not yet applied satisfactorily there, nevertheless, the respondents' relatively higher awareness can be associated with their strong direct ties with the international market. However, even within the RCJY the use of the fiscal penalties was reported by (I-B-4) to be occasionally imperfect. He confirmed that:

> *"Based on their economic and profit calculations, some plants, in certain cases, prefer to continue the unlawful release of some gases and pay the fine. It is much more expensive if they try to reduce the production or temporarily stop the process. It is also more expensive to find a radical solution. So, plants sometimes recourse to this. And the monitoring authority is also satisfied, as they believe they are imposing the regulations stringently."*

4.2.2.5.4 Power-related Concerns

Finally, the power-related reason is due to the fact that introducing the pricing system into environmentally-affecting goods would be way outside the competence and power of GAMEP. interviewee (I-A-3) stated:

> *"We would like to deploy more effectively the power of prices for the of environmental protection. We called for this in different occasions. But it proved way beyond our authority and entails numerous economic and social consequences. This needs a strong pushing from the top".*

This reaffirms the prevalent top-down governance style discussed above. Interestingly, however, this dominance of the hierarchical style is accompanied by considerable weaknesses in the operation of this model of governance. A clear manifestation of such shortcomings is GAMEP's incapacity to even enforce the GEL, notably the Articles associated with criminal liability for the offenders. It was surprising that all the groups of respondents agreed on the fact that the criminal-law provisions had no application in real practice, and GAMEP was ill-equipped and under-empowered to be able to enforce the environmental criminal law on offenders and coerce them to comply with the GEL. This is in stark contrast with what Wolf and Stanley described as the case in England, for example, where the environmental regulator has the power to force the perpetrator to abide by the law, with a wide discretion that includes the possibility of prosecution.[453] Therefore, even the top-down, command and control style of regulation that exists in some areas in Europe and is developed by European authors does not extend to and is not so far applicable in Middle Eastern jurisdictions such as the KSA, for particular reasons, mainly power-related challenges.

[453] Wolf and Stanley, n 142, P 9.

4.2.2.6 Network-based Governance

As to the network style of governance, which is known to be driven by trust and surrounded by informality, bringing the whole variety of stakeholders together, sharing common goals and exchanging ideas and information, this was unanimously reported to be simply not there. Although there might be some voluntary initiatives from the civil society, and there may be some environmental forums and conferences that have a degree of informality, these by no means amount to a network environmental governance model.

Thus, characteristics and qualities of network governance such as informality,[454] trust,[455] inclusiveness and its multi-actor character and negotiation and enhancing social learning[456] through the exchange of information,[457] and encouraging innovation and cooperation[458] are not currently present in the environmental governance system in place. Thus, it can be concluded that the theorisation of the network governance generated from the western scholarly discussions is still either not relevant or not applicable in the KSA's environmental domain.

In short, far from having a fully mature environmental network governance system, major aspects of network governance remain unavailable. The surprise, however, lies in the fact that many interviewees across the categories were unaware of the existence of this model of governance. Perhaps more surprisingly, some respondents, including (I-C-1), even doubted the feasibility of this model of governance for environmental protection purposes, regarding it as not sufficiently threatening and deterrent. For them, unless the administrative power was exercised and there was coercion of regulated parties to abide by the rules, the system would not be adequately effective, since the lack of these powers and enforcements is a sign of weaknesses in the system and of the environmental regulator. In other words, to them, unless the regulated persons are clearly subordinate to the power of the regulator there must be an issue that needs to be redressed. Yet, this clearly goes against the tenor of network governance as theorised in the literature.

4.3 Key Lessons and Conclusions

This chapter has analysed the current state of the KSA's environmental governance as a case study from the Middle East in the light of the discussion and theorisation available in the literature, which is of a western and European focus. The analysis in this chapter comprised two distinct forms: legal doctrinal analysis and qualitative analysis, thus allowing distinctive findings and contributions from each genre of analysis. For example, the legal and doctrinal analysis reveals areas of strength and weaknesses in the drafting of the environmental legal

[454] Jones, Hesterly and Borgatti, n 167, P 913.
[455] Kersbergen and Waarden, n 21.
[456] Lubell and Fulton, n 170.
[457] Gibbs, n 170.
[458] Lubell and Fulton, n 170.

and policy-making documents with regard to the models of governance. Hence, redressing these identified doctrinal issues is likely to contribute to improvements for the existing paradigm of environmental governance. On the other hand, the qualitative analysis was built on semi-structured interviews and questions derived from the predominantly western and European literature and scholarly theorisation, which allowed the respondents to freely comment and depart flexibly to bring specific and distinct issues to attention.

As pointed out above, these extension points and unique challenges in the KSA context have rarely been adequately highlighted (or often not mentioned at all) and discussed by the literature. Therefore, the identification of the above themes in the qualitative analysis and the extension points are also a contribution targeted by the chapter. Thus, the examination of the models of governance existing in the KSA provokes new discussion about unique emergent issues and challenges that are particularly related to the KSA as case study from the Middle East, which has no equivalent in the scholarly analysis focussing on advanced western and European jurisdictions.

A total of *ten* novel contributions were identified through the analysis in this chapter, which are identified in the paragraphs below. In each case these contributions are weighed against the existing literature to see to what extent the theories put forward need to be extended or amended to accommodate different cultural and regional contexts.

1- **Unique Challenges in the KSA's Environmental Governance:** Despite the existence of some similarities, it has been established that not all the theorisations presented by scholars in the international literature are relevant and automatically applicable in Middle Eastern contexts such as the KSA. Therefore, the qualitative analysis of the environmental governance in the KSA, particularly, has triggered new and unique themes to be raised which are absent from the existing scholarly analysis in the literature which is predominantly focused on western jurisdictions. For instance, the interview questions on the model of governance prompted discussions on issues about subjects, such as awareness within and between environmental institutions, and power-related issues.
2- **The Degrees of Presence of the Three Models:** The legal and qualitative analysis revealed varying degrees of presence of the models of environmental governance in the case study. The hierarchical model was clearly dominant, followed by the market-based model and lastly the network model of governance, which barely existed, if at all. From the legal and qualitative analysis it was found that all these models, and especially the first two, have their own challenges and issues that still hinder their better application.
3- **The Most Prominent Model of Environmental Governance:** The prevailing governance model in the environmental arena in the KSA is the formal and hierarchical model. Although this is not identified in any of the official documents or reports, nevertheless, it is prominent and can be observed in the various documents. This is due to, inter alia, the lack of

awareness among the environmentally-entrusted bodies about the development of the alternative models of governance and their mechanisms. This issue of under-awareness was confirmed by both the documentary and qualitative analyses. The consequence is that mechanisms such as command and control regulations, and licence-based permissions remain the default tools for environmental protection so far.[459]

4- **The Drawbacks of the Existing Hierarchical Model:** With regard to the shortcomings that appear when the hierarchical style of environmental governance prevails, through the direct command and control regulations, the findings of this chapter, from both the qualitative, and documentary and legal analysis, are in line with those laid out in the literature. In other words, the drawbacks of the over-reliance on direct environmental regulation and top-down environmental governance are also relevant to the KSA, as identified by this chapter.

5- **Inherent Challenges in the Bureaucracy-led Environmental Governance Currently in place:** The discussion of the KSA's main mode of governance in the environmental sector and the evidence examined show that some issues are not merely due to the prevalence of the vertical style of governance, but because application of this top-down governance mode per se is far from perfect. Since this mode of governance is largely administrative in nature and bureaucracy-reliant, the analysis identified multiple challenges regarding, inter alia, the capacity, power and personnel of the environmental bureaucracy and mainly GAMEP. These unique challenges have been largely derived from the qualitative analysis process and raise issues that have not been focused on by the respective literature. Therefore, the findings of the analysis suggest extensions that can be added to the theories on environmental models to accommodate the unique issues arising when these theories were examined in a distinct socio-legal context; i.e. that of the KSA. This is a primary contribution pursued by this chapter.

6- **The Need to Promote Active and Effective Employment of the Fiscal-based Model, and the Potential of Vision 2030:** The legal and qualitative analysis revealed a minimal level of employment of fiscal tools for environmental protection ends. Some of the reasons identified behind this sub-optimal situation were found to be particular to the case study and largely absent from the wider literature. These unique contributing problems identified include regulatory, power and awareness-related issues. However, it is considered that the national master plan of Vision 2030, has a great potential to address this challenge.

7- **The Absence of Application of Mature Network Governance Application and the Potential of the Vision 2030:** The introduction of network governance in the environmental domain would be a quantum leap in the long-term efforts to combat environmental problems. This model of governance is absent in the environmental field, despite some of

[459] Their effectiveness and enforcement will be discussed later in different chapter.

its characteristics being called for in some official environmental documents. However, such documents do not exhibit awareness of the full and mature picture of this form of model. As with the previous point, it is believed that Vision 2030 has a strong potential to push in this interesting direction for the goal of protecting the environment.

8- **Awareness of the Environmental Governance Models:** The qualitative analysis shows that participants had very limited knowledge about the models and tools existing in the arena of environmental protection. Limited awareness was observed of the potential advantages of fiscal tools, and the disadvantages of the excessive use of the command and control mechanisms. Even less awareness was demonstrated by participants from all groups regarding the concept and potential of the network governance model. Thus, it should be of no surprise that some participants attributed the problem to technical secondary issues rather than to larger issues such as the style of governance. This focus on the top-down model by some participants is quite consistent with the content of the various official reports.

9- **Understanding of Vision 2030 and the Need for Training and Qualifications:** Based on the qualitative analysis, it was quite surprising to find that participants of all categories had divergent views regarding the repercussions of the recently introduced Vision 2030 on the environmental sector and its models of governance. It was also concerning to discover that several respondents, notably from (I-A) and (I-B), had no certain view and also lacked awareness of the new ideas relevant to the models introduced by the Vision. This is in line with the widely reported issue, either by interviewees or in government reports, regarding the relatively weak levels of qualifications and low level of training and education held by staff in several industries and official workers in the environmental protection field.

10- **Scepticism towards the Application of New Mechanisms:** It was surprising to find that the desirability of more diverse models of environmental governance was contested among the categories, including those within the same category. For instance, participants exhibited sharp disagreement as to the feasibility of the internalisation of goods and services to the environmental harms or “externalities”. Those who argued against this concept contended that it will have damaging effects on industries and individuals and thus on the whole economy. Several interviewees believe that the introduction of fiscal tools such as environmental taxes would cause a large-scale national problem, as people will not be able to maintain their standard of living.

In conclusion, it can be recognised that the current environmental governance style is overwhelmingly premised on bureaucratic intervention. This is widely criticised by the extensive literature addressing the different models. In fact, this is argued to be environmental “government” not governance. This is, inter alia, because the actor is in reality and

predominantly the bureaucracy, with no significant roles granted to the other stakeholders. Thus, the potential of pricing, people, industries and other stakeholders is not drawn on for environmental protection purposes. Thus, it can be concluded that more diverse governance models, properly introduced in the KSA's environmental sector, are very likely to boost the effectiveness and quality of the environmental conservation efforts in a much more modern and cost-effective manner. However, as discussed in this chapter, a certain level of maturity of administration-led governance needs to be reached before the introduction of the next, more advanced, levels of governance mechanisms, such as market-based or network-based governance mechanisms is possible. This is not least because the state is the one who sets the stages for these developments, at least initially. Thus, the KSA is no exception and likely to follow the same route of incremental environmental development. Fortunately, this in tune with and can be facilitated by the Vision 2030.

5 Chapter Five: Environmental Governance, Climate Change and the Special Characteristics of Environmental Challenges – Integration Principle Focus

Abstract

Focusing on the Kingdom of Saudi Arabia as a key Middle Eastern case study, this chapter addresses, from a legal and environmental governance perspective, the unique challenge of climate change and the special characteristics of environmental challenges in terms of their complex, uncertain and transboundary nature. The chapter investigates and analyses how the environmental governance and legal arrangements in Saudi Arabia respond to these peculiar challenges. To ensure depth and quality, the analysis is first premised on a doctrinal approach, unpacking hard and soft law and policy instruments and identifying several legislative and regulatory issues and gaps inherent in these documents. In addition, the chapter utilises a qualitative approach, using original data generated by semi-structured interviews undertaken with 27 interviewees, including practitioners and scholars directly involved in the environmental governance domain. This genre of analysis facilitates discovering challenges which may be less legal, such as psychological factors, which feed into and influence either the formation or implementation of the law.

The contribution sought by the chapter is not solely the exploration of the previously unexplored and undocumented Saudi environmental law and governance jurisdiction, although this is important. The more significant, and primary, contribution pursued here, is the discussion of the contextual and Saudi findings of the analysis in this chapter in relation to the extensive environmental governance literature that is predominantly western-produced and mainly represents European-led theories, analysis and thoughts. This allows for a firmly grounded discussion and conclusion on the extent to which the existing theories of environmental law and governance are relevant and suited to the unique Middle Eastern legal context of the KSA's jurisdiction.

5.1 Introduction

The second part of the literature review in Chapter 2 has already provided some background to the special environmental challenges addressed in this chapter. These are the issues of climate change and the distinctive characteristics of environmental problems in general, mainly their cross-boundary complexity and uncertain nature. The intricacy of environmental problems requires environmental considerations to be integrated holistically at the various sites and in the different environmental media, rather than protecting the environment in certain limited geographical areas or one medium in the environment more than others.

Such fragmented treatment of environmental ills will not bring about effective overall protection. Thus, pollution and environmental issues must be tackled in an integrated style that equally takes care of all geographical areas, and is manifested in all policy areas, rather than imposing more stringent measures in certain regions, in a disconnected manner that does not respect the unique character of environmental problems. The purpose of this principle is to "*avoid otherwise contradictory policy objectives*",[460] taking into account that environmental issues are profoundly implicated in the entire development process, including in the activities of the bureaucratic machinery. This integration principle forms the general analytic framework of this chapter, in both sections.[461]

This chapter explores these issues in the context of the current status of environmental governance in the KSA. It investigates how the Saudi environmental governance system is responding to these environmental challenges. The chapter also unpacks the degree to which this understanding of the nature of the environmental issues has been considered and incorporated by the overall environmental governance arrangements in the state.

This law-in-context chapter is divided into two main sections. One is primarily a doctrinal unit, discussing the principal environmental laws and policy documents and reports from the KSA. The second part is qualitative, mostly based on the contributions from responses generated via the semi-structured interviews. Hence, the analysis of the chapter is also informed by the interviewees' responses, which are divided into four main categories: the civil servants or the

[460] Bell and McGillivray, n 107, P 56.

[461] This is important to be established at the outset because the integration principle can be interpreted in very different ways, including economic interpretations that focus on cost and price signals which are irrelevant to the discussion in this chapter. See for instance, Frank J. Convery, 'Insights from Environmental Economics in the Integration of Environmental Policy into Decision-Making' in Alessandra Goria, Alessandra Sgobbi and Ingmar von Homeyer (eds), *Governance for the Environment: a Comparative Analysis of Environmental Policy Integration* (Edward Elgar 2010) P 1. Some have more radically questioned the qualification of "integration" and its content, arguing that its instinctive appeal masks great ambiguity. See Asa Perrson, 'Different Perspectives on EPI' in Måns Nilsson and Katarina Eckerberg (eds), *Environmental Policy Integration in Practice: Shaping Institutions for Learning* (Earthscan 2007) P 25-26.

official group (I-A), representatives from businesses and industries (I-B), the academics (I-C), and representatives from environmental societies (I-D).[462]

In addition to exploring the KSA's environmental governance system with regard to how it deals with these unique challenges and properties of environmental problems, more significantly, this chapter aims to build on the theoretical accounts and bring the debates crafted by western environmental law and governance scholars into the different jurisdictional and contextual landscape of the KSA's environmental governance system. This theoretical extension will examine the degree to which such accounts are relevant for the KSA's jurisdiction and, accordingly, how urgent is the need for more scholarly contributions from future studies in the KSA and regional contexts. Such studies need to be tailored to address the unique contextual challenges that are rarely addressed by the wider international literature.

5.2 Legal Analysis

This section focuses on the status of the issue of climate change and how it is responded to by the KSA's principal environmental legislations, and the consideration given to the special characteristics of environmental challenges. This doctrinal focus (law and soft law) is also informed by evidence from the in-depth data generated by the interviews.

5.2.1 The General Environmental Law (GEL):

5.2.1.1 Climate Change

Strikingly, although it is the principal environmental statute, neither the GEL nor any other equivalent legal instrument has integrated and addressed the issue of climate change. The omission of this issue creates a significant gap in the legal medium in the KSA. Although the climate change issue is dealt with by other "softer" instrument, as will be demonstrated below, the absence of any legally-binding targets in the GEL is likely to confuse or at least relax the commitment by the administrative bodies in this regard, at the national scale.

This legislative vacuum that can be traced back to a prominent feature of the KSA's legislative domain, which is the general lack of responsiveness by the entire legislative machinery to issues that arise, let alone with regard to what are perceived as less urgent issues, such as environmental issues and climate change. A typical example is the GEL itself which has not undergone any updating and review process since its release in 2001. One of the causes of this lack of responsiveness is the procedure the legislations have to go through from their creation up to their endorsement. It is outside the scope of this chapter to give detailed insights into the various technical, procedural and substantive procedures any standard legislation has to pass through in order to be officially approved and operating. The situation is likely to be even more cumbersome in the case of highly technical legislations such as environmental laws and regulations.

[462] See Appendix A.

This type of challenge seems to no longer exist to the same extent in leading European states, notably the UK. For example, the enactment of the UK Climate Change Act in 2008 seems have to transferred the challenge to the next step of practical challenges, including issues regarding judicial interaction in climate change issues, and the potential of judicial review in this regard.[463] Even in more recent literature, the issues examined in western jurisdictions are obviously less thematic, and frequently highly technical.[464]

At the time of the introduction of the GEL, climate change was not a burning issue of legal concern internationally and certainly not nationally. This, at least partly, explains the absence of this issue from the main environmental legislation in the KSA. More importantly, there are issues related to the complexity and polycentric nature of the problem of climate change per se. These are reflected in the formidable challenges facing lawyers and adjudicators in addressing climate-change-related legal disputes. These legal challenges and the "*legally disruptive nature of climate change*" are not only relevant to the Middle East region or developing countries, but are a global phenomenon also encountered in the most advanced parts of the world.[465] When it was first introduced, the GEL came up with a set of legally-binding rules addressing the mainstream environmental problems at that time, including air pollution, land contamination and surface and ground-water pollution. Unfortunately, the GEL is far from perfect even when dealing with such long-acknowledged environmental challenges, as acknowledged by interviewees from all four categories.

The inactivity and relative stagnancy of the legal and legislative jurisdiction has led to an established practice by several executive bodies, which is recourse to ministerial decisions and administrative orders in order to fill the legislative gap regarding many national issues where the laws are either out-dated or simply do not exist. For instance, this explains why the Ministry of Energy, Industry and Mineral Resources (MEIMR) is taking the lead nationally and internationally concerning the issue of climate change.[466] The drawback of this reactionary and sector-based approach is that it results in a non-integrated, sectoral and sporadic type of governance that is by nature neither comprehensive nor systematic.

Interestingly, it is noted that one of the challenges in the KSA, as will be addressed below, is that MEIMR is the main mandated authority to lead and work on the climate change file, both nationally and, more prominently, internationally, with comparatively negligible

[463] See the discussion about "The UK Climate Change Act – Towards a Brave New Legal World?" in Macrory, n 145, especially P 270.
[464] See part 2 and 3 of Raphael J. Heffron and Gavin F. M. Little, *Delivering Energy Law and Policy in the EU and the US: a Reader* (Edinburgh University Press 2016).
[465] Elizabeth Fisher, Eloise Scotford and Emily Barritt, 'The Legally Disruptive Nature of Climate Change' [2017] 80 The Modern Law Review 173.
[466] See for example https://www.youtube.com/watch?v=YqEhsv8rL1Y 'His Excellency Khalid Al-Falih Minister of Energy' (KSA.Climate YouTube Channel, accessed in 12/9/2017).

contributions by fellow institutions such as GAMEP and MEWA[467]. This is in clear contrast to the challenges discussed in some western literature sources. For example, McEldowney, in discussing environmental law and climate change argues that one of the challenges that complicates climate change affairs in the UK is their delegation to low regional and local levels.[468] In more recent debates, one of the principal European concerns raised, especially in the UK, is uncertainty regarding Brexit and its implications for the energy sector and climate change political considerations.[469] Other western authors tackle the issue of climate change governance in federal states, notably the US.[470] This illustrates how distinct the issues in the Middle Eastern states, and the KSA can be. Consequently, to comprehensively address such contextual challenges, the existing body of international literature cannot provide a sufficient substitute for encouraging Middle Eastern scholars and writers, particularly in the KSA, to craft their own, better-fitted and regionally customised theorisations.

Hence, to provide the legislative backing for this issue requires the GEL to be updated, or even a new legislation to be created, to encompass the issue of climate change. This would be advantageous in many respects. It would reduce the potential disparate or even conflicting priorities existing within the various ministries and government institutions, thus providing a navigational tool to which all the national entities are bound. It would also open up new avenues for the courtrooms to become involved and to have a strong duty of review. This is especially important for a legislation-based legal jurisdiction such as the KSA's system, which is not a precedent-based or common law system. This is in addition to the symbolic messages that this suggested change would convey to both the public and the executive authorities. That being said, the concern of economic cost is a stumbling block that is frequently cited in the context of urging climate change legislation to be passed and materialised, especially in terms of the feasibility of suffering significant short-term and instant cost to gain hoped for advantages that may occur much later.[471]

5.2.1.2 Environmental integrational issues in the GEL

This section identifies manifestations of integrational challenges existing in the environmental governance domain. These challenges are associated mainly with the GEL.

5.2.1.2.1 Environmental Standards

The GEL is accompanied by an Appendix dictating the admissible amount of pollution to be emitted or released into the environment by industrial and development activities. Although

[467] This is made clear by the relatively rare mention of climate change in their reports and publications.
[468] John McEldowney, 'Environmental Law and Climate Change' in Raphael J. Heffron and Gavin F. M. Little (eds), *Delivering Energy Law and Policy in the EU and the US: a Reader* (Edinburgh University Press 2016) P 597.
[469] Gavin Little, 'Brexit and Energy in Scotland' [2018] 22 Edinburgh Law Review 144.
[470] Bernauer and Schaffer P451-452.
[471] Richard J Lazarus, 'Super Wicked Problems and Climate Change: Restraining the Present to Liberate the Future' [2008] 94 Cornell Law Review 1153.

this Appendix covers a wide range of potential forms of pollution and contaminating chemicals produced by the various enterprises, especially industrial activities, major issues and regulatory gaps still exist which are likely to undermine the entire environmental protection efforts exerted by stakeholders, primarily the environment agency GAMEP. Such defects appear to reflect either misunderstanding by the current environmental governance system of the nature of the environmental and ecological systems and their ills, or at least an inability to cope with them. This is reflected in the focus on air quality standards at the cost of equally important issues such as the quality of water and soil, which are largely left unregulated, as mentioned by (I-A-1) and (I-C-2). Similarly, (I-A-4) and (I-C-6) pointed out that relatively few potential chemical emissions are addressed, leaving the rest untouched. This can be clearly manifested by the fact that the Environmental Standards were issued before the GEL itself existed, which merely annexed this imperfect and incomplete list of standards to the GEL in 2001. In fact, Item 3 of Annex 1 openly states that the effective date of the Environmental Standards is August 1982. This Article in itself gives an idea of how out-dated and impractical the current standards are.

5.2.1.2.2 Prescribed Versus Non-prescribed activities

Another different but related flaw in the GEL, is that it addresses specifically certain industrial activities, such as fertilizer plants, cement factories and iron and steel plants, and expressly provides for their emissions and effluents. On a practical level, (I-A-3) claimed that this specific articulation brings about cumbersome and unnecessary disputes by organisations involved in the non-mentioned activities. Notably, according to (I-A-1), those engaged in not-explicitly-prescribed "polluting" activities who also have diligent and defiant lawyers may win legal cases, due to such regulatory loopholes. (I-A-3) put this down to the excessively legalistic approach and legislation-based style upon which GAMEP acts. Moreover, (I-A-10) noted that even where GAMEP rejects a literal application of the GEL and employs its discretionary power, it is always prone to reversal, where the regulated entity appeals or raises legal disputes. In addition, this legislation-based style of legal jurisdiction is also complicated by the lack of any specialised environmental judiciary, or any environmental knowledge being acquired by members of the judiciary.

Interestingly, the discussions about environmental standards in the European-developed literature do not reflect the existence of these kind of contextual issues.[472] For example, western environmental law scholars might focus on analysing the reasons for the proliferation of environmental standards in their own jurisdictional context, and explaining the merits of such

[472] See for instance, discussion about environmental standards in Carolyn Abbot, 'Environmental Command Regulation' in Benjamin J. Richardson and Stepan Wood (eds), *Environmental Law for Sustainability: A Reader* (Hart Publishing 2006) P 65-69. And discussion about Standards in environmental law in Bell and McGillivray, n 107, P 228-236.

benchmarks, including with regard to regulated parties and the court.[473] Alternatively, they might direct the focus to more problematic issues of environmental law standards, such as the credibility of their scientific foundation.[474] These differing intellectual and theoretical preoccupations illustrate the unsuitability of much of the western-authored literature to the particular jurisdictional issues existing in some Middle Eastern states, notably the KSA.

5.2.1.2.3 The main idea in this context

The core point being constructed here is that the failure to integrate all the potential impacting activities and harmful emissions into decision making and thus the law, makes it possible for the regulated polluting entities to "legally" manoeuvre their responsibility and to remain unaccountable. In addition, the focus of the environment standards on gaseous emissions and the weak integration of other environmental areas, make it possible, at least in theory, for industries to modify the process in order to change their release of pollutants into the air to other environmental elements, such as into ground water, for example. This is automatically aligned with the mainstream meaning of the integration principle, including the well-recognised core assumption by the Brundtland Report that "*the integration of environmental concerns into decision-making at the outset would enable policy decisions to contribute substantially to a transition toward SD* [sustainable development]."[475]

These examples represent some areas of weaknesses in relation to the concept of integration, as a clear manifestation of the fact that the currently operated environmental governance system is not dealing adequately with the special characteristics of environmental problems.

5.2.1.2.4 Vague assignment of environmental responsibilities and weakness in integration between the sectoral activities

One of the major drawbacks of the GEL and thus the environmental governance as a whole, is the vague or incomplete drafting of some of its provisions, raising major practical problems. One of the areas arising from this thematic fault is the lacuna created by imposing an obligation without decisively pinpointing who is in charge of monitoring and ensuring compliance with such an obligation. This not only results in lack of integration of environmental factors between the various relevant sectors, but more fundamentally, creates a functional and operational vacuum in each public institution, as each potentially responsible institution eludes the responsibility and casts it on another. For example, Article 12 of the GEL states:

[473] Macrory, n 145, P 303-304.
[474] Tim Jewell, 'Public Law and the Environment: The Prospects for Decision-Making' in Tim Jewell and Jenny Steele (eds), *Law in Environmental Decision-Making: National, European, and International Perspectives* (Clarendon Press Oxford 1998) P 82.
[475] Jorgen K. Knudsen and William M. Lafferty, 'Environmental Policy Integration: The Importance of Balance and Trade-offs' in Douglas Fisher (ed), *Research Handbook on Fundamental Concepts of Environmental Law* (Edward Elgar Publishing 2016) P 337.

"*1. Any person undertaking excavation, demolition or construction work or transportation of waste or soil resulting therefrom shall take necessary precautions for safe storage, removal, treatment and disposal thereof by appropriate means.*
2. When burning any type of fuel or other material whether for industrial, power generation or any other purposes, smoke, gases or fumes emitted therefrom and resulting solid and liquid waste shall be within limits permissible by environmental standards.
3. *A facility owner shall take all necessary precautions and measures to prevent leakage or emission of air pollutants in the workplace in excess of permissible environmental limits…"*

Despite the centrality of this provision, it is notable that it is unclear who is in charge of ensuring compliance with this Article: whether it is, for example, the competent agency i.e. GAMEP, or the licensing authority.[476] This major issue was explicitly and repeatedly underlined by respondents from all of the interviewed groups. In the words of (I-A-3):

"It is unclear who is in charge of monitoring the application and adherence of the industrial facilities with Article 12, for example. It is GAMEP? Or those licensing ministries? In all cases, I can assure you that GAMEP does not have either material or human resources to follow up with this mandate".

The direct consequence of such ambiguity is that this central provision occasionally remains unfulfilled, constituting a serious gap in the environmental governance system. This vacuum can be also seen as an example of the lack of integration of environmental considerations across the various sectors. With the absence of any motivational agent for the regulated entities to take care of the environment, this automatically entails the operators of the regulated activities turning a blind eye to such environmental obligations. As blatantly articulated by (I-B-6):

"*Let's be honest. We, as industrial businesses, the most important authority for us is not the environmental authority but the licensing authority, which is in our case the Ministry of Commerce. We really care about their satisfaction and don't want to irritate them. Without their licence we cannot operate and thus the entire business and our commercial interests will be at stake. If they revoke the licence or suspend our licence the business is paralysed. However, they do not focus on environmental issues or how we operate our business environmentally. In practice, their main focus is on non-environmental affairs, such as combating commercial fraud and the quality of the final product, regardless of how has been the process. And if our industry cares about the environment more than others, we will incur upon ourselves more costs giving our competitors a comparative advantage. We wish, but there is no motivation to be more environmental-friendly more than others!"*

This kind of challenge of "blurriness in terms of who is in charge of what" is not evident in the existing European-compiled literature, even where the responsibility of the environment agency and its fellow environmental protection entities is being addressed.[477] However,

[476] Using the GEL terms, the licensing authority is "*any authority in charge of licensing projects of potentially adverse impact on the environment*". See Article 1, Item 4.
[477] See chapter 8 entitled "Institutional Architecture of Pollution Control", especially the discussion about the environment agency and some fellow bodies in Holder and Lee, n 450, P 334- 341.

concerns expressed in the western literature might be raised in different aspects, including in relation to the nature of the relationship between the environment agency and the government, and to what extent it is independent and immune from anti-environmental interferences.[478] Interestingly, this kind of challenge was emphasised in relation to the KSA, however, rarely and only by very few respondents from the (I-C) category.

5.2.2 Rules for Implementation (RI)

The RI have an explanatory and interpretive function for the GEL. Strictly speaking, these are less authoritative and not, from a purely legal perspective, as obligatory as the GEL. On a practical level, however, the RI must have their origins in the GEL, and interpret and expound on these original provisions. This is important to understand, because the direct repercussion of this is that the RI does not have to pass through the same formal legislative procedures as the parent GEL. This means, at least in theory, that it is more easily updated and can be much more smoothly reviewed by the competent agency itself, i.e. GAMEP.

Yet, surprisingly, GAMEP has never subjected the RI to any significant updating, or reviewing procedure, including with regard to the polluting emissions standards, let alone introducing limits for greenhouse emissions, which are nationally much more contentious, as stated by respondents in all the interviewed categories. Problems such as lack of expertise, primarily in environmental law, institutional incapacity, lack of up-to-date technical knowledge, particularly in regard to environmental science, and lack of sufficient funding were widely reported issues by respondents across all categories. It is therefore difficult to claim that the current governance system and its principal environmental legislation is properly taking into account the intricate and special characteristics of the environmental challenges.

Having said that, the drafting of the RI indicates some consideration of the distinctive traits of environmental problems and their essential link to environmental knowledge and science. For example, Article 3, Item 3-1-1, of the RI makes it imperative on GAMEP to:

> "*Coordinate with the concerned agencies to prepare periodic reports as to the state of the Kingdom's environmental conditions and develop environmental information infrastructure and databases required to assess the state of the environment".*

Item 3-1-4 of the same Article stresses that GAMEP is tasked to:

> "*Propose projects and mechanisms to implement environmental studies in a manner that covers all the environmental mediums in the Kingdom, in cooperation and coordination with the concerned agencies research centres, national universities and regional and international centers, institutes and organizations as deemed necessary".*

[478] D. Bell and T. Gray, 'The Ambiguous Role of the Environment Agency in England and Wales' [2002] 11 Environmental Politics 76, especially P 83.

As to manifesting awareness of the transboundary nature of the environmental challenge, the RI explicitly provide for work on a wider regional and international scale. Article 3, 3-6-1, charges GAMEP with the responsibility to:

> "*Review environmental developments at regional and international levels, and coordinate with the concerned agencies and national focal points as regards regional and international environmental commitments and follow up their implementation on the national level.*"

5.2.2.1 Underlying and practical impediments

The account given above establishes that the RI does give some degree of recognition to the distinctive nature of environmental problems. However, GAMEP's failure to satisfactorily put these obligations into operation is due to various interconnected underlying impediments. Firstly, as pointed out by (I-C-3), the GEL and the RI are not products of the competent agencies, as is the norm in the legal domain in the KSA. Usually, the competent agency of any prospective enactment is the "first drafter", followed by numerous deliberations and scrutiny procedures, involving several constitutional entities. This affirms the widely reported view across the four categories regarding GAMEP's inherent institutional problems in terms of capacity, lack of experts and infrastructure available.

Moreover, according to (I-C-5) and (I-C-7), some leadership positions in the environmental governance domain have been held by individuals unspecialised in environmental science, nor have environmental lawyers been involved, which has been clearly reflected in the quality and comprehensiveness of the GEL and RI and their implementation alike. Coupled with the scarcity of training and qualifying opportunities for workers in the environmental sector, as highlighted by (I-A-2), this situation has resulted in a suboptimal understanding of both environmental science, and the environmental law. This explains the large discrepancies noted between the levels of comprehension, commitment to and implementation of the GEL and the RI among different environmental inspectors and GAMEP's personnel, which, as confirmed by (I-A-4), vary according to "*which person is handling and in charge of the case.*"

This inspection-related problem is exacerbated by the vagueness of what exactly are inspectors' duties and how much power they have. This problem is largely brought about by the absence of any statutory provision, notably in the GEL and the RI, that pinpoints and specifies the powers and responsibilities of environmental inspectors. These kinds of practical and regulatory challenges are not the concern of texts addressing environmental law in advanced European states. In the case of the UK, for example, section 108 of the Environment Act (1995) directly addresses these issues and leaves no space for vagueness.[479] Consequently, UK environmental law experts are concerned with expounding and analysing

[479] https://www.legislation.gov.uk/ukpga/1995/25/section/108 'Environment Act 1995' (Legislation.gov.uk website, accessed in accessed 16/4/2018).

these powers entrusted to environmental inspectors,[480] rather than focusing at a more preliminary level, as is the case in this chapter, which has been preoccupied with identifying the largely undocumented and undiscussed legislative gaps and challenges in the contextual issues of environmental law and governance in the KSA.

In addition, a careful reading of the above three extracts from the RI reveals that these legal provisions tie GAMEP to approach and work with other institutions. This means that these are largely procedural obligations rather than purely substantive ones. This in turn, renders the outcome of the implementation of these obligations as ultimately "out of GAMEP's control". In more straightforward terms, GAMEP may guarantee its willingness to "cooperate and coordinate with" other fellow entities; their willingness to do the same is rather questionable and in need of further improvement, as testified by (I-A-1) and (I-A-4).

Moreover, in order to properly take account of the complexity, uncertainty and transboundary character of the environmental problems, there needs to be a strong and friendly connection between GAMEP and the "science" institutions, at least at the national scale. One of the issues frequently emphasised by a number of interviewees was the fragility of this nexus. Some environmental officials put this down to the lack of resources and the funding problem, leading to the failure of GAMEP to recruit and consult environmental scholars. Some of the academics in category (I-C), including (I-C-2), suggested a more radical interpretation of this phenomenon as an issue of "confidence and trust". Although both reasonings seem to hold some truth, the second camp supported their claim with many examples which are difficult to refute. Their argument can also be evidenced by the confrontational sessions frequently presented in the media between civil servants in environmental agencies on one side, and scholars and academics on the other side.

5.2.3 The State of the Environment Report (2017)

5.2.3.1 Climate Change

Unlike its predecessors, this principal national environmental report accentuates the challenge of climate change at the national scale, for the first time. This reflects the increasing attention being paid to this central international concern. It is also in line with the nationally announced intention to considerably limit the reliance on fossil fuel in running the KSA's economy, a major driver for Vision 2030 itself. The report also highlights various national initiatives, actions and programmes by the executive and academic entities, which are designed to respond to climate change. These efforts include initiatives to be adopted by the energy, transportation, biodiversity and coastal management sectors.[481]

[480] Wolf and Stanley, n 142, P 40-41.
[481] The General Authority for Meteorology and Environmental Protection (GAMEP), 'The State of the Environment: Responsibilities and Achievements' (2017). P 88. (Arabic).

Ironically, however, these responses do not seem commensurate with the scale of the challenges raised by the report itself. For example, the report confirms the poor air quality attributed to several pollutants released from a variety of sources as a result of the ever-growing level of development and infrastructure projects. The report also points out that the challenges arise from almost every sector, at both individual and national levels. It underscores the impact of individual energy consumption, the massive operations of energy production, transformation, and delivery, and emissions and pollutants from industries and vehicle exhausts, together with particulate matter from different activities such as stone crushers, cement works and construction sites.[482]

Notwithstanding the widespread nature of this problem, the remedies, and action plans referred to by the report are clearly sectoral, fragmented and lack proper integration and assimilation of environmental issues into the decision-making process. Although the report refers to various ambitious plans and programmes responding to the atmospheric challenges, any reference to the need for overarching leadership on environmental matters and climate change is remarkably omitted. This is a major drawback, since it is self-evident that in the environmental arena, unless all actors work together, the outcome is likely to be sub-optimal. Although western literature does not ignore the issue of leadership in the context of confronting the climate change issue, discussion of such leadership normally focuses on different aspects, for example: the role of municipal leadership and mayors in localising and instigating positive responses to climate change;[483] the role of the EU leadership towards its constituent states in pursuing positive climate change efforts;[484] and at a high level, the influence of the EU leadership on the international community in regard to climate change efforts.[485]

This omission is also likely to lead to different evaluations of the importance of considering environmental issues and climate change across the various institutions. This conclusion is drawn from the documentary analysis, but is also supported by a strong consensus among the respondents in all four categories, who affirmed little consideration was given to integrating measures to maintain air quality and even less consideration to climate change. Hence, it can be concluded that the lack of integration is a major issue that creates multiple problems.

5.2.3.2 Special characteristics of environmental problems

With regard to the complexity and transboundary quality of environmental challenges, this report, like all the major reports and even environmental laws and regulations, does not seem

[482] Ibid.
[483] Taedong Lee and Chris Koski, 'Building Green: Local Political Leadership Addressing Climate Change' [2012] 29 Review of Policy Research 605.
[484] Miranda A. Schreurs and Yves Tiberghien, 'Multi-Level Reinforcement: Explaining European Union Leadership in Climate Change Mitigation' [2007] 7 Global Environmental Politics 19.
[485] Michael J Grubb and Joyeeta Gupta, 'Climate Change, Leadership and the EU' in Joyeeta Gupta and Michael J Grubb (eds), *Climate change and European leadership: A Sustainable Role for Europe?* (Springer 2000), especially P 3-4.

to sufficiently factor in the distinctive elements of environmental challenges. For example, the environmental governance framework operated appears to allow almost no room for regional directives and organisations to effectively contribute to the process of environmental protection. As a manifestation of this, like almost all the principal documents and regulations, this report does not accentuate and duly discuss the trans-national dimension of environmental law. Despite the fact that recognition of environmental considerations is on a constant rise, nationally, the regional institutions, such as the GCC, have no tangible effect within the KSA's environmental governance arrangements. This is evident from the absence of the regional dimension from this report, which was also expressly confirmed by participants across the interviewed categories, with a single, very negligible, unsupported disagreement by (I-A-5).

At the national scale, this report places formidable challenges before the entrusted institutions and policy makers, which are unlikely to be overcome without a comprehensive transformation of the current defective environmental governance system. It is easily discernible from the content of the report that the complexity and other qualities of the environmental problems far exceed the capability of the whole environmental governance arrangement to satisfactorily manage them. The shortcomings identified by the report are fundamental and diverse and exist even in essential areas of the environmental governance sphere. For example, with regard to waste management, the report reveals major obstacles with regard to regulations, social awareness, technology, human resources, and management in general. It brutally puts it that:

> "*The issue of waste management is one of the most significant problems that confront the KSA. This is due to the constantly growing quantities of solid waste and their direct ramifications on the public health, the environment and the economy. This is also complicated by the insufficient social awareness, the existence of unhealthy consumption trends within the society… In addition, the absence of the coherent system for waste management, the lack of respective laws and regulations…*"[486]

The report even goes on to point to very technical issues, such as lack of segregation of wastes at source, and the lack of data regarding their quality and quantity.[487] Interestingly, the report shows that one of the difficulties in this regard is to "convince" the waste producers and those who deal with waste treatment (the decision makers, as the report names them) to properly collect, segregate and sort the waste.[488] According to the report, the problem exists because "decision-makers" normally prefer to send the waste products to landfill, rather than to recycle or properly process them, due to the significantly cheaper cost. What is interesting here is not only the admission that such environmentally degrading practices occur on a

[486] The General Authority for Meteorology and Environmental Protection (GAMEP), 'The State of the Environment: Responsibilities and Achievements' (2017). P 195. (Arabic). Translated by the author.
[487] Ibid.
[488] Ibid.

frequent and growing basis, but the rather soft language used by the report and GAMEP in referring to this quality-of-life threatening issue.

In comparison, in referring to other critical issues, the language used is often found to be much more imperative and demanding. This reflects the relatively less urgent and prioritised status of environmental issues in comparison to economic and development issues. The latter issues are often presented in much more mandatory terms, notably when they involve similarly nationally-detrimental consequences. These examples highlight the necessity for the current environmental governance scheme to further understand and implement what is dictated by the unique character of the environmental challenges.

5.2.4 Annual Report (2016) of the Ministry of Environment, Water and Agriculture (MEWA)

Despite the relatively long history of environmental protection efforts and the environmental protection agency, this report makes it clear that fundamental concepts for coping with the complexity of environmental issues are yet to be applied. For example, MEWA, the parent ministry of GAMEP, states in the report that it has started to work on raising social awareness, and to "*integrate and factor the environmental dimension in the work of the various government sectors.*"[489] There are also other examples in the report that indicate the primitive and immature nature of the current environmental schema in confronting the highly complex and intricate ecosystem. This is well-manifested in the statement that:

> *"The Ministry has started developing a comprehensive environmental strategy to improve the environment sector. And also to develop a comprehensive and integrated environmental strategy to raise the overall performance of the environmental sector in the Kingdom of Saudi Arabia and to design the institutional framework according to the local experiences and best international practices. The scope of this strategy has been set to include the following elements: …"*[490]

Although these accounts are highlighted in the report, presumably to reassure the concerned stakeholders and observers of the environmental landscape, this is in fact worrisome and perhaps even alarming for two main reasons. First, these announced goals and measures would be supposed to have been carried out at a much earlier time, due to their centrality for any sound environmental governance system. It is inconceivable, for example, to achieve any satisfactory results without the principle of integration and without the

[489] The Ministry of Environment, Water and Agriculture, 'Annual Report' (2016) (Arabic) P 17. Translated by the author. Can be found at https://www.mewa.gov.sa/ar/InformationCenter/DocsCenter/YearlyReport/YearlyReports/AnnualRep_1437_1438.pdf accessed in 8/9/2017.

[490] The Ministry of Environment, Water and Agriculture, 'Annual Report' (2016) (Arabic) P 24. Translated by the author. Can be found at https://www.mewa.gov.sa/ar/InformationCenter/DocsCenter/YearlyReport/YearlyReports/AnnualRep_1437_1438.pdf accessed in 8/9/2017.

development process being constrained and governed by seriously considering the environment, and yet this report points out only the "starting" of the work on this.

Secondly, which is perhaps more striking, is that two decades ago the environment agency asserted in its report the importance of integrating environmental considerations in all levels of planning, and this was highlighted as one of the environment agency's achievements with regard to sustainable development at that time![491] This not only illustrates the failure of the current environmental system to effectively cope with the "wicked" and complex nature of environmental problems, but also shows its long and persistent history of inadequacy.

In addition, the report reveals that the governance style being operated and developed for the future is purely formal and ignores the capabilities and knowledge potentially possessed by local and indigenous people. For instance, the entire content of the "Achievements and Projects" presented by the Ministry is very technical and formal rather than social or inclusive.[492] One of the axioms in the scholarship regarding environmental governance is that it is never going to be sufficient for the formal actors alone to take care of the quality of the environment. As a corollary, genuine engagement by those who are in a non-formal context is very likely to boost the quality of and commitment to the cause of environmental protection. In other words, as environmental problems are normally collective in their origins, they also call for collective encounters to confront and prevent them, which is known to be central for the transformation from government to governance.[493]

Finally, surprisingly, despite the centrality of this report, as it is produced by the Ministry of the Environment, the issue of climate change is barely discussed. This is not to argue that this issue is not significant to the Ministry, but rather to pave the way for a couple of points. Firstly, the existing environmental challenges being focused on by MEWA are mainly the classical and undisputed issues rather than climate change itself. The second point is the still largely sector-based management and lack of holistic integration in the environmental governance system. For example, those who are interested in more climate change focused accounts need to refer to the announcements and materials produced by MEIMR. Although such a sectoral planning style is not ideal, it might be argued on the grounds that the vast majority of carbon

[491] Department of Meteorology and Environmental Protection, 'The Current State of the Environment Report' (2000). P 47 (Arabic).
[492] The Ministry of Environment, Water and Agriculture, 'Annual Report' (2016) (Arabic) P 66. Translated by the author. Can be found at https://www.mewa.gov.sa/ar/InformationCenter/DocsCenter/YearlyReport/YearlyReports/AnnualRep_1437_1438.pdf accessed in 8/9/2017.
[493] Louis Kotze and Caiphas Soyapi, 'Transnational Environmental Law: The Birth of a Contemporary Analytical Perspective' in Douglas Fisher (ed), *Research Handbook on Fundamental Concepts of Environmental Law* (Edward Elgar Publishing 2016) P 86.

emissions come from the petroleum and energy sector, which accounts for 92% of the total greenhouse emissions produced by the country.[494]

This is not to negate the importance of the integration of the different sectoral and executive authorities' efforts to deal with the climate change issue, which is also emphasised in western writings. What is interesting is that western writers such as Peel[495] might extend the discussion in this regard to constitutional theories and principles (such as democratic theory) which have no bearing on several Middle Eastern societies, which have their own constitutional precepts. This shows that despite some similarities in the challenges in confronting climate change and environmental issues, different concerns are always there, as a direct repercussion of the distinctions in their cultural and socio-legal contexts.

5.2.5 5-Year Development Plans

This section focuses on the most recent development plan for the period 2015-2019. As this time span cuts across the time in which the Saudi Vision 2030 came to the forefront, the influence of the Vision is profound – and yet this development plan rarely directly addresses environmental considerations. More focus is directed to economic reforms, mainly aimed at diversifying the income avenues, leading to less reliance on the unsustainable fossil fuel revenues. Of course, this has, in turn, a certain impact on the environment and the issue of climate change and greenhouse emissions.

That being said, this document makes it clear that more legal attention will be directed to boosting the quality of the environment, alongside these fundamental economically corrective measures. This includes more stringent monitoring and charging for environmental infringements.[496] Unfortunately, however, these proposed measures are not different from the conventional approach in responding to environmental challenges, both in academic writings on the subject, and in what has traditionally been applied by the environmental bodies in the KSA. The only difference is the degree to which these actions are to be implemented. Hence, this is unlikely to significantly promote the quality of environmental protection and governance. Inherent in this approach is the presumption that environmental problems are foreseeable in advance and controllable through the strictly centralised style of governance. It envisages that purely legislation-based and agency-centred approaches will be sufficient to police compliance through the threat of imposition of fiscal and administrative sanctions.

This assumption is also evident in the responses of (I-A-2) and (I-A-10), attributing the current failure of environmental governance mainly to the level of implementation and

[494] The General Authority for Meteorology and Environmental Protection (GAMEP), 'The State of the Environment: Responsibilities and Achievements' (2017). P 88. (Arabic).
[495] Jacqueline Peel, 'Climate Change Law: The Emergence of a New Legal Discipline' [2008] 32 Melbourne University Law Review 922 P 978.
[496] Ministry of Economy and Planning, 'The Executive Summary of the 10th National Development Plan and its priorities (2015-2019)', P 25 (Arabic).

enforcement, rather than to underlying causes such as the style of governance and the insufficient mechanisms made available by the current arrangement. It was more surprising to find that some respondents, including (I-C-8), supported this flawed statement that the current governance challenge is primarily an implementation issue, and not a more substantial problem. This is despite the fact that the adequacy of the traditional environmental governance design is widely refuted in the scholarly and academic field, as shown in the literature review. Thus, regardless of the level of implementation and enforcement of the existing architecture and tools of environmental governance currently in place, it is way behind the curve and incapable of dealing with uncertain, highly complex and even polycentric ecological problems.

5.2.6 An Interesting Regional Document

The document "Climate Change: Future Challenges for Sustainable Development" issued by the Islamic Educational, Scientific and Cultural Organization (ISESCO) recognises the characteristics of the environmental problems and the need for them to be absorbed by the environmental governance systems, including in the KSA. Unlike several national reports, this regional instrument stresses that current environmental challenges are rather complex and cross-boundary and unlikely to be overcome without collective, transnational and participatory efforts and endeavours. It articulates that:

> "*The environmental crisis knows no social or political boundaries and continues unabated in spite of scourges such as desertification, climate change, global warming and contamination of cross national borders. The global dimension of this crisis demands international interventions to confront all the issues in connection with environmental degradation at a planetary level and the development of a joint vision and global strategy according to a participative and collaborative approach among all the relevant players. For any measure adopted unilaterally by a government or sectoral institution, whatever the extent of its power or the mobilized resources will have neither impact nor significant effects. By analogy with economic or social regulations, environmental regulations require the establishment of a world strategy and environmental governance divided into a series of action programs at the regional, national and local level allowing intergovernmental collaboration and intersectoral cooperation*"[497]

This extract is particularly valuable to the current style of environmental governance in the KSA. It not only spotlights certain pertinent environmental issues, but also identifies major areas of weaknesses. Unfortunately, however, this document is not likely to play any substantial role, in hard or soft terms, in the environmental governance in the KSA. This lack of influence is a general feature in all "environmental" regional organisations and documents. This is discernible in several principal national environmental reports, which rarely mention regional instruments and never discuss how or to what extent they are reflected in the KSA's

[497] ISESCO, 'Draft Document on Environment Governance for Environmental, Sustainability in the Islamic World' ICEM-6/2015/3.1 can be found in https://www.isesco.org.ma/wp-content/uploads/2015/10/3-1-VE-env6.pdf accessed in 27/8/2017. P 7.

environmental protection jurisdiction. This was even more strongly confirmed by respondents from all categories, who pointed to significant gaps between the regional environmental instruments on one hand, and the national environmental governance schema on the other. Several interviewees, including (I-A-3) and (I-B-4), went further to portray the impact of the regional hard and soft law as non-existent in practice. Thus, it is hard to claim that the distinctive characteristics of environmental problems are properly integrated by the current environmental governance system.

5.2.7 Vision 2030:

5.2.7.1 The distinctive nature of the environmental challenges

As explained earlier, Vision 2030 is a master plan to revitalise the KSA's economy and therefore society in multiple dimensions. Yet, it is not clear if the intricate characteristics and complexity of the environmental challenges have been duly factored into the Vision in depth. The references to the environmental dimension seem quite scant in comparison to the emphasis on the economic aspects of the Vision. Closer examination reveals that although environmental protection considerations are highlighted, the declared objectives are not overarching and holistic enough to meet the unique and interrelated nature of environmental problems. Instead, the proposed reforms and aims in the environmental sector are largely fragmented, sector-based and not sufficiently fundamental.

To illustrate this, the Vision states that, instead of the oil sector, various potential contributing sectors, including the industrial and mining sectors, will be reinvigorated and unleashed. The Vision announces its commitment thus:

> "*We will support promising sectors and foster their success so that they become new pillars of our economy. In the manufacturing sector, we will work towards localizing renewable energy and industrial equipment sectors. In the tourism and leisure sectors, we will create attractions that are of the highest international standards, improve visa issuance procedures for visitors, and prepare and develop our historical and heritage sites. In technology, we will increase our investments in, and lead, the digital economy. In mining, we will furnish incentives for and benefit from the exploration of the Kingdom's mineral resources. At the same time as diversifying our economy, we will continue to localize the oil and gas sector. As well as creating a new city dedicated to energy, we will double our gas production, and construct a national gas distribution network. We will also make use of our global leadership and expertise in oil and petrochemicals to invest in the development of adjacent and supporting sectors.*"[498]

Although investing in clean energy technologies is likely to enhance and improve the deteriorating environmental conditions, notably on the climate change side, it is only one strand of the whole array of proposed industrial activities, of which at least some are likely to exert further pressure on the environmental assets. For example, the principal missions of independent institutions such as the Saudi Industrial Property Authority (MODON), and Royal

[498] http://vision2030.gov.sa/en/node/6 'Thriving Economy Investing for the long-term' (Vision 2030 Kingdom of Saudi Arabia Website, accessed in 21/9/2017).

Commission for Jubail and Yanbu (RC) are to attract national and international manufacturers and businesses. According to (I-A-8), (I-B-2), they welcome a wide range, including heavy industries and complex industrial processes including petrochemical and other potentially highly impacting industrial activities.

Environmentally, however, the stated objectives appear to be, similar to the longstanding environmental governance approach in general: a narrowly focused, sector-based and medium-centred approach, rather than an overarching, comprehensive or holistic style. Instead of addressing the underlying and grassroots governance aspects, the Vision continues to follow the same style, although with more pledging language. It declares that:

> *"… We will seek to safeguard our environment by increasing the efficiency of waste management, establishing comprehensive recycling projects, reducing all types of pollution and fighting desertification. We will also promote the optimal use of our water resources by reducing consumption and utilizing treated and renewable water. We will direct our efforts towards protecting and rehabilitating our beautiful beaches, natural reserves and islands, making them open to everyone. We will seek the participation of the private sector and government funds in these efforts."*[499]

This is not to say that the challenges underscored here by Vision 2030 are exaggerated or irrelevant. In fact, such environmental problems were frequently highlighted by several interviewees from all categories, including (I-A-1), (I-B-6), (I-C-8). However, the idea here is to emphasise the gap in designing the best approach to face these challenges, taking into account the special nature of the ecosystem and the unique characteristics of its ills.

Luckily, the Vision is still brim-full of various developments, including in the environmental domain, which will be unfolding until the year 2030. By that time, the hope is that steps will be taken to bring the entire national environmental governance arrangement to be based on the integration principle, which "*requires the effective integration of both long-term and short-term economic, environmental and social considerations in decision-making processes.*"[500]

5.2.7.2 Climate Change

If anything, the economic aspect of the Vision seems to be the principal driving force for even its initial creation. The recent turmoil in the global oil market and the fluctuation of oil prices provided sufficient impulse for the KSA to take a major economic decision that reverberates through other aspects of life in the country. One of the main thematic goals of the Vision is to minimise its wholesale reliance on its petroleum assets and to maximise the sustainability of the economy, which is fundamental for its survival. In his first interview after the introduction of the Vision, the Crown Prince of Saudi Arabia powerfully presented this thus:

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[499] http://vision2030.gov.sa/en/node/10 'Vibrant Society With Fulfilling Lives' (Vision 2030 Kingdom of Saudi Arabia Website, accessed in 21/7/2017).

[500] Brian J. Preston, 'The Judicial Development of Ecologically Sustainable Development' in Douglas Fisher (ed), *Research Handbook on Fundamental Concepts of Environmental Law* (Edward Elgar Publishing 2016) P 486.

"*It becomes today like our Constitution is the Quran, Sunna and the Oil. This is rather dangerous. We have become a case of oil addiction in Saudi Arabia by everyone; this is serious, and this has hindered the development of too many sectors in the past years.*"[501] Thus, it should be no surprise that the Vision is intended to have a direct positive effect on the climate change realm. This is an outcome of the ongoing reorientation of economic activities and the proposed diversification of the state's national revenues. This mainly includes setting up and investing in the clean energy sector. The Vision declares this to be a national commitment:

> *"Even though we have an impressive natural potential for solar and wind power, and our local energy consumption will increase three-fold by 2030, we still lack a competitive renewable energy sector at present. To build up the sector, we have set ourselves an initial target of generating 9.5 gigawatts of renewable energy. We will also seek to localize a significant portion of the renewable energy value chain in the Saudi economy, including research and development, and manufacturing, among other stages…"*[502]

Having said that, it is still unclear how the climate change issue will be comprehensively approached nationally. What are the expectations from the various sectors in order to contribute to the reduction of the carbon emissions? Despite some potentially effective initiatives sparked by the Vision, and administratively monitored by the Council of Economic and Development Affairs, which is the parent of the Vision,[503] there are still two main lacunae. The first is the lack of obligation to produce detailed and quantitatively targeted emission reduction reports by sectors and institutions to provide transparency and consistency for assessing the achieved goals. The second is the lack of formalisation and legalisation of such goals, which both encourage the entrusted bodies to work harder to achieve the optimal level, and also subject any potential failure to legal investigation and remedy.

This doctrinal analysis has identified important missing aspects of climate change governance. The qualitative examination below, however, reveals more profound challenges at basic sectoral and even individual levels for those working in the environmental governance domain.

5.3 Qualitative Analysis

This part of the chapter is primarily based on the original data generated by conducting in-depth interviews with specialists and practitioners in the environmental governance domain in

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[501] http://www.alarabiya.net/ar/aswaq/special-interviews/2016/04/25/%D9%85%D9%82%D8%A7%D8%A8%D9%84%D8%A9-%D8%A7%D9%84%D8%A3%D9%85%D9%8A%D8%B1-%D9%85%D8%AD%D9%85%D8%AF-%D8%A8%D9%86-%D8%B3%D9%84%D9%85%D8%A7%D9%86-%D9%85%D8%B9-%D8%A7%D9%84%D8%B9%D8%B1%D8%A8%D9%8A%D8%A9-.html 'Mohammed bin Salman and 33 Titles on the Saudi Vision' (Al Arabiya Website, accessed in 1/9/2017).

[502] http://vision2030.gov.sa/en/node/87 'A Renewable Energy Market' (Vision 2030 Kingdom of Saudi Arabia Website, accessed in 19/9/2017).

[503] http://vision2030.gov.sa/en/foreword 'Foreword' (Vision 2030 Kingdom of Saudi Arabia Website, accessed in 19/7/2018).

the KSA, from a wide range of scientific disciplines. The purpose of this section is to explore how the special characteristics of the environmental challenges are understood and put into practice, and how and to what extent the current environmental governance system considers and deals with these characteristics.

This section also addresses the issue of climate change and how it is responded to and the perceptions regarding this issue among the practitioners and scholars in the environmental governance domain. The analysis is undertaken within the framework of the integration principle in its general sense: that is, the consideration of environmental impacts simultaneously and holistically between projects, programmes and decision-making in general in the entire state, rather than individually or site-specifically or in limited areas. In this broad sense, the integration principle is a prerequisite for the real appreciation of the "wicked" and intricate character of environmental challenges, since protecting the environment in certain areas more than others, or in a specific ecosystem other than others will eventually result in degradation and poor environmental quality, unless the integration principle is embraced rigorously. This exploration of the uncharted territory of the KSA's environmental law and governance system is a significant but secondary contribution of the chapter.

As explained above, the primary and more significant contribution of the chapter is to allow a theoretical development of the dispersed scholarly analysis and discussion in the predominantly European-based literature on environmental law and governance. Under two broad issues, climate change and the unique character of environmental ills, the qualitative analysis in this section identifies a total of nine themes and sub-themes.[504] extracted from the semi-structured interviews conducted. The 35[505] interview questions generated for the interviewees had their origin in the literature review conducted in Chapter 2, Part 2. The semi-structured style of interview allowed respondents flexibility to depart from the question and to raise and discuss issues they deemed relevant. This allowed identification of issues and challenges that were in many cases surprising and have no prominent equivalent in the leading western literature on environmental law and governance. This paved the way for an extension, enabling the literature to be discussed in a different, perhaps unique, contextual reality and distinctive Middle Eastern jurisdiction.

5.3.1 Climate Change

5.3.1.1 Lack of interest

The interviews revealed surprising findings with regard to the climate change topic. No single respondent gave an affirmative reply on this issue. Their overall responses either showed lack of interest in this issue, or that they doubted its existence in the first place. Across

[504] For more on how the analysis conducted, refer to Chapter 3, Methodology.
[505] See Appendix B.

all categories, participants did not give in-depth and specific answers on climate change issues. More strikingly, they were unaware of recent international climate change developments, including COP21. Within the whole array of answers, the focus was on conventional issues of environmental law such as pollution and air quality, rather than climate change and greenhouse gases, which were never elaborated on by any of the participants.

5.3.1.2 Scepticism about, and Different Understandings of the Phenomenon of Climate Change

Even those few who briefly commented on the issue strongly doubted the existence and seriousness of this issue. For them, climate change and global warming issues are an overstatement of uncertain speculations by powerful international parties for purely political gains. The academics and scientists interviewed, including (I-C-1) and (I-C-2), pointed out that climate changes are no more than natural cycles which reoccur periodically across the centuries. They also supported their unanimous view that this is a politically-laden concept by mentioning a number of proven and undoubtedly large-scale environmental problems they perceived as much more serious, which have not gained as much momentum as that received by the climate change issue. Hence, they shared the belief that such issues were created and powerfully advocated at the international level, driven by major powers to weaken and even blackmail emerging economies and wealthy petroleum states.

5.3.1.3 The prospects of the Master Vision 2030

This aggregate sceptical attitude of respondents is not easily aligned with the efforts and attitudes already embraced by the formal policies and plans, including Vision 2030; these firmly advocate and accept the issue, although it is often propagated indirectly, through energy efficiency and awareness campaigns. At a more executive level, MEIMR also appears very active at the international level, as discussed above. The surprise lies in the fact that over the whole period of the interviews the MEIMR was one of the least mentioned institutions by the whole group of participants, despite its leadership position with regard to the issue of Climate Change. Even those who fleetingly mentioned MEIMR failed to give any details or show any understanding of the nature of its role and its strategy. This is in sharp contrast with their discussions about GAMEP and its roles, responsibilities, strategies and performance. This dichotomy can be attributed to the lack of interest in the issue of climate change identified above, but can also be traced to the lack of information, especially in the Arabic language, issued by MEIMR. This issue was very briefly indirectly mentioned by (I-B-4).

- Discussion:

The leading climate change challenges in the KSA's context can be classified into two main categories. The first is a sort of psychological and ideological attitude held mainly by scholars and academics, derived from the widely referred to uncertainty and lack of clarity regarding

climate change.[506] This can be said to have been recently by-passed by MEIMR's efforts and most significantly by the ambitious Vision 2030, which bring the challenges to another more practical level, that is, the institutional and regulatory level.

This situation is apparently different from what is presented in the western-led literature, which, at the national scale, exhibits different concerns and discusses different topics, such as the potential of climate change litigation,[507] and the actual role of the judiciary in climate change issues,[508] and also how "*air quality regimes including pollution control, planning, natural conservation, and environmental impact assessment also constitute regulatory responses to the climate change problem.*"[509] In the US, for example, writers also identify quite different challenges to those revealed by the qualitative analysis in this chapter. Betsill, for instance, contends that in the US federal political system, an important challenge to be overcome is to localise the thinking about climate change, rather than primarily thinking about it as a global problem calling for international efforts. Using his own words "think locally, act locally".[510]

5.3.2 The Distinctive Character of Environmental Problems

5.3.2.1 Institutional setup and the lack of cross-institution integration

Before analysing the responses in the interviews, it is important to bear in mind that the environmental institutional architecture has gone through, and is still going through, rapid and constant reshuffles and what may even be regarded as unorganised evolution. For example, the main environmental regulator, previously called the Presidency of Meteorology and Environment (PME), is now transformed into the General Authority of Meteorology & Environmental Protection (GAMEP). In May 2016, GAMEP was amalgamated with the Ministries of Agriculture and Water, and now named The Ministry of Environment, Water and Agriculture. Even more recently, in October 2016, as a manifestation of dissatisfaction with the

[506] Despite the consensus of the Intergovernmental Panel on Climate Change (IPCC) on the existence of climate change, scepticism has been shown even in some key western states, notably the US, by some of its policy-makers, and perhaps most interestingly by its former Environmental Protection Agency administrator; see Naomi Oreskes, 'The Scientific Consensus on Climate Change' [2004] 306 Science 1686. Even among those who determined the existence of the problem, including members of the IPCC, the uncertainties surrounding the issue, such as timing and rate of change, are admitted; see Farhana Yamin and Joanna Depledge, *The International Climate Change Regime: A Guide to Rules, Institutions and Procedures* (Cambridge University Press 2004). Equally interestingly, some environmental lawyers also appear to lack a firm conviction of the existence of climate change. For example, Fogleman and her colleagues state that "*whether you believe in the science behind climate change or whether you are sceptic, what is clear, from a lawyer's point of view, there is an increasing body of regulation dealing with climate change matters* …" Valerie M. Fogleman, Trevor Hellawell and Andrew Wiseman, *Environmental Law Handbook* (7th edn, Law Society 2011) P 92.

[507] David A Grossman, 'Warming up to a Not-So-Radical Idea: Tort-Based Climate Change Litigation' [2003] 28 Columbia Journal of Environmental Law 1.

[508] David Markell and JB Ruhl, 'An Empirical Assessment of Climate Change in the Courts: A New Jurisprudence or Business as Usual?' [2012] 64 Florida Law Review 15.

[509] Fisher, Lange and Scotford, n 1, P 637.

[510] Michele M Betsill, 'Mitigating Climate Change in US Cities: Opportunities and Obstacles' [2001] 6 Local Environment: The International Journal of Justice and Sustainability 393 P 404.

status of environmental protection, the head of GAMEP was dismissed, which further illustrates the continuation of the long-lasting regulatory dilemma in the environmental arena.

In principle, GAMEP is the main environmental regulator, with a very broad and open mandate on environmental affairs within the entire KSA. This was a matter of consensus among the respondents. However, they also agreed that it does not have an effective executive power to enforce compliance independently, as will be explained below. In addition, there is a special decentralised environmental regulator, the Royal Commission for Jubail and Yanbu (RCJY), with almost absolute responsibility for regulating and monitoring the environmental issues within limited and restricted special zones.

These designated industrial areas encompass a wide variety of industries, including huge petrochemical plants. Such heavy industrial operations, due to their scale and importance, have been allocated a specialised and expertise-equipped administration, the RCJY, with exclusive power and purview to permit, monitor, regulate, and enforce its environmental policy and regulations within these designated industrial cities. Needless to say, the RCJY has no remit outside these specified areas. In theory, however, GAMEP, by virtue of its statutory, national-wide purview could take part in managing and intervening in regulating environmental issues within these industrial cities, as there are no legally binding provisions precluding GAMEP from doing so. In reality, nonetheless, this is very contentious, and RCJY would feel uncomfortable at the prospect of such intervention, as reported by (I-A-8). In practice, however, this is unlikely to occur, as GAMEP acknowledges its relatively poor capacity and inherent impairment in confronting RCJY and, in comparison, to RCJY's capacity, confirmed by (I-A-3) and (I-B-4).

The Saudi Industrial Property Authority (MODON) is another supervisory and partially regulatory body for industrial areas. Unlike RCJY, MODON is rapidly expanding and spreading throughout the country, despite its more recent foundation, which was in 2001. Generally, but not exclusively, MODON cities' host lighter, downstream industries, which are comparatively less complex in environmental impact than the RCJY's equivalent manufactures. MODON seems to have a somewhat "hybrid" nature in terms of its regulatory power. As a default, MODON applies and implements the General Environmental Law (GEL)[511] within its industrial cities, and is under GAMEP's general jurisdiction, unlike the RCJY which has its own frequently updated and customised regulations. However, to add further complexity, when it comes to the pecuniary fines and charges, MODON, according to (I-A-10), also has its own environmental regulations, with regard to fiscal sanctions.[512] MODON has actually no statutory

[511] GAMEP's regulation. It is the principal environmental regulation, by law and according to the consensus of the participants.

[512] This is interesting because "legally" there is no reason to distinguish between the fiscal and non-fiscal provisions of the GEL by MODON as GEL is the principal and governing enactment. This, however, demonstrates the ineffectiveness of the GEL to deliver proper environmental protection. This

power to overrule nor disregard the GEL and is bound to implement GEL on the industries it monitors. In practice, however, MODON has to resort to its own discretion to fill the existing gaps, and boost the quality and effectiveness of the regulations, even though this might result in legally questionable matters regarding MODON exceeding its margin of discretion.

This somewhat fragmented structure of environmental regulators has led to problems in coordination and, most importantly, integration and there may be even a rival, legalistic and rigid nexus between such institutions. This is said because each of these three regulators observes its legal environmental duties strictly and literally within its geographical boundaries, as the rest of the country is not their "legal" business. As such, the environmental governance system and structure remain in need of comprehensive reform, notably concerning the dimensions of the integration principle. In other words, the currently available governance system does not include the principle of integration and therefore does not reflect an appreciation of cross-boundary and complex nature of environmental problems.

This complex array of challenges, including the scarcity of tight and up-to-date environmental regulations and overarching environmental policies, poses a unique challenge to the KSA, as a Middle Eastern case study, compared to the issues highlighted in the leading international literature. While the distinctive situation in the case study requires a customised interpretation and approach to the integration principle, the large body of literature assembled by western scholars emphasises issues that are, in many cases, hardly applicable to the Middle Eastern context, particularly the KSA. Despite the myriad meanings of the principle,[513] identified by some analysts, some of which might have a bearing on the case study, a considerable amount of discussion addresses issues only related to the European contexts, treaties and their particular challenges,[514] or in some cases, elaborate on the purport and the aspired-to consequences of the integration principle from an international law perspective, and how this principle has been an indispensable aspect of the international environmental law.[515]

Such theoretical accounts, despite their acknowledged contribution to their particular jurisdictions and contextual conditions, have to also consider the unique socio-legal and institutional circumstances in the case study, as a Middle Eastern example. Issues such as the excessive fragmentation of environmental institutions, different understandings and commitments towards environmental issues among the bureaucratic machines in general, and

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led MODON to come up with its own fiscal penalty guidance, which can be very contentious, legally and validity-wise. Interestingly, and as indicated by (I-A), this issue has not been legally contested in the administrative courtroom or by any judicial means. This confirms the lack of judiciary involvement in environmental issue, as discussed in other chapters of this thesis.

[513] Andrew Jordan and Andrea Lenschow, 'Environmental Policy Integration: a State of the Art Review' [2010] 20 Environmental Policy and Governance 147.

[514] Nicolas De Sadeleer, *EU Environmental Law and the Internal Market* (Oxford University Press 2014) P 7-13.

[515] Birnie, Boyle and Redgwell, n 198, P 116-118.

the lack of comprehensive environmental policies and modern enforceable environmental regulations, are all elements of the unique challenges that bring the implementation of the integration principle, in all of its interpretations, down to a more basic and fundamental level.

A glaring example is the fragmented focus by the GEL and RI on the polluting emissions and discharges released into the environment. These national flagship environmental regulations still treat the media that comprise the environment (land, water and air) as discrete components and do so in a rather dispersed manner, for example, by regulating some without the others, or regulating one medium in much less detail than another. In brief, the current environmental governance system still does not view the environment as a single inseparable unit. This clearly goes against the core idea of the principle of integration and is in direct contrast to the appropriate understanding of the complexity and characteristics of the entire ecosystem and its ills.[516] These types of contextual challenges seem to have led some writers, quite rightly, to contend that concepts such as environmental policy integration "*mainly applied to domestic [western] and European politics.*"[517]

5.3.2.2 Administrative structure (the form of state) and lack of administrative integration - together with intricate administrative power relations

The constitutional and administrative architecture of the state is substantially influential in shaping and forming the functioning and output of the environmental governance system in any country. The KSA is a unitary state, with 13 administrative divisions or regions. Each administrative region is governed by a governor, who is appointed by the King to govern and administer the region in accordance with the law and the established legal practices in the KSA. Central to the discussion here is to understand that administrative governors are entrusted with broad statutory and customary powers, notably an executive power. Thus, a powerful executive mandate is held under each administrative ruler.

Interestingly, at the same time, the principal environmental regulator in the country i.e. GAMEP, which has cross-cutting and overarching environmental protection responsibilities countrywide, has not been adequately and statutorily equipped with an executive power to autonomously impose and enforce the environmental law, i.e. the GEL, upon the mass of regulated private and public parties. In practice, this brings about an inevitable marriage between GAMEP and a wide spectrum of executive authorities, whose cooperation or consent GAMEP needs in order to make up for its shortfall in executive power. Thus, in many cases,

[516] Maurice Sunkin, David M. Ong and Robert Wight, *Sourcebook on Environmental Law* (2nd edn, Cavendish 2001) P 54-55. Susan Wolf, Anna White and Neil Stanley, *Principles of Environmental Law* (3rd edn, Cavendish 2002) P 177.

[517] Frank Biermann, Olwen Davies and Nicolien van der Grijp, 'Environmental Policy Integration and the Architecture of Global Environmental Governance' [2009] 9 International Environmental Agreements: Politics, Law and Economics 351 P 351.

GAMEP has to look for a "willing to step in" executive authority, including regional governments, due to their robust executive power.

The repercussion of this is that each executive power and, more importantly, regional government, has its own degree of willingness, circumstances, including financial ones, and maybe even ideology towards environmental issues, notably when they directly interfere and overlap with economic considerations, as explained by (I-A-3), (I-A-9). This might explain the participants' varied responses regarding the willingness of different regional governments to act according to GAMEP's recommendations and requests. Thus, GAMEP's appeals for actions and reactions from the executive authorities and administrative governments are not automatically guaranteed to be granted, as they are subject to the discretion of those authorities. It also worth mentioning that some regional governments, are known to be more actively committed to environmental issues, and towards such "environmental calls for action" as noted by (I-A-4).

This kind of structure poses unique issues and potential areas of improvement which differ from those widely discussed in the literature by western scholars, which deal with different types of states. The UK literature, for example, is replete with analyses regarding the repercussions of the devolution of environmental matters to the different regions of the UK on the environmental governance system in the UK as a whole, and its functionality, including the complexity of its relation with the EU.[518] In federal states, such as the US, Canada and Austria, different concerns are often brought by analysts. These issues include the impact of federalism on the individual and aggregate environmental achievements and contribution towards the collective environmental challenges, notably climate change.[519] Although similar general challenges may be noted in some cases, the significant variations in the challenges encountered which are related to the form of the state render it vital for Middle Eastern scholars to develop relevant theories and engage in scholarly discussions that are close to their own context, for which the extant body of literature provides no real substitutes.

Fortunately, as explained above, the KSA's environmental system has recently been restructured, in conjunction with Vision 2030, to form the giant executive unit that is the Ministry of Environment, Water and Agriculture. This development and Vision 2030 in general have great potential to reinforce the KSA's environmental governance arrangements and also act as a promising stepping stone for analysts and scholars to become more involved with the

[518] Colin T. Reid and Andrea Ross, 'Environmental Governance in the United Kingdom' in Mariachiara Alberton and Francesco Palermo (eds), *Environmental Protection in Multi-Layered Systems: Comparative Lessons from the Water Sector* (Martinus Nijhoff Publishers 2012) P 171-178.
[519] Douglas M. Brown, 'Comparative Climate Change Policy and Federalism: An Overview: Comparative Climate Change Policy and Federalism' [2012] 29 Review of Policy Research 322, and Reinhard Steurer and Christoph Clar, 'Is Decentralisation Always Good for Climate Change Mitigation? How Federalism has Complicated the Greening of Building Policies in Austria' [2015] 48 Policy Sciences 85.

ongoing developments. It will be interesting for researchers in the coming years to stay tuned to how the situation will develop "in reality". For example, so far, this amalgamation, brought about by the Vision, has had no effect on this issue, since GAMEP remains "in practice" a somewhat independent entity under the umbrella of this enormous new ministry.

5.3.2.3 Coordination and Project-based Integration

This issue is a long-standing historical one,[520] and it seems to be not related exclusively to the environmental arena. Nevertheless, the environmental institutional structures allow for a sort of muddled reality. In fact, there are a number of interesting issues that can be raised here in the context of coordination, whether between GAMEP and the other decentralised environmental regulators, namely RCJY and MODON, or between GAMEP and the giant economy-underpinning fossil fuel industries, or even between GAMEP and other fellow government and public bodies. Generally speaking, the last relationship seems the most focused on when coordination is discussed.

It is interesting to point out that a number of participants among the different categories indicated that environmental considerations are not always the first priority, notably in comparison with public service and national economic projects. This might explain why some projects of these types might not be integrated and consider environmental issues properly, leading to future potential problems. This seems to be one of the key reasons why the current environmental governance system in the country might be labelled as merely reactionary.

This under-appreciation of the priority of environmental issues has been overwhelmingly and rightly challenged by a massive amount of literature concerning the understanding of the nature of the environmental ills and the conceptualisation of the integration principle, whatever its exact meaning is. For instance, this lack of consideration of environmental issues conflicts not only with the principle of integration, but also with other closely-linked concepts, such as diffusion and assimilation.[521] Moreover, some commentators adopt a pro-environment stance, saying that merely taking environmental considerations into account and reconciling them with economic matters might be insufficient for proper integration, so the need is to "give priority to environmental issues"[522] even over other aspects. This does not, however, dismiss the coordination processes and attempts that GAMEP undertakes, through forming ad hoc joint committees with the respective authorities, or via letters and messages sent to the respective entities. The effectiveness of such avenues was reported to be a debatable issue, however.

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[520] Ahmad Al-Gilani, 'Reforming the National Framework for Environmental Policies in Saudi Arabia' [1999] 42 Journal of Environmental Planning and Management 253. And Ahmad Al-Gilani and Seamus Filor, 'Policy And Practice Environmental Policies in Saudi Arabia' [1997] 40 Journal of Environmental Planning and Management 775

[521] Steele and Jewell, n 321, P 3-9 and P 19-22.

[522] Camilla Adelle and Måns Nilsson, 'Environmental Policy Integration' in Philipp H. Pattberg and Fariborz Zelli (eds), *Encyclopedia of Global Environmental Governance and Politics* (Edward Elgar Publishing 2015).

5.3.2.4 Cross-cities' Environmental Integration

5.3.2.4.1 Cities with GAMEP branch versus Cities with no GAMEP branch

GAMEP does not have national branches, except in a handful of main cities. This situation, coupled with the lack of communication and monitoring technology at its disposal, means that GAMEP is not physically or virtually present in the whole country, and even not present at all in a considerable part of the state. In addition, the top-down legalistic prevailing approach renders the effectiveness of legal compliance largely dependent on GAMEP's power and capacity to enforce the rules, which, per se, requires close monitoring by GAMEP. All these aspects of environmental governance were reported to be in sub-optimal state by (I-A-2), (I-B-7), (I-C-6) and (I-D-3).

In fact, other relevant authorities, such as the Ministry and Municipality and Rural Affairs were reported by (I-B-5) to be much more present and effective. It was also reported by interviewees whose industries were located in cities which do not have a GAMEP branch, that they had never been environmentally inspected by GAMEP, as it is more than 300 km away from them. Thus, the municipality attempted to cover this gap by conducting non-systemic, ad hoc and sometimes merely reactionary inspection visits (I-B-5). Consequently, the GEL's implementation and enforcement were in a pitiful state. Unfortunately, this does not mean that the situation in the cities where GAMEP is present is optimal, either. In general, the level of implementation of the GEL appears much weaker in areas distant from GAMEP's physical presence. It was reported by some interviewees who owned an industrial project in one of these areas that their factories had not been subject to any environmental inspection visits by GAMEP since they were established some years ago.

A challenge of this nature does not seem to be present in the many nationally-focused analytical accounts by UK environmental law writers, for instance.[523] This should be of no surprise, since their focus is on more relevant and existing affairs. This significant theoretical lacuna should act as an encouragement for scholars, particularly Middle Eastern, and KSA researchers to pay more attention to the subject of environmental law and to the existing unique challenges in particular, including those discussed in this section.

5.3.2.4.2 Major cities and special independent institutions

Another integrational challenge stems from the proliferation of public institutions with certain environmental responsibilities. This is, in particular, related to major cities, notably, the capital city Riyadh, which, has its own High Commission for the Development of Arriyadh (HCDR). This city-specific institution has massive and multi-faceted responsibilities within the

[523] See for example, a discussion about "The institutional Landscape of UK Environmental Law" in Fisher, Lange and Scotford, n 1, P 95-113. And see discussion about "Administration and Enforcement of Environmental Law" in Wolf and Stanley, n 142, P 25-60. And also see Andrea Ross, 'The UK Approach to Delivering Sustainable Development in Government: A Case Study in Joined-Up Working' [2005] 17 Journal of Environmental Law 27.

boundaries of Riyadh city. This mandate includes the "*comprehensive urban, economic, social and cultural development of Riyadh, handling the issues related to environment management and protection, and providing the city with the necessary public services and utilities.*"[524]

The HCDR has its own Riyadh-specific High Committee for Environmental Protection for the City of Riyadh (HCEPCR), formed in 2007, chaired by the governor of the city, consisting mainly of 17 public institutions. This committee is in charge of monitoring the environmental conditions in the city, raising the level of coordination between relevant official parties, and setting up an executive programme for the protection of the environment and supervising and following up its implementation with the relevant institutions.[525] The establishment of such a powerful but regionally-restricted independent authority is in itself a recognition of the weaknesses in coordination and integration, as strongly articulated by (I-A-9):

> "*GAMEP and other environmentally-mandated bodies are working, but discretely and in a fragmented way. Every environmentally-responsible authority has their specific and rigid focus. What makes the (HCEPCR) special and effective, is that it brings 17 authorities together, follows up and ensures that each one of them are progressing and achieving in accordance with the master plan of the Riyadh city, which also endorsed by (HCDR). Despite these integrational efforts, loopholes and gaps between the functions of such bodies are frequently detected. Unfortunately, however, there is no equivalent to the (HCDR) anywhere other than Riyadh*".

These environmental challenges relating to coordination not only between equivalent bureaucratic ministries, but also in relationships with specific independent bodies do not appear to be as problematic in western advanced states, as they are in the case study. In the UK, for instance, despite the existence of multiple institutions concerned with environmental protection in one way or another, no thematic emphasis on the issue of coordination between such entities seems to be prominent.[526] Nevertheless, a considerable part of the western literature has focussed on the concept of ecological modernisation, which entails the principle of integration and the "*mainstreaming of environmental protection considerations.*"[527]

This concept is consistent with the conceptual and philosophical shifts that hold out the prospect of overhauling the economy and economic development – under specific conditions– to be mutually supported by environmental protection considerations and seek to disprove the perception that they are inherently antithetical.[528] However, even in writings that address coordination and institutional relations more clearly, western writings identify and analyse distinctly different issues. Taking a British example, such debates often revolve around

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[524] http://www.ada.gov.sa/ADA_E/AboutADA/index.htm 'Overview' (The High Commission for the Development of Arriyadh Website, accessed in 10/9/2017).

[525] http://ada.gov.sa/ada_a/Tatweer2_ada_a/?v=75&t=007266 'Environmental Protection Plan, Applying Latest Methods to Develop Natural Resources (The High Commission for the Development of Arriyadh Website, accessed in 10/9/2017). (Arabic) Translated by the Author.

[526] See for example Wolf and Stanley, n 142, P 25-60.

[527] Holder and Lee, n 450, P 165.

[528] Holder and Lee, n 450, P 164-165. And Dryzek, n 190, P170.

devolution and delegated environmental responsibilities and powers, or "up-way" concerning regulatory relations with Brussels.[529] For a multi-layered system such as the federation of the USA, the challenge in this regard is to strike the right balance that respects the "*autonomy of each individual state against the need for consistency across the nation as a whole*."[530]

5.4 Key Lessons and Conclusions

The chapter has examined the KSA's environmental governance order in relation to the two thematic issues of climate change and the distinctive properties of environmental harms as being cross-boundary, complex and frequently surrounded by uncertainty. The chapter has investigated and analysed how the KSA's environmental law and governance arrangements have confronted and responded to these unique environmental challenges. This examination and analysis has helped to build the first type of scholarly contribution to the literature pursued by this chapter, since the jurisdiction of the KSA's environmental law and governance is a fertile, insufficiently studied and clearly under-researched area of knowledge particularly at this time when the country stands at the threshold of major economic and social changes, introduced by the national Vision 2030. Therefore, this chapter, and the thesis as a whole, represent an effort to fill this significant and current intellectual gap. This is, however, not the exclusive focus nor major part of the intended contribution.

The principal scholarly contribution targeted by this chapter has been attained by synthesising this contextual analysis of the KSA's environmental governance system with the leading environmental law and governance literature. In other words, discussing the KSA's environmental governance in the light of the predominant key literature allows for the theoretical development to be pursued, in which the discussion is extended to the uncharted territory and contextual particularity that is the KSA's environmental governance arena.

The analysis in the chapter was conducted in two different genres of analysis. The first was the legal and doctrinal analysis of the principal hard and soft law legal and policy documents. This type of analysis allows detail examination that is document and law-centred with the aim to identify advantages and weaknesses existing in the law and its drafting. This in turn led to the detection of several areas of potential further improvement related to the law and the examined documents per se. The second analytic approach utilised by the chapter is a qualitative analysis premised on the responses of experts, both scholars and practitioners, in the interviews undertaken. The interviews identified a wide array of issues that are sometime not purely legal or strictly speaking law-related in nature, including psychological and

[529] The coordination issue is acknowledged by Ross and Reid to be smaller than originally anticipated. Reid and Ross P 168-169. For legislation-related discussion see Colin T. Reid, 'Who Makes Scotland's Law? Delegated Legislation under the Devolution Arrangements' [2002] 6 Edinburgh Law Review 380.
[530] LeRoy Paddock and Jennifer Bowmar, 'Environmental Governance in the United States' in Mariachiara Alberton and Francesco Palermo (eds), *Environmental Protection in Multi-Layered Systems: Comparative Lessons from the Water Sector* (Martinus Nijhoff Publishers 2012) P 50.

ideological factors, which eventually feed into or are reflected in the practice and implementation of law, or even in inaction.

Discussing the KSA-centred findings of these two types of analysis in the light of the previous environmental governance theories and arguments has resulted in the emergence and identification of unique and particular challenges and issues that have not been focused on by existing western-generated theorisations and debates. This calls for more relevant contextual theoretical accounts to be produced, notably by scholars researching Middle Eastern and KSA environmental law and governance, in order to more usefully accommodate the kinds of challenges and concerns present in such different jurisdictions.

The analysis in this chapter has resulted in *sixteen* key and novel contribution points. These points have been discussed against the literature to assess to what extent the large body of predominantly environmental law and governance literature addressing advanced jurisdictions is appropriate and fulfils the need of less researched Middle Eastern Jurisdictions, specifically the KSA's jurisdiction. It has been shown that the existing literature falls short of fully and appropriately comprehending the contextual concerns that exist in Middle Eastern states, notably the KSA. The contribution points can be summarised as follows:

1- **Climate Change Documentation issues**: It has been concluded that the principal environmental regulations and policy documents do not elaborate sufficiently on the issue of climate change. Nevertheless, this is not to imply that this issue is not on the KSA's task list. In fact, it is one of the areas which MEIMR cares about and greatly focuses on.

2- **Less Prominence of Climate Change Issues:** What is clearly seen, however, is the sectoral and departmental approach of the current form of environmental governance in dealing with this issue of climate change, and even with the more conventional environmental problems. Despite the increasing attention paid to climate change by the energy sector, the resonance of this issue in the environmental sector, including its regulations and institutions, appears weak compared to the effort exerted on conventional environmental ills. Regarding the more classical environmental problems, however, the case is markedly different. Nationally, the KSA has a basic regulatory and legal infrastructure and these "environmental" problems are more familiar to the public institutions, despite continuing, and sometimes major, imperfections in their governance. Internationally, the current focus seems to be diverted to more transnational and large-scale issues, namely that of climate change. This means that the advantage from the strong international momentum is less in these conventional areas of environmental protection.

3- **Increasing Momentum of the Climate Change Issue by Virtue of the National Vision 2030:** The above point having been made, the efforts of MEIMR identified in

the documentary analysis suggest that the climate change issue is now more present and generating greater momentum by virtue of the recently introduced Vision 2030. This is not necessarily only due to a dogma regarding this climatic issue per se, but as an inevitable consequence of the urgently needed economic reforms and transformation towards a more sustainable economy and less reliance on fossil fuel, and also in response to the highly influential push of international pressure, as emphasised by (I-A-1) and (I-B-6).

4- **Doubt about and Lack of Interest in Climate Change:** From a more empirical dimension, the qualitative analysis reveals a significant amount of uncertainty and scepticism regarding climate change. Respondents across the categories were predominantly dubious about the existence or at least the seriousness of climate change. By providing examples of more certain challenges that they perceived as more environmental degrading but which have not gained comparable momentum on the global scale, several respondents revealed their outlook on the issue as politically driven rather than environmentally-centred. This is interesting, as it demonstrates the greatly disparate inter-institutional priorities across the relevant bodies, and that such differing priorities may also reflect different understandings of the issue of climate change and its driving forces. Surprisingly, this sceptical stance held by many participants was in contrast to the efforts exerted, notably by MEIMR, to interact positively with the international community to address climate change. Fortunately, the rhetoric of climate change is more in line with the desired economic reforms of the Vision. This is particularly relevant because one of the areas most affected by any economic austerity measures is the jurisdiction of environmental governance (I-A-1) and (I-A-7).

5- **The Need for Prompting the Principle of Integration in both Climate Change and other more Conventional Environmental Challenges:** the highlighted issues in this chapter can be employed in strongly recommending integrating environmental factors deeply into the various institutions, and also in enhancing at least a minimal and common understanding of the climate change issue. This is central in aligning the approaches of the various institutions and sectors with the key intent of Vision 2030, which strongly pledges itself to the issue of climate change.

6- **The Need for Strategies, Enforcement of Regulations and Feedback Mechanisms:** On a more practical level, what seem to be missing are detailed strategies, on both environmental and climatic issues, that pin down, in specific terms, what is required from each public institution and what are the specific targets and action plans with regard to these two issues. There is also a need to develop monitoring and reporting mechanisms that allow for fresh feedback, follow-up and even accountability

to take place when needed. Thus, the newly established Ministry of Environment needs to take up this missing environmental leadership position, rather than the implementation, which should be carried out collectively and in a more integrated way by the entire set of government apparatuses.

7- **Variation in Understanding and Prioritising of Climate Change and Environmental Issues across and within Public Institutions:** Beside these potential gains, the foundation of a nation-wide integrated system for both climate change and environmental affairs is also likely to set equivalent or at least similar priorities among public bodies with regard to these two fundamental issues. In addition, this framework would also enhance the understanding and provide a navigational instrument and guidance for the development activities, and notably to government institutions in the domain of environmental protection and climate change alike. It is therefore argued that the lack of the application of the integration principle has been reflected in the limited and inadequate understanding of the nature of the issue of climate change and the special attributes of environmental problems.

8- **The Existence of Integration-Related Flaws**: This is argued to be a widespread weakness in many areas of environmental governance. For example, it has been noted that the principal environmental regulations concentrate on pollution threats to some environmental media, but not equally to others. It was also noted that principal environmental regulations do not thoroughly regulate industrial activities. Integrational challenges cross-city and among independent public bodies have been also identified.

9- **Issues related to the Alignment of Environmental Responsibilities:** These types of legislative gaps have been identified and the legal implications of leaving some environmental tasks unfulfilled and with no alignment of responsibility and therefore precluding accountability mechanisms have been highlighted.

10- **Training and Qualification Issues among the Environmental Employees and Inspectors:** This is reflected by the discussed variation of understanding, performance and decisions by environmental inspectors.

11- **Environmental Scientists vs Environmental Bureaucracy: Relational Concerns:** This un-streamlined and imperfect nexus seems to have contributed, among other factors, mainly the economic cost, to less integration of environmental science into environmental-decision making.

12- **Different Prioritisation of Environmental Considerations among Institutions**: This is also attributed to the insufficiency of the emphasis on and implementation of the integration principle among public and industrial and developmental activities. The general trend is that there is much less consideration of environmental issues in comparison to economic and financial considerations.

13- **Ineffective Contribution from the Regional Level:** Despite the presence of some interesting environmental documents, the input from the regional scale was found to be negligible.
14- **The Ascendancy of Command and Control Style of Regulation:** This is reflected by the principal and almost exclusive role attached to the GEL and the RI, with no prominent and effective role given, for example, to the economic instruments.
15- **Fragmentation of Environmentally-Entrusted Bodies:** In spite of the recent amalgamation of some environmental institutions into one big Ministry of Environment, the existence of national and local environmental regulators such as MODON and the RCJY has brought about different integrational and coordination-related difficulties, and thus variation in environmental protection efforts across different areas.
16- **Distribution of Complex Executive Powers for Environmental Matters:** The weak and confined administrative power in the hands of GAMEP has been shown to lead to intricate relationships with other more administratively powerful entities. In the environmental context, this has resulted in cumbersome and ineffective performance and responses by GAMEP.

Finally, the above account has raised issues related to the central and widely recognised environmental principle, that is the principle of integration. Despite its significance and indispensability in any environmental governance system that takes into account the intricate nature of environmental challenges, including their complexity and uncertainty and trans-boundary character, the KSA's existing system has not yet fully absorbed the principle of integration nor the inter-related characteristics of many environmental ills. The lack of any integrated pollution prevention control is a glaring manifestation of this. This challenge to integrate seems more obvious when it comes to the issue of climate change. The KSA's contextual challenges have the potential to be mitigated and dealt with, at least to some extent, by the ambitious national master plan Vision 2030. Interestingly, these identified concerns did not appear to align well with and be appropriately addressed by the massive body of literature produced largely by western environmental law and governance scholars.

6. Chapter Six: Good Environmental Governance

Abstract

The contribution pursued by this chapter takes two forms. The first is an exploration of the uncharted territory of the Saudi environmental governance framework (as a Middle Eastern case study) to identify the extent to which the three main criteria of good governance, namely public involvement, accountability and transparency, are represented and applied in the environmental governance arrangements of the case study. This is the secondary contribution. As in previous chapters, different sources of data are used, and two different genres of analysis are employed. The first is the doctrinal or black-letter approach, conducted by identifying and examining principal legal instruments and policy documents. The second genre of analysis is carried out on original data derived from 27 semi-structured interviews undertaken over a period of 90 days, from 25 May 2016. The interviewed participants are categorised into four stakeholder categories: civil servants (I-A), representatives from industries (I-B), academics (I-C) and representatives of environmental societies (I-D)[531] – see Appendix A. Part of the contribution intended by the chapter is to identify the standpoints and attitudes of the four stakeholder categories. Thus, the focus of the analysis is on stakeholders as groups rather than specific individuals. The second form of analysis, which is the main contribution targeted by the chapter, is undertaken by taking the discussion to another level by engaging with the thoughts and theories of leading environmental governance scholars and bringing them into the discussion of the case study. This primary contribution takes the analysis beyond the case study jurisdiction, but also help to explore an under-researched part of the world, i.e. the Middle Eastern, and specifically, the KSA.

[531] As explained earlier, due to the nature of the legal arrangements of environmental societies, they are academics at the same time, so the same individuals are counted in both categories.

6.1 Introduction

In the second part of the literature review, in Chapter 2, a number of standards and norms that are generally regarded as essential for the quality of any governance scheme were identified and discussed. Among these widely endorsed benchmarks of good governance are public involvement, accountability and transparency. These three good governance principles are addressed in this chapter in the almost undocumented environmental context of the case study of this research, i.e. Saudi Arabia (KSA).

Thus, this chapter examines the current status of these good governance norms in the environmental arena of the KSA. This examination is premised on doctrinal or black-letter analysis by unpacking principal environmental legislations and policy documents and governmental reports, together with a significant input from original data derived from the 27 semi-structured interviews. This is an important, but secondary contribution of this chapter.

The primary contribution, however, is pursued by incorporating scholarly theories and debates in discussing the contextual challenges and issues faced in this unique Middle Eastern context. This, in turn, facilitates discussion on the relevance and applicability of the theories and debates found in the literature to the jurisdiction of the KSA. It is important, therefore, to clarify that the major aim and *centrepiece* of the discussion and analysis, is the synthesis of these theoretical accounts in the unique Middle Eastern context of the case study.

As shown in Chapter 2, the principle of environmental public participation is generally perceived in the literature to involve three main dimensions: public accessibility to environmental data, the public's participation in the process of environmental decisions,[532] and their ability to access environmental justice. Under the topic of accountability this chapter will examine who the environmental institutions, notably the Environment Agency GAMEP, are accountable to, and how effective this accountability is. The accountability of the environmental regulator and regulated entities will also be discussed. Accountability is interpreted here broadly in its core sense: "*to be called to account for one's action*". No other definitions or understandings are sought – otherwise the topic of accountability alone could be "*as complex as Brexit*"[533]. As explained by Mulgan: "'*accountability' has been extended in a number of directions well beyond its core sense of being called to account for one's actions.*"[534] However, under the transparency principle, this chapter explores to what extent these environmental

[532] Due to the nature of the legal context in the case study and to distinguish this from the connotation of the word 'participation' in democratic contexts, in this chapter, it is sometimes referred to as people's influence on environmental decisions.
[533] Maria Lee, 'Accountability for Environmental Standards after Brexit' [2017] 19 Environmental Law Review 89
[534] Richard Mulgan, ''Accountability': An Ever-Expanding Concept?' [2000] 78 Public Administration 555 P 555.

agencies, particularly GAMEP, are open to the society, and to what extent people can see inside the workings of GAMEP by the information it discloses,[535] and why. Thus, the "visibility"[536] of GAMEP and its workings and performance is judged by the publications it produces. This primarily concerns public accessibility to the environmental data supposedly held by the environmental institutions, most importantly GAMEP.

As is the established practice in this research, the analysis in this chapter is based on the examination of several law and soft law instruments,[537] together with the in-depth data generated from the 27 interviews conducted. The findings are then linked back to the recommendations and discussions concerning good governance standards which were extracted from the literature review.

This chapter has at its core a public and administrative law flavour. This is not only because the topic of environmental law is generally conceived as a public law subject,[538] but also, perhaps more importantly, due to the fact that the environmental protection domain in the KSA is almost purely a public law and administrative law subject. It has been almost exclusively governed and regulated by the state command and control style of regulation with no significant room for, for example, economic tools or network governance mechanisms to be employed.[539] In other words, the KSA's environmental governance arrangements are still, to a very large degree, centred around "*powers exercised by government and public bodies [based on legislations that] regulate the exercise of such powers*."[540] Having said that, the launch of Vision 2030 offers an opportunity to transform and overhaul the entire environmental protection arena in the foreseeable future.[541] But this is to be left to the future studies to explore.

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[535] Heald, n 225, P 28.

[536] Martin Lodge and Lindsay Stirton, 'Accountability in the Regulatory State' in Robert Baldwin, Martin Cave and Martin Lodge (eds), *The Oxford Handbook of Regulation* (Oxford University Press 2010) P 315.

[537] This includes constitutional law instruments which were not addressed in the earlier two analytical chapters. This inclusion is due to the very close link between the good governance principles concerned by this chapter, and a number of provisions of constitutional law which are discussed here.

[538] Stallworthy, for example, says "*for the greater part, [environmental law] is distinctively public law*" and describes this as its "*dominant legal feature*". Stallworthy, n 138, P 4. See also Annika K. Nilsson, 'Enforcing Environmental Responsibilities: An Environmental Perspective on the Rule of Law and Administrative Enforcement'in Christina Voigt (ed), *Rule of Law for Nature: New Dimensions and Ideas in Environmental Law* (Cambridge University Press 2013).

[539] This is largely the case so far. However, with the imminent implementation the far-reaching Vision 2030, this excessive predominance of command and control type of regulation is likely to change.

[540] Mark Elliott and Jason Varuhas, *Administrative Law: Text and Materials* (5th edn, Oxford University Press 2017)P 1.

[541] This can be manifested by the very recently introduced (2018) privatisation programme as one of the mechanisms leading to the achievement of the Vision in 2030. This national programme has picked the "environmental sector" as one of the first sectors targeted by the privatisation process. Further details about this programme, can be accessed at http://vision2030.gov.sa/en/ncp 'Privatization Program' (Saudi Vision 2030 Website, accessed on 13/5/2018). For more information about the first phase or currently targeted sectors of privatisation see http://www.ncp.gov.sa/en/pages/targeted-sectors.aspx 'Targeted Sectors' (National Center For Privatization Website, accessed on 13/5/2018).

A final note is that the standards of good governance analysed in this chapter, although discussed within the environmental field, will be shown without adding the adjective "environmental". This is in order to ensure that the chapter is in tune with the general literature. To clarify: unlike the case of the "environmental" principles,[542] within environmental governance writings, the normative criteria of good governance are normally presented by authors, without the qualifier "environmental". This is perhaps because "environmental accountability" is an uncommon phrase in some leading jurisdictions.[543]

6.2 Good Environmental Governance Principles in the KSA (Legal Analysis)

6.2.1 Hard and Soft Law

This section investigates the extent to which the principles of good governance are represented in the KSA's principal environmental regulations and respective soft law documents, including the public's influence on environmental decisions, the principle of accountability and which entities GAMEP is accountable to. It also investigates the on-the-ground effectiveness of such accountability mechanisms in ensuring the general outcomes in terms of environmental protection, and also the transparency and openness of GAMEP to the wider community and the affected stakeholders.[544]

This legal or doctrinal analysis is presented in a three-level design. The first level explores the highest and constitutional legal instruments. The second level comprises a study of ordinary legislations and policy documents and governmental reports. The third level includes analysis and discussion regarding the general and independent institutions that are actually or potentially relevant to the environmental protection arena. The discussion starts with constitutional accounts, because the good governance standards and values focussed on by this chapter are essentially of a constitutional value,[545] since they are entrenched by the KSA's "constitutional package," as will be shown below.

6.2.1.1 First level: Constitutional Law Provisions

As seen in Chapter 2, the KSA is among the states that do not have a single codified document endorsed as "The Constitution". Nevertheless, there are a number of laws that are considered to have a constitutional status, since they address principal thematic features of the state, such as its structure, administration, rights and responsibilities, policy and values.

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[542] Which without the adjective "environmental" would be ambiguous and perhaps even misleading.

[543] LeRoy Paddock, 'Environmental Accountability and Public Involvement' [2004] 21 Pace Environmental Law Review 243 P 243.

[544] Due to its nature, and because it is rarely mentioned, particularly in soft law and policy documents, the role and access to environmental justice will be considered later, in the interview analysis section. Moreover, this issue of the role of the judiciary in environmental matters (access to justice) has been frequently addressed under the public participation topic. See for example Bell and McGillivray, n 107, Holder and Lee, n 450, and Lee, *EU Environmental Law: Challenges, Change and Decision Making*.

[545] This is the case in other jurisdictions as well. For example, see the discussion about accountability as a constitutional principle in Timothy Endicott, *Administrative law* (3rd edn, Oxford University Press 2015) See Chapter 1, Especially P 3.

The most relevant of these laws to the purpose of this chapter are The Basic Law of Governance (1992) (BLG), followed by the *Majlis Al-Wozara*, or the Council of Ministers Law (1992) (CML), and finally the *Majlis Al-Shura*, or the Consultative Council Law (1992) (CCL).[546]

As the good governance principles which are the focus in this chapter, i.e. public involvement, accountability and transparency, are partly addressed by each of these constitutional statutes, the main relevant parts of these laws are unpacked below, focusing on their role in the environmental governance domain, and centred around the part played by environmental agencies, mainly GAMEP.

6.2.1.1.1 The Basic Law of Governance (BLG)

The BLG is the most important law in the country and at the top of the constitutional law package. It comprises 83 Articles addressing various constitutional and thematic aspects of the state and its constituents. Although the BLG does not include explicit standards for the three good governance principles, a number of Articles can be interpreted as providing mechanism and tools to which these good governance criteria can be linked.

It is important to note that the KSA's constitution adopts a positive stance towards the environment. It embraces the global trend to constitutionalise environmental protection issues.[547] Article 32 of the BLG expressly states that "*The State shall endeavor to preserve, protect, and improve the environment and prevent its pollution.*" In the light of this, good governance norms can be more easily interpreted and employed in favour of environmental governance and protection. However, the terminology employed in the relevant Articles of the BLG in regard to the three principles of good governance is not particularly imperative in tone.

For example, in the case of accountability and public engagement with environmental decisions, Article 43 sets out that "*The court of the King and of the Crown Prince shall be accessible to every citizen and to everyone who has a complaint or a grievance. Every individual shall have the right to address public authorities in matters of concern to him.*" It is easily readable that public involvement cannot thus be considered as mandatory or as requiring a proactive approach. Rather, it is optional, indicating a reactive response to a certain issue or incident. This should not be surprising, as it is a right. However, it is seen as problematic that the majority of interviewees across all categories, especially the industries category (I-B), never pointed to these mechanisms and seemed unaware of their existence. Similarly, Articles 47 and 56 highlight the issues of access to justice, and the accountability of officials in power, respectively. Interestingly, the role of the Judiciary in environmental matters prompted a range of arguments by the respondents, as discussed in detail below.

[546] The other two constitutional instruments which are not as closely related to the purpose of this chapter are The Succession Commission Law (2006) and The Law of the Provinces (1992).
[547] See the Introduction and especially P 3 in May and Daly, n 335.

In discussing the accountability principle, Article 44 comes at the forefront. It designates the King as the final arbiter of all branches of power in the state, including the executive authorities. The existence and status of the environmental institutions and GAMEP are also implicitly addressed by this Article, which states that:

> *"Authorities in the State shall consist of: Judicial Authority, Executive Authority, Regulatory [i.e. legislative] Authority. These authorities shall cooperate in the discharge of their functions in accordance with this Law and other laws. The King shall be their final authority"*

Although the transparency principle is less prominent in the drafting of the BLG, a number of other key legal instruments provide for it in a complementary fashion, as will be show below.

6.2.1.1.2 The Council of Ministers Law (CML)

This constitutional law is concerned with the organisation of the Council of Ministers, setting out its powers and the appointment of its members, including a wide variety of procedural and substantive provisions, from the definitions of the council to providing for issues such as the accountability of its members. With regard to the three principles of good governance which are the focus of this chapter, this constitutional instrument can be viewed as focusing more on the fundamental principle of accountability. Providing for transparency and public involvement in the decisions of the environmental executive bodies is addressed in different legal instruments, as will be shown below.

In terms of the categories of political, administrative and legal or judicial accountability, the CML can be deemed as more concerned with provisions for political and administrative accountability. By virtue of a number of constitutional provisions, mainly the CML, the executive authorities, including GAMEP, are accountable to the Council of Ministers both politically and administratively.[548] The open mandate of the CML, including the Council of Ministers, as the highest authority to whom the public institutions, including environmental agencies are accountable, can be illustrated by Article 19 of the CML, which stipulates that:

> "*Subject to provisions of the Basic Law of Governance and the Shura Council Law, the Council of Ministers shall draw up the internal, external, financial, economic, educational and defense policies as well as the general affairs of the State and shall supervise their implementation. It shall also review the resolutions of the Shura Council. It shall have the executive authority and be the final authority in financial and administrative affairs of all ministries and other government agencies."*

Surprisingly, participants across the four interviewed categories showed little knowledge about the existence and functionality of these constitutional accountability avenues, despite

[548] The Council of Ministers (the Cabinet) is headed by the Prime Minister who is the King. All the government ministries are represented in the cabinet by the respective ministers, who are nominated by the King. The Cabinet acts not only as the main executive authority, but also enjoys a fundamental legislative role within the legal system. Thus, similarly to the other authorities, environmental bodies are politically and administratively accountable to the Cabinet. See for example Articles 19,24 and 29 of the CML. This is besides their political accountability referred to earlier by Article 44 of the BLG.

their great potential. This affirms the need for promoting legal awareness and understandings of the full picture of the legal system. In other words, practitioners, scholars, workers and stakeholders of environmental governance in general, should have appropriate awareness and comprehension of the legal system in place, which is, in essence, an inherent part environmental protection regime.

6.2.1.1.3 Consultative Council Law (CCL)

As its title suggests, the recommendations and resolutions of this council, which is comprised of experts and academics, are not decisive or binding. However, it has an important role in legal aspects and oversight. In respect to the accountability of the executive agencies, including environmentally-mandated ones, e.g. GAMEP, Article 15 of the CCL lays out that:

> "*The Shura Council [Consultative Council] shall express its opinion on the general policies of the State referred to it by the President of the Council of Ministers. The Council shall specifically have the right to exercise the following:*
> *(a) Discuss the general plan for economic and social development and provide an opinion on it,*
> *(b) Review laws and regulations, international treaties and conventions and concessions, and provide whatever suggestions it deems appropriate,*
> *(C) Interpret laws,*
> *(d) Discuss annual reports submitted by ministries and other governmental agencies, and provide whatever suggestions it deems appropriate."*

In addition, Article 22 empowers the Consultative Council to investigate and inquire into any issues of concern regarding the performance of any public entity, including the power to request the attendance in person of any government official in charge. It states:

> "*The Chairman of The Shura Council shall submit to the President of the Council of Ministers requests to summon any government official to the sessions of The Shura Council when matters relating to his jurisdiction are discussed. He shall have the right to participate in the discussion but not the right to vote."*

Although this genre of accountability granted to this Council may be regarded as a "soft accountability" jurisdiction, since the law does not offer particular measures that the Council can adopt consequent to this supervisory exercise, it does have potential for consolidating and enhancing "the sense of responsibility" of the individual at stake. Surprisingly, it was observed that there was no mention of these accountability mechanisms in the respondents' discussions, in the majority of categories. One exception was the comment from (I-A-1) which confirmed that, unlike in other sectors, this mechanism is not yet implemented in the environmental protection domain for GAMEP, despite its potential effectiveness.

This finding goes hand in hand with the argument that, in significant areas of environmental governance, challenges are mainly due to issues with implementation, as put forward by (I-A-10) and (I-C-8)**.** The discussion about good environmental governance in the KSA should, therefore, start by considering the available avenues, rather than skipping a key step and unrealistically arguing for the unavailable to be made available. The peril of being heedlessly

and impractically driven by the vast, dominant and authoritative literature regarding the avenues of accountability, which has its roots in western history and constitutions, is a pitfall to avoid. This is not, however, to deny the great value of the provocative theoretical accounts presented by this body of administrative and constitutional law literature. It is surely better, however, to be as practical and realistic as possible. This is because, as will be discussed throughout this thesis, the applicability of the literature cannot be taken for granted when considering the distinct contextual challenges encountered by Middle Eastern environmental governance frameworks, notably the case study of this research.

6.2.1.2 Second Level: Ordinary Law and Soft Law

6.2.1.2.1 The General Environmental Law (GEL)

A study of the GEL reveals that, although it does refer to some provisions that enhance transparency and accountability, there is less mention of public involvement and participatory aspects. This is also reflected in the practice of GAMEP, which, compared with fellow public bodies,[549] does not invite as much input from the public.[550] For practical purposes, the rationale behind advocating public influence in Middle Eastern studies, including in this study, should be substantive rather than procedural. To clarify, GAMEP should utilise input from people because of the connection between "*public participation and improved outcomes*",[551] which has nothing to do with the western-tailored argument that public participation is "*essential to our democratic experiment.*"[552] The rationale is that input from the affected people should be considered by GAMEP simply because this is likely to "i*ncrease the information available to* [them] *providing them with … local knowledge*."[553]

However, this pro-participation outlook that is "*based on ideas of what constitutes a high-quality decision*"[554] can be counter-argued by citing a cascade of serious obstacles. Such issues include escalating the cost, public apathy or complacency, allowing environmentally-uninformed voices amid the frequently highly-complex technical data,[555] and the fact that lay

[549] The Ministry of Health, for example, has developed a policy for public participation and welcoming input from the public. https://www.moh.gov.sa/en/Ministry/eParticipation/Pages/default.aspx "Your Participation is important" (Ministry of Health Website 26/4/2018).
[550] Although this is likely to be improved by the Vision 2030. See discussion about the Vision below.
[551] Lee, *EU Environmental Law: Challenges, Change and Decision Making* P 115.
[552] Marc B. Mihaly, 'Citizen Participation in the Making of Environmental Decisions: Evolving Obstacles and Potential Solutions Through Partnership with Experts and Agents' [2010] 27 Pace Environmental Law Review 151 P 151.
[553] Lee, *EU Environmental Law: Challenges, Change and Decision Making* P 122. See also Brian Wynne, 'May the Sheep Safely Graze? A Reflexive View of the Expert–Lay Knowledge Divide' in Scott Lash, Bronislaw Szerszynski and Brian Wynne (eds), *Risk, Environment and Modernity: Towards a New Ecology* (Sage Publishing 1996). See also Frans H. J. M. Coenen, *Public Participation and Better Environmental Decisions: The Promise and Limits of Participatory Processes for the Quality of Environmentally Related Decision-Making* (Springer Netherlands 2009) P 2.
[554] National Research Council, *Public Participation in Environmental Assessment and Decision Making* (National Academy of Sciences 2008) P 33.
[555] Renée A. Irvin and John Stansbury, 'Citizen Participation in Decision Making: Is It Worth the Effort?' [2004] 64 Public Administration Review 55. And Holder and Lee, n 450, P 128-129.

persons, at the end of the day, are not experts. Therefore, this procedure may lead to eventually distorting rather than assisting environmental decisions. Although the current literature might regard these issues and the whole argument that is based on "*leave it to the experts*"[556] as dull and outmoded by the current, predominantly legal developments in the western context,[557] nevertheless, these challenges are significantly present and central to any discussion about the KSA's environmental governance, as a key Middle Eastern case study. Ironically, the logic of "leave it to the experts" or more specifically "leave it to GAMEP" does not easily fit with the status quo of GAMEP in terms of its resources and capacity. To put it bluntly, various participants, mainly academics and scholars in (I-C), expressed concerns about the reliability and credibility of the science employed by GAMEP, if any. This is not to indicate deliberate maladministration, but rather to raise significant concerns regarding GAMEP's capacity to apply good-quality, high integrity science and to recruit the needed scientists.[558]

In addition, careful examination of the GEL conveys that it is intended to be only "technically or pragmatically environmental". In other words, it is not primarily concerned with principles or with a value-laden style of environmental governance, but rather with technical and instrumental provisions perceived to be mainly leading to effective environmental protection ends. In short, its focus is largely "about the substantive quality of a decision"[559]. This largely pragmatic[560] nature of the GEL is discernible in Article 2 which articulates that the GEL is:

> *"… aimed to achieve the following:*
> *1- Preserve, protect and develop the environment and safeguard it from pollution.*
> *2- Protect public health from activities and acts that harm the environment.*
> *3- Conserve and develop natural resources and rationalize their use.*
> *4- Include environmental planning as an integral part of overall development planning in all industrial, agricultural, architectural and other areas.*
> 5- *Raise awareness of environmental issues and strengthen individual and collective feelings of the sole and collective responsibility for preserving and improving the environment and encourage national voluntary efforts in this area*"

Having said that, this statute refers in some places to what can be interpreted as enhancing the three good governance standards. For instance, Article 3 sets out that:

> "*The Competent Agency [GAMEP] shall be entrusted with the duties of preserving the environment and preventing its deterioration which comprise the following:*

[556] Dryzek, n 190, P 75.
[557] For example, even in highly complex and science driven issues such as climate change, writers remain advocates of participation from the public, and are unwilling to totally abdicate the issue to the scientific community. Sheila Jasanoff, 'A World of Experts: Science and Global Environmental Constitutionalism' [2013] 40 Boston College Environmental Affairs Law Review 439.
[558] The sub-optimal ability and capacity of GAMEP to deal with the environmental problems were matters of almost complete consensus amongst participants of all categories interviewed.
[559] Chiara Armeni, 'Participation in Environmental Decision-making: Reflecting on Planning and Community Benefits for Major Wind Farms' [2016] 28 Journal of Environmental Law 415 P 419.
[560] The vast majority of the GEL's goals are more concerned with the final outcomes, rather than with the procedure or principles upon which this statute is premised to achieve its goals. See Article 2.

…
2- Document and publish the environmental information
…
7- Promote environmental awareness at all levels."

In terms of accountability to the courts or access to environmental justice, Article 20 of the GEL provides for the objection against any punitive decision issued by GAMEP before the administrative judiciary, which is The Board of Grievances or "*Dewan Al-Madhalim*". As this avenue of accountability to the courts is provided, confining the challenge only to GAMEP's punitive decisions regarding the regulated activities is unduly restrictive to the judicial discretion in environmental cases. This is unlike the situation in some western legal jurisdictions, where the courts are not excessively constrained in environmental issues, so they "*are developing a body of jurisprudence*"[561] and actively contributing to the environmental governance and protection sphere, as will be demonstrated below.

Thus, there is a room for the GEL and the environmental governance arrangements in general to improve, and address their existing imperfections. One notable deficiency in the GEL is the lack of provisions that empower individuals to influence environmental decisions, let alone environmental policy-making. These deficiencies will be further discussed below.

6.2.1.2.2 Rules for Implementation (RI)

As with the status of the GEL, the drafting of the RI is in need of comprehensive revision, particularly in terms of backing up the principles of the public's influence, and of accountability and transparency. The legal provisions in this regard require significant improvements in terms of both quality and quantity. For instance, among twenty Articles with tens of sub-Articles, the only provisions worth mentioning that enable individuals to potentially influence environmental decisions lie in a small section of Article 19. This part establishes the obligation of GAMEP to receive reports from the public or any entity reporting an environmental case or incident.

However, at an empirical level, interviewees from all categories, including (I-A-9), (I-B-4), (I-C-3) and (I-D-2) reported that this mechanism is ineffective and non-systematic, due to the incapacity and lack of responsiveness of GAMEP. Before delving into the respective provisions, it is relevant to highlight this interesting quote by (I-B-4), which distinguishes between the general situation (with GAMEP as the prime national environmental agency), and the special case of the Royal Commission for Jubail and Yanbu (RCJY), which is entrusted to look after the environment in certain industrial cities. He says:

> "*The reporting system or the complaints are very different between the general situation with GAMEP, and the case in the few industrial cities supervised by the RCJY. For example, if there is unusual release in the RCJY zone, people usually react and report this to the RCJY specialised department. The response is then speedy and rigorous. They are also responsive 24/7. The RCJY in these cases will contact the industry under question, verify the situation, and subject the violator to an offence if*

[561] Preston, n 499, P 475.

proven guilty. The examples are abundant in this regard. The situation is massively different in the general cases with the main environmental agency (GAMEP). Many cases I came across shows how in need of capacity, responsiveness, and effectiveness GAMEP is. In many urgent cases it has been unnoticeable. In fact, many cases were addressed by the General Directorate of Civil Defense, with no prominent role showed by GAMEP."

The respective part of Article 19 stipulates that:

"*the Competent Agency shall receive contamination notifications or any other notifications relating to violations of the [GEL] from the concerned agencies and persons. The inspection and monitoring teams shall verify such notifications, conduct follow-up and monitoring operations, take necessary actions and prepare the required initial evaluation reports.*"

In addition to the deficit in implementation discussed from an empirical angle, from a doctrinal analysis viewpoint, this provision is fraught with shortcomings. Public interaction is introduced very late in the process. Only after the occurrence of the problem does the RI offer individuals in the community the chance to take action by reporting the problem to GAMEP. Their (the individuals') job starts and ends here. Coupled with this, the RI does not provide a specified time-scale during which GAMEP is obliged to respond, nor does it oblige GAMEP to inform the reporter what measures have been taken. Indeed, this Article is representative of the imperfect, loose and vague drafting of both the GEL and its RI, which was repeatedly commented on and confirmed by several interviewees across all the four categories.

In terms of accountability of GAMEP, Article 20, Item 2-2-20, enables those sentenced by GAMEP or its committees to have recourse to the Administrative Judiciary "*Dewan Al-Madhalim"* should they wish to appeal. It states:

"*Those penalised by a decision of the committee(s) may file an appeal to the Grievance Bureau [The Administrative Judiciary/ Dewan Al-Madhalim] within sixty days from the date of their notification of the penalty decision; otherwise, their right to grievance shall lapse*".

However, confining, the availability of *Dewan Al-Madhalim* only to defendants, i.e. those who have received punitive decisions from GAMEP entails an immense reduction of the scope of GAMEP's accountability before *Dewan Al-Madhalim.* Ideally, there should be a clause or even a full Article expressly empowering any individuals to hold GAMEP accountable before *Dewan Al-Madhalim*, without the necessity of them being related to the proceedings. For instance, this suggested "enabling-clause" should equip individuals to initiate the process and bring GAMEP to account in front of the Administrative Judiciary, even in cases of alleged negligence, inaction and/or failure.

This provokes the traditional doctrinal issue of the legal standing (locus standi), or more specifically, the old question of "*Should Trees Have Standing*"[562] to the forefront. In this context the issue is "*who is permitted to present an application in court*"[563]. As neither the GEL nor RI provides any provisions establishing the "*public interest model*", access to the judiciary in environmental affairs is almost only subject to the private interest precept and thus confined to individuals for whom "*their personal rights and interests are directly affected by the challenged administrative action*"[564] or inaction, regardless of the legitimacy or soundness of the thrust of the subject matter of the litigation.

This stance by the KSA's judiciary is similar to the position adopted by the majority of the US Supreme Court in the widely-cited 1972 *Sierra Club v. Morton* case. In this case, the court did not argue against the allegations of the plaintiff who challenged the permission given by the government to Disney Corporation to establish and expand its project in Mineral King Valley, California, as destructive to the natural landscape and therefore an unlawful act by the government. Rather, the majority of Justices' opinions were based on the doctrine of standing and their argument was "*the party seeking review [must] be himself among the injured*" by "*showing of more direct interest*". It is in the same case that Justice Douglas dissented and stated that an endangered "inanimate object" could be granted personhood.[565]

The irony is that the narrow application of the doctrine of standing does not sit comfortably with the collective nature of environmental problems, which in many cases do not merely impinge on private properties, but more seriously on the "commons".[566] As such, there is much room to improve the KSA's environmental governance system, notably in the area of environmental litigation and administrative judicial review by, inter alia, recalling the special and collective nature of environmental challenges in general.

As far as the transparency of GAMEP is concerned, the RI treats the publication of environmental data in a lenient manner and in relatively less authoritative language. Despite the fact that the RI includes provisions addressing this issue, they are neither imperative enough, nor sufficiently elaborated. The only provision expressly mandating GAMEP to make environmental data accessible to lay persons is Article 3 Item 3-2, which declares that one of the duties of GAMEP is to "*Document and publish the environmental information*".

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[562] Christopher D. Stone, 'Should Trees Have Standing _Toward Legal Rights for Natural Objects' [1972] 45 Southern California Law Review 450.
[563] Chris Hilson and Ian Cram, 'Judicial Review and Environmental Law - Is There a Coherent View of Standing?' [1996] 16 Legal Studies 1.
[564] Elliott and Varuhas, n 539, P 546.
[565] https://supreme.justia.com/cases/federal/us/405/727/case.html "Sierra Club v. Morton, 405 U.S. 727 (1972)" (JUSTIA US Supreme Court Website, accessed 27/4/2018). See also 'Standing for Environmentalists: Sierra Club v. Morton' [1973] 6 Urban Law Annual 379.
[566] Fisher, Lange and Scotford, n 1, P 24-27. . See also Eric. W. Orts, 'Reflexive Environmental Law' [1995] 89 Northwestern University Law Review 1227, notably P 1256-1257.

Unfortunately, there are no provisions in either the RI or the GEL which subject GAMEP to specific accountability procedures if it fails to comply with this provision.[567]

Compare this with the provision of Article 18, Item 2-18 that subjects any entity "*withholding environmental information from the Competent [i.e. GAMEP] or Public Agency in the event of a violation of any of the standards and conditions, or providing incorrect or un-factual information or measurements of environmental parameters*"[568] to certain accountability procedures. In other words, although it is still weak and loose, the RI entails that any regulated entities that are not being transparent fall within the general remit of Article 18, Item 2-18 which imposes fiscal penalties, plus the obligation to undertake corrective measures.

6.2.1.2.3 The State of the Environment Report (2017)

There is little to say about the three good governance principles when discussing this report, which provides an insight into how the environmental bodies, especially GAMEP, who issued this report perceive issues related to environmental governance. In terms of transparency, it is discernible that a considerable factor in GAMEP's sub-optimal practices is its inability and lack of capacity to fulfil the statutory requirements of the GEL and RI regarding transparency. Although this is not explicitly emphasised by the report, nevertheless, it is easily readable. For example, the report underscores several times that the poor environmental database infrastructure is one of the hindrances that weakens and hampers the well-informed performance of GAMEP. For example, the report frankly confesses that one of its main messages is to convey that:

> "*There is a need for more attention to be exerted towards the issue of an environmental database in order to be able to possess and offer national data concerning the environmental conditions and state. Without this it would not be feasible to draw up and establish the policies and strategies and workable plans that encompass measurable goals. Hence, there shall be an implementation of a comprehensive survey of national environmental conditions and status quo of the environment, plus the project of a strategic centre for environmental information, and also development of sustainable development indicators for the post-2015 era, as well as creating data and indicators and exchanging plans and procedures within a specific government programme*"[569].

The straightforward conclusion here is that as long as GAMEP suffers from a significant lack of data, and does not hold accurate environmental information, it is impossible even to expect environmental data to be disclosed and made accessible. This essentially transgresses the norm of transparency as a requirement of good governance, as there are many prerequisite conditions that are not attained yet. This problem was echoed in statements from

[567] This is an area where the principles of accountability and transparency become clearly interrelated.
[568] Article 17, Item 5-7-17
[569] The General Authority for Meteorology and Environmental Protection (GAMEP), 'The State of the Environment: Responsibilities and Achievements' (2017). P 206. (Arabic). Translated by the author.

several participants in all four categories. For instance, this view expressed by (I-B-7) is representative of views expressed by respondents from the industries category (I-B):

> "*I can't see any environmental data made available other than those formal press releases or pronouncements from the environmental executive officials, to the official newspapers. Normally, by environmental official speakers on the fringes of certain occasion. To be honest, I am not aware of any environmentally-mandated body that is consistently and systematically publishes environmental information publicly. If the primary institution (GAMEP) has an incomplete and poor website that you cannot find useful and updated environmental information about the environmental state and conditions, how would you ask anyone else to publish such data? It is therefore naïve to expect standard industries and businesses to confess their environmental data, obviously*".[570]

Regarding the aspects of public involvement and accountability, the report does not appear to be mindful of the importance of these principles in the environmental protection arena. Despite covering a tremendously wide range of issues leading to the current sub-optimal level of environmental conservation, key issues such as the actual or potential role of individuals, and considerations of accountability are clearly overlooked. The danger of this is that, given the wide-ranging technical challenges referred to by the report, the current poor environmental performance is not likely to improve and flourish until these and other good governance principles are rigorously embraced and implemented.

6.2.1.2.4 Annual Report (2016) of the Ministry of Environment, Water and Agriculture (MEWA)

In this report, the relevance and importance of Vision 2030 and its principles and even its language, is clearly observable, as in other recently released governmental documents. A number of new concepts introduced by the Vision have been reflected in the environmental bodies' actions with regard to the principle of transparency. For instance, the Ministry has recently introduced a new feature in its website and declares:

> "*The disclosure of open data is one of the Ministry's initiatives that aims to establish a unified centre making data available to the beneficiaries from the Ministry's online portal. It aims also to establish strategies for open data in order to create awareness about the statistics, reports, studies and other documents of the Ministry. This is for the purpose of enhancing transparency, and encouraging and enriching electronic participation from the perspective of a cultured and aware society"*[571]

This approach to disclosure and the new discourse is a quantum leap in the field of environmental protection and was not as evident in the pre-Vision era. This improvement in

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[570] Some participants had a different interpretation of the same practice, leading, however, to the same conclusion i.e. the unavailability of environmental data from GAMEP. They contend that it is not primarily due to the unwillingness of GAMEP to publish ordinary environmental data, but simply because it does not get hold of it, as explained in some places in the chapter.

[571] https://www.mewa.gov.sa/ar/InformationCenter/OpenData/Pages/home.aspx 'Open Data' (the Ministry of Environment, Water and Agriculture Website, accessed in 18/7/2017). (Arabic) Translated by the author.

the area of transparency does not, however, automatically entail that the public can influence GAMEP's environmental decisions and actions. Interestingly, the focus of the report is much less prominent when it comes to the "environmental" role of the public and the issue of accountability.[572] As discussed earlier, the dominant style of environmental governance remains, in practice, largely centralised and formal. Having said that, the report refers to "*engaging stakeholders in order to facilitate transforming the environment sector*"[573] as one of its strategies. Nevertheless, the interpretation of stakeholder in this context as including individuals is questionable. The stakeholders referred to here seem to be principally the private sector, and research centres, environmental societies and non-profit organisations.[574]

Despite its importance, the accountability principle and its applications are not highlighted by this report. This reflects the inability of some environmental institutions to comprehensively diagnose the shortcomings and overarching defects existing in the environmental governance domain in general. Despite the relatively long history of environmental offences committed by regulated entities, and the failure of relevant environmental bodies to fulfil their duties (including GAMEP, which is now under the umbrella of the Ministry) the principle of accountability is not discussed explicitly nor by implication.[575]

6.2.1.2.5 5-Year Development Plans

Unlike its predecessors, the (10th) 5-Year National Plan for 2015-2019 distinctly highlights the three good governance principles, although to different degrees. This is probably due to its close concurrence with the advent of Vision 2030. What seems remarkable is that this general document has emphasised the three good governance principles more visibly and in more detail than any of the specifically "environmental" documents discussed above.

Although not strictly directed at the environmental domain, in the context of stimulating the society's productivity, this instrument refers to "*catalysing the latent energy of the civil society*"[576] and "*activating the role of the civil society institutions*"[577]. This document also more

[572] This narrow focus cannot be said to reflect the content of the Vision. Below (particularly in the section addressing the Vision 2030) is an illustration of how the Vision drives a significant development regarding the role of the public, especially in the environmental governance and protection field.
[573] The Ministry of Environment, Water and Agriculture, 'Annual Report' (2016) (Arabic) P 24, can be found at https://www.mewa.gov.sa/ar/InformationCenter/DocsCenter/YearlyReport/YearlyReports/AnnualRep_1437_1438.pdf accessed in 18/7/2017.
[574] See the strategic objectives in The Ministry of Environment, Water and Agriculture, 'Annual Report' (2016) (Arabic) P 16, which can be found at https://www.mewa.gov.sa/ar/InformationCenter/DocsCenter/YearlyReport/YearlyReports/AnnualRep_1437_1438.pdf accessed in 18/7/2017.
[575] This is in contrast with the Vision documents, which bring the principle of accountability to the forefront, as will be seen below.
[576] Ministry of Economy and Planning, 'The Executive Summary of the 10th National Development Plan and its priorities (2015-2019)', P 22 (Arabic).
[577] Ibid, P 23.

clearly underlines and links the principles of transparency and accountability together with the concept of governance. It articulates that:

> "*the 10th Development Plan consolidates the principles of accountability, through ameliorating the mechanisms of governance in the governmental bodies, and [consolidates] the levels of transparency and disclosure, as well as protecting integrity and combating corruption … the Plan aims to conduct an elaborate study for specifying and clarifying the roles and responsibilities of the governmental institutions and re-structuring them in a way that is compatible with the state's future visions and orientations, and in a way that ensures the improvement of the levels of transparency*"[578]

This link between transparency and accountability and governance is not as evident in the environmental reports as here. This is not to say that these issues are addressed comprehensively. For example, in the quote above the accountability principle is interpreted rather narrowly, as merely connoting the administrative dimension of accountability. Nevertheless, this reveals a positive change in the right direction, prompted by Vision 2030.

6.2.1.2.6 An Interesting Regional Document

A "Draft Document on Environment Governance for Environmental, Sustainability in the Islamic World" was introduced at ISESCO's 6th Islamic Conference of Environment Ministers under the topic "Climate Change: Future Challenges for Sustainable Development". As explained earlier, the pertinence of this instrument to the KSA stems primarily from its substance, rather than its obligatory nature. In fact, this document is not legally-binding as far as the KSA or other contributing parties are concerned. However, it emphatically approaches the concept of environmental governance in a normative sense, highlighting a number of environmental good governance principles, including the standards addressed by this chapter. In terms of participation of individuals, this document emphasises, inter alia, the link between environmental governance and the public's influence on environmental decisions. It contends:

> "*Environmental Governance, understood as all the levers concerning this economic, social and societal change must be at the heart of governmental action. It implies the institution of a clear-cut and specific framework: structuring of an environmental dialogue with stakeholders at the national and local levels, the participation of expert organizations and the participation of all citizens in public decision making.*"[579]

In a different context, this document portrays the concept of good governance as an amalgamation of normative principles, including participation, transparency and accountability. It argues that governance should accommodate core values, including:

> "*access to information, knowledge sharing (acquisition, learning outcomes, good practices ...), combating corruption, openness and accountability, effective resource management, professional culture ... recognition of the rights of future generations;*

[578] Ibid, P 118.
[579] ISESCO, 'Draft Document on Environment Governance for Environmental, Sustainability in the Islamic World' ICEM-6/2015/3.1 can be found in https://www.isesco.org.ma/wp-content/uploads/2015/10/3-1-VE-env6.pdf accessed in 5/6/2017. P 9

and partly because it is based on the principle of consultation and cooperation among different stakeholders."[580]

These are merely examples where this unique document has emphasised the three principles which are the focus of this chapter. Unfortunately, however, the gap between the content of this soft law instrument and the real practice is significant, as discussed below. This should not be any surprise, since the lack of influence of the regional scale of environmental law was almost unanimously agreed by the interviewees in all categories.

6.2.1.2.7 Vision 2030

The link between power and accountability is inherent.[581] For a certain agency to be accountable, everyone needs to know fully and exactly what it should be doing, i.e. its tasks are specified. At the same time, the executive powers and tools it is given should be sufficiently proportional to these entrusted duties. Vision 2030 recognises that this was not the case, including in the environmental sector. Indeed, one of the persistent and formidable challenges, notably in the environmental sphere, is that some institutions which were founded and commissioned to fulfil certain environmental tasks and responsibilities, are not armed with the necessary and corresponding executive powers and tools.[582] This is the case with GAMEP, for instance. This is not only detrimental to the fulfilment of its entrusted duties, but also precludes the accountability principle from being put into practice. In such cases, even the other essential standards of good governance, such as transparency and public involvement become meaningless in a practical and pragmatic sense. Thus, in the form of a programme, the Vision takes as one of its goals, the eradication of this mess of responsibility, and links this also to the enhancement of accountability. It affirms:

"*We will work on restructuring our government agencies continuously and with flexibility. We will eliminate redundant roles, unify efforts, streamline procedures and define responsibilities. We shall also enable our agencies to deliver on their mandate, to be accountable, to ensure business continuity and to show adaptability in the face of new challenges. Under the Council of Economic and Development Affairs, we will establish a strategic management office to focus on coordinating all government program[me]s and ensuring their careful alignment with the national Vision. The office will also prevent gaps, duplication or contradiction between agencies' policies and program[me]s, and ensure that all components of the Vision are detailed in [the] proper sectoral strategies. We will also establish a Decision Support Center at the*

[580] ISESCO, 'Draft Document on Environment Governance for Environmental, Sustainability in the Islamic World' ICEM-6/2015/3.1 can be found in https://www.isesco.org.ma/wp-content/uploads/2015/10/3-1-VE-env6.pdf accessed in 5/6/2017. P 12.

[581] Even in very recent scholarly publications, discussion about accountability is frequently linked to the issue of power. See for example, chapter 7 "Power and Accountability in Environmental Law" in Elizabeth Fisher, *Environmental Law: A Very Short Introduction* (Oxford University Press 2017). This is also true to other disciplines linking accountability to governance and good governance, see for instance Andrew Keay, 'Exploring the Rationale for Board Accountability in Corporate Governance' [2014] 29 Australian Journal of Corporate Law 115.

[582] This seems to explain why stakeholders in the official category (I-A) view the challenges in the environmental protection arena as largely a problem of implementation and enforcement. This seems however, to be oversimplifying, as argued in this chapter, and in this thesis in general.

Royal Court to support decision-making through analytical and evidence-based information and reports."[583]

The Vision further emphasises the ties between good governance, transparency and accountability and their interdependent relationship and their significance for the attainment of the numerous goals of the government in the various sectors. It indicates profound dissatisfaction with some of the poor practices which led to persistence of unsatisfactory outcomes, and the environmental sector is not an exception. The urgent need to eliminate some of the challenges that have been repeatedly acknowledged by past reports and documents is powerfully affirmed when the Vision states:

"*We shall have zero tolerance for all levels of corruption, whether administrative or financial. We will adopt leading international standards and administrative practices, helping us reach the highest levels of transparency and [good]*[584] *governance in all sectors. We will set and uphold high standards of accountability. Our goals, plans and performance indicators will be published so that progress and delivery can be publicly monitored. Transparency will be boosted and delays reduced by expanding online services and improving their governance standards, with the aim of becoming a global leader in e-government"*[585]

It is striking that this master plan, which has an undoubted nation-wide resonance, was rarely discussed by the respondents across the four interviewed groups. Its potentially "positive" repercussions on the environmental sector were not adequately discussed by any of the interviewees. Surprisingly, a number of interviewees, including (I-B-5), admitted that they had not read the Vision document and its subordinate and correlative programmes so they could not answer questions about them. Even more surprisingly, few participants, particularly in the civil servant (I-A) group, anticipated any positive environmental consequences of the Vision, as they mistakenly believed it is an exclusively energy and economy focused plan, and thus will not have any effects on the environmental protection domain.

The same unawareness or indifference was also shown by participants in the industries (I-B) group. It seems that neither the actual developments introduced by the Vision nor their repercussions had reached the knowledge of the majority of interviewees. This confirms the need for more training in the environmental governance framework for its affiliated personnel and stakeholders. As well as improving the quality of outcomes of environmental protection efforts, this is also likely to be reflected in a fuller implementation of the Vision as a whole.

6.2.1.2.8 Vision's Unique Specialised Initiatives

At a more practical level, the Vision also inaugurates a number of mechanisms that aim to promote the transparency and accountability principles. These can be exemplified by the

[583] http://vision2030.gov.sa/en/node/125 'How to achieve our vision' (Vision 2030 Kingdom of Saudi Arabia Website, accessed in 21/7/2018).
[584] As in the main official Arabic version.
[585] http://vision2030.gov.sa/en/node/13 'An Ambitious Nation Effectively Governed' (Vision 2030 Kingdom of Saudi Arabia Website, accessed in 21/7/2018).

establishment of what can be translated as "The National Centre for Measuring the Performance of Public Bodies" (Adaa). Adaa is concerned with the promotion of the principle of transparency through monitoring the extent to which the different programmes and initiatives are fulfilled and also to periodically measure the performance of public institutions and their implementation of the announced national goals. Adaa is also charged with making the outcome of these performance indicators available to the public.[586]

Another parallel mechanism introduced by the Vision is the "escalation mechanism". In a nutshell, this mechanism is dedicated to investigating the causes of any obstacles that may hinder or delay the achievement of the respective goals, and to provide a "quick solution" to such problems, as well as holding to account those responsible for such failures.[587]

Along with transparency and accountability[588] and the role of the civil society in the environmental protection domain, the Vision has instigated a potentially significant development in the environmental governance framework. In May 2018, the Council of Ministers, presided over by the King, officially endorsed the National Strategy for the Environment, introduced as part of the national effort towards the full realisation of Vision 2030 and its objectives.[589] Although details of the strategy are yet to be published, its promotion of the good governance criterion of public participation in environmental affairs is established.

The Minister of Environment, Water and Agriculture has commented, in his official Twitter account, on the official approval of the National Strategy for the Environment and said that "…*The National Environment Strategy relies on the participation of civil society in protecting the environment and raising environmental awareness among members of society*"[590]. This asserts the potential of the Vision to address current and long-standing challenges and failures existing in the KSA's environmental governance framework. This also underlines the fact that the Vision directly addresses the standards of good governance, including in the specific domain of environmental protection. The final product however, has to wait until 2030.

6.2.1.3 Third Level: Relevant General Institutions

During the last decade the public engagement culture has been influenced by a package of initiatives that have been adopted by the KSA. Thus, as well as addressing the role of Municipal Councils and their election process, this section also highlights one institution, the King Abdulaziz Centre for National Dialogue, that is pertinent to the good governance

[586] http://vision2030.gov.sa/en/node/259 'Governance' (Vision 2030 Kingdom of Saudi Arabia Website, accessed in 21/7/2018).
[587] Ibid.
[588] It is clear from the discussion in this chapter that the focus by the Vision is mainly on the inter-government and administrative brand of accountability.
[589] https://www.spa.gov.sa/1760887 'The Minister of Environment Thanks the Leadership for Endorsing the National Strategy for the Environment' (Saudi Press Agency Website, accessed in 10/5/2018). (Arabic) Translated by the author.
[590] https://twitter.com/AlfadleyA/status/993820223068401670 'Abdulrahman Al Fadhli Official Twitter Account' (Twitter Website, accessed in 10/5/2018). (Arabic) Translated by the author.

standards addressed by this chapter, notably public engagement. It also discusses its actual and potential roles in the environmental arena and for the purpose of environmental protection.

6.2.1.3.1 King Abdulaziz Centre for National Dialogue

The National Dialogue project is not part of the legal system in the KSA, as it does not pertain to any of the three main branches of the state. Nonetheless, it provides a pioneering attempt in which various sections of society are equipped to engage in a "responsible dialogue" and then listened to.[591] This forum, which was established in 2003,[592] offers a step towards wider public participation opportunities in relation to various issues affecting peoples' lives. Ideally, all kinds of environmental issues should be brought to the surface and discussed by those participating in this national-wide dialogue. Although raising environmental challenges will not necessarily have a direct effect on policies or decision making, it is likely to bring environmental concerns to the forefront and put pressure on environmental entities, mainly GAMEP, to act or at least respond. This potential "environmental" exercise is in line with the one of the Centre's main objectives, which is "*Discussing various national affairs including social, cultural, political, economic, educational and others*"[593]. It is also compatible with other objectives of the Centre, such as "*encouraging the members of the society and civil society institutions to contribute and participate in national dialogue*"[594].

Figure 2: The Centre represents a civil opportunity for the Public to deliver their opinions although it lacks any executive power.

Unfortunately, despite the diversity of activities promoted by this national assembly centre, any discussion of environmental issues seems to be absent. This is evident from the various activities shown on the Centre's website, including symposia, meetings, seminars and copies of its annual reports. Thus, this centre has not yet utilised its full potential in supporting environmental affairs and instantiating one key good governance principle, i.e. public

[591] https://www.kacnd.org/OurVision/Index 'Vision, Message, Objective and Values' (King Abdul Aziz Centre for National Dialogue Website, accessed in 13/7/2018). (Arabic).
[592] https://www.kacnd.org/KingSpeech/KingFahd 'Supreme Approval' (King Abdul Aziz Centre for National Dialogue Website, accessed in 14/7/2017). (Arabic).
[593] https://www.kacnd.org/OurVision/Index 'Vision, Message, Objective and Values' (King Abdul Aziz Centre for National Dialogue Website, accessed in 13/7/2018). (Arabic).
[594] Ibid.

involvement. This point is also affirmed by the fact that none of the respondents in the four categories mentioned this institution in any way in giving their answers to the questions posed.

6.2.1.3.2 Municipal Council Elections

Although the Law of Municipalities and Rural Areas has been in existence since 1977,[595] the election of one third of their members was introduced quite recently, in 2014, by virtue of some amendments to the Municipal Councils Law.[596] This development has been quite significant, since it instituted new practices in a domain that is very closely related to the environmental field, although some electoral practices in municipal issues did exist before this date.[597] However, the enthusiasm, resonance and scale have certainly been unique during this recent development. This can be exemplified on the government side by the encouragement of the Ministry of Municipal and Rural Affairs (MOMRA) for people to take part, under the slogan "participating in decision-making", and also by reducing the voting age to 18 years, and expanding the powers of the municipal councils.[598]

The Municipal Councils have mainly the authority for scrutinising and overseeing the performance of the respective municipalities.[599] They also have the competence to undertake studies and offer consultations and opinions regarding affairs that fall under the jurisdiction of MOMRA, including issues related to proposed urban and rural planning projects, the provision of municipal services and their fees and fines, and criteria and standards of municipal affairs affecting general health.[600] The councils also have the duty to arrange periodic meetings with citizens, facilitate communication with them, and receive complaints and suggestions regarding municipal services.[601] They are also mandated to deal with citizens' complaints, needs and suggestions, within their competence.[602]

In theory, the undertaking of these powers and responsibilities within a participatory regulatory sphere implies a shift in governance models from an exclusively agency-based to a more pluralist and collaborative paradigm. Thus, it can be argued that this legal development sends a more profound signal than its actual affect. The practical and on-the-ground ramification of this seemed surprisingly suboptimal. The interviewees did not adequately discuss any of these mechanisms. This is arguably due either to the unfamiliarity of those in all four categories regarding these municipal mechanisms, or, more probably, because the actual outcomes of these tools are quite negligible in terms of environmental protection. In all

[595] Municipalities and Rural Areas Law (1977).
[596] Municipal Councils Law (2014).
[597] There were electoral practices but with a more limited franchise regarding age and scale.
[598] See MOMORA's official channel at https://www.youtube.com/watch?v=LShwaWhSYzo 'The New Law of the Municipal Councils' (MOMRA's Official Channel on youTube, accessed 20/7/2018). (Arabic).
[599] Article 3 of the Municipal Councils Law (2014).
[600] Article 7 of the Municipal Councils Law (2014).
[601] Article 47 of the Municipal Councils Law (2014).
[602] Article 48 of the Municipal Councils Law (2014).

cases, these are not strictly speaking environmental powers and responsibilities as much as being municipal and rural and urban planning issues. Nevertheless, this experience of endorsing and embracing such a participatory and engaging governance approach would be worth transferring to more environmental issues, and more specifically to those functions entrusted to GAMEP. This change might be approached by Vision 2030.

Unlike the case of the Centre for National Dialogue, these elections and the councils were mentioned, at least minimally, in the interviewees' responses, especially in the academic group (I-C). However, some respondents, such as (I-C-5) believed that they were not environmentally effective, for a number of reasons. According to (I-C-7), their decisions have no authoritative nature and the people involved are not sufficiently environmentally aware or expert. (I-C-8) also added that their focus is on municipal issues such as garbage collection, general cleaning and local street maintenance, rather than environmental quality and protection issues.

6.3 Analysis of the Views of Different Categories of interviewees (Qualitative Analysis)

This section is based on the interviewees' responses, together with the pertinent references to scholarly discussion in the literature. As explained earlier, the respondents were experts from various disciplines and professional backgrounds, and deeply involved in the environmental sector in the KSA. The analysis covers the main three norms of good governance principles, namely, individual's influence on environmental decisions, accountability, and transparency within the environmental sector. The issue of the role of courts in the environmental protection domain is also addressed. The themes and topics discussed in the light of the available literature in this section were mainly observed and extrapolated from the interviews conducted. As explained elsewhere, this semi-structured form of interviewing permitted the participants to speak amply and flexibly depart from the exact focus of the question posed, to bring in what they thought important or worth mentioning.

As clarified earlier, despite the large amount of data gathered from the 27 interviews, these interviews and their input are not treated in this research as a centrepiece of discussion or the source of the principal originality of this work; nevertheless, they are important and their contribution to the originality of the research is significant. This research does not focus on what individual interviewees had to say per se, but rather on the opinions of the stakeholders as a group or category. Thus, identifying the perspectives and stances held by these categories is part of the contribution intended by the chapter, and the research in general.

The centrepiece of the chapter and the primary contribution of the research is actually attained by allowing the scholarly theories and discussions on environmental governance to be introduced, engaged with, and voiced within the contextual discussion and analysis of the Middle Eastern case study. This synthesis facilitates the targeted primary contribution, which is theoretical development via the expansion of the literature to the uncharted environmental

governance jurisdiction of the KSA. This, in turn, justifies an assessment of the relevance and applicability of the large body of available environmental governance literature addressing advanced states to the Middle Eastern case under study.

6.3.1 Transparency

As illustrated above, the accessibility of environmental data to the public is a central issue in this regard. Participants in all the categories agreed that environmental data have not been publicised to the public adequately and systematically, even to those affected by the particular issues. This is in contradiction with the requirements of Article 3, Item 2 of the GEL. However, the interpretation of such established conservative practices varied among the interviewees.

6.3.1.1 Mainstream Interpretation

The majority of participants attributed this lack of transparency to technical factors, such as the lack of availability of advanced technological devices and innovations at GAMEP's disposal. In other words, GAMEP does not possess up-to-date environmental data in the first place, so it is pointless to ask it to publicise something it does not have. Several participants, among all categories, echoed the point made by (I-B-4), who stated that; "*If GAMEP itself has no sufficient environmental data in its possession, how could the public possibly be informed?*". This justification is in line with numerous environmental and policy documents confirming the inadequacy of the budget and the shortage of technological and data infrastructure in environmental bodies, notably GAMEP. This explanation is also consonant with the doctrinal analysis above, particularly in relation to the discussion on the State of the Environment Report (2017).

However, there was a more elaborate version of this perspective put forward by some interviewees, notably among the bureaucrat category (I-A). This explanation, while acknowledging the scarcity of up-to-date environmental data in the hands of GAMEP, also pointed to its great reluctance to reveal environmental data to the public. Surprisingly, the loose drafting of the GEL is interpreted here as intending to safeguard GAMEP from legal consequences rather than to push it to disseminate the actual environmental information. It was asserted by (I-A-1) that:

> "*The actual environmental information is not available even to the all GAMEP's workers and personnel, let alone the general people. I remember cases where some persons even from inside GAMEP requested some data from the respective department, and the request was declined. The environmental data and lab readings are exclusively held by the main branch, and the dispersed branches across the country have no access to such data and readings. For example, I personally asked for some information from the headquarters in order to conduct some studies and do some scientific publications. My request was denied and the data considered confidential. The reason is clear, their concern is that some of this data might've got leaked to the media, and people will start to huff and puff. By that time GAMEP will have no control over the respective data. That does not necessarily mean the data reveals a serious problem, but the concern is, inter alia, this information may be subject to misconstruction or misconstruing and then bring about awkward and undue*

media and press whirlwinds. So, it is right that GAMEP is less open than some of the other fellow public bodies. However, it is hard to decisively hold GAMEP accountable on the basis of contravening Article 3 Item 2, if you contemplate the drafting there is a trick [or loopholes] that is in favour to GAMEP".

What is interesting to recognise in this context is that these kinds of challenges highlighted by the interviewees appear to be not mentioned in leading literature sources, which suggests they are contextual and relevant specifically to the Middle East. Although the environmental governance literature addressing transparency is vast, the types of issues it highlights are distinctively different, and tend to be derived from its own western context. These more sophisticated issues include: the logical and legal basis on which environmental data have to be published or the justifications and functions of publicising environmental data;[603] the forms of participation and channels of dissemination of environmental data and the link between these transparency concerns and good governance;[604] the potential of public participation in addressing environmental problems;[605] the handful exceptional cases in which information might not be made accessible, and the influence of the EU on all of these issues.[606] Interestingly, the underlying assumption in these accounts is that the general availability of environmental information is a given, whereas a central issue frequently highlighted by respondents in the case study was the scarcity and unavailability of environmental data.

6.3.1.2 A Different Interpretation

In another interpretation of the existing practices, some respondents, including (I-A-5), contended that the public are not environmentally educated and aware enough to understand the actual environmental data, which will make such data subject to misinterpretation. This camp argues that the disadvantages of such transparency practices, in disclosing environmental data, by far outweigh the advantages. According to this perspective, which was also embraced by respondents from the official category (I-A), environmental data are highly technical, and involve codes, percentages and chemical data which are inappropriate and even unwise for the lay person to be given. This is simply because "*the public is not considered scientifically 'expert'*"[607]. They believed that if environmental data were made available, they would unduly trigger fear, unrest, and unnecessary and even unjustified loud voices

[603] Cliona Kimber, 'Understanding Access to Environmental Information: European Experience ' in Tim Jewell and Jenny Steele (eds), *Law in Environmental Decision-making: National, European, and International Perspectives* (Clarendon Press Oxford 1998).
[604] Stephen Dovers and Robin Connor, 'Institutional and Policy Change for Sustainability' in Benjamin J. Richardson and Stepan Wood (eds), *Environmental Law for Sustainability: A Reader* (Hart Publishing 2006).
[605] Jenny Steele, 'Participation and Deliberation in Environmental Law: Exploring a Problem-solving Approach' [2001] 21 Oxford Journal of Legal Studies 415.
[606] Lee, EU Environmental Law: Challenges, Change and Decision Making P 127-133.
[607] Sally Eden, 'Public Participation in Environmental Policy: Considering Scientific, Counter-Scientific and Non-Scientific Contributions' [1996] 5 Public Understanding of Science 183 P 183.

challenging GAMEP. In a nutshell, their argument is based on avoiding or addressing "scaremongering" concerns. (I-A-3) articulated and expounded this viewpoint bluntly:

> "*We cannot disclose actual environmental data and indicators, not all the recipients are qualified enough to digest and deal with them! For example, there have been some times in the past where the dust ratio in the air by very far exceeded our standards. It was multiple times above our regulatory standards. If we disclosed this data that time, we will bring about fuss and pervade fear and uncalculated reactions against us from the public, which means bad consequences might be incited. We knew it was a matter of time, and this will disappear, and we will be back to normal.*
> *Another example, is the claim by some of the existence of some radioactive materials in the soil of some areas. Although they might be correct in their claim, but we cannot openly admit their correctness, because they will take this part and will turn a blind eye on our justification of this as natural, safe and not exceeding the normal limits. Some people will always stick to the negative side, and inclined to instigate propaganda. So, it is wiser to keep them calm and not disclose the data for good reasons*".

What renders this strand of explanation interesting is the fact that it is not observed in any of the available environmental reports or documents by GAMEP or any other relevant institutions. In other words, this strand of explanation is largely identified as an outcome of the interviews and empirical methodology of this research. Perhaps more interestingly, is that although the literature includes voices objecting to the dissemination of environmental data, the reasons for such objections differ vastly. As discussed by Bell and McGillivray, reluctance to disclose environmental data is normally grounded on concerns related to fears of the private sector from detrimentally impacting "*the viability of business by breaching commercial viability*" or worries about "*mischief making and unacceptable level of interference by activists*".[608] The question is now which one of the above interpretations is correct?

6.3.1.3 Reflections on these interpretations

It seems that both have some truth in them and neither of these two explanations can be ruled out. Although the poor data resources and collection methods of GAMEP have been established and were unanimously agreed on by respondents in all categories, it also appears to be the case that even when the environmental data becomes available, environmental bodies, notably GAMEP, are very reluctant to disseminate these data, especially those perceived sensitive and provocative. This explains the rather obvious practice by GAMEP to widely, and very frequently publicise meteorological and weather forecast data. This demonstrates the availability of at least a minimum degree of technology and infrastructure. For instance, in manifest contrast to other environmental data, GAMEP's official website and twitter account have plentiful forecasts, and atmospheric announcements and warnings.

The different interpretations are not necessarily conflicting views, and can also be reconciled and co-exist on other grounds. The second explanation might be more, but not

[608] Bell and McGillivray, n 107, P 297.

exclusively, applicable to RCJY,[609] as they are acknowledged by all the categories to possess relatively stringent monitoring mechanisms and reasonably up-to-date technology, including monitoring technologies and thus, up-to-data environmental data. The first explanation is more related to GAMEP, whose lack of human, logistical and technological capability was an area of consensus among the respondents of all four interviewed categories.

Unfortunately, the lack of environmental informational available to the public is a significant problem, as it automatically precludes the realisation of a widely-recognised information-based environmental governance mechanism. Effective informational governance tools could include public emission inventories, environmental public registers, and Environmental Impact Assessments, when made available.

6.3.2 People's Influence on Environmental Decisions

The direct repercussion of the prevailing conservative attitude is naturally weak participation by individuals. There was very evident agreement amongst the respondents that individuals have no obvious role to play in influencing decisions in the environmental sphere. Nevertheless, the absence of a clear-cut and institutionalised role of the lay person in influencing environmental decisions does not mean people are entirely without influence. In the light of the scarcity of environmental data disclosed, it was surprising to find that the public's effect is sometimes considerable, due to environmental regulators' concerns about their own public image. For instance, it was contended by (I-A-8) that:

> "*We care! We are attentive to peoples' sayings about us. For example, we are very observant to our twitter account, the replies to our tweets, and to what people had to say about us and our performance. We respond to them, we invite those who have worthy concerns and considerable comments. We discuss with them, and most of the time they leave us more understanding and satisfied. However, still there are some people on social media who are their claims are wrong and unduly provocative*".

From the aggregate responses of participants from all categories, it can be inferred that the relative influence of individuals is greatly dependent on certain prerequisite issues. These include the qualifications and level of education of the complainer. (I-A-5) said: "*I cannot take seriously the debate from environmentally uninformed persons. However, I have to listen to those who are environmental knowledgeable and well-qualified individuals, and to consider their argument.*" Other important factors are to what degree those people are subject to the respective environmental threat and the numbers of people affected. Moreover, it appears that the closer the regulator is to the international market and the more engaged it is with international businesses, the higher its degree of responsiveness to environmental concerns. Interestingly, the geographical area around which the concern is raised also very relevant in this regard. For example, according to (I-B-2) and (I-B-3), concerns raised to the RCJY

[609] The Royal Commission for Jubail and Yanbu (RCJY) is the environmental regulator in specific and designated industrial cities, as explained in an earlier chapter.

management regarding an issue within its spatial scope are received very actively and treated seriously. This is because the people living there are workers and employees of the various industries operating in those industrial cities, according to (I-A-8) and (I-B-8).

There is also a prominent strand of opposing attitudes, showing a more radically critical stance on these issues of transparency and public influence. This view was notable among the academics and scholars. (I-C-5), for example, argued:

> "*people are willing to take part and influence environmental decisions. The problem, however, is not the lack of encouragement, but even the discouragement. The entire system existing in the environmental sector is poor and inefficient in this regard. Unlike, some of the other fellow public institutions, GAMEP does not explain to people their potential role nor fulfil their rights to know. There are giant industrial entities exist close to residential areas. GAMEP did not talk to those people in regard to, for example, what it did to safeguard people's health and environment, nor what are the measures it adopted to at least mitigate the potential effects. Neither did it explain to them what should they do in the case of emergency or accidental release from such plants. What are and on which basis it measures and gauges their emissions in their atmosphere and what are the tools used for such measurement, and how often it conducts those, if any! Thus, we can confess that the transparency is absent!*"

This argument was further emphasised by (I-D-3). Beside their very small numbers, the environmental societies and their roles are, in reality, minor and marginalised. According to him and also to (I-D-2), their work, despite its insignificance in the practical aspects, is surrounded by compliments and courtesy, and the best they achieve is personal networking with those affiliated to them. Their insignificant role is also acknowledged by the respondents in all categories. The justification, of this situation on legal grounds, by (I-A-3), was interesting:

> "*We wish we could hand-in hand work with them [i.e. environmental societies]. We even wish to provide them with the necessary resources. However, we operate on a statutory-based approach, and the GEL does not provide for the cooperation with such societies. This is not a denial of their importance and potentially effective and constructive role. We cannot override the governing laws at the end of the day.*"

6.3.3 The Role of Courts in Environmental Protection

Addressing environmental law or governance from a legal perspective without mentioning the role of courts, would appear naïve, as would doubting the importance of the role of the judiciary in law studies. This is particularly so in the writings of western commentators where there is a public or collective interest to be safeguarded, not only in the field of environmental law, but in public law in general. For instance, Harlow states that "*The most important strand in forming the modern public interest action is probably the access-to-justice movement*."[610].

In a similar vein, but more clearly connected to the role of the judicature in good environmental governance and environmental protection, Preston argues that the role of courts is no less important than the executive and legislative branches of the state because "*the upholding and enforcing of laws encouraging sustainable development ensures good*

[610] Carol Harlow, 'Public Law and Popular Justice' [2002] 65 The Modern Law Review 1 P 8.

governance."[611] More authoritatively, the importance of the role of courtrooms and their engagement in the dynamics of environmental protection is clear from the rubric of the Aarhus convention as the "Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters". The effectiveness and positive influence of the role played by the courts is also very widely acknowledged in the literature both regionally[612] and nationally.[613] This can be illustrated by the fact that "*the courts have been at the forefront of the development of some of the key issues in environmental law.*"[614]

The analysis in this study reveals that the situation is not quite the same in the KSA's environmental jurisdiction. The role of the judiciary in the environmental sector generated divergent views across the four categories. This controversy existed even among respondents in the same category and in regard to different aspects. The Court in this context or the Judiciary refers to the administrative Judiciary[615] that is mandated to consider issues involving an "administration" or "executive authority, mainly GAMEP, in the context of this research.

According to participants including (I-A-1) and (I-C-6), the Board of Grievances has an important role and has been influential in the environmental sector in a number of cases. This is due to, inter alia, the decisive and powerful nature of its resolutions. For instance, it was contended by (I-A-3) that:

> "*The Judiciary has definitely a positive and influential role. Throughout my almost decade of working in the environmental protection sector, the Board of Grievances has been involved, and active. As an expert and responsible institution, our visions and opinions have been always called for and consulted by them in the relevant cases under their consideration. The Board of Grievances, immediately recourse to us and, they adopt our consultation and establish their final resolution on them. As a default, our viewpoint is fundamental and the cornerstone to their resolution. I have multiple examples to prove how our reports and judgments have been influential and conclusive for their judicial determination."*

Interestingly, even the responses that depicted the role of the judges as present and influential, did not refer to any deep engagement of judicial consideration in the case at stake. This camp seemed to consider the role of the judiciary as present and effective simply because

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[611] Brian Preston, 'Leadership by the Courts in Achieving Sustainability' [2010] 27 Environmental and Planning Law Journal 321 P 329-330.
[612] Francis Jacobs, 'The Role of the European Court of Justice in the Protection of the Environment' [2006] 18 Journal of Environmental Law 185.
[613] Fisher, Scotford and Barritt, n 464. For an extended discussion about the importance of courts and tribunals in environmental matters see Fisher, Lange and Scotford, n 1, P 366-400. The discussion in the western literature also transcends the ordinary judicial review by the courts in environmental cases, to the reviews of merits i.e. "regulatory appeals", which are usually conducted by another agency or body. See Macrory, n 145, P 207. See also the role of courts and tribunals in complex issues relating to technological risk appraisal across different legal cultures, in Fisher, *Risk Regulation and Administrative Constitutionalism*. According to Fisher in this book, the respective judiciary and tribunals have been, inter alia, "*fundamental in shaping understandings of essential component of environmental law, namely the precautionary principle*". See for example P 133.
[614] Bell and McGillivray, n 107, P 126.
[615] That is *Diwan al madhalim* which is translated as the Board of Grievances.

of the almost direct adoption by the courts of the recommendation or opinion supplied by the environment agency i.e. GAMEP. This deferential stance is not in line with what Justice Preston equates as Science vs Art, or even with his statement about the role of the judges in environmental matters, that: "*The determination of proceedings by a court or a judge … may involve more art than science, but it is neither unprincipled nor irrational.*"[616] However, the strong view expressed by (I-A-3) above and other similar views, were strongly challenged by other respondents. Their view was largely based on the specialised knowledge needed in environmental cases, which is sometimes not sufficiently available in the competent agencies, let alone the non-expert Judiciary. It was frankly stated by (I-B-4) that:

> "*Their role is non-existent and the judicature is not involved at all. They do not have the needed experts nor the essential scientists necessary to bring any viable resolution to environmental disputes. The ordinary judges are inherently incapable to look at profoundly complex and technical matters as the specialised environmental cases. You need specialists and specialised entity. For example, you need to say the emitted gas are comprised of such and such chemicals, which exceeded the internationally approved standards by such amount. This also environmentally and medically and causes such and such. These scientific and laboratory arguments are undoubtedly incomprehensible in the court rooms so far*"

Regardless, of which opinion might represent the general pattern or norm of practice, what seems interesting here from a legal perspective is that both quotations raise the issue of how or whether the judiciary should intervene in highly technical environmental cases about which they have no expertise. This question resonates well with the question posed, more than 40 years ago, by the USA's Judge Leventhal which asked: "*What does and should a reviewing court do when it considers a challenge to technical administrative decision-making?*"[617]

In other words, although judicial review of administrative actions is an essential avenue of accountability, due to the complexity of environmental cases, normally based on scientific evidence, the judiciary seemed to show "*extreme deference*".[618] This appears to be a corollary of their lack of specialised knowledge and is echoed in their incapability, in complex environmental issues to "*unravel layers of careful scientific work*".[619] Thus, it can be concluded, that the general practice by the Judiciary, if it becomes involved at all, is to directly embrace

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[616] Brian J Preston, 'The Art of Judging Environmental Disputes' [2008] 9 Southern Cross University Law Review 103. P 103. http://www.lec.justice.nsw.gov.au/Documents/preston_the%20art%20of%20judging%20environmental%20disputes.pdf

[617] Ethyl Corporation v. Environmental Protection Agency. https://law.justia.com/cases/federal/appellate-courts/F2/541/1/139255/ "Ethyl Corporation v. Environmental Protection Agency" ((JUSTIA US Supreme Court Website, accessed 30/4/2018).

[618] Patricia M Wald, 'Judicial Review in Midpassage: The Uneasy Partnership Between Courts and Agencies Plays On' [1996] 32 Tulsa Law Journal 221 P 221.

[619] Elizabeth Fisher, Pasky Pascual and Wendy Wanger, 'Rethinking Judicial Review of Expert Agencies' [2015] 93 Texas Law Review 1681 P 1682.

the opinion or recommendation of GAMEP, as the specialised environmental agency. In other words, "*courts find most statutory provisions ambiguous and then affirm agency action,*"[620]

6.3.3.1 Further Complication: Issues with Locus standi

In addition to the discussion about the doctrine of standing developed above in the legal analysis section, both camps appeared unaware that although recourse to experts is an established practice by The Board of Grievances,[621] the established interpretation of the term "*persons concerned*" in Article 13, Item B of the Law of the Board of Grievances is rather narrow and exclusive. At the practical level, this term has been understood to refer to those who are directly addressed by the respective administrations' decisions or actions. Thus, to be considered or qualified as "persons concerned", those who are concerned about an environmental protection issue cannot file a legal case against GAMEP, for example, unless they conclusively prove that they have direct interest and are immediately affected. This rather tight and exclusive interpretation of the Item has significant repercussions on the ability of a lay member of public to safeguard the environment through the judicial channels, as pointed out by participants in the (I-C) and (I-D) groups. For instance, (I-C-3) said: "*I felt I had to purchase a residential land, very close to the environmental violator in my attempt to meet these conditions* [regarding the standing doctrine]."

6.3.4 Accountability

As explained above, the legal structure of the KSA's environmental governance framework inevitably renders this issue primarily as an administrative law topic. The environmental framework is centred around the GEL, which confers certain powers, responsibilities and duties upon GAMEP and is thus largely an administrative law subject because "*it is the area of law concerned with the control of [GAMEP's] powers.*"[622] This relates not only to the control but also to achieving the aim of "*the successful exercise of regulatory power by the bureaucracy*"[623], i.e. governance. This brings the principle of accountability that is ubiquitous in public and administrative law[624] to the forefront.[625]

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[620] Jason J Czarnezki, 'An Empirical Investigation of Judicial Decisionmaking, Statutory Interpretation, and the Chevron Doctrine in Environmental Law' [2008] 79 University of Colorado Law Review 767 P 820.

[621] See also the Administrative Judicial Council resolution no (4/083) regarding "Rules for the use of experts and the determination of their fees before the courts of the Board of Grievances". Available at https://www.bog.gov.sa/AdministrativeJusticeCouncil/RulesAndRegulations/Pages/RulesAndRegulations-08.aspx accessed in 27/7/2017. (Arabic)

[622] Peter Leyland and Gordon Anthony, *Textbook on Administrative Law* (8th edn, Oxford University Press 2016) P 1.

[623] Daniel B. Rodriguez, 'Administrative Law' in Keith E. Whittington, R. Daniel Kelemen and Gregory A. Caldeira (eds), *The Oxford Handbook of Law and Politics* (Oxford University Press 2013) P 340-341.

[624] "*Accountability' is a word that is frequently used in many different parts of society, perhaps most often in the realm of government and politics*." Andrew Keay and Joan Loughrey, 'The Framework for Board Accountability in Corporate Governance' [2015] 35 Legal Studies 252 P 252.

[625] The concept of accountability has been strongly linked to the issue of power. Where there is power, accountability is needed to ensure legitimacy. See Keay, n 580. Respecting this link and harnessing the

As discussed above, there are various accountability and oversight mechanisms for public bodies, including GAMEP, provided by different legal and constitutional instruments in the KSA. However, the responses from the interviewees raise profound concerns regarding this topic, which is "*an important feature of any governance regime*".[626] Surprisingly, none of the interviewees showed a satisfactory level of awareness regarding the legally available mechanisms for the accountability of those who are in charge of the environment. Moreover, despite the recurrence of the term "accountability" or some of its derivatives in Vision 2030, none of the responses mentioned or showed awareness of this aspect.

This lack of awareness also indicates the unsatisfactory level of application and implementation of the available accountability mechanisms. Some responses, notably amongst the civil servant category (I-A), seemed to be, in theory, counting only on the internal administrative accountability mechanisms of GAMEP, although the majority across the other remaining three categories doubted their effectiveness. Interestingly, some participants from (I-A) seemed to feel uncomfortable when being questioned about accountability, as this may have appeared to indicate a degree of distrust towards their own roles, as officials, as will be explained below. It was observed that questions about the accountability mechanisms available against GAMEP and their level of application were reflected in apparent hesitations, and prolonged silence among respondents across all categories, though to a lesser extent among the professors and scholars group (I-C). For example, unlike their responses to other questions, many interviewees across all the interviewed groups, provided, either intentionally or unintentionally, incorrect answers, or at least very limited and flawed responses, while others preferred to skip this question.

Some participants seemed to believe that being asked questions regarding these issues indirectly entailed some sort of accusation against GAMEP or those questioned. This misconception can be illustrated by the response of (I-A-5) who replied to questions about accountability mechanisms and their effectiveness thus:

> "*I cannot answer this question. Simply because I cannot recall any instance where me or any of my colleagues in this institution were subject to accountability for any reason. We all do our jobs and fulfil our tasks promptly and effectively. So, I cannot respond to hypothetical questions which are not practical…. Even the Judiciary or the Board of Grievances we don't let the cases reach them as we always to be conclusive. And even if few cases leaked to them, we have always been the winning side, as our decisions are always statutory-based and based on our specialised environmental knowledge. Such elaborate and specialised science, are not possessed by the lay person whose argument merely based on sentiments or misinterpreted visible incidents or scenes, but not science*".

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power held by individuals in charge of public and executive entities (mainly GAMEP in the case of this research) and the availability of appropriate accountability mechanisms is a crucial component of good governance. See Chapter 9 in Elliott and Thomas, n 204, P 354-362.

[626] Elizabeth Fisher, 'The European Union in the Age of Accountability' [2004] 24 Oxford Journal of Legal Studies 495 P 496.

More clarification of the accountability principle and why it is needed should be provided to stakeholders in the environmental domain. The mechanisms already available also need to be highlighted and brought to their attention, for instance, the political accountability of the environmental regulator to the King, and the administration's accountability to the Council of Ministers and to the judiciary. No rich or satisfactory answer demonstrating adequate comprehension of this concept and its available mechanisms in the environmental protection and governance framework was offered over the entire period of carrying out the interviews.

6.3.4.1 Internal/ Inter-departmental Accountability

The previous section addressed accountability in relation to the environmental regulator/s. This section focuses more on internal accountability within the environmental regulators and between them and the regulated entities. In discussing this aspect, the distinction between GAMEP and the RCJY is the cornerstone. This is due to the massive discrepancy existing between the nature of the accountability mechanisms in GAMEP and the regulated entities on one hand, and the RCJY (or the RC) and its regulated entities on the other hand, which was highlighted by some respondents, including by (I-A-8) and (I-B-2).

According to (I-A-2) and (I-B-7), a significant part of GAMEP's work, including environmental inspection visits, which are its key task, is dependent on the personal discretion of its own employees and inspectors. This allows some space for inspectors or even offenders to bargain and potentially convince the decision makers, i.e. the inspector, to take inappropriate decisions. (I-A-1) and (I-B-4) suggested that personal feelings and relationships and attitudes play a considerable role here and sometimes feed into the final decision. For example, it was reported by (I-A-4) that industries located in remote areas might make an agreement with the relevant inspector/s not to visit them more than once or twice a year and they are happy to pay a fine for some of their environmental offences.

The system of the RC is fundamentally different, for various reasons, including its limited and therefore manageable territory, which was pointed out by (I-A-9) and (I-B-2). The RC has a clear and precise list of the factories it supervises. (I-A-8) and (I-B-3) reported how the back and forth communications and reports are regular and continuous, and the amount of emissions and waste such businesses produce are calculated, traceable and audited. This is beside other factors, such as the monitoring technologies the RC employs, which, according to (I-A-1) and (I-B-7), are advanced and there is no equivalent at GAMEP'S disposal. Moreover, (I-B-4) and (I-B-8) pointed out that the RCJY inspectors have very clear tasks and standardised benchmarks upon which they rely in their judgments; therefore, there is almost no room for personal discretion and subjectivity. However, this differentiation was challenged by academics including (I-C-5) and those in the environmental societies category (I-D-2). According to them, accountability as a concept is very rarely addressed, and almost always

misinterpreted. They expressed the view that, even in the perceived more advanced RCJY areas, the level of accountability is sub-optimal, and financial considerations and gains almost always prevail and are frequently prioritised.

6.3.4.2 Beyond accountability!

It was accepted amongst the respondents from all categories that there are a few major companies or projects that are crucial to the national economy and which are, in practice, out of the orbit of GAMEPS's supervision and accountability procedure. This is not necessarily on account of patronage but, more importantly, because GAMEP is known to be incapable of monitoring and auditing them, for a number of reasons. These include its apparently deficient infrastructure and under-trained personnel, as well as the technical sophistication of the processes and operations taking place there, which are well above GAMEP's supervisory capacity or ability to make judgments, as many participants from all four groups, including (I-A-8) and (I-B-1) pointed out. This reality was problematic to a number of academics and scholars (I-C), as they contended this lack of oversight by GAMEP over huge international companies would be reflected in a sub-optimal environmental state. Interestingly, however, the bureaucrats, such as (I-A-8), and representatives from industries, including (I-B-3), seemed to accept this situation, on the grounds that these enterprises are subject to their own internal accountability mechanisms, as well as international-market-driven accountability mechanisms. (I-B-1) and (I-B-4) also pointed out that such accountability mechanisms are much more effective and stringent than GAMEP's.

However, this is a far from perfect situation, since the absence of GAMEP's accountability procedures inevitably disables the GEL, or at least some of its provisions. The general perception, however, as expressed by (I-A-3) and (I-A-9), is that the subjection of these pivotal ventures to internal and international-market mechanisms results in achieving better environmental outcomes than could possibly be accomplished by GAMEP and its governing GEL, in their best scenario. This also seems to be due to the major significance of these companies in the national economy, which means GAMEP does not dare to risk intervention, unlike in the case of other relatively smaller-scale and less critical regulated industries. Thus, it appears that GAMEP generally is satisfied by receiving reports or notifications from the operators of such projects or companies, sometimes on an ad hoc basis, assuring them that things are on the right track (I-A-8). According to (I-B-1) and (I-B-3), these economically pivotal projects compensate for the incapacity of GAMEP by employing a stringent self-regulation approach, relying mainly on international developments in environmentally advanced countries, such as the UK, Europe and, mainly, the US and the regulation of its Environmental Protection Agency

These reports explain the evident deficiency in GAMEP's status in monitoring the heavy and economically critical industries, despite their perceived environmental impacts. In reality,

GAMEP cannot “disturb” such activities on which, at present, almost the entire economy relies. This also explains why GAMEP, in practice, does not visit such sites without coordination with the operator and supervising authority, as noted by (I-A-8). This is not intended, however, to suggest that such projects operate in an environmental unfriendly manner, but rather to illustrate the unsatisfactory state of GAMEP’s level of competence and power to deal with the country’s key environmental issues. This unorthodox situation might also complicate the attribution and accountability procedures. The following commentary from (I-A-8) portrays how different regulators might in some cases have issues in attributing responsibility and addressing accountability concerns:

> “*The RCJY is responsible only for certain spatial scale. Within this geographical zones monitoring, reporting, controlling of industrial emissions and pollution sources can be described as stringent and effective. And the aggregate amount of emissions from the various industrial and plants activities are recorded and audited. Right beyond these limited geographical boundaries, which is practically the rest of the country, the RCJY has no control, no legal power for regulation nor enforcement. In some cases, the RCJY detects and argues that a certain amount of pollutions, notably gaseous emissions, are coming from factories or industrial activities permitted by different regulator, normally GAMEP, outside the geographical scope of the well-equipped RCJY. Pollution does not respect formal or map frontiers. The RCJY has, in some cases, real issues with this*.”

6.4 Conclusion

This chapter has examined the three principal environmental good governance principles in the context of the reality of environmental governance in the KSA. The examination covered both the legal and soft law provisions that theoretically address and organise or provide for these principles. It also examined the practical aspect of what the status quo looks like and how the environmental governance framework views and implements the three benchmarks of good governance in the KSA. It also investigated how these standards of good environmental governance are, in practical terms, functioning. This exploration of the environmental governance system of the KSA is an important, but secondary contribution intended by the research.

The major contribution pursued by the research, however, is the theoretical development attained by expanding the scholarly theories and debates to the discussion and analysis of the contextual challenges and situation in the Middle East, represented by the KSA, and its environmental governance system as a case study. Employing two analytical methods (doctrinal and qualitative) has allowed a deeper investigation and richer findings to be reached. The issues and challenges identified here are not always addressed by the prevailing discussion in the available literature on environmental governance and good governance standards. Therefore, part of the major contribution of the research is to contend that the available leading body of literature is inadequate and insufficient to address the concerns, issues and challenges that are present in a distinct and equally important part of the world,

that is, the Middle Eastern context. This conclusion invites scholars and researchers from this part of the world to direct more attention and urges them to focus on these fundamental but under-studied issues of environmental governance.

It is also important to remind the reader here that the empirical findings of this research do not rely on what individual interviewees had to say, but rather sees them as representing the views of four stakeholder categories, identified as civil servants (I-A), representatives from industries (I-B), academics (I-C) and representatives of environmental societies (I-D). Discovering what stakeholders in these categories think and how they act within the environmental governance framework is part of the proposed contribution of this research. Nevertheless, the primary contribution, as explained, is not premised on the interviews per se, but rather on the intended theoretical development and expansion of the theories and debates that have emerged mainly in the context of the advanced western countries to the different Middle Eastern environmental governance jurisdiction of the KSA. As such, the *centrepiece* of this and other counterpart chapters is *not* the interviews, but the theoretical discussion in the light of the available literature.

At a doctrinal level, the chapter has identified and discussed several mechanisms and tools that are available to implement and enhance these good environmental governance criteria, together with a critical analysis of their strengths and weaknesses, wherever relevant. Through an empirical methodology and utilising the interview findings, the chapter has also revealed the practical aspects of good environmental governance and how and to what extent these standards exist and how they are interpreted in practice within the environmental sector. *Fourteen* novel points have been identified emphasising the contribution achieved by this study through synthesising the results of the doctrinal and qualitative analyses, as follows:

1. A striking gap exists between what the doctrinal law dictates, and how the environmental actors understand and put these legal dictates into material operation and execution. The most evident case of this phenomenon is manifested in the discussion on the accountability component of good environmental governance above.
2. The lack of awareness and absence of full understanding, including legal knowledge, of many stakeholders and workers in the environmental protection field appears to be a major driver of the deficiency in environmental governance. However, this failure is not seen as entirely resulting from issues with application and fulfilment rather than imperfections in the legal infrastructure and provisions. In fact, these problems arise from a conjunction between these factors. In other words, the legal infrastructure in the environmental governance frameworks is in need of comprehensive reconsideration and advancement. Nevertheless, awareness about the currently available accountability mechanisms, for example, appears to be rather low.

3. This awareness problem seems to be reflected in the fulfilment and implementation of the available and statutory mechanisms regarding all three standards of good governance. Thus, it can be argued that the existing problems are interrelated and, in practical terms, inseparable to a great extent. Surprisingly, however, the advent and great momentum of the Vision does not seem to have induced stakeholders to either discover the available mechanisms regarding the respective three good governance norms, or to question and explore its obvious future potential applications.
4. Some legal provisions by the GEL are drafted in quite loose and weak language which has repercussions on the final implementation product. The soft statutory language regarding the duty of GAMEP to compile and publish environmental data is a clear manifestation of this challenge.
5. In many cases the lack of capacity of the environmental agency GAMEP was identified as the main reason for its failure to secure its statutory tasks. This is also applicable concerning the three key good governance principles considered by the chapter. A clear example, is how the scarcity of technological tools hinders its ability to enhance transparency practices. Similarly, the differences in capacity between GAMEP and the RCJY, in favour of the latter, as important environmental regulators and overseeing authorities, seemed to lead to accountability problems in the regulated-regulator relationship. Factors such as the availability of capacity and qualified personnel, and its responsibility being confined to a smaller-scale and manageable geographical scope, allows the RCJY to implement orderly and systematically stringent accountability measures to the regulated factories and industrial activities. Unlike GAMEP, it has a clear and specific list of regulated activities and their possible emissions and releases are audited and are thus much more observable and controllable.
6. There is also a need for the environmental reports issued by environmental institutions, notably GAMEP, to be driven and guided by consideration of the standards of good environmental governance. This is likely to lead to multiple advantages, including: enabling a more methodological and consistent content of successive environmental reports, guiding the reports to diagnose and detect previously overlooked challenges regarding the three respective good governance standards.[627]
7. Although there remains considerable room for improvement in the area of the three good governance principles, utilising the available and already statutorily approved mechanisms is likely to enhance the outcome of the environmental governance system

[627] Although this seems to be starting to be addressed by the advent of the Vision 2030. This explains the observable variation between the focus of the majority of environmental governmental reports in pre vs post Vision eras. The impact of the Vision will be further highlighted below.

currently in place. Indeed, there has been an observable under-application of the available mechanisms.

8. Although the need for promoting and enhancing the application of the respective good environmental governance is established, justifications and explanations of their causes and existence varied considerably amongst respondents. This is clear, for example, from the interpretations and explanations of the sub-optimal transparency of GAMEP and their supposedly held environmental data. What seems interesting is that the different explanations given are not mutually exclusive and are, in fact, complementary. Understanding and combining the offered explanations and interpretations simultaneously provides wider and clearer understanding of the phenomenon, i.e. sub-optimal transparency practices and environmental data disclosure, notably by GAMEP.
9. With regard to civil engagement in the environmental governance framework, the role played by environmental societies remains trivial. In relatively better state is the involvement of the public. Both, however, have great room for further development, in order to bring about better environmental quality and outcomes.
10. Addressing issues concerning the role of the judiciary in environmental affairs is likely to bring about more environmentally-affirmative outcomes. The issues identified and explored by this chapter include challenges related to the doctrine of standing and the need for more environmental expertise, coupled with the need for wider statutory powers and mandate conferred on the courts. Confining the role of the judiciary largely to punitive decisions being challenged by defendants, or to private law litigations, precludes the great potential of the desired well-equipped and environmentally informed courts to more actively engage in the huge and collective task of environmental protection. Equally importantly, this will more rigorously facilitate the accomplishment of the national Vision 2030, in which the issue of environmental protection is an ingrained part.
11. With particular reference to the accountability component of good environmental governance, stakeholders, notably amongst the civil servants (I-A) and respondents from the private sector and factories (I-B), appeared in need of better understanding of the nature and aim of the accountability principle. They need to regard the accountability principle as, inter alia, a legal guarantee or device for better environmental quality, rather than, for example, directly or indirectly involving accusation or some sort of disrespect.
12. The co-existence of more than one environmental regulator seems to generate a quite perplexing situation, notably accountability concerns. Attribution of responsibility and causation were the main issues identified in this regard. For instance, the existence of more than one environmental regulator entailed different systems and legal mechanisms being used by these regulators. The variation in the margin of discretion granted to GAMEP's inspectors on one hand, and the inspectors of the RCJY on the other is one

example. The clear roles and regulated tasks of the RCJY generated more consistent and systematic decisions by their personnel, whereas in the case of GAMEP, the wide scope and lack of specifically regulated discretion of its inspectors led to inconsistent decisions and allowed subjectivity, in some cases. This also relates to the lower qualification levels among GAMEP's staff, and fewer training opportunities being available.

13. The good environmental principles addressed in this chapter are either not sufficiently considered by the established legal instruments, and/or, even in cases where there are decent legal bases, they are not applied and fulfilled properly in real practice, due, notably, to incapacity or lack of awareness.
14. Lastly, the comprehensive and multi-faceted nature of Vision 2030, which primarily encompasses social and economic issues, including environmental aspects, has the potential to address and ameliorate the sub-optimal conditions discussed and the challenges identified. This is said particularly because the Vision has brought to the forefront the respective good governance standards, together with the relevant terminology, particularly in the case of the specific framework of the KSA's environmental governance. This is left to the future scholars and researchers, however, as the Vision still has more than a decade to deliver its full potential.

7. Chapter Seven: Environmental Impact Assessment (EIA)

Abstract

This chapter explores the issues regarding environmental impact assessment (EIA) in the Middle Eastern case study of this research i.e. Saudi Arabia (KSA). The EIA is an important environmental protection tool introduced into the environmental governance framework to evaluate and inform decision-making processes regarding whether certain developments or projects are to be allowed. The EIA's legal status and procedure is examined in this chapter.

To ensure depth and thoroughness, two different types of analysis are employed. The first is doctrinal analysis, focusing on the legal and statutory provisions regulating and organising this environmental protection tool. This genre of analysis entails identifying and unpacking the laws and regulations that govern this tool. The second type is the qualitative analysis conducted by analysing the responses and original data generated from 27 semi-structured interviews undertaken over a period of 90 days, commencing on 25th May 2016. The interviews encompassed four categories of expert and practitioner stakeholders who were working in and interested in the environmental governance domain: civil servants or bureaucrats (I-A), representatives from industries and the private sector (I-B), scholars and academics (I-C), and representatives from environmental societies (I-D) (see Methodology Chapter and Appendix 1 for further details). This qualitative investigation of the widely unexplored area of the KSA's jurisdiction represents the secondary contribution intended by the research.

The main contribution of the chapter is obtained by examining and synthesising the current states of theories and debates in the literature through a discussion concerning the generally undocumented EIA jurisdiction of the KSA. This allows a theoretical development to be realised through the assessment of the extent to which the available body of literature can be said to be relevant and applicable to the on-the-ground state of the EIA in the KSA. This theoretical expansion, which brings the thoughts and arguments offered by leading scholars and authors into the uncharted territory of the KSA's EIA system is the principal contribution targeted by the chapter.

7.1 Introduction

As discussed in Chapter 3, the widespread use of the term EIA may misleadingly suggest that the nature, mechanisms and steps, and even purpose of the EIA regimes are identical in different jurisdictions and in the literature.[628] This chapter aims to explore and provide a brief analysis of the EIA regime in the context of the KSA's environmental governance. This analytical account will form the platform for understanding what might be the underlying nature and purpose of the EIA in the KSA's environmental law, and therefore identifying the strengths and weaknesses of the current EIA scheme. It should be noted that this chapter is not intended to comprehensively address the fine details and features of this EIA system; however, a number of substantial and fundamental aspects and issues regarding this EIA arrangement are studied and identified by employing both doctrinal and qualitative analysis.

As in the counterpart chapters throughout the thesis, this chapter consists of two main parts. The first is a doctrinal analysis which is primarily premised upon the major environmental legislation in the KSA, which is the General Environmental Law (GEL), including its Rules for Implementation (RI), as well as its Appendices. The second part is an empirical analysis, mainly grounded on the empirical data gathered from interviews conducted with 27 respondents working in the environmental governance field. The findings of both genres of analysis are then synthesised and discussed in the light of the available leading publications of environmental governance literature, particularly those addressing EIA. This constitutes the primary contribution intended by the chapter, which is to assess and extend, where appropriate, the relevance of the currently available literature to the middle Eastern context, represented by influential jurisdiction that is the KSA's environmental governance jurisdiction.

It should be noted that due to the specificity and relatively clear-cut scope of the subject of this chapter, the analysis of the doctrinal section focuses almost exclusively on the backbone of the legislation in the environmental protection arena (i.e. GEL, the RI, and the respective Appendices). This is unlike the doctrinal analysis in previous chapters and the next chapter, where, by virtue of their more overarching and thematic topics, the doctrinal analysis parts are extended to encompass other reports and other governmental publications. This is not as applicable to the issue of the EIA which, at least in the context of the KSA, is not presented in any other notable documents in the level of detail found in the GEL, RI and their Appendices.

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[628] In fact, the literature reveals contention regarding the nature and different aspects of the EIA. As well-articulated by Lawrence, "… *debates between advocates of a scientific EIA process and proponents of a more streamlined, practical EIA process; between adherents of an apolitical, collaborative EIA process and advocates of a political, conflict-based, democratic EIA process; between those characterising EIA as essentially procedural requirements and those stressing that EIA should advance environmental quality and sustainability objectives; between advocates of a technical, rational EIA process and those arguing that EIA is a form of adaptive environmental management and among supporters of the rational-technical, community control, and social equity site selection approaches*." David P. Lawrence, *Environmental Impact Assessment: Practical Solutions to Recurrent Problems* (John Wiley & Sons, Inc 2003) P 6.

Therefore, the doctrinal analysis in this chapter focuses only on the legal documents that refer explicitly to and principally regulate the EIA framework in the KSA.[629]

7.2 Doctrinal Analysis (the GEL & the RI)

7.2.1 What is an EIA?

The term EIA can be elusive, indicating quite different things and addressing various breadths of scope. In this chapter, the use of the term, unless explicitly stated otherwise, indicates the project-level type of environmental assessment, excluding, for example, the policy or strategic levels of environmental assessment. The reason for focusing on this level is because it is the only kind of environmental assessment that is currently in operation in the case study of this research.[630] Thus, unlike the case in some publications, the use of the EIA is *not* taken broadly "*as an umbrella term that captures the essential idea of assessing proposed actions (from policies to projects).*"[631] Thus, the focus of this chapter is on the national-level application of the EIA, rather than the international-level applications or internationally-oriented discussion on EIA, which can be found elsewhere.[632]

As is the case in other jurisdictions, the EIA system in the KSA is not intended to obstruct development or investments from taking place per se, but rather attempts to envisage in advance and anticipate any unfavourable environmental consequences of imminent or proposed enterprises in order to pre-empt such effects, either by forestalling and avoiding them or by reducing them to the smallest degree practicable. It is an important tool or procedure to inform decision-making regarding industrial or urban development and to assist entrusted parties such as public authorities and the developer "*to meet their own environmental standards, to minimise environmental impacts and facilitate the approval process*."[633] In other words, it is a tool or "*procedure for ensuring that the likely effects of new development on the environment are fully understood and taken into account before the development is allowed to go ahead*."[634]

The definition embodied by the GEL evidently reflects this purpose. It is specified as:

> "*Environmental assessment of projects: A study conducted to determine potential or actual environmental effects of a project and appropriate measures and means to*

[629] This is the same reason why the key newly introduced Vision 2030 is not extensively discussed in this chapter, as it does not refer expressly to the EIA. However, due to its great positive potential on the environmental domain, it is referred to in the conclusion of this chapter.
[630] The definition of the EIA in the KSA will follow below.
[631] Richard K. Morgan, 'Environmental Impact Assessment: The State of The Art' [2012] 30 Impact Assessment and Project Appraisal 5 P 5.
[632] See for instance, John H. Knox, 'The Myth and Reality of Transboundary Environmental Impact Assessment' [2002] 96 The American Journal of International Law 291. And Tseming Yang and Robert V. Percival, 'The Emergence of Global Environmental Law' [2009] 36 Ecology Law Quarterly 615.
[633] Barbara Carroll and Trevor Turpin, *Environmental Impact Assessment Handbook: A Practical Guide for Planners, Developers and Communities* (2nd edn, Thomas Telford 2009) P 1.
[634] ODPM, *Environmental Impact Assessment: A Guide to Procedures* (Thomas Telford 2000).

prevent or limit adverse effects and achieve or increase the project's positive outcome for the environment in line with applicable environmental standards."[635]

Before embarking on the analysis of this definition, it should be noted that the definition of EIA does not merely characterise its practical procedures or appearance, but also reveals other theoretical and conceptual attitudes behind it, which are reflected in its application.[636] It is notable that this definition by the GEL seems to overlook the information-highlighting element that is often present in EIA definitions offered by the current theoretical publications.[637] One interesting element of this GEL definition, however, is that, unlike the case in many leading environmental jurisdictions,[638] it does not restrict EIA studies to major projects or only to projects that may have considerable or significant environmental impacts.[639] This is consistent with other central EIA provisions in the GEL, as will be seen below. From an eco-centric point of view, one of the real virtues of the KSA's environmental governance is that in theory and at the doctrinal level, EIA assessments are not confined just to significantly-hurting-the-environment ventures or developments. The situation in practice is quite different, as will discussed below.

Another aspect of this definition is that it does not clarify who is in charge of carrying out this study and meeting the expenses incurred on one hand, and who must ensure it is pursued and fulfilled on the other hand. Article 5 of the GEL, however, tackles these queries, and a number of parties are involved, as will be explained below. More critically, this loose definition of the EIA fails to accentuate key requisite characteristics of EIA studies, such as their supposed systematic,[640] methodical and standardised nature, as well as the bias-free quality

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[635] This is the official translation by the Bureau of Experts at the Council of Ministers from their website. Interestingly, however, the translation of the definition of the EIA in Article 1, Item 27 of the RI, provided for by GAMEP, although somewhat similar, is distinctly different: "*the study conducted to identify the potential or consequential environmental impacts of projects, the procedures and appropriate methods to prevent or minimize the negative impacts and increase or achieve positive outputs of the project on the environment, in line with the applicable environmental standards*".

[636] See Lawrence, 'The Need for EIA Theory-Building'. However, extensive abstract or theoretical analysis regarding the EIA falls outside the scope of this chapter.

[637] Along with the purpose to predict and pre-empt potential environmental impacts, many definitions in the literature underscore the issue of collecting and communicating the data on which the EIA stands. See the definitions quoted by Glasson in John Glasson, Riki Therivel and Andrew Chadwick, *Introduction To Environmental Impact Assessment* (3rd edn, Taylor & Francis 2005) P 2.

[638] In the context of the EU for example, to be legally required an EIA the project has to be regarded to have "*significant effects on the environment*". http://ec.europa.eu/environment/eia/eia-legalcontext.htm 'Environmental Impact Assessment - EIA' (European Commission Website, accessed in 18/5/2018).

[639] The general perception in leading jurisdictions is that the assessment is *only* relevant when the effect of the respective project is qualified to be "significant". Therefore, *"… projects likely to have **significant** effects on the environment are made subject to an environmental assessment*". http://ec.europa.eu/environment/eia/index_en.htm 'Environmental Assessment' (European Commission Website, accessed in accessed in 23/5/2018. Emphasis added.

[640] The systematic nature of the EIA is a defining character throughout its history. Durning, Palframan and Perdicoúlis argue that "*EIA is systematic process which has been practised for more than 40 years*." Bridget Durning, Lisa Palframan and Anastassios Perdicoulis, 'Introduction' in Bridget Durning,

of the environmental data on which the EIA procedures should depend.[641] In practice, this omission seems to have been reflected in considerable inconsistency and discrepancies being allowed to exist in the realm of the EIA and its decisions, as will be seen below.

As is the case in many other jurisdictions, the EIA in the KSA, as shown in the definition above, does not dictate or automatically lead to a certain decision of substantial outcome, but more of a procedural mechanism.[642] Interestingly, nevertheless, the assumption behind the EIA's portrayal in the literature as "*improving environmental sensitivity of decisions*"[643] does not sit easily with the existing practices, including those of GAMEP, and the actual operation of the EIA system in the KSA, as will be elaborated below.

7.2.2 Why should EIAs be deemed exceptionally important in the KSA? – EIA's Special Status

With the lack of other assessment schemes, such as Strategic Environmental Assessments (SEA)[644] and other environmental management tools,[645] the EIA is so far the only legalised environmentally-oriented assessment procedure infrastructure. However, the level of technological and human resources at the disposal of the environment agency (GAMEP), is not yet sufficient to attain the goal of obtaining sound, and up-to-date environmental information regarding the constantly increasing industrial and construction operations, as affirmed by (I-A-2) and (I-A-6).

These and other factors place special weight on the EIA regime, which is of paramount importance for the state's environmental protection endeavours. In other words, securing a tight, effective and stringent EIA regime would facilitate the work of environmental bodies, notably GAMEP, in their pursuance of securing adequate environmental information, which is a fundamental precondition for delivering GAMEP's duties and objectives. It would also

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Anastassios Perdicoulis and Lisa Palframan (eds), *Furthering Environmental Impact Assessment Towards a Seamless Connection between EIA and EMS* (Edward Elgar 2012) P 2.

[641] These prerequisite qualities are conceived by some authors to be the distinguishing merits of EIA and the reason behind its innovativeness. As McGillivray and Bell put it "The innovation behind the EIA ... is the systematic use of the best objective sources of information and the emphasis on the use of the best technique to gather that information." Bell and McGillivray, n 107, P 432.

[642] Fisher, Lange and Scotford, n 1, P 848.

[643] Lee, *EU Environmental Law: Challenges, Change and Decision Making P 171.*

[644] There are big differences between SEA, and the EIA. The key difference can generally be said to be that while SEA is concerned with thematic strategies and decisions that precede projects and developments, the EIA focuses on the details of a certain project and its actual or potential environmental impacts. For more on the difference, see Thomas B. Fischer, *Theory and Practice of Strategic Environmental Assessment: Towards a More Systematic Approach* (Earthscan 2007) especially P 6-8.

[645] There several other tools that can be said to "rival or potentially complement EIA". In the KSA, the only prominent tool is the EIA so far. Discussion about alternative mechanisms such as environmental risk assessment, environmental auditing, cost-benefit analysis can be found in Judith Petts, 'Environmental Impact Assessment Versus Other Environmental Management Decision Tools' in Judith Petts (ed), *Handbook of Environmental Impact Assessment :Environmental Impact Assessment: Process, Methods and Potential*, vol 1 (Blackwell Science 1999) especially P 34.

mitigate the effects of several shortcomings and loopholes regarding the quality of the GEL, and GAMEP's suboptimal capacity and power. Respondents across all four categories repeatedly asserted either directly or indirectly that the statutorily prescribed duties and responsibilities of GAMEP far exceed its resources, capacity and executive powers.[646] Thus, delivering an effective EIA regime would significantly help GAMEP and the country as a whole in achieving the objectives of accomplishing better environmental state and quality, which is also stressed by the recently introduced national Vision 2030. In the next sections, the different procedures and phases comprising the EIA system in the KSA are examined.

Along with this examination, distinctions between several aspects of the KSA's EIA system and the EIA as portrayed by the available literature are identified. Despite some similarities, the EIA as operated in the KSA is considerably different from the way in which it is perceived and functions in leading western jurisdictions. This renders the literature describing and analysing the EIA system sometimes irrelevant to the KSA, as a Middle Eastern case study. For instance, the stages or steps of EIA are prescribed by Fisher, Lange and Scotford as screening, scoping, preparation of the environmental statement, public participation through welcoming comments from the public, and the decision and determining whether the proposed project should proceed or otherwise.[647] However, these procedures do not perfectly describe or apply to the EIA as it operates in the case study, as will be analysed below.[648]

7.2.3 Screening in the GEL

This section of the chapter tackles the first step of EIA, i.e. the questions of which projects should be subject to EIA and on which basis. The answer is determined by how the project-undertaker or developer is instructed to conduct an EIA and by whom. This introduction is important because the terminology of EIA and its phases differs significantly in the KSA's EIA regime from that prevailing in the environmental governance literature. Moreover, there are, so far, no legal studies that address the KSA's EIA regime and provide an analysis of its various components and phases. For example, the clear-cut steps such as screening, scoping, environmental statement production, which are prominent in the literature,[649] do not stand out in the KSA's environmental law provisions. Rather, they are embedded in several dispersed

[646] Surprisingly, and seemingly as a result of the considerable discrepancy between GAMEP's legislative duties and available capacity, some respondents notably among (I-A) incorrectly stated that GAMEP is a legislative authority in the environmental domain, rather than primarily an executive authority!

[647] Fisher, Lange and Scotford, n 1, P 847-848.

[648] It should be noted that, different scholarly discussions in the literature often formulate the steps of the EIA quite differently, despite some similarity in many cases. See, for example, the great difference between the depiction of the EIA steps above by Fisher and others in one hand, and by Middle and Middle on the other hand, in Garry Middle and Isaac Middle, 'The Inefficiency of Environmental Impact Assessment: Reality or Myth?' [2010] 28 Impact Assessment and Project Appraisal 159.

[649] See for example, Massimiliano Montini, 'Towards a New Instrument for Promoting Sustainability Beyond the EIA and the SEA' in Christina Voigt (ed), *Rule of Law for Nature New Dimensions and Ideas in Environmental Law* (Cambridge University Press 2013) P 247.

Articles and sub-Articles, notably of the GEL and the RI, which are identified here and therefore constitute an essential part of the focus of the discussion in this chapter, and an important part of its contribution.

Article 5 of the GEL emphasises that it is the responsibility of the project-undertaker to conduct the EIA study, and it is the duty of the authorising or permitting authority to ensure the fulfilment of this obligation before granting the permission. With regard to which projects are required to undergo an EIA study, it states that any development[650] with a probability to cause negative effects on the environment is to be asked for an EIA. Article 5 of the GEL reads:

> "*Licensing authorities shall ensure that environmental assessment studies are conducted in the feasibility study phase for projects with potential adverse impact on the environment. The authority executing the project shall be in charge of conducting environmental assessment studies in accordance with environmental bases and standards specified by the competent authority in the Implementing Regulations [i.e. the RI].*"

There are a number of points worth mentioning in this context. First, although the phrase "*the authority executing the project shall be in charge of conducting environmental assessment*" suggests that this provision is only addressed to public projects, this is, in practice, not exclusively the case, as even private likely-to-harm-the-environment projects have to conduct an appropriate EIA study prior to final formal approval for establishment or operation.[651] Secondly, and more importantly, the Article demonstrates that any projects with "potential adverse impact on the environment" are to be asked for an EIA. It is interesting that the Article does not narrow the scope of the EIA requirement by adding further qualifying expressions or restrictive adjectives such as "potential "*significant*" adverse impact", or restrict it to projects likely to bring about "considerable" or "unacceptable" impact on the environment". The current phrasing of the Article implies, at least ostensibly or at the doctrinal level, that any project or development "whatsoever" should be required to undertake appropriate EIA study ahead of issuing the final development consent. This drafting by the GEL is emphatically environmentally-affirmative and can be used to push for eco-centric interpretations and implementation of the EIA regime and its legal provisions, primarily by GAMEP.

This merit can be also boosted by effective and constructive interventions and contributions by the courts. However, although the general effectiveness of the judiciary's contribution to the environmental protection remit was found to be a divisive issue amongst the interviewees,[652] all four categories of respondents of respondents were in agreement

[650] The terms project and development are used interchangeably in this chapter, although the prevailing term in the official translation of the GEL is project.
[651] Interestingly, due to the relatively long time that EIA studies might take, and as a way of encouraging businesses and investments, including industrial ones, the licensing authority might in some cases allow investors to start their constructions or even some operation, if they have reasonable grounds to believe that the investor has genuinely already started the process for obtaining the EIA. (I-A-2).
[652] As discussed in detail in the chapter on Good Environmental Governance.

regarding the lack of involvement of courts in the EIA regime. This can be attributed to various causes, particularly the lack of availability of the technical, specialised and scientific resources needed for adjudging or judicially reviewing the features and details of the EIA, as reported by participants from all the categories. Moreover, as Justice Leventhal put it over 40 years ago, the judicial review of the work of the administration in environmental issues is particularly challenging because "*administrative implementation [is] through rules and orders rooted in technical expertise and inquiry*"[653]. This explains the extreme deference of the courts to the administrative EIA decisions by GAMEP.[654]

It should be noted that the engagement of the courts with the complex details of the EIA as an administrative procedure and decision is a challenge that is not unique to the Middle Eastern example of the KSA, but exists to varying degrees and in different forms in other legal contexts. For example, even in some advanced European jurisdictions, challenges such as the "*incompatibility of the EIA provisions with underlying structures of administrative law*"[655] are raised as issues that hinder the judicial interaction in EIA cases and decisions. This does not negate the role played by the courts in the European jurisdictions, including the EU regional Court of Justice, to significantly advance EIA-related judgments,[656] which has [meaning the judicature's role] no equivalent in the Middle Eastern context including nationally, in the KSA.

Moreover, with regard to GAMEP, the above-mentioned eco-centric aspect of the GEL and the EIA regime in particular, does not seem to have attracted the attention it deserves. Although this "open" drafting accords the environmental authorities and GAMEP a huge margin of discretion by which they can rigorously defend the environment through precautionary and more eco-centric application of the EIA scheme, this is not the case in practice. It is interesting that the advantage of this flexible drafting has not been utilised, not only due to the shortage of logistics and resources in the environmental governance field especially for GAMEP, but more deeply, because the quality and breadth of this drafting does not seem to be recognised and was never alluded to by any of the interviewees among all four interviewed groups.

This conclusion is neatly in line with the assertions of several interviewees across all categories, as well as some official reports, that many of the personnel in the environmental field, and specifically in GAMEP, are in need of further training and qualifications. Some

[653] Harold Leventhal, 'Environmental Decisionmaking and the Role of the Courts' [1974] 122 University of Pennsylvania Law Review 509 P 510.
[654] The deference of the judiciary on environmental issue was discussed in more detail in the previous chapter on Good Environmental Governance. This deference was even more evident and consensual amongst interviewees with regard to EIA decisions by GAMEP.
[655] Karl-Heinz Ladeur and Rebecca Prelle, 'Environmental Assessment and Judicial Approaches to Procedural Errors—A European and Comparative Law Analysis' [2001] 13 Journal of Environmental Law 185 P 185.
[656] Vanessa Edwards, 'A Review of the Court of Justice's Case Law in Relation to Waste and Environmental Impact Assessment: 1992-2011' [2013] 25 Journal of Environmental Law 515.

participants explicitly emphasised the existence of this challenge in the environmental law domain and with regard to the GEL and EIA in particular. (I-A-4), for example, explained:

> *"In many cases including with regard to the EIA, the final decision may vary as per who and which individual of GAMEP personnel is in charge of the file. Significant variation can exist according to the different attitudes and understanding of the respective agents. I personally rejected some projects on my consideration of their likely future impact on the environment, which might not have been declined if somebody else had considered the case instead of me".*

According to this view, awareness of the GEL, needs to be developed, particularly among GAMEP staff. This is required not only to enhance understanding among environmental workers and thus achieve a better-informed implementation of environmental law, but also to enable a more coherent and consistent application of the law from the staff of environmental organisations and GAMEP, including its different branches scattered throughout the country.

7.2.4 Screening in the RI

When it comes to conducting the EIA, the RI serves its purpose of explaining, extending and elaborating on the GEL provisions quite well. While the GEL provides central but generic instructions and clarification about the EIA, the RI lays out the EIA's scheme in a fairly detailed fashion. Nonetheless, it is not without shortcomings, as will be addressed below. As far as the EIA is concerned, Annex 2 of the RI has a key significance. Article 5-1 of the RI provides that:

> "*Public, concerned and licensing agencies and other persons responsible for project implementation or operation shall conduct EIA studies in accordance with the environmental fundamentals and standards, criteria and procedures as explained in Appendix 2".*

7.2.5 Appendix 2 of the RI

This section of the RI is arguably the cornerstone of the screening phase of the KSA's EIA scheme. Appendix 2, divides projects into two main divisions according to their ownership: projects that belong to individuals or private investors, and projects of a public nature or belonging to licensing authorities. Although it is a useful distinction, this categorisation has less legal significance than the other classification, based not on *ownership*, but in terms of the degree or extent of the *environmental impact* and threats that the proposed construction is likely to pose to the environment.

In this vein, Appendix 2 classifies projects in a three-layered hierarchy: the so-called "projects of the *limited* environmental impacts"; "projects with *significant* environmental impacts", and "projects with *serious* environmental impacts". The detailed guidelines on the basis and rationale of this categorisation are laid out in Appendix 2-1, entitled "Guidelines for Classification of Industrial and Development Projects". The outset of Appendix 2-1 is key for understanding the screening stage of the EIA procedure. It states that:

> *"The auditing process for the environmental impact assessment shall be based on the following key principles:*

- *The nature and magnitude of the intended activity and the existence of similar projects at the site or similar sites.*
- *The extent of depletion of natural resources by the installation, particularly agricultural lands and mineral resources.*
- *Location of the installation and the nature of the surrounding environment and nearby residential habitats.*
- *Type of power used.*
- *The method of assessment will also depend on the classification of the project based on the level of the expected impacts of these projects …"*

These are the thematic benchmarks or criteria upon which the RI classifies the risks and impacts of any proposed projects. Considerations such as the nature of the project, its location and power generation related issues are fundamental in the sense that they inform the decision-making process and the outcome as to which category the intended project belongs. Does it belong to the "first category", "second category" or does it belong to the most dangerous, suspicious and environmentally-worrisome "third category"?

When it comes to their implementation, GAMEP has considerable room for discretion in applying these standards and giving consideration to every single proposed activity or development in a case-by-case style. However, according to (I-A-1), the location of the intended project or industrial activity and its distance from inhabited areas is quite decisive and normally a more influential touchstone than the other statutory factors. This is interesting because, in theory, the legislation does not rank or prioritise these criteria; it is purely a matter of practice, an exercise of discretion by GAMEP. Having said that, this margin of discretion is also improperly constrained by certain details and elaboration given by the RI in Appendix 2-1, as will be discussed in the next section: "Issues concerning the classification of projects".[657]

This screening outcome decision has profound legal ramifications in the later stages and the life of the project. The decision as to whether this proposed development or project is of the first, second or third category will be reflected in the nature, quality, quantity and even costs of the requirement from the organisation or individual undertaking the proposed installation.[658] As the environment agency, GAMEP should be more cautious, stringent and take extra precautions with "third category" applications, than "first category" applications.

What seems to be remarkable in this regard is that, despite the major implications and consequences of these screening decisions, they have not raised even a noticeable amount

[657] Some authors deem this restriction of an entrusted public body by listing the significant projects as positive and justified legislative actions, because these activities "*necessarily have serious environmental effects*". This is not the case in the KSA's EIA regulatory framework. As will be discussed in the next section. John Alder, 'Environmental Impact Assessment — The Inadequacies of English Law' [1993] 5 Journal of Environmental Law 203 P 207.

[658] This is why screening resolutions spark the most EIA related litigations in countries where the courtroom plays a prominent role in EIA dynamics, e.g. the UK. See Fisher, Lange and Scotford, n 1, P 847.

of litigations in the courts.[659] Project owners and those undertaking them are unwilling to embark on, or may be unaware of the judicial review option to legally challenge the screening procedures and outcomes as an administrative practice and exercise of discretion.[660] That said, EIA applicants might spend a considerable amount of time in informally negotiating and debating with GAMEP over screening decisions. Thus, in real life, eloquent and persistent EIA seekers might gain legally less demanding screening decisions regarding the classification of their intended projects than they might have received if they had not argued their case, as reported by (I-A-4).

7.2.6 Issues concerning the classification of projects

Appendix 2-1 does not merely categorise any potential project into three layers, depending on their anticipated environmental gravity. In addition to giving the criteria for this classification of potential activities, through Appendix 2-1, the RI explicitly nominates several specific examples for each category. For instance, with regard to the first, least environmentally-threatening, category of projects, the RI exemplifies activities such as "*textile and ready-made clothing factories located inside industrial parks, which do not have dyeing processes*"; "*rubber and plastic factories located inside industrial parks, which rely on heating processes which do not produce hazardous emissions …*", and others.

Concerning the next category, projects with a higher level of environmental impact, the RI provides abundant examples. According to Appendix 2-1 this second category includes "*steel and iron mills and metal foundries whose production is less than 150 tons per day*", "*auto and vehicle fabrication and assembly works*", "*quarry crushing, asphalt and batching and mixing and prefab concrete plants*" and "*power transmission lines and transformer stations*".

Examples for the third category, with the assumed highest level of environmental impact and seriousness, include "*metal electroplating plants with a capacity in excess of 25 tons per day*"; "*major chemical and petrochemical industries, such as fertilizers, petroleum products, drugs*"; "*petroleum and petroleum product storage facility in excess of 15000 cubic meter capacity*"; "*nuclear power plants"* and *"public irrigation and sanitary drainage systems and their expansion, including dams.*"

Legislatively nominating specific examples of each classification may assist readers and stakeholders, including EIA seekers, in more easily realising which category the intended activity belongs to.[661] However, in practice, as pointed out by (I-A-3), it raises several

[659] This is in sharp contradiction to the case in some developed states, where the screening decisions bring about the majority of EIA litigations. See Fisher, Lange and Scotford, n 1, P 847.
[660] Because the screening, as a default, is a formal administrative process undertaken by the respective public body. See Stephen Tromans, *Environmental Impact Assessment* (2nd edn, Bloomsbury Professional 2012) P 99.
[661] This nomination or enlisting seems also to be accepted by some writers on environmental grounds, as discussed earlier.

challenges.[662] Not least, it allows for an undue amount of debate and argument by EIA applicants, which loads further administrative burdens on GAMEP. On top of that, this excessive listing of activities can also be considered pedantic and a form of over-regulation that inordinately and disproportionately constrains GAMEP's and other decision-makers' scope of discretion. This is best explained by (I-A-3), thus:

> "*There are a number of issues in different places in the GEL and the RI that these legislations should have had thought twice before they are formally endorsed and prescribed. Prime example of these imperfections is the clear-cut specification and listing of the activities that fall under each category of projects; from the first category with minor environmental consequences, to the third rank of the most serious and environmentally threatening activities. Even though they are presented only as examples, this degree of specificity is excessively narrowed down and therefore restrictive. For example, in some case, at a very practical level, GAMEP might view certain proposed or even already established project to best fit different category than what the RI prescribes. For example, the legislation affiliates plastic industries to the second category. In reality, however, and given to a very practical details, we might wish to "upgrade" the classification of this plastic industry at stake, and rank it as belonging to the "third category" with potentially more serious environmental impacts. And vice versa, there may be some activities pinpointed to belong to, say, second category, whereas, in practice, its potential impact is minor and insignificant. In both cases, the discretion of GAMEP is unwieldy leashed and confined. And because this classification is of a legislative nature, we cannot simply override it, even though serious environmental issues exist with the activity or project under consideration. Otherwise, our categorisation might be irreconcilable with the classification provided by the RI, and therefore potentially legally illegitimate or at least contentious. This is not a minor issue, since the classification of any intended activity subsequently entails varying legal and economic consequences to the investor."*

7.2.7 Scoping: determining the scope of the assessment process

One substantial legal consequence of the earlier screening decision or categorisation is manifested in the scoping phase, which is the second actual phase of the EIA. The scoping activity determines how wide or narrow the focus of the assessment will be. Thus, its purpose is to determine what items and aspects of the intended development should be covered in the assessment of the required EIA or "*What impacts of a project should be assessed*"[663].

In the KSA's EIA arrangement, the answer to this question is primarily premised on the outcome of the screening decision, and notably, to what "category or classification" in the ascending scale the proposed project is affiliated. The higher up the scale, the more details, explanations, measures, and precautions are required, incurring greater cost and burdens on the project owner or undertaker. This explains the fact highlighted by respondents (I-A-4) and (I-B-7) that many EIA seekers might strive to have their project classified as low as possible.

Another point worth mentioning is that, in the KSA's scheme, the scoping activity is largely of a legislative nature. The aspects of the intended activity that will be subject to assessment

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[663] Fisher, Lange and Scotford, n 1, P 847.

in the EIA are largely fixed and identified by the RI and its Appendices. The initial decision regarding what category the proposed development belongs to is discretionary and entrusted to a public authority.[664] In the case of the privately-owned projects, Appendix 2 entitled "Fundamentals and Standards for Environmental Impact Assessment of Industrial and Development Projects" provides that: "*The licensing agency shall classify the project for which a license is being sought in accordance with the industrial and development project classification guide (Appendix No 2.1) issued by the Competent Agency [i.e. GAMEP]*".

However, in the case of the public development project the equivalent guidance is "*The public, concerned or licensing agencies which own, implement or operate the project shall, in cooperation with the Competent Agency, identify the category of the project. Based on the project classification (Appendix 2.1) …*". This further affirms the administrative nature of the EIA and its constituents.

7.2.7.1 The first category

Because the activities classified under this category are perceived to be of minor environmental impact, the entrusted party has to fill in the form shown in Appendix 2-2, plus provide merely a "*simple preliminary report on the project*"[665]. In turn, Appendix 2-2 encloses a form entitled "Environmental Assessment of Development Projects – Information Form for First Category Projects" asking for very generic and brief information about the project and the applicant, including the applicant's personal details and a tick list about the project type (e.g. industrial, residential, agricultural). The applicant is also asked to outline some descriptive details of the project, including its location, type, and the source of energy used.

7.2.7.2 The second category

As explained earlier, this category is assumed to have a greater impact on the environment, although one that is not envisaged to be extremely hazardous. Thus, the scope of assessment and the requirements and conditions for this type of project are more elaborate and stringent in quality and quantity. After the determination that the project under consideration falls under the "second category", then the entrusted party[666] must:

> "*Have a qualified consulting office qualified [i.e. approved] by the Competent Agency or any approved agency by the Competent Agency or any research center complete the initial environmental assessment form for second category projects (second category project form, Appendix 2.3) as well as prepare a summarized technical environmental report on the project*"[667]

The difference, however, between the "simple preliminary report" required in the case of first category projects, and the "summarized technical environmental report" demanded from

[664] Except in cases where the proposed activity is covered by the RI, Appendix 2-1, as addressed earlier.
[665] Appendix 2, Item 1.3/ First Category.
[666] I call them the "entrusted party" because it could be the project owner, the implementer, the operator or others; whether the project is public or private has a role in deciding this.
[667] Appendix 2, Item 1.3/ Second Category.

second category developments is not made explicit by the legislation. The general understanding is that the higher the rank of the potential environmental negativity of the intended activity, the more details and clarifications are expected to be furnished in this report. As no definition of these is provided, the understanding of the content and level of detail needed in each report and the judgment of their adequacy is developed by practice and everyday experience. In all cases, GAMEP, as the competent agency, has the final word on judging the quality and sufficiency of the data provided for all the different reports in relation to their classification.[668] Remarkably, there is no obligation on any party, including GAMEP, to publicise such data or to invite third party comments. The absence of any inclusive or participatory qualities from the EIA process will be further highlighted below.

7.2.7.3 The third category

Due to the great gravity of the potential impact, the scoping process of this type of development is required to be the widest, and most thorough of the three genres of projects. According to Appendix 2 of the RI, the in-charge party must, inter alia:

> "*Employ a qualified consulting office approved by the Competent Agency or any research center [approved by the Competent Agency] to conduct an environmental assessment study for the project in accordance with the guidelines for the development of an environmental impact assessment for industrial and development projects (Appendix 2.4) … and the agency in-charge of implementing the project shall be obliged to refer back to the Competent Agency for coordinating in preparing the study".*[669]

Examination of Appendix 2.4, which is dedicated to the third category projects, shows that no preparation of any kind of reports is demanded. Rather, the entrusted party is required to carry out a comprehensive study about the respective projects, including specification and explanation of the project, its purpose, the surrounding environment and atmosphere and the anticipated environmental consequences on every aspect of the environmental media.

7.2.8 The central role of the environmental consultant offices

The environmental consulting offices are accorded a pivotal function and position in the KSA's EIA scheme. In practice, they, or their equivalents, such as endorsed environmental colleges or environmental research centres, are engaged in almost every EIA application. In other words, the essential process of collating and compiling the environmental information that forms the bedrock of the entire EIA process, and constitutes the basis of the final decision, is carried out by these environmental consulting offices. Their fundamental role derives its powerful status from its legislative nature. The general tone of the RI, and especially Appendix

[668] This, and whether to take the EIA outcome into consideration for producing the final decision regarding the potential project, is an entirely formal and administrative exercise, and thus dependent on the respective environmental authority's volition, in this case GAMEP. This "formal character" of evaluating and decision-making on environmental risks has brought criticism by pundits. See for example De Sadeleer, *Environmental Principles: From Political Slogans to Legal Rules* P 207 - 208.
[669] Appendix 2, Item 1.3/ Third Category.

2 conveys that this legislative emphasis on the role of environmental consultant organisations increases with the level of the potential environmental threats and environmentally negative outcomes of the intended activity. The rationale of this "positive correlation" is the belief that these supposedly expert-led offices need to play a greater role in the more environmentally threatening projects, due to their presumed specialised knowledge and resources. Here lie focal issues relating to whether all these consulting groups are really led by adequate expertise and driven solely, or even largely, by environmental considerations.

Interestingly, neither the GEL nor the RI stresses or advocates the participatory character, even in the case of activities with the greatest potential environmental impact. This aspect and many other features of the environmental governance system reveal the underlying perception of the KSA's environmental governance system regarding the purpose and nature of the EIA scheme. It can be seen that the KSA's current EIA arrangement is clearly an embodiment of the school that views the EIA in purely "scientific terms", rather than, for example, through the lenses of "*deliberative terms*".[670] This renders much of the literature on the EIA inapplicable to the particular situation of the EIA in the KSA, as one of the most recurrent themes or even axioms of EIA in scholarly discussions in the current literature is that "*consultation and participation are integral to [EIA]*"[671], which is not observable in the Middle Eastern model analysed by this research, as will further be discussed below. More challenges in the practical functioning of the consultant groups will be discussed in the qualitative section below.

7.2.9 Environmental Statement

Interestingly, throughout the EIA's legislative procedures and steps in the KSA there is nothing that could be technically recognised as an "environmental statement". This is equally applicable at the practical level, since, although they were aware of the EIA as a legal requirement, none of the interviewees seemed to have even minimal awareness of this key feature of the EIA. Nevertheless, their understanding reflects the EIA law, and more precisely the on-the-ground-practice within the realm of the EIA by the parties involved, mainly GAMEP, in which this aspect of EIA is absent. Interestingly, the environmental statement feature, is widely regarded as a *bedrock* of the EIA procedure in notable western jurisdictions, such as the UK.[672] Accordingly, this high ranking or status of the environmental statement step of the EIA in the literature does not reflect the reality in the Middle Eastern context, represented by the KSA.

Thus, in the KSA's style of EIA scheme, there is technically no such thing as a specific "environmental statement"; although generally "environmental information" is compiled by the

[670] Fisher, Lange and Scotford, n 1, P 849.
[671] Christopher Wood, *Environmental Impact Assessment: A Comparative Review* (2nd edn, Prentice Hall 2003) P 1.
[672] R J Heffron and F McManus, 'Environmental Impact Assessment' [2016] 20 Environmental Law in Scotland 1

project owner or more precisely the hired private firm. Unlike the situation in some western EIA arrangements, neither the GEL nor the RI, including its Appendices, provide for the environmental statement or the "environmental information" gathered to be complemented, addressed, commented on, or rectified by third parties, such as other public authorities, environmental societies, or perhaps more importantly by individuals from the general public.[673] As (I-A-5) participant openly commented, "*if we're to consider the entire EIA procedure as a total of 100%, the contribution from members of the public, at its best level, will not exceed 1%*". That said, there is no obvious legislative prohibition against individuals seeking a "friendly" discussion and making contributions that may feed into the procedure of the EIA.

This is distinct from the situation depicted by the international literature, where there is not merely an invitation to the public to take part of the EIA process, but also an obligation to make sure that the information shown in the environmental statement is readable and comprehensible by lay persons. As Bell and McGillivray argue, "*a non-technical summary of any information supplied must also be provided, enabling [a] non-expert to understand its findings. It seems clear from recent case law that this document must not be overly complex for the general public to access and must genuinely engage meaningful[ly] …*"[674]

In practical terms, this affirms the essential role of the hired (by the developers) consultant environmental firms in the KSA, and of GAMEP as the competent authority in the function and outcome of the entire EIA regime. GAMEP and the consultant firms define and shape the procedure of the EIA system in the light of the existing environmental law, represented principally by the GEL and the RI and its Appendices. Furthermore, this disengagement from the steps in the EIA applies not only to the parties such as the environmental societies, public authorities and members of the public, but also extends to the role of the judiciary, which appears to be absent with regard to the EIA practice. In principle, although the EIA law is largely regarded as an administrative law[675] for which the administrative judiciary has the responsibility to review GAMEP's decisions and apply the major sanctions prescribed by the GEL and the RI, in fact, the courts have no obvious role in any of the EIA's stages. This is due to, inter alia, the highly technical nature of the EIA one hand, and the lack of expertise among the members of the judiciary, where there are no environmental scientists or experts among

[673] Input from these external parties can be valuable and effective, as they might have pertinent and environmental knowledge not available to the developer or the EIA applicant. See discussion in Tromans, n 659, especially discussion on compilation of environmental statement P 179-180.
[674] Bell and McGillivray, n 107, P 457.
[675] In the sense that EIA decision-making process takes place in administrative contexts and widely by public administration institutions. Elizabeth Fisher, 'Research Handbook on Fundamental Concepts of Environmental Law' in Douglas Fisher (ed), *Environmental Impact Assessment: 'Setting the Law Ablaze'* (Edward Elgar Publishing 2016) P 427 - 428. This also includes the considerable discretionary power conferred on respective public authorities in several aspects of the EIA process. See John Alder Environmental impact assessment-the inadequacies of English law. Journal of Environmental Law Vol. 5, No. 2 (1993), pp. 203-220.

the justices, which was mentioned by participants in all the categories including (I-A-7) and (I-B-7).

7.3 Major issues in the EIA (Qualitative Analysis)

This part of the chapter aims to shed light on the practical challenges and identify significant issues concerning the on-the-ground practices and application of the EIA. Thus, this part of the chapter is largely based on the responses generated from the interviewees across the four different categories, but also engages with theoretical accounts and scholarly discussions from the EIA literature. Although the issues identified are not claimed to be exhaustive, they are noteworthy concerns that merit examination and discussion. Interestingly, the kinds of challenges identified can largely be seen as contextual challenges that have currently almost no equivalent in leading jurisdictions and are therefore not addressed by the available body of literature on EIA. The existence of such specific challenges should not be surprising, as "*the provisions for EIA vary considerably between countries and are also varying over time"*[676]*,* but also because EIA is *"a multifaceted decision-making process."*[677]

In addition, the issues identified below were ranked differently by various participants, and even by different categories of participant. In other words, although the great majority of respondents rightly reckoned that the EIA regime currently in place has significant room for further improvement in the future, even within the same category they emphasised different and diverse aspects of the regime. Some of the weightiest issues are discussed below.

7.3.1 Essential introduction and very brief history

Introducing the EIA scheme into the KSA's environmental governance domain was a quantum leap that enhanced the role of the environmental law in producing better environmental protection outcomes. What may not be generally known, even by some of those working in the field of environmental protection, is that, although the introduction of the GEL in 2001, followed by the RI, provided for the mandatory implementation of the EIA in the KSA as a legal requirement, and stipulated certain specific steps for its fulfilment, in fact, the EIA arrangement had existed prior to the issuance of these environmental legislations. That said, the pre-GEL EIA arrangement had greater ambiguity, with less regulation and certainty about its nature and procedures, and, more importantly, was more in the nature of a soft law, in the sense that it was not deemed necessary nor legally obligatory, as pointed out by (I-A-4) and (I-A-2). Thus, what the GEL and the RI did on coming into force was to give a solid emphasis, provide more details, and change the legal status of the EIA from optional to compulsory.

Interestingly, the original introduction of the EIA scheme prior to the adoption of the obligatory KSA environmental law can be credited to the positive influence of the international

[676] Norman Lee, 'Environmental Impact Assessment: A Review' [1983] 3 Applied Geography 5 P 7.
[677] Prasad Modak and Asit K. Biswas, *Conducting Environmental Impact Assessment for Developing Countries* (United Nations University Press 1999) P 13.

market on the domestic legal sphere,[678] as some international enterprises or factories were required by their central management or international boards to obtain an EIA certificate before operating their proposed projects in any country, including the KSA. As explained by (I-A-4):

> "*By that time, many requests for EIA had been addressed to us by international businesses wishing to operate in the KSA. Obviously not because they were nationally legally-binding, in fact they were not. But because their internal reasons and requirements from their international leadership, or for their international market related considerations".*

The piecemeal introduction of the EIA system into the national environmental law was not only influenced by this "international" aspect. Nationally, the enforcement of the GEL and RI, of which the EIA is an essential part, was also in a state of flux. Transforming non-binding instructions, guidelines, and a quite widely routine or unwritten code of conduct into solid rules, and legally binding practices seems to have been recognised by the legislator as a challenging undertaking with significant socio-economic implications, including on the regulated entities. Therefore, the GEL expressly offered both a statutory "delay" for implementation, and also provided for discretionary further "legal postponement" of the enforcement of the GEL, and thus the EIA. Article 15 of the GEL and the RI alike state:

> *"Projects existing at the time of the issuance of the General Environmental [Law] [i.e. the GEL] shall be given a maximum term of five years as grace period before enforcement, so that these projects can organize themselves accordingly. If that said term is not sufficient for projects of a special nature, then an extension may be granted by a decision from the Council of Ministers based on the proposal of the Competent Minister."*

Thus, it should not be surprising to learn that The GEL did not have a direct effect after its enactment. In fact, (I-A-1) reported that once Article 15 was invoked, the regulated entities were allowed a considerable time in order to adapt to the new situation. Some respondents, including (I-A-1), even contended that the real endeavour for full activation of the GEL and the RI commenced only in 2011, after the "grace period" had been extended several times. However, there was a consensus among the participants that the state of flux of the EIA regime is still ongoing and the EIA regime has not yet reached its maturity, as will be seen below.

Although at the practical level, this Article was necessary, invoking Article 15 entailed a "late" attempt for full enforcement[679] of the GEL. This contributed to extending this state of flux and what can be seen as a "grey area" of implementing the GEL and the respective EIA provisions, contributing to different challenges, as discussed below. This prolonged period of "greyness" in enforcing the GEL, particularly with regard to EIA, seem to have lost the GEL a

[678] This is very much consistent with the wide agreement of respondents amongst all four categories on the considerable influence of international trade or the international level of environmental law on the development of the national environmental governance arena.

[679] In fact, almost all the participants remained highly sceptical that full implementation was a reality, due to issues regarding the competence, qualification and infrastructure of GAMEP.

quite considerable deal of momentum. This is unlike, for example, the quite vigorous introduction of the National Environmental Policy Act (NEPA) in the US, which, led authors to label it as the "*Magna Carta*" of environmental law in the US.[680]

7.3.2 Developments initiated prior to the full execution of the EIA regime

The driving forces mentioned above have led to a perplexing state with regard to EIA. Despite the fact that, in principle, the EIA is a legally-binding and conditional requirement before the foundation of any project likely to harm the environment, at the same time, there are a huge number of enterprises that were founded before these obligatory EIA provisions came into being. At the practical level, this brings about a great many legal and socio-economic concerns and unresolved challenges for the respective decision-makers. There are numerous expanding projects that were meeting the existing requirements at the time of establishment; the problem is that the environmental law and primarily the EIA requirements were, at that time, on the side-lines, in comparison to issues such as economic development.

Hence, at the time of the so-called "full enforcement"[681] of the GEL and the RI, there were several major and even probably indispensable enterprises operating without prior EIA studies, some of which have still not been able to obtain a proper EIA, as vouched for by participants from all the groups, including (I-2-3), (I-C-3) and (I-B-7). This sparked a dilemma in which the endeavours of societal stakeholders and even GAMEP to seek a radical solution by, for example, shutting down or moving such polluting operations to remote and uninhabited areas, have been robustly challenged by a persistent and confrontational attitude from the investors, stressing that they satisfied the law and the permit conditions governing at the time of construction and the commencement of their operation (I-A-4). Thus, they contend that they are unable to fulfil the "impracticable" demands of the new regulations, and argue that such unwieldy rules cannot be applied retrospectively. As respondent (I-A-3) explained:

> *"I am aware an example of huge industry that is contributing to the national need. At the time of its establishment decades ago everything seemed to have gone OK. Now, after the massive urban expansion of the city, which at that time was remote to it, the industry can be said to have reached and well exceeded by such urban development. So, the industry is now part of the city. This places formidable challenges regarding environmental requirement such as the EIA. In order for the factory to satisfy the EIA requirement, it has to be removed remotely to a totally different area, and this proves challenging.... The nature and geological properties of the location and land seem to perfectly suit the industry and its process and the sand they use in their production processes. ... getting the plant removed to very distant places is quite likely to cause considerable number of its engineers and manpower to leak .... This is disastrous to the industry, especially after those technicians and workers ... have built their experience over the years in this manufactory. ...tremendous costs are expected if similar or even more environmental friendly industrial machines and appliances to ...*

[680] William H. Jr. Rodgers, 'The Most Creative Moments in the History of Environmental Law: "The Whats "' [2000] 2000 University of Illinois Law Review 1 P 23.
[681] It is still a continuing attempt.

installed in such remote areas. These are some of the challenges that make dealing with these kind of old industrial activities tedious and still quite unresolved.".

Regardless of the validity of their defence and the responses from administrative and legal perspectives, implementing a radical decision on these economically vital industries or terminating their operations would have significant social and economic consequences. Respondents (I-A-3) and (I-B-1) pointed out that the stability of prices, not only nationally but also regionally, would be at stake, due to their influential role and capacity for supplying the national and regional market. Although the right decision is very clear from a purely eco-centric viewpoint, in such complex situations, realist decision-makers have many other concerns and considerations than purely environmental ones to think about.

7.3.3 Private vs Public Projects & GAMEP

There seems to be a considerable dichotomy in terms of the regulatory and enforcement powers that GAMEP has over private versus government projects, although, in principle, the obligation and application of GEL does not discriminate between projects potentially impacting the environment.[682] Legally speaking, the GEL addresses public service projects such as bridge-building and road construction exactly on the same footing as it places obligations on private projects, such as poultry farms. Nonetheless, it appears that there is an obvious discrepancy between GAMEP's "real" power to impose the law on private businesses on one hand, and its lesser influence on public, government-owned projects on the other.

Generally speaking, GAMEP appears to be far more able to impose the GEL on private sector ventures, than on public service projects, due to its relatively less powerful status, as well as the indispensability of such public services (I-A-1) and (I-C-8). This was also confirmed by (I-A-3), in referring to employees in other licensing or public authorities, who admitted "*some of them might see us as a stumbling block rather than anything else!*" Moreover, the scale of the social need to establish public-benefit projects such as hospitals and roads carries far more weight than the need to found private profitable businesses. In this case, GAMEP may take recourse to pleading with the respective ministry for legal compliance, with no guaranteed outcome. This point was expressly made by some participants, and illustrated by one of the participants from the bureaucracy, (I-A-3) thus:

"*Generally speaking, when the applicant is an individual or private investment the process should go smoothly and largely OK. However, when the development is of a public nature here lies the real issue. The GEL is there, and clear, GAMEP's license has to be pursued and secured in all cases and irrespective of the nature and ownership of the project. Private investor can be obliged to satisfy GAMEP's conditions and to obtain its approval. This is not equally achievable when the development is government-owned and of a public service nature. This challenge remains insurmountable so far".*

[682] Although the RI has different section to each. In all cases, they are similar in provisions and obligations.

7.3.4 Issues with the private consultancies, and the effectiveness of the EIA procedure

Although conducting the EIA assessment is a legal requirement prior to the establishment of any project or industrial unit, its mechanisms are in need of reconsideration and revision. There seem to be significant issues regarding the accuracy and feasibility of such assessments. The EIAs are undertaken by private environmental consultancy offices, with no systemic mechanism for scrutiny and verification of their soundness and integrity, even by GAMEP, as interviewees across the categories affirmed, including (I-A-9), (I-B-6) and (I-C-7).

Furthermore, there seem to be issues about the qualification, capacity and level of understanding of the EIA's requirements and purpose among the employees of such commercial consultancy offices.[683] This was asserted by many participants across all the four interviewed categories, notably the scholars and academic (I-C) group. This was very much in tune with the GAMEP's announcement that in 2017 the number of environmental consultancy offices endorsed by GAMEP fell dramatically, with 29 offices disaccredited, from a total of 73.[684] Among other corrective measures,[685] its issuance of authorisation to such private consultancies also decreased over the same year.[686] According to GAMEP, these punitive and restorative measures were taken due to different types of failures and performance-related issues, with no further clarification given. Interestingly, these challenges seem also to exist even in advanced environmental jurisdictions, where EIA regulations have been very recently argued to be "*often misunderstood and misinterpreted*".[687] EIA implementation is also reported to prove challenging across Europe and to have "*generated* [in the particular jurisdiction of the UK] *more case law on the environment than any other area of EC or domestic law.*"[688]

Interestingly, these issues regarding the qualification and competence of these hired private offices seem to have been recognised by the Royal Commission for Jubail and Yanbu (RCJY)[689], leading it to have recourse to international EIA specialists instead. Thus, the RCJY

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[683] Which could be further discussed in separate future publications

[684] https://www.pme.gov.sa/Ar/MediaCenter/News/Pages/230239-01.aspx 'Penalising Different Environmental Consultancy Offices during 2017' (the General Authority of Meteorology & Environmental Protection (GAMEP) Website, accessed in 24/12/2017) (Arabic: Translated by the author).

[685] These reforming endeavours were adopted in conjunction with the impulse of the national Vision 2030, which has a potential for enhancing the environmental governance arena in the future, not only by the technical detailed features it brings, but also due to its nation-wide impetus in all sectors.

[686] https://www.pme.gov.sa/Ar/MediaCenter/News/Pages/230239-01.aspx 'Penalising Different Environmental Consultancy Offices during 2017' (the General Authority of Meteorology & Environmental Protection (GAMEP) Website, accessed in 24/12/2017) (Arabic: Translated by the author).

[687] Urmila Jha-Thakur and Thomas B. Fischer, '25 Years of the UK EIA System: Strengths, Weaknesses, Opportunities and Threats' [2016] 61 Environmental Impact Assessment Review 19 P 26.

[688] Stephen Tromans and Karl Fuller, *Environmental Impact Assessment: Law and Practice* (LexisNexis 2003) P1.

[689] The specialised environmental regulator for restricted industrial zones, as explained previously.

required applicants to obtain an EIA certificate from internationally-recognised specialists, rather than referring the potential industries to GAMEP's list of endorsed environmental consultancy offices. This was made clear by (I-A-8) when he said:

> "*The RCJY relies with regard to the EIA on well-acknowledged US and European companies or entities. Any potential factory has to secure, prior to its foundation, the EIA from an international EIA specialist where its activity is known to be best revised by this or these particular specialists. The domestic environmental consultancy offices cannot be said to satisfy the RCJY requirement and the size and gravity of the industries and companies operate within its territory".*

Interestingly, however, some participants imputed part of the problem to GAMEP itself, on the ground that "*once a potential project has gained an EIA certificate from one of the approved offices, all that needs to be done is to submit the assessment to GAMEP, which will, most likely, in many cases be endorsed by GAMEP without systematic and effective examination*" (I-C-5). Other respondents also pointed out that "*there is no guarantee that the endorsed project will undergo the EIA again, even if there has been a major amendment of the facility or industry under question!*" (I-B-7).

Some respondents across the categories went on more critically to point to more profound issues. According to these respondents, the legal requirement of the Environmental Impact Assessment seemed to have lost its logic. Rather than being a requirement for conducting prudent and customised studies of the potential risks brought about by different proposed projects, and taking the precautionary and preventive measures to assess and proactively take them into consideration, it has turned into a merely procedural requirement, lacking its original purpose and rationale. This view is represented by (I-C-7) when he said that:

> "*Some of these private environmental consultancy offices would have already prepared studies to be granted to clients having similar projects in order for them to initiate their industrial businesses without unneeded delay. Thus, such EIAs were, in practice, shallow or non-relevant studies that were largely prepared in advance of the application, and, in some cases, all that at least some of such consultants would do was to make superficial and minor amendments to previous studies, with some changes in, for example, some titles and subheadings".*

More interestingly, some participants, for example (I-C-5), attributed the problem to the lack of understanding of the entire procedure by some of the consultants and to their prioritisation of their profitability and commercial accounts over the original environmental considerations. According to this argument, at least some of the environmental consultants might advise the potential industries on how to convince GAMEP to categorise or rank them as having the least possible impact, in the three categories, where "the third category" denotes projects with the highest environmental impact. This is because such consultants have the experience to persuade GAMEP to rank the potential project below what it really merits, bearing in mind that the owners or employees of such consultant organisations are sometimes either current or previous GAMEP employees, as pointed out by (I-A-1). According to this

participant and to (I-A-4), this could be done through negotiating and pledging to GAMEP that the potential industrial project would not exceed certain limits of production or emissions. This point raises concerns about the regulatory criteria or standards on which industrial activities are classified, if there is room for negotiation and bargaining by the potential business owners regarding the ranking, rather than having a systemic or less subjective ranking scheme.[690]

7.3.5 Inconsistency of EIA regime application according to the location of the project

The fact that GAMEP is not physically present in all areas of the KSA limits its ability to exercise control and surveillance over the environmental conditions and related activities, raising concerns about inconsistency of implementation of environmental law across locations. It was highlighted, notably by participants from (I-B), whose industrial activities are located in a region in which GAMEP has no branch, that they did not really need an EIA to initiate their industrial projects, and that the other government bodies, notably the respective licensing authority, did not ask for environmental requirements such as an EIA. This raises concerns about the sectoral approach in dealing with environmental issues, as well as the shortcomings in the integration of environmental considerations into the developmental aspects. Further solidifying the EIA regime is likely to overcome or at least mitigate these and similar flaws.

7.3.6 The variation in understanding of the environmental law and value and regime of EIAs among workers in the environmental domain – Lack of environmental input from the public

Although the modest quality of the EIA scheme currently in place was almost a matter of consensus amongst participants, the diagnosis and to what extent it was attributed to the deep-rooted problems varied considerably among respondents. While some attributed the sub-optimal quality to the causes mentioned above, other interviewees linked this mainly to issues related to the quality of those working in the domain of the EIA, either within GAMEP or other licensing agencies. According to this camp, the primary causes are attributed mostly to the low level of understanding of EIA-related legal issues and lack of appreciation of the nature of the potential environmental risks posed by the applicant's proposed development. This is exacerbated by the considerable discretionary power given to the civil servants in relation to the EIA requirements. This is relevant because some employees might mistakenly accept underrated categorisation of potential projects, raising concerns of inconsistency in implementing environmental law.

These challenges related to poor understanding of the nature, purpose and even functionality of EIA are aggravated by the lack of channels through which the public can

[690] Needless to say, bargaining is not the only manner in which industries are ranked; however, the room for negotiation and its impact on the ranking system is evident, as reported by the participant.

influence the decision as to whether a project should proceed. This renders a considerable amount of the literature which views EIA as "*a vehicle for enhancing public participation in environmental decision making*"[691] irrelevant to the EIA regulatory framework in the KSA. Indeed, in many scholarly discussions, including those in legally-oriented publications, the debate is framed largely around this aspect of the EIA, i.e. public participation.[692]

Even more interestingly, some respondents, for example (I-B-5) and (I-B-5), contended that they would not be surprised if some licensing institutions grant the applicant the permit to construct without strictly demanding them to refer to GAMEP and to appropriately fulfil the environmental-legal requirement, primarily EIA issues. This is also in line with the confirmation by (I-A-3) and (I-C-2) that not all businesses and activities have obtained EIAs before starting their operations. The dividing line of the specific reason between why some had not pursued an EIA similarly to others who secured their EIAs seems quite blurred.

7.4 Conclusion

This chapter has explored the current EIA system in operation in the KSA as a Middle Eastern case study, identifying the nature and the various procedures and steps of the EIA scheme in the KSA. The exploration of this uncharted territory of the KSA represents the secondary contribution of the chapter. The analysis was conducted in two main sections; the first was mainly doctrinal, and the second was principally premised on original empirical data gathered via interviews. Both analyses have been discussed in the light of key debates and the current state of theory on EIA in the available literature. Each principal section has identified distinct issues and concerns, contributing to better understanding of the whole EIA picture, and at the same time addressing issues and challenges existing at both the doctrinal and legislative levels, and also at the practical and operational scale.

The chapter has identified and discussed the nature, and procedures of the EIA, as shaped and portrayed by the KSA's environmental law and as operated in the environmental governance ambit, and examined some of the legal implications and consequences entailed. In addition, in order to provide a deeper understanding of some of the principal issues and challenges, the chapter briefly discussed the piecemeal development of the EIA regime, which not only shaped its history but also contributes to persistent ongoing issues.

The chapter has also identified certain gaps and weaknesses in the EIA system currently in place in the KSA's environmental governance framework. Taken together, the issues identified make it clear that the assertion in some of the extant literature that EIA is associated

[691] Holder and Lee, n 450, P 548.
[692] See for instance, Paul Stookes, 'Getting to the Real EIA' [2003] 15 Journal of Environmental Law 141 . In other places the EIA is portrayed as one of the principal "participation mechanisms". See Benjamin J. Richardson and Jona Razzaque, 'Public Participation in Environmental Decision-Making ' in Benjamin J. Richardson and Stepan Wood (eds), *Environmental Law for Sustainability: A Reader* (Hart Publishing 2006) P 179.

with "*integration, precaution, participation, prevention, proceduralization, sustainability*"[693] cannot yet be realistically extended to this Middle Eastern context. The major points identified by the chapter can be demonstrated by the following *seventeen* novel contribution points:

1- The EIA can be said to have a special status in the KSA, as it remains the only environmental assessment mechanism that is explicitly enacted, and backed up by in-force laws and regulations.

2- The nature of the EIA regime can be understood as purely bureaucratic, minimally influenced by the scientific outcomes in the final product of decision-making, and shaping quite different stages from those found in the practice of some other jurisdictions, notably leading western ones. This highly state-centric style of EIA would be enhanced by considering the addition of participatory characteristics in the future.

3- One of the most interesting distinctions is, the low prominence, or arguably complete absence of, the "Environmental Statement" stage in the current EIA system in place, and the absence of collaborative channels for the stakeholders to provide their feedback or comments on the statement or any aspects of the procedures.

4- This situation grants GAMEP great scope for exercising a significant degree of discretion, with contributions from the private environmental consultancy offices or similar groups. In this situation, inviting more actors into the EIA circle is likely to improve the accuracy, integrity and quality of such EIA decisions. It would also address several challenges, including the shortage of technical and human resources, as well as institutional capacity, which inevitably hinders the ability of GAMEP to secure accurate and up-to-date environmental information.

5- At the doctrinal level, the definition of the EIA can be viewed as environmentally-affirmative and unique, in that it does *not* confine the EIA only to projects that are likely to *significantly* hurt the environment. This merit could be exploited by the judicature to ensure more effective application of the EIA system. However, the definition offered still suffers from certain weaknesses, notably its omission of the "systematic character". Accentuating this characteristic is arguably more important in the context of the KSA than for, example, in some western advanced jurisdictions given the sub-optimal level of comprehension and understanding of EIA system.

6- Enhancing training and opening up qualification opportunities in the particular domain of EIA could lead to more understanding and thus a more standardised and systematic application of the EIA. This improvement would equip the parties involved, notably the environmental agency's personnel, to harness the legislative and drafting advantages of

[693] Jane Holder, *Environmental Assessment: The Regulation of Decision Making* (Oxford University Press 2004) P 32.

the relevant legal provisions, and mitigate the shortcomings of the regulations via prudent and eco-centric exercise of the considerable margin of discretion available.

7- The specific steps and phases of the EIA are not mentioned by the respective pieces of legislation. Coupled with the sub-optimal level of understanding of the EIA's rationale, nature and technicality, this seems to have contributed to the problem of the inadequate recognition of the EIA system and its functionality.

8- Regarding the screening phase of the EIA, at the doctrinal level, the law does not exclude any project that is likely to have adverse impact on the environment to be addressed by the EIA provisions. At the empirical level, however, this is not the case.

9- In the scoping stage, classifying the potential projects into three rigid groups, according to their perceived level of impact on the environment seemed to lead to some practical pitfalls, despite the merit of such statutory categorisation at the theoretical level.

10- The role entrusted to the private environmental consultancy firms has exceeded both their capacity and the qualification level of many of their workers and also their understanding of the rationale, nature and purpose of the EIA as prescribed by the national environmental laws. Thus, setting up specialised EIA units in GAMEP or in the ministry of environment might help to solve this problem or reduce this gap.

11- The "environmental statement" phase, does not appear to be recognised by the respective available regulations. Introducing such a step, as found in the literature addressing more fully-fledged EIA systems, is likely to encourage input from the interested parties who might have specific or local knowledge that is not available to the consultancy offices nor to the permitting authority. This, per se, is likely to enhance the quality and comprehensiveness of information upon which the final decision is taken.

12- There is a positive correlation between the physical presence of GAMEP as the environmental agency and the extent to which the EIA is considered obligatory by the regulated industries.

13- It seems that the extent to which different permitting agencies value and appreciate the importance of the EIA as a mandatory legal requirement varies. This has brought about a somewhat fragmented and sectoral approach. Promoting the understanding of the EIA system and its governing legal provisions is likely to help in levelling up and standardising the cross-institutional understanding.

14- Carrying out EIAs for public benefit ventures has proved more challenging than doing so for private owned projects. This is due, inter alia, to the perceived necessity of such public projects, which cannot be obstructed on the environmental grounds of the EIA.

15- More intervention and contribution from the judiciary is likely to back up more effective implementation of the statutory EIA system. It is also likely to affirm some of the legislative points of strength existing at the doctrinal level.

16- All of the issues identified above regarding the regulation and implementation of the EIA also affect the essential anticipatory feature of the EIA as an environmental protection tool. Addressing these issues is likely to consolidate and improve the anticipatory properties of any EIA scheme.
17- Despite the existence of a large body of the literature on the subject of EIA, its relevance and applicability to the Middle Eastern context, represented by the KSA's jurisdiction, is questionable and quite limited in many cases.

Nevertheless, it should be recalled that the introduction of the EIA regime as an integral part of the KSA's environmental law landscape is a great step forward in the right direction. It is expected that a considerable number of the identified challenges are likely to be addressed by the ambitious, national Vision 2030 masterplan, which is intended to contain many reforms and developments in the environmental protection arena.

8. Chapter Eight: Environmental Governance and Environmental Principles

Abstract

This chapter explores the existence and nature of principal environmental principles. i.e. sustainable development, the precautionary principle, the preventive principle and the polluter pays principle. The analysis in this chapter focuses on exploring to what extent these principles are embodied in the environmental governance jurisdiction of the Kingdom of Saudi Arabia as a case study from the Middle East. It seeks to examine what, if any, are their manifestations and their legal status and role in environmental protection in the environmental law and governance framework.

The chapter combines the doctrinal, or black-letter approach, that focuses on legal and government documents, and an empirical socio-legal or qualitative analysis supported by input from experts and stakeholders involved in and acting in the environmental governance domain of the case study. The qualitative analysis derives its data from 27 semi-structured interviews with stakeholders from four groups: bureaucrats (I-A), representatives from factories and industries or the private sector (I-B), scholars and professors (I-C), and representatives from environmental societies (I-D) (see Methodology chapter and Appendix A for further details). The exploration of the widely undocumented Saudi environmental law landscape is an important but secondary contribution of this chapter.

The major contribution intended by this chapter is a theoretical development which brings discussion from the scholarly literature into the context of the case study, and particularly to assess the relevance and applicability of existing theorisations to the different context of the Middle East, represented by the environmental governance jurisdiction of Saudi Arabia.

8.1 Introduction

In the literature review (Chapter 2) a number of key principles for any environmental governance system were identified and discussed.[694] These four principles, sustainable development, the precautionary principle, the preventive principle[695] and the polluter pays principle, are profoundly engrained in contemporary national and international environmental law and form the basis of many of its provisions and guidelines.[696] At a national scale,[697] this chapter is intended to shed light on these principles and their shape, and degree of implementation in the context of the KSA's current environmental governance arrangements, rather than comparing them to other decision making tools or approaches that prevail in some jurisdictions, such as the cost-benefit analysis approach.[698]

The chapter explores the status of these principles in both doctrinal, and empirical terms. The first part of the chapter aims to analyse the status and position of the principles in hard and soft law instruments, including environmental statutes, policy documents, governmental reports and periodicals. The second main part of the chapter is based substantially on the analysis of the in-depth data generated by the semi-structured interviews undertaken with 27 participants representing different sectors and disciplines. The interviewees are categorised into four groups: bureaucrats or civil servants (I-A), representatives of industries and the private sector (I-B), members of academia, (I-C), and representatives of environmental societies (I-D). These participants came from a variety of disciplines, including environmental science, environmental engineering, petroleum engineering, civil engineering, nano-biotechnology and ecotoxicology. The amalgamation of this empirical data and its analysis with the outcomes of the doctrinal analysis constitutes the backbone of the analysis in this chapter and leads to its conclusions.

The chapter concludes with some reflections on the status of these principles in the KSA's current environmental law and governance in practice. The conclusion comments on the extent

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[694] Interestingly, however, these, notably the polluter pays principle, might have slightly different appreciation by scholars of disciplines such as energy law. Raphael J. Heffron and others, 'A Treatise for Energy Law' [2018] 11 The Journal of World Energy Law & Business 34.

[695] The distinction between the precautionary and preventive principles is associated with the level of certainty of occurrence of the risk. Thus, while the former is about uncertain and hypothetical risks, the latter is about known risks. Therefore, the preventive principle was much less doubtful and controversial amongst interviewees, as will be seen below. See De Sadeleer, *Environmental Principles: From Political Slogans to Legal Rules P 91.* And Beder, 285, P 47.

[696] De Sadeleer, *Environmental Principles: From Political Slogans to Legal Rules* P 13.

[697] Rather than internationally. Discussion about the principles can be framed at the international law scale, and there is large body of the literature that argues for the role of international law. For example, in the case of sustainable development, it has been contended that "*its central pillar is international environmental law*". Dominic McGoldrick, 'Sustainable Development and Human Rights: An Integrated Conception' [1996] 45 The International and Comparative Law Quarterly 796 P 797. Also reference to and discussion about all the principles addressed here, but from an international law perspective, can be found in Birnie, Boyle and Redgwell, n 198.

[698] Leslie Carothers, 'Upholding EPA Regulation of Greenhouse Gases: The Precautionary Principle Redux' [2015] 41 Ecology Law Quarterly 683.

to which each one of the principles has been present or is likely to be present in the foreseeable future, bearing in mind the current major reformist attitude expressed by the KSA's Vision 2030. The primary contribution of the chapter is attained by synthesising the existing scholarly debates and discussions into the distinct Middle Eastern jurisdiction of the KSA. Mapping and extending what environmental law and governance scholars have had to say in other contexts is instrumental in determining the applicability and relevance of a significant part of the available literature to the status quo of the environmental governance landscape of the case study. This theoretical extension and development fills a significant currently existing gap in the available body of the literature.

8.2 Environmental Governance and the Principles in the Context of the KSA (Doctrinal Analysis)

This exploration aims to investigate the nature and the extent to which these distinct principles are considered and endorsed by several major legal and policy instruments in the KSA. Although largely doctrinal, this section employs arguments and evidence from the interviews conducted, where these are relevant. Throughout the sections of the chapter, the principles are tackled in order of sustainable development, preventive principle or precautionary principle, and lastly the polluter pays principle

8.2.1 The General Environmental Law (GEL)

As explained in the previous chapter, the GEL is, by far, the most important specialised instrument that governs and orients the environmental protection undertaking and environmental governance system in general.

8.2.1.1 Sustainable Development

As shown in Chapter 2, this precept is quite problematic and elusive, not only in theoretical terms, but also on the practical level. By its very nature, sustainable development is exclusively an environmental idea, as the social and economic dimensions are equally prominent in the standard understanding of the sustainable development principle. This renders its application and implementation as going beyond the responsibility only of the General Authority of Meteorology and Environmental Protection (GAMEP), or even its parent the Ministry of Environment, Water and Agriculture (MEWA) or any other single authority alone. Thus, no one institution or particular group of institutions claims or is exclusively aligned with the responsibility of achieving sustainable development. Here lies a major challenge.

This problem is reflected in the main environmental law in the KSA, the General Environmental Law (2001), which does not expressly mention the issue of sustainable development. This is arguably due to the fact that it is the principal statute that mainly specifies the powers, and scope of discretion, and governs the actions of the environment agency (GAMEP). Therefore, mentioning the sustainable development principle in the GEL might provoke some controversy about the responsibility of GAMEP in an area that that is not

jurisdictionally plausible, nor would its sub-optimal capacity allow it to play a key executive role in implementing sustainability. In all cases, the omission of the phrase 'sustainable development' in the GEL creates a sort of legal and definitional vacuum that has still not yet been tackled by any other equivalent enactment.

This significant legislative definitional vacancy has opened up the door for the various institutions and sectors to work out, through their own diligence and self-initiatives, what could be sustainable development and how it might be defined, but has also left those who have no direct interest in addressing, defining and highlighting the principle of sustainable development untouched and unencouraged to do so. The natural outcome is that among the various government and business institutions diversified understandings, definitions, and versions of sustainable development exist.

Given that the administrative law jurisdiction in the KSA is generally legislation-based rather than judge-made law, the judiciary cannot invoke sustainable development as an argument or rationale in their legal reasoning, due to the fact that the GEL does not feature or even define the term sustainable development. Thus, the inclusion in the GEL of the term sustainable development would be instrumental in granting it certain legal status, which could be embraced by judges in reaching their final conclusions even though at first this general legislative reference to the principle might not help the judiciary to explore its detailed elements.[699] GAMEP seems to have recognised this legislative gap and has attempted to cope with it by establishing an inter-institutional sustainable development department. This department started enthusiastically but could not maintain the original level of enthusiasm for many reasons, according to (I-A-4). It encountered the reality of being institutionally separated from the rest of the development sectors, lacking nation-wide effective authority, and being institutionally subordinate to other departments, even within GAMEP. Unsurprisingly therefore, this department has had a limited and sporadic influence, largely dependent on its administrative leadership which has also been intermittent due to new appointments being made from time to time. Currently, the influence of this sustainable development department is barely, if at all, noticeable, as (I-A-1) maintained.

Ross's analysis of the three main challenges existing in the UK seem to resonate quite well with the analysis in this chapter. She identifies lack of sustainable development leadership, inconsistency of attitudes and understandings across sectors and institutions, and the vagueness of the role of sustainable development in guiding decision-making, notably

[699] 'International Courts and the Application of the Concept of "Sustainable Development"' in Armin von Bogdandy and Rüdiger Wolfrum (eds), *Max Planck yearbook of United Nations Law Online*, vol 3 (Max Planck Institute for Comparative Public Law and International Law).

economic decision making,[700] which appear also to be significant areas for improvement [by GAMEP][701] in the KSA, perhaps to different degrees.

8.2.1.2 The Precautionary Principle

In discussing the Precautionary Principle, the concepts of risk, uncertainty, causal relationships between the alleged act or incident and the environmental harm come to the forefront.[702] None of these terms, however, is explicitly defined by the GEL. Nevertheless, there are some provisions in the GEL that suggest this statute is based on the perception that the probability of environmental harms is static and quite possible to anticipate. This means that when scientific evidence is not conclusive and environmental knowledge is incomplete, the GEL does not oblige or induce the respective agency to take specific precautionary action. For example, Article 9 indicates that "preventive" measures must be taken only when the potential of risk and causality has been established. In Items 2 and 3 it is stated that:

> "*2- Concerned agencies shall establish and enhance emergency plans, as required, to protect the environment from pollution hazards resulting from emergencies caused by their projects during the performance of their activities.*
> *3- Each person who supervises a project or a facility which has the potential for causing adverse impacts on the environment, shall prepare emergency plans to prevent or alleviate the hazards of such impacts and have sufficient means to implement these plans."*

In practice, as expressed by (I-A-3), the term 'hazard' seems to be understood to indicate certain known environmental harms not hypothetical or uncertain ills. Another issue here, is the presumption of the 'instantly appearing' damage of the environmentally-aggressive act. The phrase "*during the performance of their activities*" raises the question about cumulative, long-latency, long-term and maybe even cross-generational environmental detriments.

This non-precautionary approach has significant legal implications in the presumption of the benignity of actions and activities unless proven otherwise scientifically.[703] As such, persons conducting an activity or discharging a substance are not obliged to prove that their

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[700] Andrea Ross, *Sustainable Development Law in the UK: From Rhetoric to Reality?* (Earthscan 2012) P4.

[701] I say [by GAMEP] in the sense that in the developed countries "*environmental ministries and agencies have generally taken the lead in engaging with the idea* [i.e. sustainable development]"., in James Meadowcroft, '"Sustainable Development: a New(ish) Idea for a New Century?"' in John S. Dryzek and David Schlosberg (eds), *Debating the Earth: the Environmental Politics Reader* (2nd edn, Oxford University Press 2005) P 271.

[702] Unlike or the preventive principle where the uncertainty is much less, as discussed in Chapter 2. Consequently, the preventive principle is much less relevant where the causal relationship between the activity and the environmental damage is uncertain. As such, "*Under the obligation of prevention, however, activities with uncertain risks may remain unregulated. This gap may be filled by the precautionary principle*." Ling Chen, 'Realizing the Precautionary Principle in Due Diligence' [2016] 25 Dalhousie Journal of Legal Studies 1 P 21.

[703] This for example was traditionally the interpretation of some legislations in the US. In the words of Warshaw: "*manufacturing, processing and use of chemical substances cannot be restricted unless the regulatory authority proves an unreasonable risk*." Jean Warshaw, 'The Trend Towards Implementing the Precautionary Principle in US Regulation of Nanomaterials' [2012] 10 Dose-Response 384 P 384.

action will not cause environmental damage.[704] In order for GAMEP to be convinced to act, it is the role of the objector to prove that such actions or discharge might cause damage either to the environment or to human health, so the precautionary shift of the burden of proof is not recognised. This is also supported by the following statement from interviewee (I-A-5):

> "... *considerable number of the complaints we receive is either psychologically induced, or against emissions do not exceed the statutorily permissible thresholds. In either case, we cannot do anything. After following up with the complaints we got, in many instances we find out that the complained against actions, emissions or discharge is not scientifically proven harmful. In fact, many people are quite psychologically inclined to believe that such issues will cause them a problem, or they wrongly linked it with an existent health or environmental issues in their areas. In other cases, we go and investigate but conclude that that complained against activity or enterprise do not traverse the legally allowable emission standards. In such cases, I will convict myself and bring myself and institution into a trouble if I took action, because the conductor of such 'legitimate' activity may bring a legal or administrative case against us, and definitely we will lose it, since he has a legal back up! In many other cases, when we ask the complainant or objector to prove his claim that certain environmental or health problem is going to be caused by the activity or emission he disliked, or even to establish a link between an existent either human health or environmental ills and the disliked activity, emission or discharge, the claimant stand unable, and maybe accused us of deliberately turning a blind eye on them out of personal gains! Therefore, and in all cases, I always have to have a causality proof in order to intervene with confidence and for protection for all parties involved".*

8.2.1.3 The Preventive Principle

Although the GEL and its Rules for Implementation (RI) (discussed below) do not seem to be precautionary enough, they can, however, be recognised as preventive. They regulate and refer to multiple legal mechanisms including emission limits, pre-project assessment and the use of best available technology,[705] which are regarded as applications of the preventive principle.[706] In theory at least, the GEL calls for appropriate measures to be taken in advance of any foreseen environmental detriment, to pre-empt such damage either by preventing it from happening or by mitigating its likely impacts. For instance, Article 6 provides that:

> *"The party executing new projects, making major modifications to existing projects, … must utilise the best possible and most suitable technologies for the local environment and use materials which introduce the lowest possible level of pollution to the environment."*

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[704] This shift of the burden of proof to the undertaker of the project rather than the objector is a typical manifestation of the precautionary principle. However, it is argued to be a strong or excessive interpretation of the principle and thus not without controversy. Noah Sachs, 'Rescuing the Strong Precautionary Principle from its Critics ' [2011] 2011 University of Illinois Law Review 1285. Daniel Bodansky, 'Deconstructing the Precautionary Principle' in David D. Caron and Harry N. Scheiber (eds), *Bringing New Law to Ocean Waters* (Brill | Nijhoff 2004).

[705] For instance, the RI Article 6, Item 6-1 demands project undertakers to "*employ technology which is internationally evaluated best and most suitable technology available for the local environment and to use materials with minimal pollution to environment and to commit to using technologies that are suitable*…".

[706] Alexandre Kiss, 'Public Lectures on International Environmental Law' in Adrian J. Bradbrook and others (eds), *The Law of Energy for Sustainable Development* (Cambridge University Press 2012) P 26.

Although this Article clearly embodies a preventive approach, there are a number of issues that might diminish its practical potential. The most obvious one is concerning the phrases "*the best possible*" and "*most suitable*" and with the phrase "*for the local environment*". In practice, these clauses seem to limit the effectiveness and practicality of the GEL, particularly in terms of the status and capacity of GAMEP. The GEL does not assign this responsibility to any specialised technical entity that could determine what are 'the best and most suitable technologies'. This is an area surrounded by ambiguity: What are the standards and criteria that make such technologies best, and most suitable for the local environment? Who decides? And perhaps most importantly, what if acquiring such technologies entails excessive and unbearable costs for the project conductors or applicants?

Moreover, regarding the phrase, "*for the local environment*", it remains unclear what is the scale used to interpret the term. Is it, for example, on a regional scale, city scale or village scale? This is important because the massive territory of the KSA encompasses a wide variety of different types of landscapes, topographies, and habitats. In all cases, GAMEP does not have the qualifications, resources and logistics to come up with customised environmental strategies or programmes in line with such statutory requirements, as emphasised by (I-A-2), (I-B-7), (I-C-1).

Thus, although the GEL acknowledges GAMEP to be the competent agency in its first Article, GAMEP is inherently incapable of answering these highly complex and technical questions. Many official reports and also the consensus of the interviewed participants in all categories agree that GAMEP lacks substantial capacities, skills, human resources and technologies to adequately lead the fulfilment of the GEL.

Another issue is the paradox between this requirement for regulated parties and activities to use "*the best possible and most suitable technologies*" and the actual regulatory standards, as the statutorily stated thresholds have never been substantially updated nor tightened since the enactment of the GEL in 2001. These largely obsolete legislative emission standards are also incomplete and flimsy as pointed out by (I-A-3), (I-B-4), (I-C-2). Thus, the outdated standards may provide a way out of responsibility for those activities and projects which use 'the worst possible technology' in their processes, on the pretext that they have not exceeded the allowable limits.

8.2.1.4 Polluter Pays Principle:

Similarly, the GEL makes no explicit reference to this principle. However, closer reading of some of its Articles reveals that the principle forms the basis for some of its provisions. Nevertheless, even those Articles reflecting the incorporation of the principle mirror quite lenient and incomplete versions. Three prime examples reflecting different dimensions of the principle are identified and discussed below.

8.2.1.4.1 Manifestation 1

In the first example, Article 13 dictates that:

> *"All persons engaged in production, servicing or other activities shall take the necessary measures to achieve the following:*
> *1- Prevent direct or indirect contamination of surface, ground and coastal waters that may be caused by solid or liquid residues.*
> *2- Preserve the soil and land and curb its deterioration or contamination.*
> *3- Limits noise pollution, particularly when operating machinery or other equipment or using horns or loudspeakers. Noise levels shall not exceed allowable environmental standard limits set forth in the Rules for Implementation."*

Here the legislator asks operators to take the needful means in order to forestall environmental damage, and to preserve the original quality of the environment, or reduce damage and deterioration. Such means normally entail the regulated projects securing appropriate and advanced technologies, together with well-qualified staff. These are not free-of-charge items. Hence, the polluter pays. Consequently, the cost of prevention, reduction or control would be reflected and 'internalised' by the final price of such goods and services. Ultimately, the market failure is limited by virtue of the polluter pays principle implicit in the GEL, at least at a theoretical level.[707]

Thus, neither the polluter nor the consumer of such polluting goods would be totally a free rider. This serves a central ex ante economic function of the polluter pays principle.[708] The downside, however, as pointed out by (I-A-7), (I-B-7), is that GAMEP is not currently capable of ensuring compliance with the complex dual nature of such legal provisions, comprising both legal and economic dimensions. Another problem is that in the absence of environmental taxes or a system for assessment, in fiscal and quantitative terms, it is very unlikely that these internalised costs adequately reflect the actual environmental damage or impact.

8.2.1.4.2 Manifestation 2

Another manifestation of the polluter pays principle in the GEL is seen in Article 17, stating:

> *"1- If the competent authority establishes that an environmental measure or standard is violated, it shall, in coordination with relevant authorities, compel the violator to:*
> *a- end and remove any adverse effects, and remedy consequences thereof in conformity with environmental standards and criteria within a specified period; and*
> *b- submit a report on measures taken to preclude any future violation of said standards and criteria, provided that said measures are approved by the competent authority.*
> *2- If the situation is not rectified as provided for above, the competent authority shall, in coordination with the relevant or licensing authorities, take necessary measures to*

[707] It is an overestimation to argue that the GEL is able to de facto "*correct market failure by internalizing* [fully or adequately] *the cost of environmental pollution*". Manufactures do not adequately bear the cost of their pollution, because the principle has not yet come to the forefront in the KSA's environmental law jurisdiction, and also due to issues with the drafting of the GEL per se, as will be seen below. Fisher, Lange and Scotford, n 1, P 413.

[708] In contrast to, for example, the ex post curative application of the principle which will be addressed below. See De Sadeleer, *EU Environmental Law and the Internal Market* P 58 and P 61.

compel the violator to rectify the situation in accordance with the provisions of this Law."

This Article provides for the environmental violator to be held responsible and compelled to repair the damage caused and restore the environment to a perceived acceptable status or condition. It also makes it mandatory upon the offender to pledge, in a written form, not to re-commit the infringement in the future, and specify the measures taken to ensure that the violation will not re-occur. Otherwise, if the perpetrators do not respond, this Article mandates the GAMEP to force them to respect the rules. All these curative measures are to be carried out at the expense of the violator. So, the polluter has to pay.

However, there are a number of issues worth raising regarding the application of the polluter pays principle in this context, both in theory and practice. In theory, this remedial dimension of the polluter pays principle comes in a post-problem phase, so it is too late in the process to prevent or pre-empt the damage. Moreover, Item (a) of the Article does not require the violator to restore the environment to its original state or as best quality as possible, but only to rectify the situation minimally, so as not to exceed the given standards. The irony is that there is a substantial issue with the quality, stringency, comprehensiveness and adequacy of the provided standards per se, as pointed out by (I-A-1), and (I-C-6). Therefore, a higher legal status granted to the polluter pays principle, both by the judiciary and in legislative terms, with an eco-centric interpretation of the principle, would be likely to address these current legal and legislative gaps, including those related to the inadequacy of environmental standards or discharge thresholds.[709]

As well as being lenient and legitimising unacceptable levels of pollution, these standards are also incomplete, according to (I-A-1) and (I-C-2). A staggering example of this is represented by Article 13, Item 3, which requires anyone conducting a production process or providing a service to "*Control noise pollution, particularly when operating machines and equipment and using alarm devices and loudspeakers, and not exceed permissible environmental standards provided for in the Implementing Regulations*". Ironically, however, neither the GEL nor its Rules for Implementation provide noise standards, which renders the implementation of this Article unattainable.

Further, GAMEP is not powerful enough either to systematically detect the environmental wrongdoers or to force the detected activities to conform to the laws, due to its widely acknowledged poor capacity and lack of administrative and executive power. Moreover, even Article 17 itself does not empower GAMEP to freely act as it deems necessary, thus excessively constraining its power and discretion. Probably the unintended, practical

[709] See the curative function of the polluter pays principle in De Sadeleer, *Environmental Principles: From Political Slogans to Legal Rules* P 37. Further discussion is provided in the qualitative analysis section below.

consequence of phrases like "*in coordination with the relevant or licensing authorities*" is to render GAMEP constrained by, or even subordinate to other entities and executive bodies, the so-called "*relevant authorities*". Naturally, however, such authorities may have different priorities and other considerations in mind than those of GAMEP, as stated by (I-A-1), (I-C-7).

8.2.1.4.3 Manifestation 3

A third representation of the polluter pays principle can be found in Article 18 of the GEL. For example, in Item 2, it articulates that:

> *"Without prejudice to any harsher penalty provided for in any other law, any person who violates any provisions of other articles [according to Item 1 of this Article, this means other than Article 14 of the GEL] of this Law shall be punished by a fine not exceeding ten thousand Riyals and compelled to remove the violation. In case of repetition, the maximum fine shall be increased without exceeding double the maximum limit, and the violator shall be compelled to remove the violation. The relevant facility may be closed for a period not exceeding ninety days."*

Several points need to be addressed here. First, the Article sets 10,000 Riyals as a cap in any fiscal penalty imposed on the violator, regardless of the magnitude or severity of the environmental damage caused. The irony is that, for many industrial businesses, 10,000 Riyals is a rather trivial sum.[710] Therefore, it can be much more cost-effective for them to pay the 10,000 Riyals or even double this amount, rather than carrying out major modifications to the industrial process or adopting newer more environmentally-friendly technology, as pointed out by (I-B-4). This problem is further complicated by GAMEP'S lack of power to force the violators to redress the environmental ills they cause, in this case to "*remove the violation*".

Another equally significant issue here is with the phrase "*facility may be closed for a period not exceeding ninety days*". Again, this restricts the discretion of GAMEP and the judiciary, irrespective of the scale of the environmental deterioration brought about by the environmental contravention. Hence, the incorporation of the polluter pays principle in this Article, although originally a step forward, requires substantial review and consolidation.

The issues identified in this context call for more effective and stringent consideration of the polluter pays principle. This is needed not only to address legal, economic and environmental issues and aims, but also to promote the "pedagogical effect" of the polluter pays principle.[711] For instance, when a member of society see companies and industries are held liable for their own pollution including in fiscal terms, this is likely to strengthen their acceptance of their commitment towards the environment and their willingness to take part

[710] Compare this 10,000 Riyals cap to the 1,000,000 Riyals fine, that may be imposed by the Royal Commission for Jubail and Yanbu (RC) to regulated plants that operate within the RC's zones (I-A-8).
[711] Jonathan Remy Nash, 'Too Much Market: Conflict between Tradable Pollution Allowances and the Polluter Pays Principle' [2000] 24 Harvard Environmental Law Review 465 P 479.

and even make sacrifices in this regard. As put by Rose, "*We need to pay attention to the lessons we provide for ourselves through our laws*.".[712]

8.2.2 Rules for Implementation (RI)

8.2.2.1 Sustainable Development

Unlike the GEL, the RI explicitly refers to the principle of sustainable development. Nevertheless, the RI does not overcome the definitional challenge of this principle either in Article 10, where the principle is clearly underscored, or in Article 1 of the RI, entitled "Definitions", where over 70 definitions for various terms are laid out.

Having said that, Article 10 of the RI, the only locus where this principle is mentioned outright, seems to strongly tie this principle to the principle of factoring environmental considerations into any national strategy or process of decision-making.[713] Thus, this association with the principle of integration should be applauded. For instance, Magraw and Hawke argue that the integration of the various, inter alia, economic factors with the environmental protection consideration is considered both "*the most important implication of the concept of sustainable development*" and also "*one of its core elements*".[714] Lee also portrays the integration principle as "*clearly of considerable consequence to sustainable development*".[715]

In another place the Article plainly refers to "*Sustainable Development Objectives*" with no explanation or reference to any legal or policy document that elaborates on the intended meaning and nature of such objectives. This renders the implications of this central Article somewhat opaque. The Article reads thus:

> *"environmental aspects must be taken into consideration in planning for projects and programs, in the development plans for the various sectors and in the General Development Plan. These environmental aspects shall be taken into consideration in a manner that achieves sustainable development objectives, especially in the following agencies …"*

The Article then goes on to make abundant references to the integration principle or the "incorporation" of environmental considerations into various sectors and domains, including health, industrial, urban development, agricultural, tourism, mass media, coastal areas, and with regard to all the respective executive authorities. Although the association of sustainable development and the integration principle can be of great value, the lack of precision renders them open to highly heterogeneous and perhaps even antithetical interpretations of the same

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[712] Carol M. Rose, 'Rethinking Environmental Controls: Management Strategies for Common Resources' [1991] 1991 Duke Law Journal 1 P 36.
[713] Daniel Barstow Magraw and Lisa D. Hawke, 'Sustainable Development' in Daniel Bodansky, Jutta Brunnée and Ellen Hey (eds), *The Oxford Handbook of International Environmental Law* (Oxford University Press 2007) P 628. Lee, *EU Environmental Law: Challenges, Change and Decision Making* P 44.
[714] Ibid, P 628.
[715] Lee, *EU Environmental Law: Challenges, Change and Decision Making* P 44.

principle. The precise incorporation of the sustainable development principle into the RI or the GEL would validate the entrance of the principle into the courtroom, and thus create an opportunity for its justiciability and enforceability. In other words, "*The more precise legislation is, the easier it is for the court to interpret and enforce it in a way that is consistent with that which the legislature intended.*"[716] Therefore, this would grant the judiciary a promising role to take part in and work for sustainability.

In seeking a more detailed, precise definition of sustainable development, it is apposite to recall warnings made by fellow researchers, which might be useful in moderating any suggestions which might be deemed inconsistent with the spirit and intention of the principle of sustainable development. As Ruhl puts it:

> "*Sustainable development will never produce that type of detailed, relatively static framework, because the multi-parameter, multi-dimensional nature of sustainable development knots the concept together in a constantly evolving system aimed at maintaining optimized fitness over the long term."*.[717]

It is interesting to compare this reference of the RI to the principle of sustainable development, with the statement by Lee and Holder regarding the status of sustainable development in the UK: "*Its introduction into legislation was fairly slow … sustainable development first entered official policy documents far earlier than it found its place in legislation*".[718] However, the pace of the development and evolution of the principle and its use in the UK once it was introduced into legislation, seemed much more dynamic than in the context of the KSA, where there has been a quite evident stagnancy, notably up till the recent introduction of the Saudi Vision 2030.

8.2.2.2 Preventive Principle

As far as the preventive principle is concerned, the RI appears, at least in theory, to be serving this quite well. In fact, its central purpose is to prevent harm before it materialises. Article 2 of the RI, explaining the aims of its existence, states:

> "*The General Environmental Regulation [meaning the GEL] and its Rules for Implementation are intended to:*
> 1- *Preserve, protect, and develop the environment and safeguard it from pollution.*
> 2- *Protect public health from activities and acts that harm the environment.*
> 3- *Conserve and develop natural resources and rationalize their use. …"*

Another version of the preventive principle, concerned more with the period subsequent to the initial damage, is also addressed by the RI. That is the aim to limit environmental

[716] Ross, 'Why Legislate for Sustainable Development? An Examination of Sustainable Development Provisions in UK and Scottish Statutes' P 40.
[717] J. B. Ruhl, 'Sustainable Development: A Five-Dimensional Algorithm for Environmental Law' [1999] 18 Stanford Environmental Law Journal 31 P 63.
[718] Holder and Lee, n 450, P 243.

deterioration that is already apparent and to prevent harm from further diffusion or complications. For example, Article 21, Item 1 of the RI, states:

> "*If the committee … concludes that the environmental violation committed has major environmental, health, social and economic impacts, and that failures to promptly and immediately remove the violation will aggravate such impacts, the committee may order the violation removed immediately as per the environmental provisions it deems appropriate, and at the violator's expense and without waiting for the Grievance Bureau's decision [i.e. the Administrative judiciary's decision] as regards the grievance or the case*"

Although the presence of the preventive principle here is constructive, the implication of the Article is that its implementation here is conditional on GAMEP's establishing that the issue of concern is a major one and its potential damage is significant. Moreover, GAMEP's committee has to demonstrate that the harm has multi-dimensional impacts with major potential health, social and economic ramifications, and cannot justify its conclusion on environmental grounds and reasoning only. In view of the widely acknowledged need of GAMEP for more infrastructure and human resources, it is currently unlikely to be competent enough to fulfil these legislative requirements effectively. Having said that, it is possible that the relatively recent amalgamation of GAMEP, prompted by Vision 2030, under the newly formed Ministry of Environment Water and Agriculture, might empower GAMEP with the needed machinery and resources.

To conclude, it can be recognised that the RI, like standard environmental laws and regulations, is, in general, preventive in nature and purpose, although with considerable shortcomings. The situation becomes more complex when the relationship between the action [potential violation] and the potential harm or environmental impact is less certain and less conclusively established. This introduces the principle of precaution.

8.2.2.3 Precautionary Principle

The precautionary principle does not seem to be clearly manifested in the RI. Nonetheless, in some cases, it can be, in theory at least, invoked through quite eco-centric interpretations of some of the RI provisions. However, the drafting of other provisions does not support such a precautionary-inclined interpretation, since they are direct and specific wordings. Article 1, Item 54, for example, provides the definition of the Maximum Allowable Limit [of the released pollutants] as a "*specified numerical value of <u>polluting materials</u> that shall not be exceeded*"[719]. This Article provides that in order for any substance to be governed by environmental standards or caps, it has to be of a *certainly* "polluting" nature, i.e. scientifically proven and uncontroversial. This means that, whenever uncertainty is present, we cannot accord the environment the benefit of the doubt. Had this item included operative words such as "*possibly*

[719] Emphasis added (although translation of the GEL and RI used in the chapter are official, and not by the author).

polluting materials", "*potentially*", "*may*" or "*likely*", then the interpreter could invoke more precautionary-principle-driven meaning and rulings.[720]

This precautionary style is actually adopted to some extent by other Articles in the RI itself. This can be illustrated by Article 11, Item 11-1-2, which enunciates that:

> "*Persons responsible for operating any project that has a potential adverse environmental impact, shall install automated instruments consistent with the project size to observe and monitor the environmental parameters and provide the Competent Agency with the output and results generated by such instruments when required, after coordination with the concerned or licensing agencies*."

More interestingly, some Articles refer to minimising the "probability" of environmental damage. Article 11, Item 11-2 provides that:

> "*Any person engaged in an activity [that may cause]*[721] *adverse environmental impacts shall take the appropriate actions to limit such impacts or minimize the probability of their occurrence*."

This drafting of this legal provision, would more easily allow for an eco-centric and precautionary-principle-oriented interpretation, as it contains precautionary phrases such as "*may cause*", "*appropriate actions*" and "*minimize the probability*". As such, judges or decision makers can potentially make resolutions on the basis that the absence of conclusive scientific evidence that the activity will cause a problem to the environment cannot be used as a pretext to not take precautionary and preventive measures in advance. However, it is evident from the respondents' comments that this has not been the case so far, as testified by (I-A-7), (I-B-5), (I-C-6). Hence, it can be seen that in terms of the incorporation of the precautionary principle, the RI does not expressly refer to the principle, although some provisions tend to be more malleable to an environmentally-affirmative interpretation that is strictly precautionary in approach. Other provisions seem to be clearly the opposite, where activities or emissions have to be *recognisably* detrimental to the environment, which appears to be more akin to the preventive principle. At the practical level, the situation is distinctly different, as will be discussed below in due course.

In all cases, and even if the precautionary principle is eventually accepted as a substantiated legislative principle, it seems likely that the courts, with their currently limited role in resolving environmental, will encounter formidable challenges in handling precautionary-principle-related cases. This is because, beside the vulnerability of the principle to

[720] Another example of a provision that does not expressly use 'precautious' language is Article 9, Item 9-4-1. It is thus preventive but not precautionary. Interestingly, the official translator seems to have spotted this drafting loophole and pragmatically added the adjective "*potential* adverse impacts" in the English version of the RI. However, the original Arabic version is the official yardstick.

[721] This is a more accurate translation of the original Arabic version. In the official translation, though, the provision reads as "*Any person engaged in an activity with potential adverse environmental impacts …*". In such delicate cases, the official translation can be argued to be 'wrong', as the word "potential" has an impact on the probability meaning of the provision.

misinterpretation[722] and misuse[723], they will likely to be "forced to evaluate the merits and validity of scientific claims" produced by scientists which are already littered by uncertainties.[724]

8.2.2.4 The Polluter Pays Principle

In several places in the RI it can be seen that the RI requires the polluter to pay and to incur certain costs related to the pollution or polluting act. Nevertheless, it does not explicitly refer to this principle by name or provide that the costs of the environmental damage and degradation caused by certain products or services have to be internalised or reflected by their market price. Similarly to the GEL, it merely includes several scattered provisions that impose, either directly or indirectly, certain costs on the polluter, to be paid in different phases of the process prior to, during, and post-pollution or operation. The lack of explicit reference to the principles, including the polluter pays principle, seemed to be clearly reflected in the low level of awareness of interviewees in all the four categories. This seems also to have contributed to the lack of resort to these principles in the judicial legal reasoning, which per se freezes its legal doctrinal development, expansion and evolution.[725]

Direct costs are, for example, those fixed amounts of money that are levied on industries or any persons as a consequence of specific environmental infringements. The indirect incorporation of the polluter principle, on the other hand, can be exemplified by those legal provisions which compel the concerned persons or producers to ensure possession and activation of anti-pollution measures, machinery or equipment. Nevertheless, even where the polluter pays principle is embodied, it is not without imperfections, which may be substantial, as seen in the following examples.

8.2.2.4.1 Example 1

Article 18, Item 18-1 of the RI states that:

> *"… whoever violates the provisions of Article fourteen[726] of the General Environmental [Law] shall be punished by imprisonment for a term not to exceed five years, by a fine not to exceed SR 500,000 or both. An appropriate compensation shall be ordered and the violator shall be obligated to eliminate the violation. The facility or the vessel [may be] detained for a period not exceeding ninety days. In case, of recurrence, the maximum limit of imprisonment shall be raised but may not exceed double the initial term, or the maximum limit of the fine shall be increased but may not exceed double the initial fine or both. An appropriate compensation shall be ordered and the violator shall be obligated to eliminate the violation. The facility may be temporarily or permanently closed or the vessel temporarily detained or confiscated*."

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[722] Ragnar Lofstedt, 'The Precautionary Principle in the EU: Why a Formal Review is Long Overdue' [2014] 16 Risk Management 137.
[723] Maxime Gignon and others, 'The Precautionary Principle: Is it Safe' [2013] 20 European Journal of Health Law 261.
[724] Marjolein B. A. van Asselt and Ellen Vos, 'The Precautionary Principle and the Uncertainty Paradox' [2006] 9 Journal of Risk Research 313 P 331.
[725] See for example chapter 4 in Eloise Scotford, *Environmental Principles and the Evolution of Environmental Law* (Hart Publishing 2017).
[726] Article 14 of the GEL, addresses highly dangerous and environmentally destructive substances and materials such as toxic and radioactive waste and hazardous contaminations.

A number of critical issues should be identified here. First of all, the deterrent value of the fiscal penalty ceiling of SR 500,000 is rather inadequate, bearing in mind the magnitude and possible irreversibility of the potential damage to the environment or health. Moreover, as (I-A-3) and (I-B-5) noted, this fixed maximum is hardly going to deter major wealthy businesses and industries. Ironically, therefore, stringent enforcement of the phrase "*An appropriate compensation shall be ordered and the violator shall be obligated to eliminate the violation*" is likely to incur much more cost for the perpetrator than the original penalty, which is more in line with the dissuasive central purpose of the polluter pays principle.

Further, if the clause "*the violator shall be obligated to eliminate the violation*" were interpreted in an eco-centred manner to entail restoring the environmental state as far as possible to the original conditions, then undoubtedly the provision would be a far more intimidating deterrent. In practice, however, none of the participants could recall a case where this Article had been applied, despite a number of reported incidents, let alone the adoption of such interpretations rather than those with less of a deterrent impact. As such, the costs of environmental problems caused by the market activities violating environmental law are not recovered and reflected in the final pricing of the products or the services they provide. This cannot be reconciled with the principle and its subsumed cost recovery principle.[727]

8.2.2.4.2 Example 2

There are also more elaborate and comprehensive provisions in the RI addressing the recovery of the environmental injury caused. Article 11, Item 11-2-2 asserts that:

> "*Any person who performs an act that causes environmental pollution or adverse environmental impacts shall take all necessary actions to immediately stop such pollution, remove the adverse impacts, treat their effects and remediate the damage [to the] environment in the manner that is determined by the Competent Agency after coordination with the concerned agency and in accordance with the Rules for Implementation. Further, this is to be undertaken within the specified period and to the degree that is required to compensate for existing and consequential damage resulting from the pollution. If such person fails to fulfil these obligations, he will incur all costs resulting from the process of stopping the pollution, monitoring, following-up and remediation of all damage caused by the pollution*."

This provision serves a higher order and more elaborate curative role. Among other things, terms such as "*to compensate for existing and consequential damage*" can have great value for an eco-centric application of the polluter pays principle, despite obvious challenges regarding long latency environmental ills. Numerous other Articles of the RI also serve the preventive dimension of the polluter pays principle, demanding those conducting regulated

[727] Herwig Unnerstall, 'The Principle of Full Cost Recovery in the EU-Water Framework Directive—Genesis and Content' [2007] 19 Journal of Environmental Law 29.

activities to take necessary measures and obtain and use the instruments and equipment needed to control, prevent and reduce potential pollution and contamination of the ecosystem.

8.2.2.4.3 Key Notes

Despite their positive aspects, the provisions of the RI have shortcomings, some related to the date of drafting the GEL and the RI per se. Since their formalisation in 2001, these regulations have not undergone any major updating or amendments, despite several loopholes and flaws, some of which are major and formally acknowledged. For instance, Article 3, Item 3-3-4, of the RI implicitly but clearly acknowledges the inadequacy of the current environmental standards to effectively safeguard the environment against the ever-growing human-induced contamination. It elaborates on the duties and responsibilities of GAMEP and provides that GAMEP is entrusted to "*coordinate with the concerned agencies to review [and complete]*[728], develop and enhance the environmental standards, criteria and directives related to their activities".

One substantial legal repercussion of this relating to the polluter pays principle is that the polluter or the polluting entities will not have to bear the cost of the negative externalities caused if there is no detectable infringement backed up by prohibitive legislative provision(s). In other words, even if, for example, harmful gaseous emissions were released, the polluting activities cannot be "legally" held to account, if the GEL or the RI have not clearly addressed such polluting substances. Introducing a proper and eco-centric understanding and implementation of the polluter pays principle can effectively contribute in redressing these legal and legislative issues. Thus, when considered rigorously, this principle has the potential to boost the quality of environmental policies and regulations which has led some to argue that it is one of the two most important environmental principles.[729]

It can be concluded that the RI and the GEL would be both far more in line with a more mature and environmentally-affirmative version of the polluter pays principle if they expressly provided for the liability of any harmful activity, emission or discharge of materials, even if such activity or substances are not legally proscribed or if such activity is administratively authorised. Regardless of any other considerations, once human health or environmental assets are affected, statutory and civil liability should follow. Generally speaking, however, and as a matter of consensus amongst the interviewed groups, this is not yet the case.

[728] Surprisingly, this word is missing in the official English translated copy of the RI. In this context, it is, however, a central phrase upon which the argument premised.
[729] Chris Miller, 'Has Environmental Law Become Humdrum?' [2008] 20 Journal of Environmental Law 8.

8.2.3 The State of the Environment Report (2017)

This important report is one of the most comprehensive reports that addresses the environmental state in the KSA, encompassing numerous intersecting and overarching issues and principles.

8.2.3.1 Sustainable Development

Although this principle has a pervasive presence in the report, it seems to convey quite differing conceptualisations. Although these understandings are not necessarily mutually exclusive, the core tenor of the principle appears to shift pragmatically in focus as the context requires. For example, among the principal messages of the first chapter, entitled "Environment for Development", the report asserts that:

> "*Indeed, the integration of the environmental considerations into the KSA's developmental plans and policies, and rendering it an integral and inherent part of the process of the comprehensive planning for the development in all fields, industrial and urban and other domains, and greening the economy are conducive to placing the society on a clear and defined path for sustainable development in the future; This path would have regard to safeguarding the natural resources, and at the same time developing human/humankind and fulfilling its essential needs, especially in the shadow of the threat represented by the issue of climate change, and the impact of this on the various aspects of development.*"[730]

This understanding of the principle associating sustainable development with the principle of integration, is markedly in harmony with the connotations of the GEL provisions discussed above. A unique use of the term in this regard is its accentuation of the flagship challenge of global climate change. Interestingly, the strength of the nexus between the principle of sustainable development and climate change is internationally acknowledged.[731] For example, Rodriguez, Ürge-Vorsatz and Barau suggest that sustainable development can be used to "*provide a window of opportunity for creating multidimensional operational approaches for climate change adaptation in cities*."[732]

However, Matthew and Hammill contend that the relationship between the principle of sustainable development and climate change has been increasingly strained,[733] and therefore

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[730] The General Authority for Meteorology and Environmental Protection (GAMEP), 'The State of the Environment: Responsibilities and Achievements' (2017). P 26. (Arabic: Translated by the Author).

[731] "The links between climate change and sustainable development are strong". https://sustainabledevelopment.un.org/topics/climatechange "Climate change" (The Division for Sustainable Development Goals (DSDG) Website, accessed in 7/6/2018).

[732] Roberto Sanchez Rodriguez, Diana Urge-Vorsatz and Salisu Barau, 'Sustainable Development Goals and Climate Change Adaptation in Cities' [2018] 8 Nature Climate Change 181 P 181.

[733] Doubt is also raised by Dark and Burgin regarding the ability of the precautionary principle to properly respond to climate change. This sceptical argument about climate change is relevant in the KSA, as will be discussed in the qualitative analysis below. Stephen Michael Dark and Shelley Burgin, 'An Examination of the Efficacy of the Precautionary Principle as a Robust Environmental Planning and Management Protocol' [2017] 60 Journal of Environmental Planning and Management 2122.

their compatibility should not be seen as perfect and automatic.[734] According to these authors, sustainable development needs to be more "climate-sensitive", and the various elements of sustainable development e.g. economic, development and environmental elements need "to be filtered through the lens of climate science."[735,736] Although this level of detailed analysis does not feature in this State of the Environment Report (2017), the statement from the report quoted above and this argument from the literature regarding the nexus between sustainable development and climate change are clearly not mutually exclusive.

However, as explained earlier, the focus of the principle of sustainable development is constantly changing across the report. For instance, the definitions or meanings provided in different contexts in the report, highlight quite distinct issues, including social participation. Sustainable development in this context is portrayed thus:

> *"Sustainable development is the development that satisfies the needs of the present without compromising the ability of the future generations to meet their needs. It (sustainable development) aims to achieve harmonisation and complementation between the environment and development. It is premised on three dimensions: social, economic and environmental aspects. It is, therefore, primarily concerned with amelioration of the quality of people's life and health without depleting the natural resources or exploiting it above its natural capacity. It [sustainable development] encourages the effective participation by local societies in the process of decision-making that may help them to confirm their common interests and impose them in an effective manner. Its [meaning sustainable development] policies endeavour to develop new technological and economic means and new social systems that are capable of fulfilling the present's needs, and also enjoy inherent sustainability for next generations"*[737]

A number of observations can be drawn from the extract regarding this brand of sustainable development. Perhaps the most obvious one is the clear impact of international environmental law, namely, Our Common Future or the Brundtland Report 1987. The first two lines of the quotation above have almost the exact wording as the definition provided by the Brundtland Report.[738] It is also clear from this quotation that the State of the Environment report

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[734] This seems to resonate quite well with Ross's argument, asserting that the early and classical weak versions of sustainable development are incapable of dealing morally or legally with current environmental challenges, primarily the challenge of climate change. Andrea Ross, 'Modern Interpretations of Sustainable Development' [2009] 36 Journal of Law and Society 32.

[735] Richard A. Matthew and Anne Hammill, 'Sustainable Development and Climate Change' [2009] 85 International Affairs 1117 P 1127.

[736] In the context of urban development. While, Jonas and Gibbs also seem to doubt the automatic sufficiency of the mainstream sustainable development concept , stating that "*Carbon control would seem to introduce a new set of values into state regulation and this might open up possibilities for challenging mainstream modes of urban and regional development in a manner not possible under sustainable development*." Aidan While, Andrew E. G. Jonas and David Gibbs, 'From Sustainable Development to Carbon Control: Eco-State Restructuring and the Politics of Urban and Regional Development' [2010] 35 Transactions of the Institute of British Geographers 76 P 76.

[737] The General Authority for Meteorology and Environmental Protection (GAMEP), 'The State of the Environment: Responsibilities and Achievements' (2017). P 30. (Arabic: Translated by the Author).

[738] World Commission on Environment Delopment, *Our Common Future* (1987). This definition is different from the economic-driven definitions of the principle. See, for example, definitions,

goes on to broadly explain the concept of sustainable development. Interestingly, it appears that the more accounts the report gives to elaborate on this principle, the more fluid and perhaps opaque sustainable development becomes, reflecting the widely acknowledged malleable, stretchy and catch-all nature of sustainable development and thus it can be argued that expanding on the concept only obfuscates it further. In this context sustainable development "*does not aim for a singular 'steady state', but rather the best possible dynamic for dwelling in the world taking into account the needs of economy, society and environment.*"[739] As seen in the extract above, and in line with many academic publications, the report appears to use the terms sustainable development and sustainability quite indifferently and interchangeably, despite the argument by some that these terms are not synonymous.[740]

As discussed earlier in the literature review (Chapter 2), the common challenge regarding the conceptualisation of sustainable development seems also to exist in the KSA, as to whether sustainable development is, for example, a guiding principle, policy aim, a procedural or substantive objective or simply a favourable notion, at the cost of its clear-cut identity. For example, it is certainly not a well-defined action plan nor a clearly-defined requirement backed up by legislative instruments. Nevertheless, these different manifestations of sustainable development cannot eclipse its political value,[741] as embodied in the Vision 2030 document, among others, and is likely to bring about multi-dimensional and comprehensive changes in the KSA, including in the environmental protection governance domain. Thus, this central report has the potential to push towards a more uniform understanding of this term by offering, inter alia, a crystallised, nationally-accepted definition, and perhaps also well-defined criteria or even normative standards upon which its achievement can be appraised and judged.

8.2.3.2 Preventive and Precautionary Principles

Although the report does not appear to directly address these principles, nonetheless, there are multiple places where the report cites, for example, "*the need to prevent, reduce*" certain environmental problems. However, as the link between the scientific basis of these elements and the need for them to be present the environmental decision-making process, mainly by GAMEP, is not emphasised, it is difficult to be sure that such phrases reflect actual recognition of the preventive and precautionary principles as legal or policy-related principles.

The attitude towards the sometimes blurry relationship between the causes and effects of 'potential' environmental damage can differ, even though the precautionary principle is accepted. For example, in the case of climate change, the precautionary principle can be

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assumptions, methodology in Eric Neumayer, *Weak Versus Strong Sustainability: Exploring the Limits of Two Opposing Paradigms* (3rd edn, Edward Elgar 2010) P 7-13.

[739] Libby Robin and Will Steffen, 'History for the Anthropocene' [2007] 5 History Compass 1694 P 1695.

[740] Dovers and Connor, n 603, P 21 note 1.

[741] Kotzé, n 275, P 131.

interpreted as underlining either "*adaptation rather than mitigation*", or a more stringent interpretation that embraces "*a precautionary posture that is strong, robust, and expeditious [that] would prevent future regrets and recriminations*"[742].

The role of causal links, and the implications of the degree of certainty about such causal links are not noticeably addressed in the report. The general tone across the report reflects the view that environmental problems, although pressing and harmful and even perhaps complex, are *not* generally difficult to identify. Thus, the value of the report could be further boosted if the issues of the probability of risk and harm, the degree of certainty and its repercussions on the outcome of the decision-making process, as well as the inevitable limitations of science are properly tackled and elaborated in future versions of the report. This would grant more space for the precautionary principle to be attended to and have a say.

Having said that, in some contexts, the report does underline the importance of precautions or even the "precautionary approach", although in a very broad sense and with no due detailed provided. For example, in the context of addressing the crude oil, natural gas, and mining sectors, the report stresses that *"… The precautionary approach in all phases of extraction, marketing and use is conducive to the protection of people and ecosystems and their [ecosystem's] services from the effects of these industries*."[743]. The other reference to "precautionary measures" occurs in the specific context of "environmental crises, disasters and hazards management."[744] Although this is a valuable use of the principle, a more thematic, overarching prevalence of the precautionary principle would lend the report greater value and convey further educational and symbolic messages, as well as having practical value for the institutions concerned.

8.2.3.3 Polluter Pays Principle

Recognition of the basic logic of the polluter pays principle is also found in the report. Interestingly, the report repeatedly emphasises the national aim to "*elevate the added value for natural resources in the national economy, diversifying its sources, and ensuring its sustainability, and protecting the environment and preserving wildlife*."[745] This exact phrase recurs in the report no less than eight times, indicating the importance of fiscal tools and economic strategies to be further considered in the national environmental governance jurisdiction. The report also underlines the notion of pricing the environmental services supplied by the natural resources and ecosystems and the topic of "The Economics of

[742] A. W. Harris, 'Derogating the Precautionary Principle' [2008] 19 Villanova Environmental Law Journal 1 P 7.
[743] The General Authority for Meteorology and Environmental Protection (GAMEP), 'The State of the Environment: Responsibilities and Achievements' (2017). P 26. (Arabic: Translated by the Author).
[744] Ibid, P 208.
[745] See for example, Ibid, P 58 and 144.

Ecosystems and Biodiversity".[746] This holds a revolutionary potential for the KSA's economy and environmental protection arenas, however, it is put forward without examining the suitability of such this economic doctrine to the national economy and its compatibility with, for example, Vision 2030.

More practically, the report highlights a number of recent weighty decisions endorsed by the government that reflect a tendency for greater adoption of the polluter pays principle. Perhaps most importantly, it refers to "*cutting down subsidies on the oil prices in an attempt to rationalise the use and limit the waste, and shift energy and water consumption norms, lessening the financial cost burden from water desalination, and also in order to reduce the carbon footprint of the Kingdom*."[747,748] This 2016 decision on partially and gradually lifting the subsidies from oil prices is also needed in order to "*protect the environment and its resources, and to ward off the waste that has exacerbated in the society and become a threat to development plans*."[749] These can be seen as manifestations of the increasing application of the polluter pays principle, which is likely to have preventive implications against the future potential and human-induced environmental ills and disadvantages.

8.2.4 Annual Report (2016) of the Ministry of Environment, Water and Agriculture (MEWA)

8.2.4.1 Sustainable Development

The principle or the concept of sustainable development appears persistently in this report. The commitment towards and interest in sustainable development seems to be greatly boosted by Vision 2030, which will be discussed below in a separate section. Having been produced in the post-vision era, the sustainable development principle is a driving concept in this report as a clear manifestation of the Vision's leverage. However, this is accompanied by no obvious legal consequences or direct or indirect legal status or implications.

In the report's preamble, sustainable development can be read as an *orientational soft power* concept for achieving the KSA's Vision 2030. In its exact words, the sectors of environment, agriculture and water are "*working simultaneously in different directions in order to realise Vision 2030, and one of its most important objectives is achieving sustainable development, preserving and developing the water resources and sustaining them and rationalising their use, and also enhancing sustainable food security*."[750]

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[746] Ibid, P 146.
[747] Ibid, P 104.
[748] The relationship between the polluter pays principles and subsidies is essential, to the extent that some might call the polluter pays principle the non-subsidisation principle. See for instance Candice Stevens, 'Interpreting the Polluter Pays Principle in the Trade and Environment Context' [1994] 27 Cornell International Law Journal 577.
[749] The General Authority for Meteorology and Environmental Protection (GAMEP), 'The State of the Environment: Responsibilities and Achievements' (2017). P 219. (Arabic: Translated by the Author).
[750] The Ministry of Environment, Water and Agriculture, 'Annual Report' (2016) (Arabic: Translated by the author) P 8. Can be found at

In other contexts of the report, sustainable development has more structural connotations. It is portrayed as a potential positive consequence amalgamating the environmental, agricultural and water sectors into one recently formed Ministry of the Environment, Water and Agriculture. Perhaps more interestingly, sustainable development or sustainability is also present in several other places in the report, and is conceived as a "*Vision*", "*Strategic Goal*", or even part of the "*Message*" of this central ministry. This "ubiquity" of the terms sustainable development and sustainability reflects the central value and significance accorded to this principle, and perhaps even an increasing potential role to be conferred on the principle in the KSA's environmental governance jurisdiction. Yet, so far, the over-broad drafting and indiscriminate use of the term, coupled with the lack of a fixed and specific definition or clear-cut framework of normative standardisation, are not likely to add significant practical value. Therefore, until these challenges are overcome, this principle might be no more than a buzzword, and an abstract notion, and the question about its "operability" will remain unsolved.

This conclusion is in line with Dernbach's argument that: "*While it is difficult to envision how sustainable development can occur without a legal foundation, the issue of an appropriate legal foundation for sustainable development at the national level has received less attention than it deserves.*"[751]. It should, however, be a warning against taking a naïve attitude that sees the proposed sustainable development legal order as a panacea. Using Bosselmann's words: "*while a legal system cannot on its own initiate and monitor social change, it can formulate some parameters for the direction and extent of social change*".[752] Having said that, the prevalence of this concept throughout this and other documents is indicative of its symbolic and representative value. Moreover, its ability to deliver multiple meanings can be regarded as a merit of this principle,[753] making it almost always relevant.

8.2.4.2 The Principles of Prevention and Precaution

The treatment of the principles of prevention and precaution in this report is noticeably different: silent regarding precaution, and feeble and unclear about the principle of prevention. Thus, the report contains almost nothing that clearly addresses the precautionary principle, whereas some applications and practices highlighted by the report can be deemed as reflective of a certain degree of interest in the preventive principle. The report also highlights a more rudimentary but important approach, which is not merely to prevent or control pollution, but also to fix acknowledged existing environmental ills.

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https://www.mewa.gov.sa/ar/InformationCenter/DocsCenter/YearlyReport/YearlyReports/AnnualRep_1437_1438.pdf accessed on 29/10/2017.

[751] John C. Dernbach, 'Navigating the U.S. Transition to Sustainability: Matching National Governance Challenges with Appropriate Legal Tools' [2008] 44 Tulsa Law Review 93 P 94.

[752] Klaus Bosselmann, *The Principle of Sustainability: Transforming Law and Governance* (Ashgate 2008) P 43.

[753] Dryzek, n 190, P 149.

For example, the report announces that one of the initiatives embraced by MEWA, as part of the National Transformation Program, in line with Vision 2030, is the initiative of the "Rehabilitation of the Contaminated Areas"[754]. In the same vein, there are several actions and measures introduced by the report which can be regarded as giving substance to the abstract principle of prevention. These can be manifested by, inter alia, the foundation of the "*Centre for Environmental Information, Meteorology and Early Warning of Weather and Pollution*"[755], "*raising the level of environmental monitoring and control in coastal areas*"[756], the "*monitoring of sanitary and industrial wastewater from source*"[757] and, more interestingly, the initiative of establishing the "*strategic environmental assessment for the development sectors*".

8.2.4.3 Polluter Pays Principle

Although there is no separate section or direct acknowledgement of this principle in the report, there are a number of issues that are highlighted by the Ministry which are likely to be reflected in the prices of the services provided, for example, in the water sector. Beside the fact that the water prices are now subject to a new (higher) tariff scheme, the report frequently points to concerns and targets such as the privatisation of the water sector, the excessive waste of water resources, the heavy reliance of the water sector on government subsidies, and raising and collecting the sector's revenues efficiently.[758] All these issues and proposed strategies are likely to have direct effects on the prices in the water sector, which will result in the polluter and consumer paying. Would these developments be a satisfactory application of the polluter pays principle and be adequate to discourage the misuse of such a valuable natural resource? Or would it just allow those abusing these natural resources to continue wasting water after they "buy their right to waste" and have paid its price? These and other relevant questions are left for the real application in the future to reveal.

In all cases, it should be borne in mind that this might "*hurt the poor more than the rich. Higher standards of drinking-water* [might cause] *suffering among low-income households, since the cost of meeting them is passed on to consumers via water bills*"; therefore, in practice, consumers are treated as the "true polluters" who should pay.[759] This is one of the

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[754] The Ministry of Environment, Water and Agriculture, 'Annual Report' (2016) (Arabic: Translated by the author) P 40.
[755] Ibid.
[756] Ibid.
[757]) Ibid, P 41.
[758] See for example, The Ministry of Environment, Water and Agriculture, 'Annual Report' (2016) (Arabic: Translated by the author) P 51, and also https://www.mewa.gov.sa/ar/Ministry/initiatives/MinistryInitiatives/Pages/default.aspx "National Transition Program 2020" (Ministry of Environment Water & Agriculture Website, accessed in 23/6/2018) (Arabic: Translated by the author).
[759] Stephen Tindale and Chris Hewett, 'Must the Poor Pay More? Sustainable Development, Social Justice, and Environmental Taxation' in Andrew Dobson (ed), *Fairness and Futurity: Essays on Environmental Sustainability and Social Justice* (Oxford University Press 1999) P 234-235.

major social dimensions or repercussions of this economic and legal principle of 'polluter pays' that is a product of the interpretation and implementation of this protean principle.

8.2.5 5 Year Development Plans (2010-2014)[760]

8.2.5.1 Sustainable Development

Although the principle of sustainable development constitutes an underlying concept in this report, as found in the previous documents, it is not without ambiguity. As a signal of its centrality, sustainable development is referred to right at the start of the chapter "Environmental Management". Here, meaning of the principle seems to be more aligned with the very general concept of "environmental protection". Thus, sustainable development in this context appears to be a more environmentally-laden concept,[761] rather than balancing economic and social considerations with the environmental aspects, as seen in the doctrinal examination above. The outset of this chapter reads thus:

> *"The successive KSA's Development Plans have given special attention to the environment, its conservation, its development and protection against pollution factors, within the framework of harmonisation between sustainable development requirements, and improving development indicators in macro, sectoral and spatial levels. This approach is emphasised in Article 32 of the Basic Law of Governance, which proclaims that "The State shall endeavour to preserve, protect, and improve the environment and prevent its pollution"."*[762]*.*

Here, the term sustainable development is used vis-à-vis development and economic considerations,[763] which represents the aspired balance between "environmental protection" and economic development.[764] Here, the conceptualisation of sustainable development does not seem quite similar to that conveyed in other places in the report. For instance, on page 230, sustainable development is offered as an optimal equilibrium between development and the environment, and inexorably linked with the integration principle. In this vein, sustainable

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[760] The 2010-2014 plan is still strongly relevant. It can be argued that there is much more said in this version regarding the environmental principles, than in the current version of the 5 Year National Development Plan (2015-2019), which is less detailed, probably due to the advent of Vision 2030.

[761] This use of the term might be challenged by some on the ground that "*sustainability goes beyond environmentalism*". Margaret Robertson, *Sustainability Principles and Practice* (2nd edn, Routledge 2017) P 3.

[762] Ministry of Economy and Planning, 'The 9th National Development Plan (2010-2014)' P 219 (Arabic: Translated by the author).

[763] This approach can be said to have its origin in the international environmental law discourse where the "*focus* [is] *both on conservation and protection of the environment, and also on a second … objective related to … 'sustainable economic growth*'". Marie-Claire Cordonier Segger and Ashfaq Khalfan, *Sustainable Development Law: Principles, Practices, and Prospects* (Oxford University Press 2004) P 78.

[764] The focus of this usage is clearly on the environmental aspect of the principle. This conceptualisation of sustainable development, found in some international environmental law instruments, particularly accentuates the commitment "to preserve natural resources for the benefit of present and future generations". Philippe Sands, 'Environmental Protection in the Twenty-First Century: Sustainable Development and International Law ' in Richard L. Revesz, Philippe Sands and Richard B. Stewart (eds), *Environmental Law, the Economy and Sustainable Development The United States, the European Union and the International Community* (Cambridge University Press 2000) P 374.

development is more than a guiding concept but rather an achievable goal through "*making the environmental planning an inherent and inseparable part of the development comprehensive planning in all fields*"[765]. There are also areas in which the term sustainable development is employed quite loosely, without clear substance or well-defined message.[766] All these uses of the term, however, appear to fall within the paradigm of the so-called "weak" sustainability, aimed at adding more environmental sensitivity to development dynamics, rather than the radical institutional transformation advocated by the perceived "strong"[767] version of the principle.[768]

Having said that, the various connotations of the principle of sustainability or sustainable development interspersed in this report and present in the other examined reports do not seem to have reached the degree of divergence which might jeopardise its usefulness.[769] Thus, they still have the potential for further convergence and to be more focused, thus contributing to a more unified understanding of the principle across public institutions and society as a whole.

8.2.5.2 Preventive and Precautionary Principles

These principles receive no direct mention in the report. For example, the report does not address the impact of either the degree of scientific certainty, nor the probability of environmental harm on the ability, discretion or even obligation of public authorities, notably GAMEP, to take action. Although the report establishes the need to conduct more environmental (land, marine and air) studies in order to discover the impacts of the different environmentally-stressing variables on the local inhabitants,[770] it does not explain how this would be reflected in GAMEP's and the public authorities' discretion and decision making processes. This said, the report recurrently asserts the need for several ex-ante and ex-post measures and actions to be taken in order to anticipate, pre-empt and prevent environmental ills. For example, the report underscores the necessity for enhancing "monitoring and anticipation" of environmental harms and disasters and their potential dangers.[771]

Moreover, as a policy attitude, the report announces the target of "*elevating the imperative preventive measures for protecting the environment and natural resources, and preserving*

[765] Ministry of Economy and Planning, 'The 9th National Development Plan (2010-2014)' P 230 (Arabic: Translated by the author).
[766] For example, see Ministry of Economy and Planning, 'The 9th National Development Plan (2010-2014)' P 221 (Arabic: Translated by the author).
[767] Note that the adjectives "weak" and "strong" when attached to the principle of sustainable development are purely descriptive rather than used in a laudatory sense. For instance, strong sustainability has been derogated in the literature as "*morally unacceptable as well as totally impractica*l". Wilfred Beckerman, ''Sustainable Development': Is it a Useful Concept?' [1994] 3 Environmental Values 191 P 191.
[768] Richardson and Wood, n 274, P 14.
[769] Michael Redclift, *Sustainable Development: Exploring the Contradictions* (Routledge 1987). Dovers and Handmer, n 268.
[770] Ministry of Economy and Planning, 'The 9th National Development Plan (2010-2014)' P 231 (Arabic: Translated by the author).
[771] Ibid, P 225.

dwellers' health". Thus, overall, the preventive principle is given more substance in the report through highlighting several needed instruments and strategies to forestall 'known and recognisable' environmental evils from appearing. Therefore, this report, along with the other discussed documents, can form an appropriate platform for a more overt presence and a more refined conceptualisation of these two correlating but distinct principles.

8.2.5.3 Polluter Pays Principle

Despite the fact that the report does not cover the "financial or fiscal" liability of the polluter before the public authority and society as a whole, it does address a necessary step toward any effective implementation of the polluter pays principle, which is to assess the costs that pollution incurs upon society.[772] This can be a stepping stone to create "*a constant incentive* [for polluters] *to reduce pollution, by contrast with direct regulation and its generally fixed environmental standards*" and thus encourage regulated industries to harness their specialised knowledge and experience in order to reduce their expenses.[773] Thus, it is hoped that, in future editions, in line with Vision 2030, this report can address this principle in detail and discuss its potential environmentally-affirmative applications and functions.

8.2.6 Vision 2030

This is the most significant and far-reaching document in the KSA issued during the current decade. It shapes the aspired future of the KSA in multiple dimensions, and triggers diverse plans, mechanisms and measures to materialise the Vision's ambitions and objectives.

8.2.6.1 Sustainable Development

Unsurprisingly, as a national comprehensive master plan, the sustainable development principle is presented as a bedrock principle in this document. Under the principal pillar of the Vision: "*Vibrant Society with Fulfilling Lives*", sustainable development is recognised as an essential ingredient and presented as more than a mere policy target or desirable strategy. The rigorous presence of the principle in this seminal national document can be viewed as an assurance of the existence of the political will which has been argued to be frequently absent when it comes to commitment to sustainable development.[774] According to Vision 2030, sustainable development also inevitably and profoundly cuts across multiple aspects, including religious, ethical and human dimensions, which endows it with a noble and grand status. Under the rubric of "Achieving Environmental Sustainability" the Vision stresses that:

> "*By preserving our environment and natural resources, we fulfil our Islamic, human and moral duties. Preservation is also our responsibility to future generations and essential to the quality of our daily lives. We will seek to safeguard our environment by increasing the efficiency of waste management, establishing comprehensive*

[772] Ibid.
[773] Holder and Lee, n 450, P 422.
[774] Duncan A. French, 'The Role of the State and International Organizations in Reconciling Sustainable Development and Globalization' in Nico Schrijver and Friedl Weiss (eds), *International Law and Sustainable Development: Principles and Practice*, vol 51 (Martinus Nijhoff Publishers 2004) P 61.

recycling projects, reducing all types of pollution and fighting desertification. We will also promote the optimal use of our water resources by reducing consumption and utilizing treated and renewable water. We will direct our efforts towards protecting and rehabilitating our beautiful beaches, natural reserves and islands, making them open to everyone. We will seek the participation of the private sector and government funds in these efforts."

In particular, two aspects of this understanding of "sustainable development" are interesting. The first is that sustainable development is manifested as a multi-faceted concept. It is more than a "tangible" target to be realised by the government machinery alone, but also has substantial psychological status and facets which are equally important to the former "administrative and public policy" content. This can be viewed as a paradigmatic shift in conceptualising the principle of sustainable development in the KSA.

The flip side of this presentation of sustainable development, however, is the enumeration or listing of certain limited sectoral solutions as part of the understanding of this principle. Although issues such as proper waste management, increasing recycling projects, fighting desertification, optimising the use of water resources and taking care of beaches are indispensable aspects or outcomes of the aspired sustainable development, they will never be sufficient or meaningful enough. Providing a comprehensive meaning or clear-cut definition of the principle would be much more feasible for overcoming the current challenges discussed above. At best, these sector-focused items are applications that indicate a serious commitment to the principle but do not represent the principle per se.

There are other references to "sustainable development" in the Vision document, sometimes rather broad and loose. For example, the "National Transformation Program," which is an essential constituent of the Vision, indicates that the ultimate purpose for the Vision (including its various mechanisms and changes and amalgamation of principal government entities and ministries) is to reach "*a prosperous future and sustainable development*"[775] In this case, sustainable development can be understood as a goal. However, further details and guidance and even legal legislative backups might further contribute to the principle's actual implementation. In other words, unlike in other notably advanced jurisdictions, this goal has not been transposed into a certain form of legal order or obligation.[776] And for some, "*sustainable development can only be achieved in the context of the rule of law, requiring fair, effective and transparent international and national governance arrangements and clear and implementable environmental laws*."[777]

[775] http://vision2030.gov.sa/en/ntp "National Transformation Program - Foreword" (Vision 2030 Kingdom of Saudi Arabia Website, accessed in 21/7/2018).
[776] Stuart Bell and others, *Environmental Law* (9th edn, Oxford University Press 2017) P 58.
[777] Christina Voigt, 'The Principle of Sustainable Development: Integration and Ecological Integrity' in Christina Voigt (ed), *Rule of Law for Nature: New Dimensions and Ideas in Environmental Law* (Cambridge University Press 2013) P 147.

Although these references do not convey well-defined meanings of the principle "sustainable development", nevertheless, their symbolic value in the Vision and its documents should not be underestimated, for the general public scale and formal entities alike. The far-reaching nature of the Vision, and its synchronous programmes and mechanisms, are likely to produce more observable and fruitful environmental outcomes through employing existing administrative means and prompting much-needed legal measures and instruments. Thus, the Vision can be a landmark in the well-recognised "staged process" or staged nature of the move towards sustainable development and its implementation.[778]

8.2.6.2 Preventive and Precautionary Principles

It is unsurprising that the Vision places no direct emphasis on these specific principles, as it is an umbrella roadmap that provides the directions rather than addressing every issue or principle in detail. However, MEWA is endowed with quite wide discretion to pinpoint the initiatives, programmes, principles and measures that are "environmental" or largely "environmental" in substance and which are needed to enhance and give life to the Vision's ultimate objectives. As such, MEWA, represented by the "Directorate of Environment," appears to embrace these two principles, or at least the preventive principle, not only as a guiding or steering principle,[779] but as a duty and responsibility. Number 12 of the declared duties and responsibilities of this major directorate goes as follows:

> "*Overseeing and ensuring the appropriateness and effectiveness of the programs and procedures carried out by the General Authority for Meteorology and Environmental Protection for the prevention, abatement or reduction of the risks of environmental pollution, and environmental disasters, and response to environmental emergencies, in coordination and cooperation with the relevant authorities*"[780]

However, although this articulation of responsibility acknowledges the preventive and precautionary principles, or at least the former, the many detailed classical questions regarding, for example, operationalising, applicability and to 'what degree the system should be preventive and precautious' are left unattended. Principal definitional gaps and queries are also not addressed. Although legally speaking the precautionary principle especially, has *not* yet "*become entrenched into regulatory regimes*"[781], the environmentally promising Vision

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[778] Andrea Ross, 'It's Time to Get Serious—Why Legislation Is Needed to Make Sustainable Development a Reality in the UK' [2010] 2 Sustainability 1101 P 1121.

[779] But still not yet as a "fundamental principle of environmental law". However, the Vision, by emphasising on the environmental protection need, is likely to bring the principle to the front and thus may crystallise its applications towards the year 2030. Jonathan Remy Nash, 'Standing and the Precautionary Principle' [2008] 108 Columbia Law Review 494 P 494.

[780] https://www.mewa.gov.sa/ar/Ministry/Agencies/EnvironmentAgency/Pages/agency.aspx "Directorate of Environment" (MEWA website accessed 23/6/2018). (Arabic) (Translated by the Author).

[781] Elizabeth Fisher, Judith S. Jones and René von Schomberg, 'Implementing the Precautionary Principle: Perspectives and Prospects' in Elizabeth Fisher, Judith S. Jones and René von Schomberg (eds), *Implementing the Precautionary Principle: Perspectives and Prospects* (Edward Elgar 2006) P 11.

2030 has elements that might push towards its materialisation. This needs to be accompanied by administrative and judicial acknowledgment, appreciation and comprehension of the principle and its multi-directional formulation which means that, like the preventive and all other principles, it "*can only be substantively defined in the context that it is operating in*"[782].

For now, basic questions exist, such as: What is the 'risk' that has to be prevented or reduced? Is it the environmental pollution that should be prevented or at least controlled or the risk per se? What is the threshold of the probability or likelihood of risk? Who can capably decide? And on which basis? Unfortunately, however, regulating these issues and challenges cannot be adequately assisted by principles such as the precautionary and preventive principles per se, since these principles might help to enlighten us as to "*whether to regulate, but give limited guidance about the appropriate level of regulation*."[783]

8.2.6.3 Polluter Pays Principle

The principle of polluter pays is potentially quite compatible with the KSA's Vision 2030. One of the important objectives of the Vision is "to shift the government's role from providing services to one that focuses on regulating and monitoring them."[784] In the environmental sector, this can, at least partly, mean 'tagging environmental services with a price' or a certain degree of 'commodification' of environmental services or assets. Regardless of the palatability of such environmental marketisation to the eco-centric thinkers, this is likely to boost the applicability of the polluter pays principle.

In practice, however, the polluter pays principle does not seem to have come to the surface yet. For example, although one of the officially acknowledged challenges in the environmental sector and to the Vision's "National Transformation Program" is the "Growing Annual Cost of the Environmental Deterioration in the KSA"[785], none of the goals and initiatives endorsed to confront this challenge is clearly "fiscal" in nature.[786] Although these announced 'counter-environmental-deterioration' initiatives have considerable preventive and rehabilitative qualities, they are largely state-centric and bureaucratic in essence. A simple example of this is that none of the declared "goals" and "initiatives" responding to this challenge seem to have clearly targeted imposing and levying "environmental" costs on the polluters so that they bear

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[782] Fisher, *Risk Regulation and Administrative Constitutionalism* P 41.
[783] Daniel. A. Farber, 'Coping With Uncertainty: Cost-Benefit Analysis, The Precautionary Principle, and Climate Change' [2015] 90 Washington Law Review 1659 P 1659.
[784] http://vision2030.gov.sa/sites/default/files/report/Saudi_Vision2030_EN_0.pdf "Saudi Vision 2030 Document" (Vision 2030 Kingdom of Saudi Arabia Website, accessed in 21/7/2018). P 45.
[785] https://www.mewa.gov.sa/ar/Ministry/initiatives/MinistryInitiatives/Pages/default.aspx "National Transformation Program 2020" (The Ministry of Environment, Water and Agriculture Website, accessed in 1/11/2017). (Arabic: Translated by the author).
[786] See https://www.mewa.gov.sa/ar/Ministry/initiatives/MinistryInitiatives/Pages/NTPenvch1.aspx "National Transformation Program 2020: The challenge of the Growing Annual Cost of the Environmental Deterioration in the KSA" (The Ministry of Environment, Water and Agriculture Website, accessed in 1/3/2018) (Arabic: Translated by the author).

the cost of the environmental damage they cause to the ecosystem through environmental taxation arrangements, for example.

Having said that, the Vision has sparked an ambitious privatisation programme that aims to incrementally privatise several products and services previously provided by the government. Interestingly, the starting point of this potentially transformative programme is the energy and environmental sectors.[787] It is promising that these economic-oriented endeavours are also accompanied by a comprehensive programme of reviewing laws and regulations,[788] which will inevitably address environmental regulations as well. This combination of efforts is needed, notably the parallel regulation-based development. This is because "i*t seems unlikely that we will ever succeed in measuring environmental costs with such a degree of precision that they can be imposed on relevant economic actors in a way that will allow us to rely upon market forces alone*."[789] For example, in many cases the preventive dimension of the polluter pays principle cannot be taken for granted, as it rests on the presumption of "*polluters*[790] *behaving in economically rational ways*"[791].

8.3 Environmental Principles and Practices in the Context of KSA's Environmental Governance (Qualitative Analysis)

Based on the interviews conducted, this section unpacks the status of the environmental principles in real practice in the environmental governance jurisdiction of the KSA. Responses derived from interviewees in the four categories form the substance of this section in regard to the application of the principles and to what extent they are present, their understanding and conception, as well as some practical issues regarding their implementation and comprehension. Thus, the purpose of this section is to address the respective environmental principles in their real world practice, as opposed to the doctrinal or in-theory statements about them in the various KSA documents, some of which have been discussed above.

8.3.1 Sustainable Development

Although participants agreed on the critical importance of the issue of sustainable development, even within the same category, the conceptualisation of this principle varied, sometimes, considerably. For example, some respondents seemed to view sustainable development as a fuzzy and stretchy term generally denoting the general notion of "environmental protection" in the various national legislations, policies, mechanisms and programmes. For this camp, sustainable development is already strongly present in the

[787] http://www.ncp.gov.sa/en/Pages/Targeted-Sectors.aspx "Targeted Sectors" (The National Center for Privatization & PPP Website).
[788] http://vision2030.gov.sa/en/node/125 "How to Achieve Our Vision" (Vision 2030 Website, accessed in 15/6/2018).
[789] Richard Macrory, 'Regulating in a Risky Environment' [2001] 54 Current Legal Problems 619 P 622.
[790] Including consumers who create a demand on polluting activities/services or non-environmental-friendly products.
[791] Lee, *EU Environmental Law: Challenges, Change and Decision Making* P 186.

national environmental governance arrangements. The GEL, GAMEP, MEWA, and their respective institutional and legal instruments are seen to be a clear embodiment of the "in-process" principle (I-A-5).[792]

Associated with this doctrine, there are those who conceive that the real issue lies in the lack of emphasis of the sustainability principle at the "operational" level of the current environmental governance system, rather than, for example, in the planning or policy-making arenas (I-D-1). For example, (I-C-7) explained that, "*Sustainable development is theoretically there, but effectively not.*"

This variation in appreciation and understanding of the term, even within public institutions, can be converged and mainstreamed by the intervention and contribution of GAMEP in this regard, in adopting or even customising a justified and implementable understanding of and priorities for sustainable development. This situation does not seem to be realised just yet. For instance, GAMEP recently announced sustainable development as "*the optimal utilization of natural resources and the care for their development and sustainability for the advantage of present and future generations.*"[793] Regardless of its apparent anthropocentric design, this definition is not accompanied by measurable goals or specific indicators upon which it can be implemented and its outcome assessed.

Moreover, surprisingly, none of the participants, amongst all four categories, seemed to have any awareness of this definition favoured by GAMEP. This is, however, not to claim special significance of this definition. In fact, as demonstrated above, tracing and examining the various announcements, reports or work by GAMEP can reveal quite distinct connotations of this term. Indeed, if one conclusion is to be put forward in this context, it is that the aggregate responses from the participants do seem to lag behind what is in the documents and reports, notably in the significant Vision 2030. This is why introducing a legislation focusing on or emphasising the principle of sustainable development will at least show the "*authorities' awareness of* [the*] problem*"[794], which is likely to be reflected in mobilising other stakeholders to positively react at, inter alia, the educational and implementation levels.

On the other hand, the majority of participants believed that the sustainability principle did not figure effectively in the environmental governance sphere. According to (I-A-7), (I-B-6), (I-

[792] To some extent, the variation of understanding is attributable to the inherent contestable nature of the principle (and the interviewees themselves and their varied levels of practice, experience and qualifications). As Jacobs explains "Often there will be a number of such definitions available; but neither this nor their vagueness makes such concepts meaningless or useless." Michael Jacobs, 'Sustainable Development as a Contested Concept' in Andrew Dobson (ed), *Fairness and Futurity: Essays on Environmental Sustainability and Social Justice* (Oxford University Press 1999) P 26.

[793] https://www.pme.gov.sa/Ar/PAandSD/Pages/pme_tasks.aspx "Functions of GAMEP in Environmental Protection and Sustainable Development" (GAMEP Website, accessed in 1/7/2018) (Arabic) (Translated by the author).

[794] Luzius Mader, 'Evaluating the Effects: A Contribution to the Quality of Legislation' [2001] 22 Statute Law Review 119 P 122.

C-4) and (I-D-3), there are no overarching measurable sustainability goals on the national scale on which the implementation of sustainable development is appraised. According to this perspective, which is strongly supported by the evidence, the existing actions or plans are incoherent sectoral attempts by largely fragmented entities, either formal authorities such as GAMEP, or academic institutions such as King Saud University.

Several examples were supplied to support this opinion. For instance, with regard to sustainability in the energy sector, the amount of energy produced nationally is huge, and is from non-sustainable sources particularly for water desalination purposes, which is the main method for producing drinkable water in the major urban areas.[795] In addition, the issues of the non-use of and inattention to natural water resources, such as those accumulated in the dams was also highlighted by (I-A-) and (I-C-2).[796] They emphasised that despite the dams having cost massive amounts of money for construction and maintenance, the majority of the water retained by these reservoirs is not used and eventually evaporates or is lost by other natural causes. Other examples, such as over-fishing, were also raised by respondents.

Thus, several participants amongst the different categories demonstrated a high level of uncertainty as to whether the fundamental principle of Sustainable Development was feasibly translated by GAMEP in particular, and the whole economic and environmental governance domain in general. They viewed the current reality of environmental governance as far from attaining a satisfactory level with respect to sustainability, despite the existence of some part of the basic institutional and regulatory infrastructure. Equally interesting was to note that Tarlock's conclusion that sustainable development is a "paradox" concealing different contents or emphases to different parties was equally applicable to the case of this study.[797]

8.3.1.1 Example of the Sectoral SD Attempts

8.3.1.1.1 High Commission for the Development of Arriyadh (Riyadh City) (HCDA)

HCDA is a city-specific entity that has an extensive regulatory mandate over the city of Riyadh and one of its central responsibilities is to environmentally protect the capital city. In its last version of the five-year "Executive Plan for Environmental Protection" (2015-2019), HCDA introduced the "climate change" dimension to the already existing 5 themes of the previous older versions.[798]

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[795] Remote villages and rural areas depend on groundwater for drinking water. This is reported to be hazardous due to the sub-optimal treatment of industrial waste, notably the liquid industrial waste, by the industrial activities nearby (I-A-1) and (I-C-5).

[796] Although the national Vision 2030 is likely to significantly drive towards more sustainable development practices, notably via the officially endorsed objective to move towards less reliance on unsustainable energy sources.

[797] A. Dan Tarlock, 'Ideas without Institutions: The Paradox of Sustainable Development' [2001] 9 Indiana Journal of Global Legal Studies 35.

[798] High Commission for the Development of Arriyadh (Riyadh City) (HCDA), Executive Plan for Environmental Protection in the city of Riyadh (2015-2019). P 12 (Arabic).

HCDA, via this plan, has created a concrete expression of the principle of sustainable development that suits the topography of Riyadh city. Irrespective of the fine details of this sustainable development strategy, the translation by HCDA of the principle into an elaborate and well-defined concept, with specific tasks and responsibilities that are clearly shaped and specifically entrusted to the various formal and semi-formal institutions, can be regarded as a role model and a stepping stone for future nationally-scaled strategies.[799]

Unfortunately, however, this plan has no mandatory power beyond the frontiers of the capital city. Moreover, the majority of respondents across all the interviewed categories did not seem to have adequate familiarity with this document. Either they had no idea about it, or merely minimal awareness of its very general concept. Equally surprising was that those who showed great knowledge about this plan and its implementation in Riyadh seemed rather uncertain about the situation in the other cities, including the major regions (national scale).

8.3.1.1.2 Ordinary private factories vs internationally-oriented industries

In practice, and as agreed by all respondents across the categories, GAMEP has not introduced legally-binding nor soft law national-scale sustainable development goals or indices that are enforced on or even advertised to industries. Consequently, driven by their profit-oriented mind-set, industries, in general,[800] do not voluntarily conform to such perceived restrictive measures, which could put them at a comparative disadvantage compared to their competitors in the market, as pointed out by (I-B-4).

International businesses or major industries that are already engaged in the international market, however, have self-initiated sustainable development policies. As (I-A-1), (I-B-5) and (I-C-1) explained, these types of businesses are driven by international market developments, instruments and requirements rather than by the KSA's national environmental law, per se.

8.3.2 Preventive and Precautionary Principles

Obtaining the participants' responses on questions about these principles was a sobering experience. The first and foremost surprise was that the meaning of each principle and the distinctions between them had to be explained to the entire group of interviewees. One notable challenge when attempting to explain these two principles to the interviewees can be illustrated by Scotford's words in describing the preventive principle in the EU context that "*the principle is also sometimes confusingly conflated with the precautionary principle … as if they represent an equivalent idea*"[801].

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[799] Due to time and word restrictions details of the HCDA plan cannot be discussed in this paper. For full details see High Commission for the Development of Arriyadh (Riyadh City) (HCDA), Executive Plan for Environmental Protection in the city of Riyadh (2015-2019). (Arabic).

[800] The situation in the RCJY can be considered an exception, due to some incentives accorded to the factories to initiate different 'environmental' voluntary initiatives, for example, the annual "environmental friendliness prize" granted to those businesses that demonstrate extra 'non-legally-binding' environmental care (I-A-8).

[801] Scotford, n 723, P 89.

This does not mean that the interviewees were unaware of the basic notions of prevention and precaution. But they were certainly not aware of them as legal, economic and academic subjects that are extensively discussed by scholars and commentators in the massive body of literature. This applies particularly to the principle of precaution, where it can be concluded that this principle has not reached even the status of being viewed as "*an aspiration aimed at guiding policy makers*"[802], let alone more stringent forms of the principle. The preventive quality was widely acknowledged by interviewees,[803] but "*prevention* [remains not] *elevated to the level of a general principle, but maybe sometimes seemed to be "formulated in very general declaratory rules.*"[804] In some cases, participants, notably among (I-A) and (I-B), even showed a lack of interest in the precautionary principle as "*the costs of such principles may outweigh the benefits*."[805] Several major aspects of what can be said in this context are explained below.

8.3.2.1 Environmental problems vs environmental threats

Interestingly, the attitude revealed in the overall responses among the bulk of the respondents across the different categories was that the real issue is environmental problems rather than environmental threats or risks. Thus, in practice, "*where there are threats of* [considerable environmental] *damage, lack of full scientific certainty* [is frequently understood as a valid] *reason for postponing cost-effective measures to prevent* [arguable] *environmental degradation.*"[806] So, in practice, Fisher's explanation of the precautionary principle as: "'*no evidence of harm' does not mean that there is 'no harm*'",[807] did not seem to be recognised by several respondents, nor to be evidently operational in the real practice of GAMEP and by actors in the environmental governance sphere in general. However, in the case where there is established certainty about the occurrence of the environmental damage the "preventive principle" was widely understood and recognised by the participants as a logical and uncontroversial precept but not as an established environmental legal principle.

Environmental threats seemed to be perceived as "anticipated" and "logical in development and appearance", in the sense that the causal links between environmental damage and its causes are almost always detectable and identifiable, even though they might be compound and involve intricate situations caused by several entangled causes. Thus, environmental

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[802] Ole W. Pedersen, 'From Abundance to Indeterminacy: The Precautionary Principle and Its Two Camps of Custom' [2014] 3 Transnational Environmental Law 323.
[803] Although they disagree in terms of how the current legal setting is effectively preventive, as will be discussed below.
[804] De Sadeleer, *Environmental Principles: From Political Slogans to Legal Rules* P 89.
[805] Adrian Vermeule, 'Precautionary Principles in Constitutional Law' [2012] 4 Journal of Legal Analysis 181 P 182.
[806] Adjusted from Principle 15 of the United Nations Declaration on Environment and Development.
[807] Elizabeth Fisher, 'The New Oxford Companion to Law' in Peter Cane and Joanne Conaghan (eds), *The New Oxford Companion to Law* (Oxford University Press 2008) P 171. See also Jale Tosun, 'How the EU Handles Uncertain Risks: Understanding the Role of the Precautionary Principle' [2013] 20 Journal of European Public Policy 1517.

knowledge is treated, in practice, as complete and conclusive and a subject about which there is not, or should not be, "exaggerated" doubt, controversy or uncertainty.

8.3.2.2 Why is this the pervasive conception?

From the aggregate comments, there appeared to be a number of reasons for this predominant conceptualisation, even among academics. Two main reasons, in particular, are more discernible. The first is that, as the environmental challenges have been clearly in existence in the KSA, are widely known and their causes are easily recognisable and detectable (or perceived to be so), little uncertainty can be perceived to exist regarding them. Rather, they were perceived to be certain and brought about by identifiable causes. The interviewees agreed that environmental ills such as air quality degradation, surface and ground water contamination and environmental problems sparked by massive amount of domestic municipal and medical waste are all prime examples of the environmental challenges currently at stake. According to the interviewees, these are all real and "on the ground" problems for which the causal links are not a puzzle. Such pressures on the environmental assets are easily understood as the result of factors such as the increasing industrialisation trends and consumer behaviours, coupled with several legal and regulatory defects of the environmental law, both in "documents and theory" and "in practice".

The second reason that seems to sustain this dominant opinion, is the participants' concerns regarding the "wobbliness" of precepts such as "risk" and "uncertainty". Interestingly, some of the respondents, for example (I-A-3), believed that when these concepts are executed and given substance as governing principles, they are likely to lead to dangerous and unbearable economic consequences, with inevitable eliminations of viable economic opportunities. So, it is believed their harm might be more than their potential benefits. This, in turn, has a direct repercussion on their understanding and perception of the risk-centred principle of precaution. Thus, the statement by Sunstein that "…*the precautionary principle should be rejected, not because it leads in bad directions, but because it leads in no direction at all. The principle is literally paralyzing-forbidding inaction, stringent regulation, and everything in between*"[808] to some extent reflects their view.

Moreover, according to several respondents including (I-A-6) and (I-C-6), notions such as "risk" and "uncertainty" are markedly vulnerable to politically-oriented agendas at the international scale. The issue of climate change was cited as a typical example. Several interviewees suspected than the notions of 'risk' and 'uncertainty' vary and are prone to be overstated and manipulated to attain politically-loaded gains by developed countries, according to (I-C-2) and (I-D-1).

[808] Cass R. Sunstein, 'Beyond the Precautionary Principle' [2003] 151 University of Pennsylvania Law Review 1003 P 1003.

8.3.2.3 So, What are the Environmental Threats and Problems?

As discussed above, the predominant conception of environmental problems and threats leaves little room for the 'precautionary principle' to be exercised. Equally, at the legislative level of the environmental governance arena, Leinen's precept that "*the precautionary principle* [should] *rightfully play a major role in the daily work of the legislator*"[809] seems also to be hardly applicable. As such, environmental problems appear to be envisaged and dealt with as if they "*present themselves in well-defined boxes*"[810], as Dryzek puts it.

Interestingly, however, environmental problems appeared to be defined differently by the respondents in different categories. For a number of interviewees, environmental problems are those deemed to be so and prescribed by the law, especially the GEL and the RI. This belief seemed to be engrained, particularly among those who conceived the GEL to be well-drafted and adequately protective, despite some imperfections, such as (I-A-4) and (I-A-10). Another stance was exhibited by those such as (I-A-8) and (I-B-1), who appeared to define environmental problems according the thresholds and standards set by international parties and advanced industrialised countries. For them, environmental problems occur when the standards set forth by entities such as the European Union (EU), World Health Organization (WHO) and the United States' Environmental Protection Agency (US EPA) are breached. This conviction was common, particularly among participants working with or closely linked to internationally-driven industries and factories. Their involvement in the international environmental regulatory developments, schemes and initiatives seemed to be the main driving force in constructing their attitude.

Finally, there were those who regarded the definition of environmental problems as substantially premised upon laboratory outcomes. For this camp, the results of the perceived authoritative, scientific and laboratory experiments were the cornerstone for identifying and defining environmental problems as stated by (I-A-5). This and the previous view can be seen as science-based perspectives that are led by "*a technocratic and expert process based on demonstrated, significant levels of harm.*"[811] Neither, however, rests easily with the spirit of the precautionary principle, not only because the precautionary principle is argued to be "… *a deliberative principle. Its application involves deliberation on a range of normative dimensions which need to be taken into account while making the principle operational in the public policy*

[809] Jo Leinen, 'Risk Governance and the Precautionary Principle: Recent Cases in the Environment, Public Health and Food Safety (ENVI) Committee' [2012] 3 European Journal of Risk Regulation 169 P 169.

[810] In his wording, Dryzek's view, as discussed in Chapter 2 in the literature review, is that these problems "do *not* present …" in this way (emphasis added). See Dryzek, n 190, P 9.

[811] Paul Rübig, 'The Changing Face of Risk Governance: Moving from Precaution to Smarter Regulation' [2012] 3 European Journal of Risk Regulation 145 P 145.

context."[812] Going along with this latter conceptualisation of the precautionary principle might be conducive to divergent conclusions and decisions by policy-makers or judgments by judges, as reasoning and argument will "*not* [be] *grounded in science, but rather based on subjective, idiosyncratic, political preferences, and cultural values employed often under the guise of differences in 'level of protection.'*"[813] These and other challenges have led some scholars to question the justiciability of the principle of precaution.[814]

Across this range of understandings by interviewees, there seems to be insufficient room for the precautionary principle to operate in any of its shapes or forms. For instance, if the scale of the precautionary principle is to be presented from weak to strong as "*uncertainty does not justify inaction*", to "*uncertainty justifies action*" or "*shifting the burden of proof*" from the opponent to the proponent to establish and prove the safety and non-harm of the proposed activities, none of these versions of the precautionary principle seems to be viable.[815] The reason is because the concept of 'uncertainty' upon which all the versions of the principle of precaution are premised is not adequately considered or emphasised.

One principal shared standpoint that seemed to be present among all the respondents, however, was the necessity of the preventive principle for those "certain and defined" environmental problems, to pre-empt and forestall them prior to their coming into existence. At the same time, they perceived no need of what they regarded as an "extreme" version of the precautionary principle that might allow exaggeration, and therefore economic loss.

8.3.2.4 Precautionary, Preventive or Reactionary?

Many factors, some of which have been discussed in this chapter and some which are addressed in other chapters, have rendered GAMEP unable to discharge its statutory obligations effectively. GAMEP has a very limited number of branches located only in some of the major regions, and consequently it is absent from the environmental protection scene to the extent that regulated entities will not strongly feel its existence in real life in many areas. This was bluntly stated by (I-C-5) thus:

> "*Until major health or environmental incidents occur, GAMEP is not there. And even subsequent to that, they sometimes appear either to deny or trivialised the problem, or sometime it might get defensive. They care about the environment, but they also no less care about their reputation and not to appear ineffective or not doing their job properly"*

[812] René von Schomberg, 'The Precautionary Principle: Its Use Within Hard and Soft Law' [2012] 3 European Journal of Risk Regulation 147 P 147.
[813] Lucas Bergkamp and Lawrence Kogan, 'Trade, the Precautionary Principle, and Post-Modern Regulatory Process: Regulatory Convergence in the Transatlantic Trade and Investment Partnership' [2013] 4 European Journal of Risk Regulation 493 P 506.
[814] Fisher, 'Is the Precautionary Principle Justiciable?'.
[815] Nathan Dinneen, 'Precautionary Discourse: Thinking Through the Distinction Between the Precautionary Principle and the Precautionary Approach in Theory and Practice' [2013] 32 Politics and the Life Sciences 2.

This was also explained in similar phrasings by participants across the categories, notably (I-B) and (I-C). Interestingly, however, some participants including (I-C-8) attributed this to, inter alia, the lack of environmental knowledge and thus commitment of the environmental leadership and the dominance of economically-prioritised thinking, as well as the lack of environmental expertise among those working in and holding leadership positions in GAMEP and other relevant environmental bodies. According to this view, expressed by (I-A-8), the personnel working for environmental institutions are either poorly qualified, or non-environmental in their original specialisation. Some participants such as (I-A-1) and (I-C-3) also attributed this to the unattractive salaries granted to GAMEP's employers. The low level of payments for environmental workers are dangerous for two reasons. The first is to discourage potential highly-qualified candidates and experts from working in GAMEP. The other, perhaps more critical consequence, is to raise the possibility of environmental inspectors and employees indulging in unsound and corrupt practices, which is, according to a number of participants, not utterly inconceivable.

These challenges, coupled with the lack of contribution by any environmental courts or tribunals, do not sit easily with the specialised expertise and knowledge needed in order to tackle delicate precautionary principle inquiries regarding, inter alia, "*the level and type of harm that would justify action, the amount of knowledge needed to justify action, the types of actions that would be appropriate as precautionary measures, and under what circumstances these would be appropriate*."[816] Therefore, the challenges of the precautionary principle cannot be addressed merely by filling the extant legal and legislative gaps, but need to be accompanied by raising the level of employees qualifications and understandings of the principle and its implications in practice. In other words, although different scholars and practitioners might have fairly comparable understanding of the principle, "*intense controversy over the role*" it should play in real practice means it is an acknowledged challenge.[817]

Thus, it was stressed by many respondents including (I-A-6), (I-C-7), (I-B-5) and (I-D-2), that environmental principles, including preventive principles and especially the precautionary principle, are, in practice, either merely slogans for media consumption, or the current environmental governance system is still clearly immature. That is being said, there is great future potential held by the fundamental role of environmental protection in Vision 2030.

8.3.3 Polluter Pays Principle

The interviewees almost all agreed that the consideration of this principle in the current environmental governance system was very weak and barely existed. In contrast, some

[816] Elizabeth Tedsen and Gesa Homann, 'Implementing the Precautionary Principle for Climate Engineering' [2013] 7 Carbon and Climate Law Review 90 P 94.
[817] Christoph Klika, 'Risk and the Precautionary Principle in the Implementation of REACH: The Inclusion of Substances of Very High Concern in the Candidate List' [2015] 6 European Journal of Risk Regulation 111 P 111.

governmental policies might actually counter environmental considerations, such as fossil fuel and vehicle fuel subsidies. However, this situation is likely to be considerably changed in the foreseeable future, in line with the comprehensive national Vision 2030.

The bottom-line idea of this principle is that the polluter should be the one who bears the costs incurred by public authorities and society due to their pollution, or as Carol Browner, former administrator of the US Environmental Protection Agency put it, "*It's this simple: You pollute, you pay*"[818,819] Although this is easily understandable, logical and therefore, at the theoretical level, uncontested by participants, the interviewees did not demonstrate an awareness of this 'logical concept' as a legal and economic way of cost allocation that is derived from the economic theory of externalities.[820]

In practice, however, this principle is not adequately present in the current environmental governance order, as mentioned by (I-A-6), (I-C-6), (I-B-6). Moreover, thorough application of this principle is likely to ignite great controversy and resistance by society, including businesses, due to the potential surge of prices and living costs in general, as (I-A-3) suggested, as polluters are 'unwilling to pay'. Moreover, challenges arise regarding what would be the proportionate price-tag for each pollutant or polluting activity, given the particular situation of the KSA and its aridity and scarcity of green spaces.[821] Nevertheless, this principle was widely welcomed by the academics and scholars interviewed. Examples of aspects of the imperfect implementation of the polluter pays principles are discussed below.

8.3.3.1 Examples of the Sub-optimal Application of the Polluter Pays Principle

8.3.3.1.1 Treatment of Industrial Waste

It is legally required that no industrial project will be given an environmental certificate to initiate operation unless it provides, in its application to GAMEP, a contract with an endorsed environmental or waste treatment company that will collect and treat its industrial and operational waste. This allows GAMEP, in theory, to ensure that the industrial waste is treated properly and professionally. This legal requirement is part of the EIA of any potential project.

However, the real practice seems to be different and environmentally worrying. For example, in many cases the waste collected by such waste collection companies is disposed of by simply dumping it, as reported by (I-C-5) and (I-C-7). There are no stringent recording,

[818] As reported by John J. Fialka Staff Reporter of The Wall Street Journal in https://www.wsj.com/articles/SB947781616495455358 "Koch Industries' $30 Million Fine Is Biggest-Ever Pollution Penalty" (The Wall Street Journal Website accessed in 17/6/2018).
[819] Although it is a little naïve to think of the principle as so straightforward. It is surrounded by several uncertainties concerning meanings and application. Michael Doherty, 'The Status of the Principles of EC Environmental Law' [1999] 11 Journal of Environmental Law 354. And Richard Macrory, ''Maturity and Methodology': A Personal Reflection' [2009] 21 Journal of Environmental Law 251.
[820] De Sadeleer, *Environmental Principles: From Political Slogans to Legal Rules* P 21.
[821] De Sadeleer, *EU Environmental Law and the Internal Market* P 59.

tracking, or monitoring mechanisms for such collected waste nor for the private collection companies, except in some very limited zones.[822] This was explained by (I-B-6) as follows:

> "*In spite the fact that industrial activities are legally required, during their application for establishment, to show the way they deal with their waste and residuals, in practice, however, the industrial waste is not rigorously recorded and tracked. For instance, some industrial activities disposed of their industrial liquid wastes by dumping them into a deep ground hole they made. Once such a primitive well was full, they left it for a couple of days so the earth through its porosity would swallow and absorb the waste, and then they started to dump the next consignment, and so on"*

Even more surprising is that the interviewed representatives of industries believed that some industrial projects do not engage in a feasible contractual relationship with these companies. According to some participants, (I-A-9) and (I-C-5), what might happen in some operations is to pay for the contract paper from the company in order to provide it to GAMEP, and then obtain the environmental licence or permit. So, it is merely an ostensible arrangement, rather than a genuine or authentic legally binding contractual relationship.

This act allows them to save a huge amount of money (i.e. the polluter does not pay). For example, according to (I-C-5), rather than engaging in a mutually binding contract costing the industry at least around 25,000SR, in some cases they obtain the paper contract only for 1,000 SR. This raises questions about the extent of the real applicability of the Polluter Pays Principle in this regard and the need for the polluter pays principle to work as "*an incentive for the polluter to prevent or reduce pollution*".[823] In this context, more effective consideration and implementation of the polluter pays principle is needed for both of its main functions: pollution cost internalisation (where polluters bear the cost of prevention control measures, making their products' prices are more expensive than the environmental-friendly products), and as a cost allocation principle, in terms of who should pay; so the person producing the pollution is liable for payment rather than, for example, the public authorities or the society as a whole.[824]

8.3.3.1.2 EIA-related Issues

Participants (I-A-4) and (I-A-9) also highlighted the negligible average cost of EIAs, which encourages more 'polluters' to obtain them, and establish their projects without really accurate assessment of the environmental damage or impact cost they will place on the environment. This is also applicable to the quality and feasibility of the pollution control, reduction and

[822] The case appears to be in contrast with the situation in the areas with decentralised regulation and supervision, namely in the RC, and areas under the supervision of major oil companies, where the waste is inventoried, recorded, tracked, and closely monitored and treated.

[823] Petra E. Lindhout and Berthy van den Broek, 'The Polluter Pays Principle: Guidelines for Cost Recovery and Burden Sharing in the Case Law of the European Court of Justice' [2014] 10 Utrecht Law Review 46 P 46.

[824] Stevens. See also the explanation of Lord Carnwath of the Polluter Pays Principle's role as cited in Justine Thornton, 'Significant UK Environmental Law Cases 2017/18' [2018] eqy014 Journal of Environmental Law 1 P 3.

treatment measures provided by the EIA applicant as to how to deal with the environmental impact or harm that may occur. For instance, (I-C-5) stated that the average cost of EIA studies is around 5000-15000 Saudi Riyals for some projects, whereas the fair and reasonable cost for proper EIAs would be many times more than this relatively insignificant cost.

In addition, the adequacy and appropriateness of the controlling and preventive measures provided by existing and potential industrial activities were argued to be rather sub-optimal by several interviewees across the four categories. This is beside the lack of an environmental taxes scheme, as pointed out by (I-A-6) and (I-C-6), which also raises considerable concerns regarding the polluter pays principle in the environmental arena. Hence, it can be concluded that "polluters should pay for pollution prevention and control measures as well as for the environmental damage they cause" which is a basic meaning of the polluter pays principle.[825]

8.3.3.1.3 Polluter Pays Principle and Charges on Industrial Activities

The fees and charges applied by GAMEP to the actual and potential polluters cover only specific administrative and sometimes punitive aspects but not the real environmental impacts, damage and illnesses caused by polluters. Therefore, the economic profits they gain out of their pollution are not paid back, even partially, to GAMEP or public institutions in order to contribute to the environmental protection and surveillance tasks mandated to GAMEP and other public bodies. Here the principle is required in an eco-centric interpretation. not merely as a principle to allocate responsibility, but to account for all the externalities or the cost of environmental harm produced or potentially produced by the industries.[826] This is to include the cost of not only pre-activity preventive and controlling measures, but also post-activity liability if treatment or reparation is needed for the environment afterwards.[827]

Strikingly, these insignificant costs required from the polluters throughout the different administrative phases to the actual running of the industrial activities are, in practice, interpreted by polluters as 'I have paid for the pollution so I gained the right to pollute', which is described by Bell and his colleagues as "*a complete misunderstanding of the principle's true meaning*"[828]. Once polluters acquire their environmental licence and permit to operate, they act as they are allowed to openly and pragmatically gain the most out of their 'payment for pollution'. In addition, (I-A-1) reported that some operators of industrial activities become

[825] Edwin Woerdman, Alessandra Arcuri and Stefano Clò, 'Emissions Trading and the Polluter-Pays Principle: Do Polluters Pay under Grandfathering?' [2008] 4 Review of Law and Economics 2 P 572.
[826] Sanford E. Gaines, 'The Polluter-Pays Principle: From Economic Equity to Environmental Ethos' [1991] 26 Texas International Law Journal 463.
[827] The principle could also be interpreted broadly in a way that compensates for the damage or requiring the polluters to pay even though they did not de facto break the relevant legislation. Marcin Stoczkiewicz, 'The Polluter Pays Principle and State Aid for Environmental Protection' [2009] 6 Journal for European Environmental and Planning Law 171 P 173.
[828] Bell and others, n 774, P 226.

confrontational towards the imposition of fiscal penalties, despite their environmental lawbreaking act.

This situation was even further complicated by the indisputable lack of monitoring and controlling capacity of GAMEP. This means that once the licence to operate is obtained, polluters unleash their operational capacities to gain the maximum profit out of the cumbersome administrative and bureaucratic procedures they have gone through. Environmental caps, for example, as in the system of tradable permits, are non-existent. Legislative environmental standards are not, in practice, adequately enforced and implemented, for various reasons, mainly capacity-related issues with GAMEP, as pointed out by (I-A-4), (I-B-5) and (I-C-3). Thus, the flagship aim of the polluter pays principle to encourage pollution abatement is not serviceable. The resulting market failure is clear, since prices of goods and services do not reflect the negative externalities caused to the environment.

As discussed above, even civil liability does not complement this regulatory gap by forcing polluters to compensate for the damage they cause, since polluters defend themselves by showing their environmental licences and their EIAs.[829] In other cases, polluters defend themselves by claiming that the damage has not arisen out of their pollution per se, but due to the loose and insufficiently restrictive legislative standards that allow the pollution to take place.[830] On top of that, for various reasons, including Sharia-law related reasoning, a scheme of environmental taxation was not favoured to be set up in the early stage of the KSA's environmental law history. With the advent of Vision 2030, however, the situation might considerably change in the future.

Lastly, but most importantly, with regard to the remedial dimension of the polluter pays principle, GAMEP and pertinent bodies were not regarded as capable enough to stringently and systematically detect pollution and properly hold polluters accountable, as argued by (I-A-2) and (I-B-1) (I-C-7). One of the most widely-accepted facts cited by the respondents was that polluters, in practice, were not forced to remedy the harm and damage they had instigated. Consequently, according to(I-A-1), in some cases, polluters found it more cost-effective to move from their location or to cease carrying on their business instead of bearing the excessive cost of rectifying the environmental damage they caused or attempting to restore the site to its original environmental status. This can cause environmental and legal challenges for future investments in the site, including defining who is the polluter that should pay,[831] and also

[829] The polluter pays principle can be extended "*to create an obligation … to compensate the victims of environmental harm*". Barbara Luppi, Francesco Parisi and Shruti Rajagopalan, 'The Rise and Fall of the Polluter-Pays Principle in Developing Countries' [2012] 32 International Review of Law and Economics 135 P 135.

[830] Surprisingly, some interviewees even among (I-A) did agree with this to some degree.

[831] Samvel Varvaštian, 'Environmental Liability Under Scrutiny: The Margins of Applying the EU 'Polluter Pays' Principle Against the Owners of the Polluted Land Who Did Not Contribute to the Pollution: Case C-534/13 Ministero dell'Ambiente e della Tutela del Territorio e del Mare and Others v Fipa Group Srl

regarding allocation of liability issues, which might require certain extensions to the application of the principle in general.[832] These are examples of the imperfect application of the polluter pays principle which have led many businesses, sometimes international ones, to flood into the country. As stated by (I-A-4):

> *"I came across some foreign applicants who were their wildest dream to obtain a license to their polluting project in their home countries. They came here to establish their business and benefit from the facilities and attractive advantages given to entice international business. I can recall one applicant who came here to apply for one license, but due to the relatively very low cost for establishing and running its project, he applied for establishing three industrial enterprises instead!".*

All the above-identified issues seem to be driven by the difficulty in applying many dimensions or aspects of the polluter pays principle. To make it straightforward, adopting or considering the recommendation of the OECD in 1974 that:

> *"the polluter should bear the expenses of carrying out the measures, … to ensure that the environment is in an acceptable state. In other words, the cost of these measures should be reflected in the cost of goods and services which cause pollution in production and/or consumption."*[833]

could indeed make a difference in favour of raising the level and quality of environmental protection via internalising the cost incurred by pollution by placing it on the polluter, at least to some extent, rather than being incurred by the society in the form of negative externalities. Moreover, scholars, practitioners, lawyers and stakeholders within the environmental governance domain in general are invited to devote more effort to exploring the principle and bringing it to the forefront for environmental protection ends. This is a valuable exercise, due to the stretchy and evolving nature of the principle/s which render "*lawyers* [to be] *increasingly inquiring into the types of role these principles play, or may play in the legal practice.*"[834]

8.4 Conclusion

This chapter has explored the legal status and presence of the four environmental principles examined in the environmental governance jurisdiction of the KSA. The examination has included the manifestations and forms into which the principles are shaped in the KSA's environmental governance jurisdictions. In addition, the chapter has explored the legal status and role attached to these principles. The different findings were observed via two main

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and Others [2015] (ECJ, 4 March 2015) (Fipa Group and Others)' [2015] 17 Environmental Law Review 270.

[832] Gonzalo Caballero and David Soto-Oñate, 'Environmental Crime and Judicial Rectification of the Prestige Oil Spill: The Polluter Pays' [2017] 84 Marine Policy 213.

[833] https://legalinstruments.oecd.org/en/instruments/11 "Recommendation of the Council on the Implementation of the Polluter-Pays Principle" (OECD Legal Instruments Website, accessed in 20/6/2018).

[834] Nicolas de Sadeleer, 'Preliminary Reference on Environmental Liability and the Polluter Pays Principle: Case C-534/13,Fipa: Case Note' [2015] 24 Review of European, Comparative and International Environmental Law 232 P 232.

analytic approaches. The first was doctrinal analysis, where the focus was largely on the documents and legal instruments. The second approach was an empirical analysis, based on responses from respondents, which provided findings related to the real application and practical issues and the presence and forms of the environmental principles in the real practice. In sum, *fifteen* novel contribution points can be established as:

1- Examination of the principal environmental documents has shown that, to varying degrees, the foundations of the respective environmental principles are present in the KSA's environmental governance system. Challenges remain, however, requiring major endeavours to improve the ultimate outcomes of environmental protection.
2- Such challenges currently exist in a mainly two-layered form. The *first order* is theoretical or doctrinal. Environmental laws and regulations could be significantly enhanced once they are revisited and reviewed, driven by a clear and well-defined eco-centric understanding and consideration of environmental principles.
3- The definitional vagueness and lack of clarity is a consistent theme at both doctrinal and theoretical level, and also at the practical level amongst stakeholders involved in the environmental governance domain. As such, the implicit references to the principles, and also the explicit reference in the case of sustainable development, for example, do not produce any legal obligation or implication either substantive or procedural.
4- This situation regarding the concept of sustainable development seems relatively better than that for the other principles. For instance, the term sustainable development is now a popular term that was familiar to all interviewees, and can be found in multiple legal and bureaucratic reports and portrayed in different formulations, including as an objective, a positive consequence or outcome, a structural idea, or strategic goal. However, this is not the case regarding the other principles, which need first to become as commonly known and popular as sustainable development. Using de Sadeleer's wording, while sustainable development can be regarded at the moment as a "slogan" with no obvious "legal rules", the other three principles are yet to become slogans, let alone having legal rules.[835]
5- Both genres of analysis revealed that the precautionary principle is the least prominent and familiar, to the extent that examination of environmental law documents reveals ambivalent stances and potentially unresolved future interpretations of this principle.
6- As mentioned earlier, the seeds or basic elements of the principles can be said to be there, however, more concrete embodiment of the principles is needed, to different degrees. This should also be accompanied by a thorough understanding of these principles to facilitate eco-centric and purposive interpretations that will effectively contribute to environmental protection ends. For example, in the case of the polluter pays

[835] De Sadeleer, *Environmental Principles: From Political Slogans to Legal Rules*.

principles, this would encapsulate activities from ‘cradle’ and subsequently in pre, during and post development or operation periods.

7- The principles generally lack any well-shaped legal identity and status upon which the judiciary can build and establish final decisions and legal reasoning. This can be prompted by explicit legislative recognition and accentuation of the principles, which awards them effective roles to play and interests to safeguard. This legislation-driven contribution is essential, given the legislation-based nature of the KSA’s administrative law jurisdiction, which is not a common law or precedent-based legal system.

8- This legislation-based development would also facilitate the establishment of a firm recognition and more convergent understanding and appreciation of the principles amongst the public institutions and stakeholders of the environmental governance domain, which seems to be lacking at the moment.

9- Amongst the participants, it could be discerned that whereas there is a general and abstract acceptance of the principles of sustainable development and prevention, this is not equally applicable to the precautionary and polluter pays principles. This reluctance to engage with both principles seem to be driven by economic concerns and worries about significant cost implications.

10- The potential of these principles is great due to their very nature. If properly applied, environmental principles, by virtue of their comprehensive, highly-charged and catch-all nature, are likely to boost the quality of the KSA’s environmental laws, regulations and policy documents, by filling multiple gaps and addressing numerous weaknesses, some of which have been identified and discussed in this chapter. Fulfilling this potential requires the principles to be at the forefront, both legally and in policy-making circles.

11- Environmental regulations and documents are called on to draw closer to each other to provide similar and more delicate conceptualisations of the environmental principles. This is the cornerstone for more homogeneous inter- and cross-institutional understandings of these baggy and by nature elusive concepts. This clarity would be positively reflected in furthering uniformity and streamlining of the prioritisation process between and among institutions, which would inevitably lead to more symmetric decision-making outcomes. This, per se, is also an essential precondition of achieving sustainable development, for example.

12- The *second order* of challenges is more empirical and practical and largely administrative. This is to do primarily with GAMEP and MEWA, and their performance-guiding rules and regulations. Giving more attention to the environmental principles and generating and propagating certain criteria and clear practical definitions of these principles would enable these institutions to steer their actions and even help them to overcome some of the loopholes existing in the GEL and RI.

13- The quite wide discretion granted to GAMEP by the GEL could be utilised and translated much more coherently, effectively and rigorously once a comprehensive understanding is obtained and an emphasis directed towards these essential principles.

14- At a practical level, this will allow GAMEP to attach more resonance to the environmental principles among the regulated entities. Moreover, if the exercise of power by GAMEP and MEWA was more directed by these principles, it might also bring about involvement by the judiciary, to revise and refine such administrative discretion. This would allow the court to have a say on the principles mainly via the judicial review window.

15- In general, more rhetoric, discussion of and attention to these principles is needed in order to accord them more resonance and bring them more prominently to the surface. This would be conducive to shaking up the current environmental governance system to remove the stagnation and to bring environmental principles to the forefront of the agenda.

Finally, based on the above findings, it can be concluded that the position of the environmental principles in the Middle Eastern jurisdiction of the KSA is quite distinct from what is portrayed by some key environmental law scholars regarding their nature and status. For instance, neither the recent statement by Bell and his co-authors that environmental principles "*are general guides to action*"[836], nor the perception of Fisher and her colleagues that they have the function of being "*interpretive tools … informing tests of legal review … and as generating legal review tests*"[837] can be said to be relevant to the status and position of the environmental principles in the environmental governance jurisdiction of the KSA. Similarly, the recent conclusions by Scotford that environmental principles are "…*formulated phrases representing policy ideas, and … they have been developing* [an] *increasing role in judicial reasoning*…"[838] and that "*courts play a critical role in shaping and accommodating the legal potential of environmental principles…*"[839] are equally inapplicable to the Middle Eastern case study examined here. Nevertheless, all these characterisations of the principles by scholars might hold some relevance in the future for the KSA, notably by virtue of the Vision 2030 and its environmental momentum. At the current stage, however, the principles, with the possible exception of sustainable development, are more akin to latent, and non-dynamic general legitimate and logical ideas instinctively accepted by stakeholders. These logical ideas are in favour of preventing environmental harm, being minimally precautious, and that the polluters should be held financially responsible for the damage they caused or might cause. At the first stage, these abstract, broad, logical ideas need, inter alia, more direct, including legal,

[836] Bell and others, n 774, P 55.
[837] Fisher, Lange and Scotford, n 1, P 420, 422 and 424.
[838] Scotford, n 723, P 260.
[839] Ibid.

recognition, popularisation and advertisement amongst actors and stakeholders in the environmental governance sphere, as well as a legislative ticket to enter the courtroom. In short, these abstract notions need to be recognised as substantiated and influential 'principles' that provide guidance to regulators and regulated parties.

Due to space and time limitations environmental justice is not addressed by this chapter. More substantively, this exclusion is also because environmental justice is not discussed under the banner of "environmental principles" by leading environmental law scholars including in recent publications[840]. More explicitly Bell and his colleagues expressly acknowledged that environmental justice is not "a 'principle' in the same sense as the Precautionary Principle or the Preventive Principle"[841] although environmental justice may be viewed as a principle by some authors including scholars of closely-linked disciplines such as energy law.[842]

[840] Scotford, n 723. Also neither included by De Sadeleer, *Environmental Principles: From Political Slogans to Legal Rules*, nor seemed to be addressed by Fisher alone or Fisher and her colleagues as part of the environmental principles in both Fisher, *Environmental Law: A Very Short Introduction See* P 44-46 and P 70-73*,* and Fisher, Lange and Scotford, n 1.
[841] Bell and others, n 774, P 74.
[842] Heffron and others, n 693.

9. Chapter Nine: Summary and Conclusions

9.1 General Summary

This summary covers three important aspects of the research, the background of the study, the main research question and the development of the research method.

9.1.1 Background

It was initially highlighted that the KSA faces a number of challenging economic and social issues that have placed stresses on the state of the environment and consequently call for better environmental governance. The vast amount of natural resources consumed domestically is a clear signal that this will be a contributing factor to such environmental problems. For instance, the entire annual national production of natural gas is consumed domestically for local and national purposes, such as in water desalination projects; this is in addition to the issue of depletion of non-renewable groundwater and mismanagement of such water supplies,[843] and the unsustainability of current electricity generation practices, which has been officially acknowledged.[844] The lack of effective utilisation of the country's renewable resources is also manifested by its huge power-generation subsidies, which have maintained energy prices below the international average.[845] Another environmentally degrading issue, is the lack of effective waste treatment practices and environmentally friendly disposal plants and technology. Thus waste, in all its forms, "*residential, industrial, medical and electronic waste*" is also causing a considerable environmental challenge in the country.[846]

As shown in this research, a further complexity is encountered in the hierarchical nature of the KSA's environmental bureaucracy. Although associating a highly hierarchical style of administration with governance may seem paradoxical, this first impression required more prudent investigation and analysis, especially in relation to topics with a relatively lower degree of controversy and more likelihood of convergence of views, such as the importance of environmental protection and better management of natural resources. The main aim of this research was to undertake this analysis. Due to the breadth of this subject and the major

[843] Arani Kajenthira, Afreen Siddiqi and Laura Diaz Anadon, 'A New Case for Promoting Wastewater Reuse in Saudi Arabia: Bringing Energy into the Water Equation' [2012] 102 Journal of Environmental Management 184

[844] Ali Ahmad and M. V. Ramana, 'Too Costly to Matter: Economics of Nuclear Power for Saudi Arabia' [2014] 69 Energy 682. See also Noura Youssef Mansouri and Ahmed F. Ghoniem, 'Does Nuclear Desalination Make Sense for Saudi Arabia?' [2017] 406 Desalination 37.

[845] Yousef Alyousef and Paul Stevens, 'The Cost of Domestic Energy Prices to Saudi Arabia' [2011] 39 Energy Policy 6900.

[846] Nahed Taher and Bandar Hajjar, 'Energy and Environment in Saudi Arabia: Concerns and Opportunities' (2014) P 7.

environmental challenges that the KSA is encountering[847]; this work has specifically tackled the concept of environmental governance and its applicability, with particular reference to the issue of environmental protection in the KSA, as a case study of the Middle East.

9.1.2 Research Questions

In this study, the main research question - "Can good governance practices be applied in Saudi Arabia in regard to the protection of the environment? If so, how can they be implemented?" - was approached by breaking it down into smaller sub-questions which were:

1- What is governance and environmental governance? What do the terms mean?
2- How is the KSA governed? What is the KSA's legal systems? And what are the main legislations in this regard?
3- What definition or different definitions or understandings are associated with the concept of environmental governance in the KSA?
4- What models of environmental governance exist and prevail in the KSA?
5- How are the issues of climate change and the special characteristics of environmental challenges responded to by the environmental governance framework in the KSA?
6- How and to what extent are environmental good governance standards or norms comprehended and incorporated by the environmental governance domain in the KSA?
7- What are the position and structure of the Environmental Impact Assessment (EIA) in the KSA?
8- What is the position or legal status of the environmental principles in the KSA? And to what degree are they present in the environmental governance arrangements and structures?

The literature review in Chapter 2 identified five major topics of environmental governance, which narrowed down the focus of the research. These five areas were employed to clarify the phrase "good governance practice" in the main research question, which was essential in reaching the answer to the main research question.

These five areas are represented by the five analytical core chapters of the thesis: Chapter 4 addressing models of environmental governance; Chapter 5 considering environmental governance, climate change and the special characteristics of environmental challenges; Chapter 6 on what constitutes good environmental governance; Chapter 7 on environmental impact assessment (EIA), and Chapter 8 which explored the implications of the main

[847] Waked and Afif. Also see Peter J. Vincent, *Saudi Arabia : an Environmental Overview* (Taylor & Francis Group 2008). AarifH El-Mubarak and others, 'Identification and Source Apportionment of Polycyclic Aromatic Hydrocarbons in Ambient Air Particulate Matter of Riyadh, Saudi Arabia' [2013] Environmental Science and Pollution Research 1

environmental principles i.e. sustainable development, the precautionary principle, the preventive principle and the polluter pays principle.

9.1.3 Development of the Method

Two principal methodologies were employed in the study. The first was the black-letter or doctrinal methodology, examining legislations and statutes which directly (e.g. environmental enactments) or less directly (e.g. legislations with constitutional status) regulate and govern environmental protection processes in the state. They included laws and legal instruments, policy documents and government reports, periodicals and circulars. Data sources also included ministerial announcements and data published by official websites and websites belonging to acknowledged international organisations. Reports from domestic media were also minimally referred to. Reference to case law was not considered to be very relevant, due to the nature of the KSA's legal system as predominantly legislation-based, notably in the field of administrative law, to which environmental law belongs. This was also due to the scarcity of KSA's environmental law legal cases, for several reasons discussed earlier in the research, such as issues related to the legal doctrine of standing.

The second primary methodology was a socio-legal qualitative analysis applied to original data generated from a total of 27 semi-structured interviews conducted in the early summer of 2016 in the KSA. The interviewees represented four stakeholder categories: bureaucrats or civil servants (I-A), representatives from factories and the private sector (I-B), academic professors and scholars (I-C) and representatives of environmental societies (I-D).

9.2 Contributions of Research and Policy Implications

The research has identified and discussed several areas of strength, and areas where there are significant opportunities for further improvements in the KSA's environmental governance jurisdiction. It is hoped that the research will contribute to enlarging the currently underdeveloped scholarship regarding Middle Eastern contexts of environmental law and governance in general, and the KSA's environmental law and governance, in particular.

The exploration of these topics aimed to produce two overarching main contributions to the research field. The first was mapping the largely under-researched territory represented by the KSA's environmental governance framework and its legal arrangements. The other more significant contribution is to provide an appraisal of the relevance and applicability of the large available body of literature, which is predominantly focused on Western contexts, to the specific Middle Eastern context, and thus enable some sort of judgment to be made regarding the sufficiency and adequacy of this existing body of literature to deal with the sort of challenges and reality existing in Middle Eastern contexts, represented in this study by the KSA. This is also intended to encourage future researchers, notably in legal studies, to pay more direct attention to this previously uncharted territory of knowledge i.e. environmental law and governance in the KSA in particular and the Middle East in general. As mentioned earlier,

the utilisation of the original data generated from the 27 interviews conducted added great value to the analysis and thus the findings of this research.

It was established, in Chapter 4, that the prevailing model in the KSA's environmental governance framework is the bureaucratic state-centred form rather than market-based or fiscal governance and the network mode of governance practiced in other jurisdictions. Shortcomings associated with this hierarchical model of environmental governance were identified related to its inflexibility and reliance on the capacity of environmental agencies, which was not always adequate. Although some limited applications of the fiscal model of environmental governance were noted, the network-based style of governance was not represented in the environmental protection domain.

This response of this environmental governance framework, including its legal arrangements, to the challenge of climate change and the unique cross-boundary properties of environmental problems was found to be unsatisfactory. The reasons for this were identified in Chapter 5 as shortcomings in climate change documentation, lack of stakeholder consensus regarding the gravity of the climate change issue and the imperfect legal response to the inherent unique attributes of environmental problems. However, there were also administrative flaws, such as the lack of integration and holistic approaches to confronting both climate change and environmental ills in general. It was concluded that a more rigorous legal response was required, supported by awareness-raising campaigns across sectors and among stakeholders within the environmental governance sphere.

Several issues regarding the three flagship good governance principles of public influence or engagement, transparency and accountability, were identified within the environmental governance framework of the KSA in Chapter 6. The examination of the presence and role of these principles in the legislations and regulations, and in the real practices of environmental governance actors revealed a wide chasm between the legal environmental provisions and the on-the-ground practices by actors and stakeholders within the environmental governance domain. It also found a low level of awareness and knowledge about the potential of these principles, and the ability of good environmental governance principles, notably the accountability principle, to deliver change. The challenges to the capacity of the environmental agency GAMEP in delivering and fulfilling its statutory responsibility in this regard also needed to be addressed. Additionally, it was concluded that more use could be made of existing institutions and influential national plans to advertise and propagate the value of these good governance benchmarks for environmental protection ends.

The contribution of the examination of the essential environmental decision-making tool of environmental impact assessment (EIA) conducted in Chapter 7 identified both advantages and significant challenges in the current state of the EIA and its implementation. These positives can be exemplified by the presence of the legislative and regulatory infrastructure

upon which further development can take place in the future. The demerits are primarily manifested by the lack of the participatory element in the present arrangement of the EIA. The overreliance on private environmental consultancy offices was identified as a significant weakness in the current EIA processes, because of their weak performance and poor resources and understanding of the rationale of EIAs. It was also concluded that it was necessary to expand GAMEP's own capacity, together with setting up competent and specialised EIA units in GAMEP under its supervision in order to revise the work of, or even replace such private consultancy firms.

The four landmark environmental principles, sustainable development, the precautionary principle, the principle of prevention, and the polluter pays principle were explored in the context of the environmental governance domain of the KSA in Chapter 8. Other than the sustainable development principle, it was found that they are given no explicit reference in the legal documents examined, or prominent role to serve. Importantly, although their seeds and logic are visible, none of the four principles has yet been accorded a legislative ticket to enter the courtroom and be counted among the principal legal reasoning tools in the hands of the judicature. Thus an important finding is that more emphasis needs to be directed to the principles in order to enable them to enter the mainstream legal and environmental lexicon and lead to more solid and refined understandings among stakeholders and those officially entrusted to safeguard the environment. A particularly clear conclusion that emerged was the need for a specialised judiciary who are familiar with the environmental principles and their potential in pushing for better environmental protection outcomes.

At this point it is possible to provide a broad answer to the main question of the thesis: "Can good governance practices be applied in Saudi Arabia in regard to the protection of the environment? If so, how can they be implemented?". The answer is positive. In a nutshell, yes good governance practices can be applied in the KSA with regard to the protection of the environment, and the way to do this is through advancements in the five major areas of environmental governance identified in this research. These five major areas of environmental governance include the models of environmental governance, climate change and the special characteristics of environmental challenges, good governance standards, EIA and application of the environmental principles.

9.3 Limitations of the Thesis and Direction of Future Research

The limitations within this thesis revolve mainly around the qualitative research conducted through the interviews, in which the prominent issues were accessibility, and aspects related to cultural openness. Gaining access to the interviewees in the context of the case study of this research was harder than would be perceived in a typical western country. This is also one of the reasons this study has equally conducted a large amount of doctrinal analysis and was not solely based on interviews. Although 27 key individuals, who were stakeholders and

practitioners in the KSA's legal and environmental governance field were interviewed, some individuals and representatives of certain relevant entities could not be reached, due to the time and resources at the researcher's disposal. Moreover, some potential interviewees did not show any interest in taking part, while others withdrew at the last moment.

Furthermore, these time and resource restrictions have only enabled the researcher to conduct only one case study, rather than two or more case studies. According to Yin, although single-case study is a valid way of researching and can produce successful outcomes, two or more case studies are likely to lead to richer outcomes and "*analytic benefits*".[848]

In addition, it is conceivable that some participants were not willing to reveal all the information they knew about the organisations they represented. Thus, some respondents might be inclined to positively or negatively overstate a situation in their responses, either not to spoil the image of certain entities, or to exaggerate a negative situation regarding institutions with whose actions they are not in total agreement. Although recruiting a larger number of interviewees than the 27 participants, might have been more enriching to the findings of this research, it is believed the crux of the thesis is not exclusively or predominantly interview-based, but the doctrinal and documentary analysis is equally important in this research.

There are also limitations concerning the subject matter of the research. Although the research examined prominent and principal and thematic issues of environmental governance, a number of components and relevant issues have been either omitted or not comprehensively discussed, due to the time constraints and word limits,[849] and, primarily, the almost inexhaustible range of issues and perspectives in the voluminous literature. A number of topics quite prominent in some contexts of the literature have been discarded, either because of word limits, or for objective reasons, such as their lack of relevance to the case study examined by this research study, i.e. the KSA. For example, time and space constraints led to excluding topics addressing theories of policy or environmental policy processes, while issues involving those theories emphasising democracy or the democratic nature of environmental governance were omitted because of lack of relevance to the case study context.

Although this study can be of a great benefit for many developing and Middle Eastern countries, notably those that share many similarities with the KSA in a number of aspects, its specific focus on the KSA, renders the generalisability of the findings and outcomes a somewhat sensitive issue, which should not be taken for granted. For instance, the respondents to the interview questions were experts and practitioners who were involved mainly in the KSA's environmental governance context, rather than other Middle Eastern countries. Moreover, the questions posed were confined to the case study of this research, i.e.

[848] Yin, n 359, P 64.
[849] For instance, the topics of environmental justice and enforcement.

the KSA, and not expanded to the whole region systematically. This does not, however, rule out any potential lessons and benefits for other states and systems, notably those Middle Eastern and neighbouring states that have a high degree of similarity with the KSA, environmentally, economically, legally, socially or politically.

Future studies are encouraged to address significant gaps existing in several places in the context of the KSA's environmental law and governance. For instance, conducting a comparative study with other relevant jurisdictions could build on this research and widen the scope of analysis and thus be a valuable addition to the literature. Examples of certain aspects of environmental governance and governance in general from countries in the Middle East, such as Egypt, UAE and Kuwait, or in other regions with systems comparable to the KSA's environmental law system, are encouraged to be addressed in later studies.

In addition, dedicated studies will be needed addressing the ongoing changes to the KSA's environmental governance landscape driven by the masterplan (Vision 2030) and their policy implications and potential repercussions on the quality of future environmental protection outcomes. More classical studies on environmental law subjects are also currently required, as there is a lack of studies on the topics of enforcement of KSA's environmental law and how and by whom it should be carried out, also examining the judicial positions in and towards environmental law cases, and the role and influence of the judicature in addressing environmental problems.

Interestingly, in the light of this background, it has been concluded that the ambiguity of terms such as governance and good governance can be a positive element. Different visions and theories about these concepts and the lack of a single, unified definition or theory of the term might help us by providing an opportunity to attempt to construct a distinctive style of "governance" for an eastern society such as the KSA's society, as the case study in this thesis. Indeed, the elasticity arising from the multiple theories and perceptions of what governance means might allow us to pursue an appropriate style of governance in a quite different society, where the Islamic culture is predominant.

9.4 Conclusions

This research study has identified major areas of environmental governance where there is great potential to enhance and promote the quality of environmental governance practices in the KSA. For example, in the case of environmental principles, having the KSA's environmental legislations and regulation holistically centred upon and emerging from these principles is very likely to have far-reaching leverage in bringing about enhancement and improvements. Highlighting and debating these principles more explicitly, and then implementing them more rigorously in an eco-centric orthodoxy, would also bring about large-scale environmental protection successes.

An important merit of all of the five principal aspects or areas of environmental governance identified in this research (models of environmental governance, climate change and the special characteristics of environmental challenges, good governance, EIA, and the principles), is their thematic, overarching and far-reaching quality. Consequently, addressing and redressing these areas is likely to improve the overall quality of environmental protection, rather than narrowly solving single specific environmental problems or contamination episodes. This satisfies the inherent hypothesis of this research that the major drivers of many environmental challenges existing in the state are related to issues with governance, more precisely environmental governance. Moreover, this study is a piece of legal research, and as Little points out, "*legal research can and does make an important contribution to the development of society's understanding of governance and regulation …*".[850]

[850] Little, n 334, P 603.

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Appendices

Appendix A

Table 1: Details of the Interviewees

Category	Affiliation	Position
First: Bureaucracy		
1- (I-A-1)	General Authority of Meteorology and Environmental Protection (GAMEP) - Ministry of Environment, Water and Agriculture.	Former Head of GAMEP's Branch, Formerly member of international negotiating team on environmental affairs.
2- (I-A-2)	(GAMEP) - Ministry of Environment, Water and Agriculture.	Head of GAMEP's Branch.
3- (I-A-3)	(GAMEP) - Ministry of Environment, Water and Agriculture.	Deputy Head of GAMEP's Branch.
4- (I-A-4)	(GAMEP) - Ministry of Environment, Water and Agriculture.	Environmental Inspector and Specialist.
5- (I-A-5)	(GAMEP) - Ministry of Environment, Water and Agriculture.	Environmental Inspector and Specialist.
6- (I-A-6)	(GAMEP) - Ministry of Environment, Water and Agriculture.	Member of international negotiating team on environmental affairs.
7- (I-A-7)	Ministry of Municipal and Rural Affairs.	Head of a Municipality Branch.
8- (I-A-8)	Environmental Protection Department - Royal Commission for Jubail and Yanbu (RC)	Chief Executive Expert
9- (I-A-9)	Arriyadh Development Authority	Environmental Specialist
10- (I-A-10)	The Saudi Industrial Property Authority (MODON) - Environmental Protection Department	Chief Executive Expert
Second: Industries/ Private Sector		
11- (I-B-1)	Oil and Petroleum Company	Petroleum Engineer
12- (I-B-2)	Power and Water Utility Company	Environmental Engineer
13- (I-B-3)	Petrochemical Company	Environmental Engineer
14- (I-B-4)	Petrochemical Company	Environmental Specialist
15- (I-B-5)	Stone and Gravel Industry	Owner and Manager
16- (I-B-6)	Paint Factory	Owner and Manager
17- (I-B-7)	Aerospace and security company- Environmental Protection Department	Environmental Consultant
18- (I-B-8)	Metal Coating Company	Environmental Specialists

Third and Forth: Academia, Research Centres & Semi-NGOs		
19- (I-C-1)	King Abdullah Institute for Nanotechnology - Nanotechnology Society	Former Dean
		28- Active Member (I-D-1)
20- (I-C-2)	King Saud University (KSU) - Society of Agricultural Sciences	Professor - Soil and Environmental Pollution
		29- Active Member (I-D-2)
21- (I-C-3)	King Abdulaziz University (KAU) - Environmental Science Society	Professor - Environmental Science
		30- Former Head (I-D-3)
22- (I-C-4)	King Abdulaziz University (KAU)	Professor - Environmental Science
23- (I-C-5)	King Abdulaziz University (KAU) - Government Consultant	Professor - Environmental Science
24- (I-C-6)	King Abdulaziz University (KAU) – Government Consultant	Professor - Environmental Science
25- (I-C-7)	King Abdulaziz University (KAU)	Nanotoxicology
26- (I-C-8)	Almaarefa Colleges	Professor - Civil Engineering
27- (I-C-9)	Water Research Centre	Deputy Head

Appendix B

A- General

1- From your perspective, and in light of the current distribution of environmental responsibilities, what are the main/ the most important environmental bodies and why? And what are the reasons for having such number of environmentally-responsible bodies?

2- How and to what extent do you think the recent developments in the structure of environmental bodies, announced by the government concurrently with the announcement of the National Transformation Plan 2020 and the Saudi Vision 2030, will affect the environmental protection arena?

3- In your opinion, what are the main challenges in the area of environmental protection? And how do you think this could be overcome?

4- With regard to laws and regulations on environmental matters, what do you think are the most prominent issues? What do you think are the most successful or unsuccessful aspects of the current environmental governance system including such laws and regulations?

5- How would you describe the effectiveness and implementation of the various environmental regulations that constitute the KSA's environmental law?

6- In your experience, how is environmental law enforced? What instruments/ powers are available for enforcement? And how effective are they?

7- Other than the formal state actors, how effective, are the roles, if any, of individuals, particular industries or semi-NGOs in protecting the environment?

B- Environmental Governance and Modes/ Models

8- From your perspective, what is the prevailing modes/ approach to environmental governance? Hierarchical (top-down) (e.g. such as command and control), Market-based (e.g. the use of fiscal tools and pricing for environmental protection ends), network governance (where interdependent members of the society (actors) are tied by relational trust and mutual interest voluntarily), or other? And why is this the way they do in KSA?

9- In your opinion, to what extent has technology/ technological innovation been utilised/employed for environmental protection purposes?

10- In your view, are environmental authorities and environmental decision makers being continuously informed, in a learning-oriented way, through channels of information (for instance, about the science behind the decisions they are taking)? If so, how effective is this process?

C- Environmental Governance and Risks

11- How would you describe the current environmental system in dealing with prominent/major environmental risks in the KSA, such as air pollution, desertification and climate change or any other prominent environmental challenge/s? And how effective is it?

12- From your perspective, to what extent, if any, does science play a part in the environmental policy-making process? How effective is it? If not effective, why?

D- Good Governance and Environmental Protection (Good Environmental Governance)

13- In your opinion/experience, what is the most important principle of good governance for attaining optimal environmental protection in the KSA? I mean good governance principles such as participation, accountability, transparency, responsiveness, efficiency and effectiveness, effective judicial protection or any other principle you would consider important. (NOTE: IF THEY REFER TO OTHER PRINCIPLES PERHAPS I COULD ASK WHY THEY THINK THIS)

14- With regard to public involvement, in your view, to what extent are people involved, or could be involved in environmental decision-making? How has this been effective, where it has taken place?

15- To what extent do you think environmental information is accessible to anyone?

16- In your understanding, what, if any, are the channels through which people can challenge an environmental decision or an action that has been taken in breach of the law?
17- Who are environmentally responsible bodies accountable to? If they are not, are any reasons given?
18- in respect of environmental issues, how transparent and open are environmental authorities, companies or industries, in this respect?
19- To what extent do the principles, responsiveness, efficiency and effectiveness, apply in the reality of current environmental governance in the KSA? And how responsive, efficient, and effective is the current environmental system?
20- How effective do you think the current judicial system is in safeguarding the environment? In other words, do you think the judiciary and courts have a significant role to play in environmental issues? And if so what role do they play?

E- Scales and Levels of Environmental Governance

21- As there are sources of environmental law at different levels, such as the international, regional, national or local, which do you think is the most effective level in effectively regulating the environment? And why?
22- How are the environmental duties and responsibilities distributed, vertically or hierarchically between the relevant administrative units or divisions of government (regions, cities, localities)?
23- In your experience, how do environmentally-mandated bodies cooperate and coordinate with one another, if at all? Cooperation or otherwise, either horizontally or vertically?
24- In your experience, how, and to what extent, are environmental duties and responsibilities distributed horizontally between the relevant authorities/ agencies?
25- Do you think there is any scope for conflict or overlap of competences? If so, how would such conflict or overlap be resolved or addressed?

F- Trends

26- Are there, in your opinion, certain obvious trends in the environmental governance arena? For example towards centralisation or decentralisation, or privatisation in the supply of environmental services such as waste disposal or water distribution, or integration of environmental issues in other developmental policies and decisions If so, how effective are they?

G- Environmental Governance and Societal Actors

Already been asked about. (Any role of actors other than the state-actors? How effective?) See Qs6 for example.

H- Environmental Governance and Unique Characteristics of Environmental Problems

27- To what extent, do you think, the special characteristics of environmental problems, such as their trans-boundary characteristics and complexity and uncertainty, are taken into consideration in making environmental decisions, or in the general practice of the respective environmental authorities? In other words, In your view/experience, do environmental policies, decisions and practice generally reflect a proper consideration or understanding of the special characteristics of environmental problems, that is their complexity and uncertainty and trans-boundary nature?

I- Environmental Governance and Environmental Principles

28- In your opinion, to what extent has the principle of sustainable development been considered by environmental laws and regulations and by the current practice of the respective bodies in the KSA? And how effective has it been?
29- In your opinion, to what extent has the precautionary principle (*to be explained verbally for the non-academics*) been considered by environmental laws and regulations as well as by the current practice of the respective bodies in the KSA? And how effective has it been?

30- To your knowledge, to what extent has the polluter pays principle been incorporated into environmental laws and regulations and the current practices of the respective bodies in the KSA? And how effective has this been?
31- In your opinion, to what extent has the preventive principle (to be explained verbally to the interviewee) been incorporated into environmental laws and regulations as well as by the current practice of the respective bodies in the KSA? And how effective has it been?

J- Regulatory approach

32- What do you think is the most prevalent of the following environmental regulatory approaches in the KSA (command and control i.e. direct regulation, market-based or fiscal instruments e.g. environmental taxes and charges, or voluntary self-regulation such as eco-labelling or industry collective initiatives (This could take multiple forms such as agreements between industries, declarations and others or any other type), and why?

K- Final Points

33- How would you like to see the future development of environmental law and governance in the KSA, in the light of, for example, the KSA's vision 2030?
34- From your viewpoint, what will be the impact, if any, of Paris COP21 (the 2015 Paris Climate Conference) on the KSA's environmental arena?
35- Is there anything else you would like to add?

Appendix C

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Information Sheet

Introduction and invitation to participate in in the research:

I am Mohammad Alomari, the researcher in this PhD research, and I am a lecturer in administrative and environmental law at King Saud University (KSU) in Riyadh. This research is funded by KSU, and carried out as part of my research in order to obtain a PhD degree in law from the Law School, University of Leeds, UK. The subject of the research is the concept of environmental governance, taking the Kingdom of Saudi Arabia (KSA) as a Middle Eastern case study. This research is supervised by Dr Raphael Heffron at the Law School, Queen Mary University of London, and Professor Andrew Keay at the Law School, the University of Leeds.

You are invited to take part in this research as an interviewee. So, please take your time to read this information sheet in order to be able to make an informed decision about whether you would like to participate in this research. Please do not hesitate to ask/email/ telephone any questions if you need any further clarification. Finally, if you are willing to take part, please kindly sign the consent form attached/enclosed. Thank you very much.

You may also wish to withdraw after consent has been granted. It is totally up to you to withdraw any time up to the start of the analysis stage. More clearly, you are free to withdraw any time before January 2017. Withdrawal afterwards might seriously damage the research and its quality. If you wish to contact me regarding this issue, or any other, you are most welcome. Please refer to my contact details at the end of this document.

The project's main idea and purpose:

As you will be aware, the largely desert, arid location of the KSA, together with its steady population growth and other socio-economic factors, places considerable pressure on its environmental assets. At the same time, the government has shown generosity and willingness to support formal environmental endeavours through, for example, enacting environmental regulations, and providing generous subsidies for environmental bodies.

However, a number of studies and government reports show the need for further endeavours with regard to the aspect of environmental governance. For example, the last published version of the annual report of The General Authority of Meteorology and Environment (GME), formerly "The Presidency", (2014-2015) acknowledges a number of considerable challenges encountered in this respect. This research seeks to contribute in this respect by identifying those principles and practices in regard to governance that can best further the aims of environmental protection.

Why you have been selected as a potential interviewee in this study:

You have been selected due to your knowledge, interest or experience in the subject matter of the research. The relative lack of publications and studies in this field, means interviews are a potentially useful source of knowledge to obtain an in-depth view of the issues. I am seeking participants who have professional knowledge and experience in some or all the aspects of this field i.e. in the case study of the research.

Your decision to participate:

Participation is determined by your own preference. You are completely free to decide whether to participate or not. Please note that there are no direct benefits nor special gains to the interviewees, and you do not have to take part. However, the outcome of the research is hoped to contribute to the aim of more effective environmental protection. Your views and understanding can be helpful in building a clearer understanding of the issues and challenges involved.

Location and duration of the interview:

The interview can take place at your preferred venue, in a place convenient to you. The anticipated length of the interview is between 1:30 to 2 hours. The questions asked will concern environmental governance and environmental protection in the KSA. Some of the questions will require only short answers, but the majority are designed to acquire in-depth information based on your knowledge, experience or interest. It is also up to you to choose not to answer any of the questions you prefer not to answer.

Audio recording of the interview:

The audio recording is very important for accuracy and some practical reasons. It allows me, as the researcher, to accurately recall the data you have kindly provided. However, most importantly, this will only happen with your permission.

Once you have agreed, a digital recording device will be used during the session. This is very important, as it allows accurate transcription to be carried out afterwards. The recording will be transcribe and typed in order for me to be able to analyse the data. Finally and importantly, the recordings will be destroyed once the research is published.

Confidentiality and anonymity:

The data collected from the interview will be strictly confidential and completely anonymised. No one other than myself, as the researcher, will have access to your responses, and no details will be revealed that make any of the participants, including yourself, identifiable. The findings of the research will be presented in a way that makes participants not identifiable to any readers. This is not merely an ethical consideration in respect to you as a participant, but a very important element of the research integrity in itself.

Uses of the research:

As mentioned above, the research is being undertaken mainly in pursuance of a PhD degree from the Law School at the University of Leeds in the UK. It remains possible for the researcher to publish some journal articles or produce a book, as well as using the anonymised data for academic presentations and conferences contributions.

Contact for future or further information:

Should you require any further information please get in touch with myself at lwmana@leeds.ac.uk, or at my King Saud University email address malomari@ksu.edu.sa, or at my mobile numbers in Saudi Arabia 0595454996, or via the UK mobile number at 07540974337. You could also contact my primary supervisor at r.heffron@qmul.ac.uk , or my co-supervisor at a.r.keay@leeds.ac.uk should you require any further clarifications.

Thank you for taking the time to read and consider this document, I hope you will feel you are able to take part in this valuable research.

Appendix D

Interviewee Consent Form

The Research Project: Applying Good Governance Practices in the Middle East in the Case of Environmental Protection: Saudi Arabian Case Study.

	Please Tick as Appropriate
I have read and understand the information sheet explaining and clarifying the nature and purpose of the research. I have been given the opportunity to ask the researcher any questions I would like to ask concerning the research.	
I understand that my participation is voluntary and I am free to decline to answer any question posed by the interviewer. I also understand that I can withdraw at any time, up until January 2017, without needing to justify my reasons, and without any unwanted consequences on my side.	
I give permission to the research team to have access to my anonymised responses. I understand that I will not be made identifiable in any sort of publication of the data, nor in the final outcome of the research. I also understand that my responses will be confidential, including any personal details I divulge.	
I agree to participate in this research and will inform the researcher should my contact address have changed.	

The Researcher's Name	Mohammad Alomari
The Respondent's Name	
The Respondent's Signature	
Date	

Once this has been signed by the respondent, the participant should receive a copy of the signed and dated participant consent form, the information sheet and any other written information provided to the participants. A copy of the signed and dated consent form should will be kept with the project's main documents which will be kept in a secure location.

Appendix E

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Leeds LS2 9LJ Tel: 0113 343 4873
Email: ResearchEthics@leeds.ac.uk

UNIVERSITY OF LEEDS

Mohammad Alomari
School of Law
University of Leeds
Leeds, LS2 9JT

ESSL, Environment and LUBS (AREA) Faculty Research Ethics Committee
University of Leeds

14 April 2016

Dear Mohammad

Title of study: **Applying Good Governance Practices in the Middle East in the Case of Environmental Protection: Saudi Arabian Case Study**

Ethics reference: **AREA 15-104**

I am pleased to inform you that the above research application has been reviewed by the ESSL, Environment and LUBS (AREA) Faculty Research Ethics Committee and following receipt of your response to the Committee's initial comments, I can confirm a favourable ethical opinion as of the date of this letter. The following documentation was considered:

Document	Version	Date
AREA 15-104 Ethical_Review_Form_ MOHAMMAD2.doc	3	13/04/16
AREA 15-104 Information Sheet MOHAMMAD2.docx	2	13/04/16
AREA 15-104 Interviewee Consent Form MOHAMMAD2.docx	2	13/04/16
AREA 15-104 Fieldwork_Assessment_Form_medium_MOHAMMAD - .doc	1	04/04/16

Please notify the committee if you intend to make any amendments to the original research as submitted at date of this approval, including changes to recruitment methodology. All changes must receive ethical approval prior to implementation. The amendment form is available at http://ris.leeds.ac.uk/EthicsAmendment.
Please note: You are expected to keep a record of all your approved documentation. You will be given a two week notice period if your project is to be audited. There is a checklist listing examples of documents to be kept which is available at http://ris.leeds.ac.uk/EthicsAudits.
We welcome feedback on your experience of the ethical review process and suggestions for improvement. Please email any comments to ResearchEthics@leeds.ac.uk.
Yours sincerely

Jennifer Blaikie
Senior Research Ethics Administrator, Research & Innovation Service
On behalf of Dr Andrew Evans, Chair, AREA Faculty Research Ethics Committee
CC: Student's supervisor(s)