

The Times: Are They a-Changin’? Saudi Law Finally Addresses Domestic Violence with Its Regulation on Protection from Abuse

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ABSTRACT: This Note examines the Saudi Arabian Regulation on Protection from Abuse—a law that the Saudi Council of Ministers passed in August of 2013 in response to an advertisement campaign funded by the King Khalid Foundation that aimed to address the widespread problem of domestic abuse in Saudi Arabia. While this law is unlikely to produce a significant impact on Saudi society at present, given time, textual modification, and further efforts to make the Saudi citizenry aware of its rights, the Regulation might eventually help to lower rates of domestic abuse in the country.

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I. INTRODUCTION

August 26, 2013, marked the passage of a law, the likes of which the Kingdom of Saudi Arabia had never before seen—one that criminalized domestic violence.¹ Before that time, domestic abuse had gone wholly unaddressed in Saudi law, and on the rare occasion that a case of abuse was reported and brought to court, Saudi judges were left to rely on their own interpretations of Sharia law in determining whether the allegations constituted criminal action.² While “[t]here are no reliable statistics regarding domestic abuse in Saudi Arabia,” the King Khalid Foundation (an organization discussed in greater detail below) identified “that the phenomenon of battered women in the Kingdom of Saudi Arabia is much greater than is apparent on the surface” and launched a campaign to raise public awareness of the problem in April 2013.³ That campaign, along with the public’s response, led directly to the passage of a truly groundbreaking law: The Regulation on Protection from Abuse (the “Regulation”).

The questions that have yet to be answered, however, are whether the Regulation is likely to have an observable impact on rates of domestic violence in Saudi Arabia, and what can be done to ensure that it helps to lower those rates as much as possible. The following pages seek to provide answers to those questions. To that end, Part II will provide a backdrop against which the

1. *Saudi Arabia: New Law to Criminalize Domestic Abuse*, HUM. RTS. WATCH (Sept. 3, 2013), <http://www.hrw.org/news/2013/09/03/saudi-arabia-new-law-criminalize-domestic-abuse>.

2. *Id.*

3. *Id.* (quoting the King Khalid Foundation) (internal quotation marks omitted); Daisy Carrington, *Can Saudi Arabia's First Anti-Domestic Violence Advert Make a Difference?*, CNN (May 12, 2013, 11:08 PM), <http://www.cnn.com/2013/05/12/world/meast/saudi-arabia-anti-domestic-abuse-campaign/>.

contours and intricacies of the Regulation may be examined. Part III will discuss the text of the Regulation, accenting important articles and noting some of its textual strengths and weaknesses. Finally, Part IV will address the likelihood that the Regulation, as it is presently written, will have an impact on Saudi society, and will suggest that its impact might be positively augmented by (1) textual modification including specification of who will have the power to enforce its provisions; description of what behavior rises to the level of abuse; mandated counseling for those convicted of abuse; and discussion of how the Regulation will interact with the Guardianship System, as well as (2) further education for the public concerning both the Regulation and domestic violence more generally.

II. A VIEW OF SAUDI ARABIA FROM 10,000 FEET

This Part briefly addresses the current state of Saudi Arabia in relevant social, legal, and governmental respects. To begin with, it is essential to introduce several fundamental concepts concerning Sharia Law and the Muslim faith, as well as the system of government that operates in Saudi Arabia, so that the legal context in which the Regulation on Protection from Abuse arose may be sufficiently understood. To further understand *why* the Regulation came to be, this Part will then narrow its focus to address the problem of domestic abuse in Saudi Arabia, including one well-publicized case of domestic violence. Concerning the question of *how* the Regulation was passed, this Part will discuss social change under King Abdullah and the 2013 media campaign that addressed domestic violence. Finally, to consider societal obstacles to the Regulation's enforcement, this Part will conclude with a look at the controversial system of guardianship that Saudi Arabia employs.

A. A BRIEF INTRODUCTION TO SHARIA LAW

Sharia law—that is, the religious law of Islam, derived in great part from the Quran—has existed for more than 1000 years, and has had so fundamental an impact on Middle Eastern culture and life that an exhaustive discussion of what it is and its exact importance in Saudi Arabia could not possibly be provided here. Instead, what follows is a brief introduction to some basic concepts that will be helpful in more fully understanding the importance of the Regulation on Protection from Abuse and in determining its likely impact.

The modern Muslim faith is possessed of two main branches: Sunni and Shi'ite.⁴ These branches differ in a number of ways, but tend to agree on many of the basic tenets of Sharia law⁵—the foundational set of teachings that governs the Muslim way of life, and which consists of the writings of the Quran

4. CHRISTOPHER M. BLANCHARD, CONG. RESEARCH SERV., RS21745, ISLAM: SUNNIS AND SHITES 2 (2009).

5. *Id.*

and sunna (the recorded conversations, or hadith, of the Prophet Muhammad, along with a record of the “deeds of the Prophet collected after his death”).⁶ A worldwide majority of Muslims adhere to the Sunni tradition.⁷ However, within that one branch, there are four mainstream schools of fiqh, or jurisprudence,⁸ which also take different approaches to the interpretation of Sharia: Hanafi, Maliki, Shafi’i, and Hanbali.⁹ Among Shi’ite jurists, the Ja’fari school is dominant.¹⁰ These schools’ various approaches to interpretation are essential to understanding a particular country or region’s stance on any number of issues, since Sharia contains no codified laws.¹¹ In Saudi Arabia, a country that follows Sunni tradition, the Hanbali school of fiqh holds sway.¹²

There are two reasons that the country’s following of the Hanbali school of jurisprudence is important. First, the dominance of Hanbali jurisprudence in Saudi Arabia results from its historical relationship to Wahhabism in the region.¹³ Wahhabism is generally described as an “offshoot” of Hanbali jurisprudence and “encourage[s] a return to the orthodox practice of the ‘fundamentals’ of Islam, as embodied in the Quran and in the life of the Prophet Muhammad.”¹⁴ Because of the strong link between these two traditions in modern Saudi Arabia, and because of the rigidity of Saudi Arabia’s application of Islamic law, Hanbalism is generally viewed as a “conservative literalism.”¹⁵ While this may not be a completely accurate depiction of pure Hanbali jurisprudence,¹⁶ here it will suffice to note that as a result of the historical importance of Wahhabism in Saudi Arabia, its laws and jurisprudence tend to reflect a strict adherence to Sharia law.¹⁷

6. CHIBLI MALLAT, INTRODUCTION TO MIDDLE EASTERN LAW 32–33 (2007).

7. BLANCHARD, *supra* note 4, at 3.

8. MALLAT, *supra* note 6, at 32.

9. BLANCHARD, *supra* note 4, at 3; Ataullah Siddiqui, *Ethics in Islam: Key Concepts and Contemporary Challenges*, 26 J. MORAL EDUC. 423, 425–26 (1997).

10. Irshad Abdal-Haqq, *Islamic Law: An Overview of Its Origin and Elements*, 7 J. ISLAMIC L. & CULTURE 27, 39 (2002).

11. BLANCHARD, *supra* note 4, at 2.

12. MALLAT, *supra* note 6, at 112.

13. *Id.* (describing Hanbalism as having arrived in Saudi Arabia “in the eighteenth century on the wings of ‘the Wahhabi call’”).

14. BLANCHARD, *supra* note 4, at 4. *But see* MALLAT, *supra* note 6, at 112 (noting that “how much Wahhabism can be equated with Hanbalism is yet to be researched”).

15. MALLAT, *supra* note 6, at 113.

16. *Id.* (“*Al-Mughni*, the great compendium of the leading Hanbali jurist Ibn Qudama . . . does not differ in its treatment of various subjects in any ‘qualitative’ manner from other classical texts. In the case of family law, the exemplum of the wife’s legal position *vis-à-vis* marriage actually yields a totally opposite conclusion to the received idea that Hanbalism is strict and conservative.”).

17. *See id.* at 112–13 (discussing Hanbalism and Wahhabism and referencing Saudi Arabia in relation thereto).

Second, it is important to consider Saudi Arabia's application of Hanbali jurisprudence—as opposed to one of the other three Sunni schools of fiqh—and how it places the country in a unique position. Aside from Saudi Arabia, Hanbalism “is prevalent in . . . Qatar, parts of Oman, and the United Arab Emirates.”¹⁸ Outside of these select few regions, however, one does not tend to find large groups of Hanbali jurists in any particular geographical area.¹⁹ As a result of the peculiarity of Hanbalism to these few regions, human rights activists and other members of the international community must be careful not to push for changes and policies, which other Muslim countries observe, in Saudi Arabia simply because they share a national religion. For instance, whereas the Hanafi school “stresse[s] the use of qiyas, or analogical deduction to find rules of Islamic law,” Hanbalism focuses “strictly” on the hadith in coming to its own conclusions.²⁰ Thus, if one were to suggest that Saudi Arabia should apply an interpretation of Islamic law based on another country's success with that interpretation, without regard to which fiqh that country employs, one might quickly find that the suggestion would hold no weight, as the Saudi populace might reject that interpretation outright. All of this is not to say, however, that it is an exercise in futility to hope to achieve in Saudi Arabia an *end result* observed in another country. Instead, one ought simply to consider how that result might be achieved via a different system of jurisprudence.

B. GOVERNMENT IN SAUDI ARABIA

Having discussed Islamic and, more specifically, Saudi jurisprudence, this Subpart will take a closer look at the style of governance in effect in Saudi Arabia, beginning with an examination of the Basic Law of Governance—a constitution-like, foundational document in Saudi Arabia. Chapter 1, Article 1 of the Saudi Arabian Basic Law of Governance reads, in relevant part, “The Kingdom of Saudi Arabia is a fully sovereign Arab Islamic State. Its religion shall be Islam and its constitution shall be the Book of God [The Holy Quran] and the *Sunnah* . . . of His Messenger.”²¹ This portion of the Basic Law of Governance establishes that Saudi Arabia is an Islamic state,²² and this

18. BLANCHARD, *supra* note 4, at 3.

19. MALLAT, *supra* note 6, at 112.

20. Farooq A. Hassan, *The Sources of Islamic Law*, 76 AM. SOC'Y INT'L L. PROC. 65, 69–70 (1982).

21. BASIC LAW OF GOVERNANCE [CONSTITUTION] Mar. 1, 1992, art. 1 (Saudi Arabia). The Saudi Constitution is referred to generally as the Basic Law of Governance, and will be referred to as such throughout this Note. *See, e.g.*, Abdulaziz H. Al-Fahad, *Ornamental Constitutionalism: The Saudi Basic Law of Governance*, 30 YALE J. INT'L L. 375, 384 (2005); R. Hrair Dekmejian, *The Rise of Political Islamism in Saudi Arabia*, 48 MIDDLE E. J. 627, 633 (1994); Joseph Nevo, *Religion and National Identity in Saudi Arabia*, 34 MIDDLE E. STUD. 34, 35 (1998).

22. *See, e.g.*, Al-Fahad, *supra* note 21, at 384–85; Hossein Esmacili & Jeremy Gans, *Islamic Law Across Cultural Borders: The Involvement of Western Nationals in Saudi Murder Trials*, 28 DENV. J. INT'L L. & POL'Y 145, 146–47 (2000); Nevo, *supra* note 21, at 35.

concept informs the rest of the document, perhaps most notably Articles 7,²³ 8,²⁴ and 48.²⁵ Further, in accordance with Article 7, “[t]he traditional subjects of law, such as family law, inheritance, trusts, contract and criminal law are exclusively defined by the *Sharia*.”²⁶

Although the Basic Law of Governance takes the form of a constitution, Saudi Arabia is nevertheless considered to be a non-constitutional monarchy.²⁷ In this system, the government is divided into three branches: executive, legislative, and judicial. Occupying the executive branch are the King and the Council of Ministers.²⁸ Members of the Council are appointed by the King, and are “responsible for drafting and overseeing implementation of the internal, external, economic, financial, social, educational, defense, and other general matters of the state.”²⁹ The King then, in addition to his power to appoint members of the Council of Ministers, issues decrees regulating all areas not covered by “traditional Islamic law” and sanctions all decrees proposed by the Council of Ministers.³⁰ He also has the power to appoint all Emirs—governor-like figures who each preside over one of Saudi Arabia’s fourteen provinces; is the Commander in Chief of Saudi Arabia’s

23. BASIC LAW OF GOVERNANCE [CONSTITUTION] Mar. 1, 1992, art. 7 (Saudi Arabia) (“Governance in the Kingdom of Saudi Arabia derives its authority from the Book of God Most High and the *Sunnah* of his Messenger, both of which govern this Law and all the laws of the State.”).

24. *Id.* art. 8 (“Governance in the Kingdom of Saudi Arabia shall be based on justice, *shura* (consultation), and equality in accordance with the Islamic *Shari’ah*.”). The concept of “shura” is one deeply imbedded in Sharia law, and, as such, is taken directly from the Quran. See Geneive Abdo, *Re-Thinking the Islamic Republic: A ‘Conversation’ with Ayatollah Hossein ‘Ali Montazeri*, 55 MIDDLE E.J. 9, 14 (2001) (reading in part, “the affair (*amr*) is conducted on the basis of consultation” (citing THE QUR’AN 42: 36–38 (M.A.S. Abdel Haleem trans., 2010 (“God will give to those who . . . conduct their affairs by mutual consultation.”)))).

25. BASIC LAW OF GOVERNANCE [CONSTITUTION] Mar. 1, 1992, art. 48 (Saudi Arabia). (“The courts shall apply to cases before them the provisions of Islamic *Shari’ah*, as indicated by the Qur’an and the *Sunnah*, and whatever laws not in conflict with the Qur’an and the *Sunnah* which the authorities may promulgate.”).

26. Esmacili & Gans, *supra* note 22, at 147.

27. *Id.* The non-constitutional description of the monarchy may be inferred from the language of Article 1, declaring that the constitution is “the Book of God.” BASIC LAW OF GOVERNANCE [CONSTITUTION] Mar. 1, 1992, art. 1 (Saudi Arabia); see also Al-Fahad, *supra* note 21, at 385 (inferring from the fact that many provisions of the Basic Law of Governance, for instance, those limiting the power of the Executive, are derived from “traditional norms and Islamic precepts, which are external to the Basic Law”).

28. See *The World Fact Book: Saudi Arabia*, CENT. INTELLIGENCE AGENCY, <https://www.cia.gov/library/publications/the-world-factbook/geos/sa.html> (last visited Dec. 30, 2014) (click “Government” heading).

29. *Saudi Arabia Government*, SAUDI NETWORK, <http://www.the-saudi.net/saudi-arabia/government.htm> (last visited Dec. 30, 2014).

30. Esmacili & Gans, *supra* note 22, at 147 (noting that areas not generally covered by Sharia law include, *inter alia*, corporate and broadcasting law); see also FED. RESEARCH DIV., LIBRARY OF CONG., SAUDI ARABIA: A COUNTRY STUDY 199 (Helen Chapin Metz ed., 5th ed. 1993).

armed forces; and possesses “[u]ltimate authority in virtually every aspect of government.”³¹

The legislative branch of government is occupied by the Majlis al-Shura (“Shura Council”).³² However, to describe the Shura Council as merely legislative is somewhat misleading, as its function is more accurately described as “deliberative,” which encompasses a number of additional activities.³³ In fact, despite being a member of the Executive Branch, the Council of Ministers might more aptly be described as a purely legislative body because it is its duty to exercise regulatory authority and with the consensus of a majority of the Council, to submit administrative decrees to the King for ratification and subsequent publication in the Saudi Official Gazette.³⁴

Forming the foundation for the judicial branch of government in Saudi Arabia are three varieties of Sharia courts: the courts of first instance; the courts of appeal; and the Supreme Judicial Council.³⁵ Within this system, Saudi judges are primarily trained in matters of Islamic law and are not required to possess expertise in “technical or commercial” areas of the law.³⁶ This further demonstrates the far-reaching extent to which Islamic law governs in Saudi Arabia.

Finally, there are three important differences between Saudi and Western court systems. First, while the Basic Law of Governance declares the judicial branch to be “independent,” the extent to which this is actually the case is questionable as a result of the King’s extensive powers over all the branches of government.³⁷ Second, the Saudi court system possesses no formalized system of procedural rules or enforcement mechanisms, including a complete absence of codified law governing pretrial discovery, pleadings, judgment collection, and other matters that are fundamental to the Western

31. FED. RESEARCH DIV., *supra* note 30, at 194–95; *Saudi Arabia Government*, *supra* note 29.

32. *The World Fact Book: Saudi Arabia*, *supra* note 28.

33. R. Hrair Dekmejian, *Saudi Arabia’s Consultative Council*, 52 MIDDLE E.J. 204, 205 (1998) (describing deliberative bodies as encompassing “consultative, legislative, mediational, cooptative, representational, symbolic, and honorific” functions).

34. See David J. Karl, Note, *Islamic Law in Saudi Arabia: What Foreign Attorneys Should Know*, 25 GEO. WASH. J. INT’L L. & ECON. 131, 142–43 (1991) (discussing the King’s power to issue royal decrees (i.e., laws), particularly with respect to contemporary legal problems, and stating that many of these decrees may “originate in the Saudi Arabian Council of Ministers”). The Official Gazette is a publication released by the Saudi government that contains the laws of the country, as required by the Basic Law of Governance. BASIC LAW OF GOVERNANCE [CONSTITUTION] Mar. 1, 1992, art. 71 (Saudi Arabia)..

35. Karl, *supra* note 34, at 144.

36. *Id.* at 144–45.

37. BASIC LAW OF GOVERNANCE [CONSTITUTION] Mar. 1, 1992, art. 46 (Saudi Arabia). (“The Judiciary shall be an independent authority. There shall be no power over judges in their judicial function other than the power of the Islamic *Shari’ah*.”). Furthermore, judges are appointed and relieved by Royal Decree following recommendation by the Supreme Judicial Council. *Id.* art. 52; Al-Fahad, *supra* note 21, at 385.

judicial system.³⁸ This presents a number of obstacles, not only to Saudi litigants, but also to foreigners attempting to navigate the Saudi legal system.³⁹ And third, because Saudi courts are bound neither by prior decisions nor by the decisions of higher courts, “there is no regular system of reporting court decisions”—and even if one existed, it would be of little help to litigants.⁴⁰

C. DOMESTIC ABUSE IN SAUDI ARABIA

Although the issue (or question) of whether Sharia law itself condones or condemns the commission of domestic violence against wives, children, and domestic workers is one that has been the subject of some debate in academic literature,⁴¹ it is undisputed that domestic abuse occurs regularly in Saudi Arabia—although no reliable statistics concerning precise frequency exist—and, until recently, the country’s codified law has failed to address it.⁴² Though most cases of domestic abuse are not widely publicized—or even reported, given the possibility of losing one’s children in divorce proceedings, not wanting to embarrass or further anger the abuser, or feeling that reporting the abuse is too drastic a response—a few cases in recent years have come within view of the public eye. One such case received a uniquely high level of attention—that of Rania al-Baz.⁴³

1. The Case of Rania al-Baz

In 2004, Rania al-Baz, a newscaster in Saudi Arabia, was the victim of such severe physical abuse at the hands of her husband, Muhammad Bakar Yunus

38. Karl, *supra* note 34, at 149–51.

39. *See id.*

40. *Id.* at 149–50.

41. *See, e.g.*, ANTOINETTE VLEIGER, DOMESTIC WORKERS IN SAUDI ARABIA AND THE EMIRATES: A SOCIO-LEGAL STUDY ON CONFLICTS 94–97 (2012); Manuela Marín, *Disciplining Wives: A Historical Reading of Qur’an 4:34*, 97 *STUDIA ISLAMICA* 5, 5–40 (2003), *reprinted in* 2 *ISLAM AND HUMAN RIGHTS: CONTENTIOUS RIGHTS AND CASE STUDIES* 91, 91–126 (Abdullah Saeed ed., 2012); Lily Zakiyah Munir, *Domestic Violence in Indonesia: A Case Study of Muslims*, 2 *MUSLIM WORLD J. HUM. RTS.* 1, 1–37 (2005), *reprinted in* *ISLAM AND HUMAN RIGHTS: ADVOCACY FOR SOCIAL CHANGE IN LOCAL CONTEXTS* 85, 85–129 (Mashood A. Baderin et al. eds., 2006).

42. *See* HUMAN RIGHTS WATCH, LOOSER REIN, UNCERTAIN GAIN: A HUMAN RIGHTS ASSESSMENT OF FIVE YEARS OF KING ABDULLAH’S REFORMS IN SAUDI ARABIA 21–23 (2010), *available at* <http://www.hrw.org/sites/default/files/reports/saudiog1owebwcover.pdf>; *Saudi Arabia: New Law to Criminalize Domestic Abuse*, *supra* note 1. In fact, the U.S. Department of State reported that between 16% and 50% of married women in Saudi Arabia have been the victims of spousal domestic violence. BUREAU OF DEMOCRACY, HUMAN RIGHTS & LABOR, U.S. DEP’T OF STATE, SAUDI ARABIA 2012 HUMAN RIGHTS REPORT 29 (2012), *available at* <http://www.state.gov/documents/organization/204593.pdf>. The estimate’s wide range is due, in part, to the broad category of activity included in the definition of domestic violence, as well as to researchers’ belief that many cases of domestic violence go unreported. *Id.*

43. *Beaten Saudi Woman Speaks Out*, BBC NEWS (Apr. 30, 2004, 11:37 AM), http://news.bbc.co.uk/2/hi/middle_east/3667349.stm.

Al-Fallatta, that she was nearly killed.⁴⁴ As a result of the attack, Rania “suffer[ed] 13 facial fractures,” and medical personnel gave her “a 70 percent chance of complete recovery” when she arrived at the hospital.⁴⁵ The fact that Rania’s plight received any publicity at all is due, in part, to the severity of her case.⁴⁶ Had Rania’s beating been less severe, not requiring hospitalization, her case may well have gone unreported, and the pattern of abuse would have been allowed to continue.⁴⁷ Fifteen days after the attack, for reasons unknown, Al-Fallatta turned himself over to Saudi authorities.⁴⁸ His prosecution in the Saudi courts led to conviction on a charge of “severe battery”—reduced from attempted murder on the basis of undisclosed “mitigating factors”—and a sentence of six months in jail and 300 lashes.⁴⁹

Another important aspect of the case lies in the divorce proceedings that followed. Despite a number of prior instances of violence, Rania was, until the attack that nearly took her life, reluctant to ask for a divorce out of fear that she might lose custody of her children.⁵⁰ And when Rania finally did choose to do so, the presiding judge’s failure to appear in court stalled the divorce proceeding by four months.⁵¹ Unfortunately, such delays are not an unusual circumstance in Saudi divorce proceedings, with the adjudication of some cases being postponed for up to five years as a result.⁵²

2. The Guardianship System

As a final note, it is important to consider the Guardianship System that Saudi Arabia employs because of its immense impact on women’s rights and the prevalence of domestic abuse. This policy requires that “every Saudi woman must have a male guardian, normally a father or husband, who is

44. *Id.*; Maha Akeel, *Rania’s Husband Gets Six Months’ Jail, 300 Lashes*, ARAB NEWS (May 31, 2004, 3:00 AM), <http://www.arabnews.com/node/250391>.

45. Akeel, *supra* note 44.

46. *See Breaking the Silence*, GUARDIAN (Oct. 5, 2005, 2:07 AM), <http://www.theguardian.com/media/2005/oct/05/broadcasting.saudi-arabia>. During Rania’s stay at the hospital, “her father took photographs of her grotesquely disfigured face,” which she later allowed him to publish, thus bringing her case to the attention of the public. *Id.* Of course, the severity of Rania’s beatings were not the only reason that her case became so widely publicized—part of it was certainly a result of her status as a widely popular newscaster. *See id.* (describing Rania’s widespread popularity).

47. *See supra* notes 41–43, 46 and accompanying text.

48. Akeel, *supra* note 44.

49. *Id.*

50. *Breaking the Silence*, *supra* note 46.

51. Maha Akeel, *Nothing Short of a Divorce, Insists Rania Al-Baz*, ARAB NEWS (Oct. 27, 2004, 3:00 AM), <http://www.arabnews.com/node/257160> (“The lawyers checked with the clerks again and were told that they have no idea when the judge would arrive. Someone said that the day before, he only came in for an hour. . . . The judge’s absence is apparently a normal thing in Saudi courts.”).

52. *Id.*

tasked with making a range of critical decisions on her behalf.”⁵³ This policy extends so far that “[a]dult women generally must obtain permission from a guardian to work, travel, study, or marry. Saudi women are similarly denied the right to make even the most trivial decisions on behalf of their children.”⁵⁴ The impact of guardianship is so great that Human Rights Watch describes it as “the most significant impediment to the realization of women’s rights in the [K]ingdom.”⁵⁵

Although the Guardianship System is not codified in Saudi law, the government, police, and judiciary have ensured that it approaches universal application throughout the Kingdom, justifying its imposition by reliance on a strict interpretation of a single Quranic verse.⁵⁶ Given its prevalence, it is not difficult to see how this policy impedes the ability of Saudi women to report instances of domestic violence in their homes.⁵⁷ A more extensive analysis of this particular effect appears in Part III of this Note.⁵⁸

D. SOCIAL CHANGE UNDER KING ABDULLAH’S REIGN PROVIDES WOMEN GREATER AND MORE EXPANDED RIGHTS

Soon after taking the throne in 2005, King Abdullah began to implement his reform agenda, making changes that have impacted Saudi society and “loosen[ing] the reins stifling [it].”⁵⁹ With respect to human rights, for example, these changes have positively affected areas including “freedom of expression, judicial fairness, and religious tolerance.”⁶⁰ Additionally, many of these changes, while incremental, benefit a specific subset of Saudi society: women.

First, women have seen the government promoting their rights, if to a limited and somewhat ineffective extent, in the workplace.⁶¹ For instance,

53. HUMAN RIGHTS WATCH, PERPETUAL MINORS: HUMAN RIGHTS ABUSES STEMMING FROM MALE GUARDIANSHIP AND SEX SEGREGATION IN SAUDI ARABIA 2 (2008), available at http://www.hrw.org/sites/default/files/reports/saudiarabiao408_1.pdf.

54. *Id.*

55. *Id.*

56. *Id.* at 10 (“Sura 4 verse 34 of the Quran states, ‘Men are the protectors and maintainers of women, because God has given the one more [strength] than the other, and because they support them from their means.’” (alteration in original)).

57. HUMAN RIGHTS WATCH, *supra* note 42, at 17 (“One Saudi woman in June 2010 told Human Rights Watch that her brothers, who are her guardians, beat her and then married her off against her will three times to men for money, who also beat her. Another Saudi woman, whose brother is her guardian, told Human Rights Watch in August 2009 that her brother had raped her when she was a child, and later twice married her off to men against her will. She was now divorced, and lived with her infant daughter from the second marriage in her brother’s house. He beat her, but she could not live elsewhere without his consent as her guardian.” (citations omitted)).

58. *See infra* Part III.D.

59. HUMAN RIGHTS WATCH, *supra* note 42, at 1.

60. *Id.*

61. HUMAN RIGHTS WATCH, *supra* note 53, at 17–19.

instead of explicitly requiring sex segregation in the workplace, which was a standard practice prior to King Abdullah's reign, Article 4 of the Saudi Labor Law—amended by Royal Decree on September 27, 2005⁶²—instead requires “the more vague adhere[nce] to the rulings of the Islamic Shari'a.”⁶³ Though this change is hardly monumental on its own, when coupled with other social and political actions in recent years,⁶⁴ it suggests a progressive mindset in the present government that one might hope would have an impact on the attitudes held more broadly by Saudi society.⁶⁵

Second, another important change is King Abdullah's treatment of the Saudi religious police—an organization charged with the “imposition . . . of ‘moral rules’ on society.”⁶⁶ In the past, the religious police tended to focus on enforcing rules regarding women's clothing and the propriety of their intermingling with men. Responding to the Saudi public's widespread criticisms of this and other practices, the government in 2006 and 2007 took away this institution's power to make arrests in the absence of “regular” police, as well as its power to detain arrestees at its own police stations—requiring instead that such individuals “be handed over to the regular police.”⁶⁷ Such deprivations of power represent important, if indirect, steps forward for women's rights.

Finally, while the Guardianship System is currently still in place in Saudi Arabia, the Saudi government declared in 2009 that it would put an end to it.⁶⁸ The fulfillment of such a promise, were it ever to become a reality, would represent yet another important step forward for women in Saudi Arabia. One should keep in mind, however, that changes such as this and others previously discussed are not necessarily permanent: given the King's extensive powers,

62. Royal Decree No. M/51 (Labor Law), 27 Sept. 2005 (Saudi Arabia), *available at* http://www.sagvia.gov.sa/Documents/Laws/labor_law_en.pdf.

63. HUMAN RIGHTS WATCH, *supra* note 42, at 18 (alteration in original) (citation omitted) (internal quotation marks omitted); HUMAN RIGHTS WATCH, “AS IF I AM NOT HUMAN”: ABUSES AGAINST ASIAN DOMESTIC WORKERS IN SAUDI ARABIA 2 (2008), *available at* http://www.hrw.org/sites/default/files/reports/saudiArabia0708_1.pdf.

64. For example, allowing women to rent hotel rooms independently during travel and investing billions of dollars in creating “plans for new, specialized courts, more independent judges, increased funding and expertise, and increased reliance on statutes and the legal profession and less reliance on interpretation of religious precepts.” HUMAN RIGHTS WATCH, *supra* note 42, at 2.

65. *See id.* at 1 (stating that “the limited reform that has taken place suggests the elite is still floating trial balloons, undecided about the type of government and society it wants to steer towards”). While this limited reform has by no means achieved all those ends which one might hope for (hence, limited), the very fact that the Saudi government is perceived as “undecided” with respect to the values it wishes to promote, as opposed to being strongly in favor of maintaining a strictly religious regime, suggests that the minds of those in government are at least somewhat open to change. *See id.*

66. *Id.* at 20.

67. *Id.*

68. *Id.* at 16.

all these changes could be undone if King Abdullah's "enthusiasm for reform [were to] wane, or [were his] successors [to] tread more conservative paths."⁶⁹

E. *THE 2013 ANTI-DOMESTIC ABUSE ADVERTISEMENT CAMPAIGN*

Change does not always take a top-down course, however. In April 2013, the King Khalid Foundation—a Saudi Arabian philanthropic organization focused on social development in the Kingdom and directed by Her Royal Highness, Princess Banderi A.R. Al Faisal—started a campaign against domestic violence entitled "No More Abuse."⁷⁰ The campaign featured a powerful image, which the organization published in Saudi Arabian newspapers and on Internet-based social media platforms, such as Facebook and Twitter.⁷¹ The image depicts a woman wearing a traditional burqa concealing everything but her eyes, one of which is blackened and bruised.⁷² Beneath the picture is an Arabic phrase that, in English, reads, "Some things can't be covered."⁷³ In addition, the campaign aired an equally moving television commercial, which remains available online, presenting a middle-aged, Saudi male who arrives home and immediately proceeds to scream at and beat two crash-test dummies, later revealed to be presumably his wife and son.⁷⁴

Despite the Foundation's fears that the message might not effectively reach the public, the campaign was a success, garnering attention both in Saudi Arabia and abroad.⁷⁵ Prior to the campaign, domestic violence was simply not a topic that received much attention in Saudi Arabia, even though it may have been an "elephant in the room."⁷⁶ As a result, these images both shocked readers, who responded on social media—some going so far as to

69. *Id.* at 1.

70. Carrington, *supra* note 3; *No More Abuse*, KING KHALID FOUND., <http://www.kkfeng.org/no-more-abuse.php> (last visited Jan. 24, 2014).

71. Carrington, *supra* note 3.

72. *Id.*

73. *Id.*; Caitlin Dewey, *Saudi Arabia Launches Powerful Ad Campaign Against Domestic Violence*, WASH. POST (May 1, 2013), <http://www.washingtonpost.com/blogs/worldviews/wp/2013/05/01/saudi-arabia-launches-powerful-ad-campaign-against-domestic-violence/>; *No More Abuse*, *supra* note 70.

74. *Saudi Arabia'[s] First AntiDomestic Abuse Advert*, YOUTUBE (May 7, 2013), <http://www.youtube.com/watch?v=S-uKvRO7zpc>.

75. Carrington, *supra* note 3.

76. *Id.*

start their own, independent anti-abuse campaign, “provocatively entitled ‘Hit Her’”⁷⁷—and contributed to the passage of the Regulation.⁷⁸

III. A DETAILED EXAMINATION OF THE REGULATION ON PROTECTION FROM ABUSE

Only months after the start of the 2013 anti-domestic abuse advertisement campaign, the Saudi Arabian Council of Ministers passed the Regulation on Protection from Abuse, which, for the first time criminalized domestic violence and provided relatively harsh penalties for abusers.⁷⁹ The following discussion addresses the passage of the Regulation, and includes an examination of its more important articles. After providing an introduction to the Regulation, this Part will also proceed to address a few of its textual strengths and weaknesses.

A. PASSAGE OF THE REGULATION ON PROTECTION FROM ABUSE

In addition to its campaign against domestic violence, the King Khalid Foundation composed the first draft of the Regulation on Protection from Abuse and submitted it to the Saudi Council of Ministers, hoping that they would enact it.⁸⁰ In response to both the campaign and the criticism Saudi Arabia has received in international circles, the Council of Ministers did just that, passing the Regulation at a cabinet meeting held on August 26, 2013.⁸¹ Prior to its passage, when cases of domestic abuse made it into the court system, Saudi judges had to rely on “a general penal code based on Islamic Sharia law” in determining whether the abuser deserved punishment.⁸² Because judicial interpretations of the code typically found “mild forms of

77. Afifa Jabeen Quraishi, *New Anti-Domestic Abuse Campaign Asks: Dare to ‘Hit Her?’*, ARAB NEWS (June 3, 2013, 7:02 PM), <http://www.arabnews.com/news/453753> (“The campaign, provocatively entitled ‘Hit Her,’ is organized by a group of young Saudis and is sponsored by an audio production studio and agency ‘Libra Productions,’ based in Jeddah. Most of the youth featured in the campaign are popular Saudi tweeps and YouTube hosts, who express their views on domestic violence in their own words. Some of these include: ‘I’d kill myself if I ever thought of hitting you,’ ‘Just because you are male doesn’t necessarily mean you are a man,’ and ‘Domestic violence? Aint nobody got time for that!’ The photos have been posted on their Twitter accounts using the hashtag #اضربها”); see also Carrington, *supra* note 3.

78. See *Saudi Arabia: New Law to Criminalize Domestic Abuse*, *supra* note 1 (noting that the King Khalid Foundation was responsible for the domestic abuse campaign, which aired earlier in the year, and that it also composed “the initial version of the” Regulation, which was passed later in the year).

79. *Id.*

80. See Carrington, *supra* note 3.

81. Mahmoud Habboush, *Saudi Arabia Passes Kingdom’s First Domestic Abuse Law*, REUTERS (Aug. 29, 2013, 11:09 AM), <http://www.reuters.com/article/2013/08/29/us-saudi-women-violence-idUSBRE97SoQ620130829>; see also Carrington, *supra* note 3 (discussing the mounting pressures to enact protective measures).

82. *Saudi Arabia Passes Law Criminalizing Domestic Abuse*, ALJAZEERA AM. (Aug. 30, 2013, 5:32 AM), <http://america.aljazeera.com/articles/2013/8/30/saudi-arabia-passeslawcriminalizingdomesticabuse.html>.

violence against ‘disobedient’ wives”⁸³ permissible, many abusers received acquittals. It was in response to this unpunished abuse that the King Khalid Foundation launched its anti-domestic abuse advertisement campaign previously discussed, which became one of the driving forces behind the Saudi Council of Ministers’ decision to pass the Regulation.⁸⁴

While increasing rates of violence directed at women and children undoubtedly led to the Regulation’s passage, violence directed at domestic workers—mostly “women employed inside the home as nannies, housekeepers, and caretakers for the elderly and sick”⁸⁵—provided an even greater impetus. For instance, in September 2010, the story of Lahadapurage Daneris Ariyawathie—a Sri Lankan domestic worker in Saudi Arabia who had “nails and metal objects . . . hammered into her body” by her employers—went public and elicited widespread criticism of the country’s lack of a domestic abuse law.⁸⁶ This criticism helped to push the Council to implement a law that would protect this and other vulnerable populations.⁸⁷ Violence such as that committed against Ms. Ariyawathie was by no means isolated, however.⁸⁸ Christoph Wilcke, a member of Human Rights Watch, described her incident as “one of countless cases of abuse and exploitation of migrant domestic workers.”⁸⁹

83. *Id.*

84. *See id.* (noting the temporal relationship between the campaign’s launch and the subsequent passage of the Regulation merely “several months” later).

85. HUMAN RIGHTS WATCH, “AS IF I AM NOT HUMAN”: ABUSES AGAINST ASIAN DOMESTIC WORKERS IN SAUDI ARABIA, *supra* note 63, at 11.

86. *Saudi Arabia: Domestic Worker Brutalized*, HUM. RTS. WATCH (Sept. 2, 2010), <http://www.hrw.org/news/2010/09/02/saudi-arabia-domestic-worker-brutalized>.

87. *See* Habboush, *supra* note 81 (discussing the large number of cases of domestic abuse against domestic workers that have been given negative international attention as of late and noting that the law, once implemented, will be aimed, in part, at protecting domestic workers from that abuse).

88. *See, e.g.,* Romina Halabi, *Contract Enslavement of Female Migrant Domestic Workers in Saudi Arabia and the United Arab Emirates*, HUM. RTS. & HUM. WELFARE 43, 44 (2008), available at <http://www.du.edu/korbel/hrhw/researchdigest/slavery/fmd.pdf> (“Due to the individualized working environment of household labor, female domestic servants are the group most vulnerable to exploitation in Saudi Arabia and the UAE.”); *Fresh Claims of Abuse of Indonesian Domestic Workers in Saudi Arabia*, AMNESTY INT’L (Nov. 19, 2010), <http://www.amnesty.org/en/news-and-updates/fresh-claims-abuse-indonesian-domestic-workers-saudi-arabia-2010-11-19> (reporting Amnesty International’s response “following the reported discovery of the mutilated body of an Indonesian woman found in a skip in the town of Abha”); *Indonesia Condemns Saudi Maid Abuse Acquittal*, BBC (Apr. 4, 2011, 3:34 PM), <http://www.bbc.co.uk/news/world-asia-pacific-12962400> (“Tens of thousands of Indonesian women work in Saudi homes, and many complain of abuse by their employers.”); *Saudi Arabia: Domestic Workers Face Harsh Abuses*, HUM. RTS. WATCH (July 9, 2008), <http://www.hrw.org/news/2008/07/07/saudi-arabia-domestic-workers-face-harsh-abuses> (arguing for reforms to protect domestic workers in order to effectively redress widespread domestic abuse by employers, supported by accounts given by three domestic workers).

89. *Saudi Arabia: Domestic Worker Brutalized*, *supra* note 86.

B. KEY ARTICLES IN THE REGULATION

One of the most important articles within the Regulation is Article 1, which, *inter alia*, defines domestic abuse and those with the authority to enforce the law for the purposes of the statute.⁹⁰ Domestic abuse, according to the Regulation, “includ[es] physical, psychological [and] sexual abuse,” as well as “abuse threats.”⁹¹ In addition to affirmative acts of abuse, the Regulation also aims to capture “refrain or default in fulfilling . . . duties and commitments to provide the essential basic needs for any other member [of] his family or those legally under his guardianship.”⁹² This definition is quite broad, bringing many possible cases of domestic abuse within its scope. On the other hand, although the highly important “competent authority”—the body vested with the power to enforce the Regulation⁹³—also appears in Article 1, its definition is essentially tautological. As the Regulation states, competent authority refers to “any competent authority” for the purposes “of applying the rules of this regulation.”⁹⁴ Not knowing precisely which authority this refers to is highly worrisome, given that the competent authority is responsible for receiving and handling all reports of domestic abuse, ensuring the provision of necessary medical care, reporting cases that involve criminal activity to the police, and a host of other essential duties.⁹⁵

Another notable portion of the Regulation is Article 2, which clarifies the aims of the legislation as a whole to: (1) “[p]rovid[e] protection from all kinds of abuse”; (2) get “help and treatment” for victims; (3) punish abusers; (4) provide education to the general public with regards to domestic abuse; (5) “[h]andl[e] behavioral phenomena that arise in society”; and (6) develop mechanisms for handling abuse.⁹⁶ Article 2, as a result, does not limit the goal

90. Royal Decree No. M/52 (Regulation on Protection from Abuse), 21 Aug. 2013, art. 1 (Saudi Arabia) [hereinafter Regulation on Protection from Abuse].

91. *Id.*

92. *Id.*

93. *Id.* The “competent authority” is given a great many responsibilities throughout the Regulation, including the duty to receive reports of domestic abuse (Article 3); to “handle all abuse reports” and to “determine all necessary actions” (Article 4); to ensure that “necessary medical care” is provided (Article 7(1)); to “[p]rovide family and social direction and guidance for all those involved” (Article 7(3)); to “[w]ork on submitting the case to psychological therapy or any other rehabilitation program” (Article 7(5)); to prioritize cases “according to . . . risk level” (Article 8); to refer cases requiring “immediate intervention” to other competent authorities to ensure that no greater harm is brought on the victim (Article 9); to report cases that may constitute a crime to the police (Article 11); to “cooperat[e] with relative authorities” to take such “protective measures” as providing education on abuse (Article 15(1), (4), (5), (6), and (7)) and providing statistical data and other research on abuse (Article 15(3) and (8)); and to issue “relative regulations” (Article 16). *Id.* art. 3; 4; 7(1), (3), (5); 9; 11; 15(1), (3)–(8); 16.

94. *Id.* art. 1.

95. *See id.* art. 2, 13, 15.

96. *Id.* art. 2. Article 2(2) is particularly important, as it suggests that work should be done to “provid[e] shelter and social, psychological and medical care” for victims of domestic abuse. *Id.* art. 2(2). This will be discussed more in the analysis portion of the Note, but for now it will

of the Regulation to merely providing criminal penalties for committing abuse, which the Council of Ministers could have done, but instead states a broader, more encompassing purpose.

Similarly, Articles 5 and 6 protect those who report incidents of abuse.⁹⁷ Article 5 accomplishes this by requiring that the identity of those who report domestic abuse be kept anonymous.⁹⁸ Article 6 does its part by providing reporters with immunity from prosecution should the report prove inaccurate.⁹⁹

Finally, another article of major importance is Article 13, which sets forth the punishment for abuse. Article 13 requires that anyone found to have committed an act of abuse against another “shall . . . be sentenced to jail for a period not less than one month and not more than one year and/or a fine not less than five thousand Saudi riyals and not more than fifty thousand Saudi riyals.”¹⁰⁰ This penalty is doubled for repeat offenders.¹⁰¹ When compared to the sentence that Rania Al-Baz’s husband received for nearly killing her—six months in jail and corporeal punishment¹⁰²—as well as the fact that, per the language of Article 1, a Saudi individual could presumably be found to have committed abuse for significantly less violent or severe actions,¹⁰³ Article 13 carries a stronger power of imposing penalty on those who abuse.

C. THE REGULATION’S STRENGTHS

Although the Regulation is by no means a perfectly formed piece of legislation, it does possess a number of strengths. Many of these strengths have already been addressed. First, the fact that Articles 5 and 6 provide protection for those who report instances of abuse is a critical strength. Many women in Saudi Arabia do not report abuse occurring in their homes due to a fear of what the community may say about them;¹⁰⁴ as a result, Article 5, in particular, may go a long way towards giving the Regulation practical effect. Second, Article 13 mandates a substantial penalty, as opposed to a merely formal

suffice to say that providing shelter and care for victims of abuse is no less than essential to giving the Regulation meaningful effect.

97. *Id.* art. 5–6.

98. *Id.* art. 5 (“It is prohibited to reveal the identity of the reporter of any abuse case unless upon his prior approval, or as defined by the relative regulations. . . . [A]ll those who become aware of such information, by virtue of their positions, shall be committed to keep this information secret.”).

99. *Id.* art. 6 (“Anyone, who reports a case with good faith, shall be relieved of responsibility in case such case is proven not to be an abuse case.”).

100. *Id.* art. 13. Five thousand Saudi riyals are roughly equivalent to USD \$1,333, and 50,000 Saudi riyals are valued at around USD \$13,330.

101. *Id.*

102. Akeel, *supra* note 44.

103. Regulation on Protection from Abuse, *supra* note 90, art. 1.

104. Habboush, *supra* note 81.

disincentive, for those who commit domestic abuse.¹⁰⁵ Third, the fact that Article 1 states that the scope of the Regulation extends to acts of both abuse and neglect further contributes to the Regulation's strength.¹⁰⁶

In addition to the foregoing, another important portion of the text is found at the end of Article 13, which addresses punishment for violations, wherein it states "[t]he court shall be entitled to decide any other custodial measures"—a reference to the imprisonment aspect of the punishment.¹⁰⁷ By giving the courts broad authority to shape this aspect of the penalty to fit the circumstances of a particular case, the Regulation not only works to deter abusers, but also to better provide help and protection to the victims.

Finally, while it remains a question whether the Regulation actually achieves a great deal in the way of preventing domestic abuse, one can say, at least, that its existence will help to take this prevalent problem—which Saudi courts previously treated primarily as a private matter—and make it a subject of public discussion and debate.¹⁰⁸ By doing this, one can hope that, over time, attitudes towards domestic violence in the country will have the opportunity to change and domestic abuse may become less of a pervasive problem.

D. THE REGULATION'S WEAKNESSES

Despite its noteworthy strengths, the Regulation is far from perfect and possesses weaknesses that cripple its potential. The first of its flaws, and likely the most important of them, is the tautological definition of the "competent authority" that Article 1 sets forth.¹⁰⁹ As many of those who have read and considered the Regulation have noted, because of this textual ambiguity, it will be difficult "to ensure prompt investigations of abuse allegations or prosecution of those who commit abuses."¹¹⁰ Moreover, although the Ministry

105. Regulation on Protection from Abuse, *supra* note 90, art. 13; see also Nesrine Malik, *Saudi Arabia's Domestic Violence Law Is a First Step to Changing Attitudes*, GUARDIAN (Aug. 30, 2013, 8:15 AM), <http://www.theguardian.com/commentisfree/2013/aug/30/saudi-arabia-ban-domestic-violence> (describing the fines imposed by the Regulation as "hefty"); *Saudi Arabia: New Law to Criminalize Domestic Abuse*, *supra* note 1 (noting that the Regulation allows for "harsher" punishment where Sharia law so requires, as well as that "[j]udges can double the specified penalties for repeat offenders").

106. Regulation on Protection from Abuse, *supra* note 90, art. 1; *Saudi Arabia: New Law to Criminalize Domestic Abuse*, *supra* note 1 (mentioning that the Regulation's definition of abuse extends to both affirmative actions and neglect).

107. Regulation on Protection from Abuse, *supra* note 90, art. 13.

108. See, e.g., Malik, *supra* note 105; Heather Saul, *Saudi Arabia Cabinet Passes Ban on Domestic Violence*, INDEPENDENT (Aug. 29, 2013), <http://www.independent.co.uk/news/world/middle-east/saudi-arabia-cabinet-passes-ban-on-domestic-violence-8789358.html>; *Saudi Arabia: A New Law to Curb Domestic Abuse*, N.Y. TIMES (Aug. 29, 2013), <http://www.nytimes.com/2013/08/30/world/middleeast/saudi-arabia-a-new-law-to-curb-domestic-abuse.html>.

109. Regulation on Protection from Abuse, *supra* note 90, art. 1 (defining the competent authority as "any competent authority" and failing to specify a particular agency).

110. *Saudi Arabia: New Law to Criminalize Domestic Abuse*, *supra* note 1; see also *Saudi Arabia Passes Law Criminalizing Domestic Abuse*, *supra* note 82.

of Social Affairs has claimed that “enforcement mechanisms [will] be published by the end of this year,” only time will tell whether or not the Ministry will fulfill that promise.¹¹¹

A second weakness of the Regulation, as it is presently drafted, is that it fails to address the Guardianship System. Given that this system severely restricts the freedom of movement for the women of Saudi Arabia, the fact that the Regulation does not address it might mean that a woman’s ability to, for example, go to a police station to report a case of domestic abuse could be similarly constrained. Some individuals, however, disagree.¹¹² Rights activists like Waleed Abu al-Khair argue that under the new Regulation, women will not be required to bring a male relative with them to file complaints.¹¹³ Human Rights Watch, in contrast, has suggested that this is not wholly accurate.¹¹⁴ Particularly given Saudi Arabia’s prohibition of a woman’s right to operate a motor vehicle,¹¹⁵ it is easy to imagine scenarios in which a victim of abuse could not get to a police station to report abuse because she did not have the means to do so.¹¹⁶

Similarly, the Regulation also fails to provide direction with respect to the “who” and “how” of intervention in suspected cases of domestic abuse.¹¹⁷ As a result of the Regulation’s failure to address the process of reporting and intervening domestic abuse, persons who attempt to intervene in circumstances where abuse is only suspected, as opposed to confirmed, may face criminal prosecution.¹¹⁸ Such fears are not merely speculative. On September 24, 2013, a Saudi court of appeals upheld the conviction of two Saudi women who attempted to help a third woman whom they had reason to believe was suffering neglect.¹¹⁹ Of course, one can imagine an argument

111. *Saudi Arabia Passes Law Criminalizing Domestic Abuse*, *supra* note 82.

112. *See Saudi Arabia Outlaws Domestic Violence*, ALJAZEERA (Aug. 30, 2013, 1:10 AM), <http://www.aljazeera.com/news/middleeast/2013/08/20138290272119559.html>.

113. *Id.* (“Rights activist Waleed Abu al-Khair said . . . ‘[w]omen were required to bring in a male relative if they showed up at a police station to file a complaint,’ . . . This will not now be necessary.”).

114. *See Saudi Arabia: New Law to Criminalize Domestic Abuse*, *supra* note 1.

115. While there are no written laws in Saudi Arabia which state explicitly that a woman cannot drive, the fact that “authorities have been instructed not to issue licenses to women” effectively eliminates a woman’s opportunity to legally operate a vehicle. VLEGER, *supra* note 41, at 212.

116. *See Saudi Arabia: New Law to Criminalize Domestic Abuse*, *supra* note 1 (“In many cases, dependents would require logistical support or transportation from male relatives or employers, who themselves often are the abusers, in order to report abuses or escape abusive situations.”).

117. *See Regulation on Protection from Abuse*, *supra* note 90, art. 3 (providing that “[a]ll those who witness abuse cases are to report it immediately,” but saying nothing about what should be done where one suspects that abuse has been committed, but has not witnessed an act of abuse).

118. Adam Coogle, *Dispatches: Is Saudi Arabia Really Serious About Ending Domestic Abuse?*, HUM. RTS. WATCH (Sept. 26, 2013), <http://www.hrw.org/news/2013/09/26/dispatches-saudi-arabia-really-serious-about-ending-domestic-abuse>.

119. *Id.*; *Saudi Arabia: Activists Convicted for Answering Call for Help*, HUM. RTS. WATCH (June 18, 2013), <http://www.hrw.org/news/2013/06/17/saudi-arabia-activists-convicted-answering-call-help>.

that such a conviction is meant to deter members of the public from inserting themselves in dangerous situations rather than handing their information over to the police. This argument is flawed for two reasons. First, it seems odd that one law in the country would criminalize domestic abuse and profess to support the abolishment of domestic violence while another law in that same country criminalizes those who try to help victims of such violence.¹²⁰ And second, this does not resemble the reasoning that authorities have relied on in the past in refusing to intervene in cases like these:¹²¹ that “a man’s ‘sovereignty’ over his female legal dependents” should not be interfered with.¹²²

Finally, the Regulation also fails to clearly identify what behavior rises to the level of abuse.¹²³ Although its definition is well crafted insofar as it extends to a wide variety of *kinds* of abuse (e.g., bodily, psychological, and sexual abuse, as well as neglect), it nevertheless fails to establish a minimum threshold that one must cross to come within the scope of the broad concept of “abuse.” For instance, since the Regulation does not state that marital rape falls under the category of sexual abuse, it remains an open question whether such behavior is criminal under the Regulation.¹²⁴ As a result of this statutory vagueness, judges who disagree with the Regulation may simply hold that in a given case, the defendant’s actions did not rise to the level of criminal abuse. Additionally, victims of abuse will be unable to reliably predict whether reporting their abuser is worth the risk that, should the court choose not to convict the abuser, the violence they face may intensify.

IV. THE REGULATION’S IMPACT: WHERE IT STANDS AND WHERE IT CAN BE TAKEN

This Part will address two interrelated subjects. First, Part IV.A will consider the likelihood that the Regulation, as it is presently drafted, will have an impact on Saudi society. Part IV.B will then propose the actions Saudi authorities and activists should take in order to increase the Regulation’s impact on society and to support the ongoing movement towards gender equality in Saudi Arabia.

A. THE LIKELIHOOD OF SOCIETAL IMPACT

It is highly unlikely that the Regulation, as it is presently written, will have any observable impact on Saudi society. In addition to the textual weaknesses of the legislation, discussed above,¹²⁵ there are three other reasons that the

120. Coogler, *supra* note 118.

121. See, e.g., *id.*; HUMAN RIGHTS WATCH, *supra* note 53, at 22 n.65.

122. Coogler, *supra* note 118.

123. *Saudi Arabia: New Law to Criminalize Domestic Abuse*, *supra* note 1.

124. *Id.*

125. See *supra* Part III.D.

Regulation is unlikely to significantly affect rates of domestic violence in Saudi Arabia.

First, codifying a law does not guarantee that violations thereof will be prosecuted. Even in western countries like the United States, where the rule of law is generally thought to be upheld, it is simply impossible for everyone who commits a crime to be brought to justice. Whether this is the result of inadequate enforcement resources, the cleverness of individual criminals, or some combination of these and other factors, the reality is that not every crime is prosecuted. This concern is amplified in countries like Saudi Arabia where neither the courts nor law enforcement strictly adhere to the rule of law.¹²⁶ In those places, even when criminals *are* haled into court, one cannot accurately predict whether a conviction will result. Human Rights Watch reports that in the absence of a written penal code, Saudi Arabia “relies on judges’ interpretations of the Sharia for determination of which actions constitute crimes and what the attendant punishment should be. The definitions of crimes and nature and severity of punishments may vary from case to case.”¹²⁷

Second, even if one could count on the courts to faithfully apply the law, and even if authorities were to redraft the law so as to address its various weaknesses, the enforcement of a law such as this will often require cooperation on the behalf of citizens—something the law itself cannot ensure. For instance, if a husband abuses his wife, she may choose not to report him because of the repercussions that might flow from that action. She might fear, *inter alia*, losing custody of her children in the event that he seeks a divorce.¹²⁸ Alternatively, where the abuse is infrequent, she may reason that criminal prosecution is too drastic a response.¹²⁹ Further, many abuse victims do not

126. See, e.g., NATHAN J. BROWN, *THE RULE OF LAW IN THE ARAB WORLD: COURTS IN EGYPT AND THE GULF* 4 (1997); JOSEPH A. KÉCHICHIAN, *LEGAL AND POLITICAL REFORMS IN SA’UDI ARABIA* 283–84 (2013); THOMAS W. LIPPMAN, *SAUDI ARABIA ON THE EDGE: THE UNCERTAIN FUTURE OF AN AMERICAN ALLY* 27 (2012) (citing HUMAN RIGHTS WATCH, *PRECARIOUS JUSTICE: ARBITRARY DETENTION AND UNFAIR TRIALS IN THE DEFICIENT CRIMINAL JUSTICE SYSTEM OF SAUDI ARABIA* 3 (2008), available at <http://www.hrw.org/reports/2008/saudijustice0308/saudijustice0308web.pdf>).

127. HUMAN RIGHTS WATCH, *supra* note 126, at 17.

128. Such fear is well-founded, as Islamic law grants physical custody of children to divorced women only if the child has not yet reached puberty (for daughters) or seven years of age (for sons). Eleanor Abdella Doumato, *Saudi Arabia*, in *WOMEN’S RIGHTS IN THE MIDDLE EAST AND NORTH AFRICA: PROGRESS AMID RESISTANCE* 425, 434 (Sanja Kelly & Julia Breslin eds., 2010). Furthermore, as noted above, at least one Saudi woman has admitted to bearing the loss of custody of her children in mind in trying to determine whether to seek a divorce from her husband because of his abuse. See *supra* Part II.C.1 (discussing the case of Rania al-Baz).

129. None of this is to suggest that the onus for reporting abuse or otherwise ensuring the enforcement of the Regulation falls entirely on the victims of abuse. Other members of society have a similar duty, but here, we again find reasons for which the fulfillment of that duty may not occur in every case. Consider a scenario where someone suspects that abuse is going on in a home. Even given that their identity would be protected under the Regulation, they might not wish to bring the embarrassment and hassle of an investigation on someone whose guilt they are unsure of.

report abuse due to a fear of what the community might say about them.¹³⁰ The only way to eliminate such fear, it would seem, is to change societal attitudes towards domestic abuse. Finally, as it is presently written, and in the absence of a sweeping royal decree mandating that all domestic violence be rooted out and stopped, the Regulation will require a widespread changing of attitudes towards domestic abuse among the Saudi population before it has any real effect on rates of domestic violence. Such change, however, is inevitably gradual and will occur only over a great deal of time.

Third, there is lack of public awareness. Despite the high level of visibility that the anti-domestic violence advertisement campaign received,¹³¹ it is not known whether the majority of the public—particularly wives who may be confined primarily to the home and whose access to the media and other sources of information may be controlled by their husbands—even knows that the Regulation was passed. And, even if everyone in Saudi Arabia *does* know of its passage, it requires an even further stretch of the imagination to suppose that they are aware of its specific contents. As a result, many abuse victims who would otherwise report their abusers may fail to do so simply because they are not aware that that is an available option.

To take the hypothetical one step further, imagine that everyone in Saudi Arabia both knows that the Regulation has been passed *and* knows exactly what behavior constitutes abuse within the meaning of its terms. Even if this were the case, and it seems obvious that it is not because the Regulation fails to inform the reader what behavior rises to the level of criminal abuse,¹³² the second concern mentioned above would still be present—victims would remain unsure whether reporting their abuser would be worth the risk of having that person find out that it was the victim who had submitted the report. In short, the likelihood that the present draft of the Regulation—and perhaps even revisions—will substantially impact rates of domestic violence in Saudi Arabia is, sadly, minimal.

B. SUGGESTIONS FOR ENHANCING THE REGULATION'S IMPACT

This Part will address the more uplifting subject of what might be done to improve the present state of things. In short, it proposes two courses of action that Saudi authorities should take: textual modification of the Regulation and the implementation of educational programs to increase awareness surrounding both the Regulation and the concept of domestic violence generally.

130. *Saudi Arabia Outlaws Domestic Violence*, *supra* note 112.

131. Carrington, *supra* note 3.

132. *Saudi Arabia: New Law to Criminalize Domestic Abuse*, *supra* note 1; *see also supra* Part III.D (discussing the Regulation's failure to properly define "abuse").

1. Textual Modification of the Regulation

The first change that should be made with respect to the Regulation's text is at once both the most obvious and, arguably, the most crucial: specification of "the competent authority." The duties given to this unnamed organization are extensive,¹³³ and unless a "real" organization is given the responsibility to undertake those duties, the Regulation has little hope of protecting victims of domestic violence. As one commenter has noted, what organization would take on these numerous responsibilities without being charged with carrying them out?¹³⁴ However, due to Saudi Arabia's system of governance, specifying which organization should be recognized as the competent authority is not a difficult task. Given the broad powers afforded the King under Articles 55 and 70 of the Basic Law of Governance, King Abdullah could unilaterally issue a Royal Decree requiring that an organization already in existence undertake the duties of the competent authority or, in the alternative, that such an organization be formed.¹³⁵

Second, the Regulation should be amended to include some discussion of what behavior rises to the level of criminal abuse, rather than merely providing broad categories of abuse. In shaping such a definition, the King or the Council of Ministers might look, for instance, to the World Health Organization's ("WHO") definition of intimate partner violence.¹³⁶ According to a 2002 report, that organization defines such violence largely in terms of coercion and control.¹³⁷

Third, authorities should introduce an additional provision to the Regulation requiring mandatory counseling for those convicted of committing an act of domestic violence. Judges, working together with counselors, could determine the appropriate duration of counseling on a case-by-case basis. In order to ensure that the pattern of abuse does not

133. See *supra* note 93 and accompanying text (listing all of the duties given to the "competent authority" throughout the Regulation).

134. *Saudi Arabia: New Law to Criminalize Domestic Abuse*, *supra* note 1 (quoting Joe Stork, then-acting Middle East director at Human Rights Watch, as saying that "[w]ithout effective mechanisms to punish domestic abuse, this law is merely ink on paper").

135. BASIC LAW OF GOVERNANCE [CONSTITUTION] Mar. 1, 1992, art. 55 (Saudi Arabia) ("The King shall . . . supervise the implementation of Islamic *Shari'ah*, and the general policies of the State, and the protection and defense of the country."); *id.* art. 70 ("Laws, international treaties and agreements, and concessions shall be issued and amended by Royal Decrees.").

136. WORLD HEALTH ORG., WORLD REPORT ON VIOLENCE AND HEALTH 89 (Etienne G. Krug et al. eds., 2002).

137. *Id.* (defining intimate partner abuse as including "[a]cts of physical aggression—such as slapping, hitting, kicking and beating"; "[p]sychological abuse—such as intimidation, constant belittling and humiliating"; "[f]orced intercourse and other forms of sexual coercion"; and "[v]arious controlling behaviours—such as isolating a person from their family and friends, monitoring their movements, and restricting their access to information or assistance"). Obviously, it is highly unlikely that the King or Council would be inclined to provide criminal penalties for the act of, say, "slapping," particularly if it occurred on only a single occasion. Nevertheless, this definition might provide valuable guidance in determining which acts *should* be considered criminal.

continue (and particularly to help ensure the perpetrator does not commit an act of revenge against the original victim upon being reunited with the abuser), a minimum amount of counseling should be required. In the event that the court determines incarceration of the abuser is necessary, such counseling should begin during the period of imprisonment.¹³⁸

Fourth and finally, authorities should revise the Regulation to specifically address the Guardianship System's potential influence on the Regulation's effective implementation. As discussed above, it is likely that the Guardianship System will continue to prevent many female victims of abuse from reporting their abusers to authorities.¹³⁹ As a result, a declaration should be added to the Regulation providing that no woman or girl shall be considered to have violated or otherwise improperly circumvented the guardianship of her spouse, or any of her other male relatives, by reporting, or attempting to report, to the competent authority an act or acts of abuse that has/have been committed against her.

2. Education and Awareness

Modifying the Regulation's text is not the only thing that can be done to help increase its impact on Saudi society and to speed up the process of changing attitudes towards domestic violence. In addition, given the great success that the 2013 anti-domestic abuse advertisement campaign had,¹⁴⁰ organizations like the King Khalid Foundation should work to put together a second campaign aimed at accomplishing two goals. First, the campaign should inform the public that the Regulation was passed. Second, it should urge that the battle is not yet over and everyone needs to do his or her part in working to stop domestic violence.

Advertisement campaigns, however, are limited in terms of the amount of information with which they can provide the public. Because of this, activist organizations should also work with the government to develop educational programs that would further inform Saudi citizens of exactly what kinds of behavior the Regulation protects against; to whom they can submit reports of domestic abuse; the penalties for violation(s) of the Regulation; where victims of abuse can seek shelter; and, perhaps most importantly, both the causes and

138. Where the court determines that incarceration is necessary, it is likely that the abuse committed will have been particularly violent. In such instances, it would be prudent to take advantage of the period during which the abuser and his victim are already separated in order to begin counseling, particularly if these individuals will be reunited soon after the term of imprisonment is served. Even where the victim seeks shelter and does not wish to come into contact with the abuser again, taking advantage of the period of incarceration to begin counseling would be useful for ensuring that the abuser does not avoid going to therapy.

139. See *supra* Part III.D.

140. See Carrington, *supra* note 3.

effects of domestic violence, emphasizing that such acts are not in any way the victim's fault.¹⁴¹

Implementing these educational programs should be pursued via two different avenues. First, because the Regulation, by its own admission, is aimed at “[e]ducating people and society about the concept of abuse,”¹⁴² efforts should be made to hold the government to this statement by providing publicly advertised, state-sponsored educational programs. This avenue runs two risks, however. First, there is the chance that a state-sponsored program would present information in a biased way. Second, because of the Guardianship System, there is a significant probability that abusive husbands or other male relatives would not permit the woman or women they are abusing to attend these programs.

A second educational avenue, then, should be somewhat more covert. One way of pursuing such covert means might be to set up informal educational programs, to be held in malls. In one article, Isobel Coleman, “a senior fellow for U.S. foreign policy at the Council on Foreign Relations in New York and director of the council’s Women and Foreign Policy Program,”¹⁴³ describes a mall that she visited in Saudi Arabia that had a designated “ladies only” level.¹⁴⁴ Because women can escape the presence of their male guardians at venues such as this, there is ample opportunity for women to talk to one another and to spread information both about domestic abuse and the Regulation.

Certainly, educational programs and textual modifications are not the only things that should be done to combat domestic abuse in places like Saudi Arabia. Indeed, much should be done to provide shelters for victims of abuse, to better document cases of abuse, and to take on other projects aimed at eliminating such destructive behavior. What this Note does mean to suggest, however, is that these two measures are of utmost importance and should be given significant weight in determining what should be done first.

V. CONCLUSION

The Regulation on Protection from Abuse is an important and unprecedented piece of legislation for Saudi Arabia. Despite the fact that it may not have the impact that it is aimed at achieving for many years to come,

141. This last point is crucial because domestic violence has previously been approved of as a way of disciplining “disobedient wives.” *Saudi Arabia Passes Law Criminalizing Domestic Abuse*, *supra* note 82 (internal quotation marks omitted). As a result, many women are afraid to tell anyone that they are being abused because of the judgment they might face from the community. Habboush, *supra* note 81.

142. Regulation on Protection from Abuse, *supra* note 90, art. 2.

143. *Isobel Coleman: Biography*, SOLUTIONS, <http://www.thesolutionsjournal.com/user/10785> (last visited Dec. 30, 2014).

144. Isobel Coleman, *Channeling Khadijah in Saudi Arabia*, 2 SOLUTIONS 42 (2011), available at <http://www.thesolutionsjournal.com/node/903>.

it nevertheless represents open-mindedness on the part of the government and is an important symbolic step towards achieving equality for women in that country. Going forward, the Council of Ministers, the King, and the Majlis al-Shura should work together to revise the present draft of the Regulation to address its apparent weaknesses. Additionally, activist organizations and the government should establish educational programs and advertisement campaigns to help ensure that victims of domestic abuse are aware of their new legal rights. The war against domestic violence is far from over, but an important battle has been won. And indeed, the times, they are a-changin'.