

5-1-2014

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## Recommended Citation

Pridgen, Kristen M., "Empty Promises? A Comparative Approach to the Future of Women's Voting Rights in Saudi Arabia" (2014).  
*Law School Student Scholarship*. Paper 549.  
[http://scholarship.shu.edu/student\\_scholarship/549](http://scholarship.shu.edu/student_scholarship/549)

# Empty Promises? A Comparative Approach to the Future of Women's Voting Rights in Saudi Arabia

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## I. Introduction

On May 11, 2013, Pakistan held its general election to choose members of the 14th National Assembly. Although women represent 43 percent of the 86 million registered voters in Pakistan, in villages such as Mateela, not a single woman has voted in an election for decades.<sup>1</sup> In fact, no woman from 564 of the 64,000 polling districts in Pakistan has voted since 2008 due to widespread threats of violence. In Peshwar, only 523 of 6,431 women voters turned out to cast their ballot in the 2008 election due to violence threatened against women who voted and the men who brought women to the polls.<sup>2</sup>

Pakistani women were afforded the right to vote back in 1956, but still nearly 60 years later have struggled in their exercise of that right. In places like Mateela, men, as the guardians of women, do not allow, and even threaten, women who take part in the electoral process based on antiquated notions that women do not have the mental capacity necessary to make an important decision such as voting or women belong inside the home and outside of the public sphere.

The driving force behind low to no participation by women in the May 2013 vote in Pakistan was the circulation of letters by radical religious groups warning men not to allow their female relatives to go to the polling stations because it is “un-Islamic” for women to take part in

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<sup>1</sup> *Pakistan's women still struggling for the right to vote in coming elections*, Associated Press, May 7, 2013 at <http://www.thenational.ae/news/world/south-asia/pakistans-women-still-struggling-for-the-right-to-vote-in-coming-elections>.

<sup>2</sup> Amber Rose Maltbie, Esq., *When the Veil and the Vote Collide: Enhancing Muslim Women's Rights Through Electoral Reform*, 41 McGeorge L. Rev. 967, 989 (2009-2010).

the democratic process.<sup>3</sup> To counteract against the violence, 70,000 troops and security forces were commanded to ensure safety at the polls.

Similarly, a survey conducted prior to the 2004 national election in Afghanistan showed that 87 percent of Afghans said that women must have their husband's permission in order to vote, and of the women who were allowed to vote, 72 percent of citizens believed that husbands should advise their wives on whom to vote for.<sup>4</sup> Gender-based violence and insufficient security at the polls make it difficult for these women to exercise their right to vote.

Although Pakistani and Afghan women have the right to vote, though limited and largely unpracticed, there still remain countries in the world that deny or restrict women the right to vote at present day. These countries include Saudi Arabia, Lebanon, Brunei, the United Arab Emirates, Bhutan, and Vatican City.<sup>5</sup> In Lebanon, women are required to show proof of elementary education before voting.<sup>6</sup> Neither men nor women have the right to vote in Brunei, but that results from the structure of the government.<sup>7</sup> If Brunei had an electoral system, theoretically, women would be allowed to vote. There is limited suffrage for men and women in the United Arab Emirates.<sup>8</sup> In the Vatican City, women are not allowed to vote because only

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<sup>3</sup> Tracy McVeigh, *Pakistan's women face battle for the right to vote*, The Observer, May 4, 2013 at <http://www.theguardian.com/world/2013/may/04/pakistan-women-right-to-vote>.

<sup>4</sup> *Voter Education Planning Survey: Afghanistan 2004 National Elections*, The Asia Foundation, 48-49 (2004).

<sup>5</sup> Daniel Tovrov, *Saudi Women Vote; Which Countries Still Don't Allow Women's Suffrage?* International Business Times, September 26, 2011 at <http://www.ibtimes.com/saudi-women-vote-which-countries-still-dont-allow-womens-suffrage-318260>.

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

Cardinals may vote and only males may be Cardinals.<sup>9</sup> Finally, in Bhutan, there is only one vote per family in village level elections.<sup>10</sup>

Although women do not have the right to vote at present day in Saudi Arabia, in September 2011, King Abdullah promised Saudi Arabian women the right to vote in the municipal elections in 2015.<sup>11</sup> The King's decision was prompted by a women's demonstration against the Saudi Arabian driving ban.<sup>12</sup> This demonstration gained international attention following the sentencing of women involved. One woman received a sentence of ten lashes for her participation in the demonstration, which caused international outrage<sup>13</sup>. Saudi women petitioned the King for the right to drive and were met by opposition from the King, the clergy, and Saudi society.<sup>14</sup> However, this movement sparked the King to grant women voting rights in the future.

This paper will explore the obstacles Saudi Arabian women will face in exercising the right promised to them by King Abdullah and proposed solutions to those obstacles. These obstacles, resulting largely from Islam, make it unlikely that the King's promise will be kept in 2015. Part II of this paper will discuss a brief historical perspective of the women's suffrage movement that drove the first country in the world to afford women voting rights, New Zealand, as well as an overview of the women's suffrage movement in the United States beginning with the Women's Rights Convention to the culmination of the Nineteenth Amendment. International law as it relates to women's suffrage will be briefly explored. Part III of this paper will discuss

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<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

<sup>11</sup> *Saudi king gives women right to vote*, Mail & Guardian, September 25, 2011 at <http://mg.co.za/article/2011-09-25-saudi-king-gives-women-right-to-vote/>.

<sup>12</sup> *Id.*

<sup>13</sup> *Saudi woman to be lashed for defying driving ban*, The Guardian September 28, 2011 at <http://www.theguardian.com/world/2011/sep/28/saudi-woman-lashed-defying-driving-ban>.

<sup>14</sup> *Id.*

Saudi Arabia's legal system, the religion of Islam generally, the role and rights of women in Saudi Arabian society, and the obstacles Saudi women will face in exercising their right to vote. Part IV will analyze whether change is in the future for Saudi Arabian women and the catalysts necessary to ignite change. This paper will conclude that the restrictions placed on women by Islam will, in practice, disenfranchise Saudi women and make King Abdullah's promise to Saudi women an empty promise.

## **II. A Brief Historical Perspective**

### **A. New Zealand & the United States**

The women's suffrage movement in New Zealand was led by the Women's Christian Temperance Union ("WCTU").<sup>15</sup> Kate Sheppard founded the WCTU and she was the leader of the suffrage movement in New Zealand.<sup>16</sup> She wrote and distributed several articles to attract attention to the issue of women's voting.<sup>17</sup> The WCTU sent a series of petitions to Parliament to support their movement. A petition sent in 1893 included over 32,000 signatures of female citizens who supported equal rights for men and women in New Zealand.<sup>18</sup> This sparked action New Zealand's Parliament. On September 19, 1893, New Zealand became the first country in the world to afford women the unrestricted right to vote in national elections.<sup>19</sup> The Governor of

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<sup>15</sup> John Markoff, *Margins, Centers, and Democracy: The Paradigmatic History of Women's Suffrage*, 29 *Signs: Journal of Women in Culture & Society* 85, 91 (2003).

<sup>16</sup> *The 1893 Electoral Act; NZ Women First in the World to Vote* at <http://nzwomensrighttovote.weebly.com/causes-continued.html>.

<sup>17</sup> See Kate Sheppard, *Ten Reasons Why the Women of New Zealand Should Vote* (1888); Kate Sheppard, *Is It Right?* (The Prohibitionist).

<sup>18</sup> *Petitioning Parliament*, Electoral Commission at <http://www.elections.org.nz/votes-women/petitioning-parliament>.

<sup>19</sup> Markoff, *supra* note 15, at 91.

New Zealand, Lord Glasgow, signed the Electoral Act into law, which allowed women the right to vote.<sup>20</sup>

The United States lagged only shortly behind New Zealand in enfranchising women. In 1848, reformers Elizabeth Cady Stanton and Lucretia Mott invited several activists to the Women's Rights Convention in Seneca Falls, New York.<sup>21</sup> Even before the Convention, reform groups began advocating for women's suffrage.<sup>22</sup> The women's rights movement slowed during the Civil War, but was ignited once again following the war when the Fourteenth and Fifteenth Amendments were ratified.<sup>23</sup>

On October 15, 1872 another leader of the women's suffrage movement, Virginia Minor, attempted to register to vote in St. Louis, Missouri, but was denied because she was a woman.<sup>24</sup> The Missouri constitution provided that "every male citizen of the United States shall be entitled to vote."<sup>25</sup> Minor sued the registrar who rejected her application in the Missouri Supreme Court, which subsequently ruled in favor of the registrar.<sup>26</sup> Minor brought her suit to the Supreme Court of the United States alleging that the Missouri constitution provision was unconstitutional and women have the right to vote under the privileges and immunities clause of the Fourteenth Amendment.<sup>27</sup> The Supreme Court stated that although women are citizens of the United States, the constitutionally protected privileges of citizenship did not include the right to vote.<sup>28</sup> Thus,

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<sup>20</sup> *Votes for Women*, Electoral Commission at <http://www.elections.org.nz/votes-women>.

<sup>21</sup> *The Fight for Women's Suffrage*, The History Channel at <http://www.history.com/topics/the-fight-for-womens-suffrage>.

<sup>22</sup> *Id.*

<sup>23</sup> *Id.*

<sup>24</sup> *Minor v. Happersett*, 53 Mo. 58, 62 (1873).

<sup>25</sup> *Minor v. Happersett*, 88 U.S. 162, 165 (1875).

<sup>26</sup> *Minor v. Happersett*, 53 Mo. at 63.

<sup>27</sup> *Minor v. Happersett*, 88 U.S. at 165.

<sup>28</sup> *Id.*

the Supreme Court held that the Fourteenth Amendment did not guarantee women the right to vote.<sup>29</sup>

By 1890, the National American Woman Suffrage Association was formed and by 1910, Western states began to extend women the right to vote in state elections.<sup>30</sup> Finally, on August 26, 1920, the Nineteenth Amendment to the Constitution was ratified.<sup>31</sup> The Nineteenth Amendment overruled *Minor v. Happersett*.

**B. International law relating to human rights**

The United Nations adopted the Convention on the Elimination of All Forms of Discrimination Against Women (“CEDAW”) in 1979.<sup>32</sup> Thereafter, CEDAW was implemented in 1981.<sup>33</sup> CEDAW is one of the most prominent international written agreements on women’s human rights and seeks to hold countries accountable for discrimination against women taking place in that country.<sup>34</sup> It is described as a “bill of rights for women.”<sup>35</sup> Specifically, CEDAW directs countries to take affirmative steps to combat discrimination against women and “establish legal protection of women’s rights.”<sup>36</sup> Presently, 187 countries have ratified CEDAW.<sup>37</sup> Thus,

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<sup>29</sup> *Id.*

<sup>30</sup> *The Fight for Women’s Suffrage*, *supra* note 21.

<sup>31</sup> *Id.*

<sup>32</sup> Elizabeth Evatt, *Finding a Voice for Women’s Rights: The Early Days of CEDAW*, 34 *Geo. Wash. Int’l L. Rev.* 515, 516 (2002-2003).

<sup>33</sup> *Id.*

<sup>34</sup> Janet Benshoof, *U.S. Ratification of CEDAW: An Opportunity to Radically Reframe the Right to Equality Accorded Women under the U.S. Constitution*, 35 *N.Y.U. Rev. L. & Soc. Change* 103, 121 (2011).

<sup>35</sup> *Id.*

<sup>36</sup> *Id.* at 123.

<sup>37</sup> *Fast Facts About CEDAW*, CEDAW 2013 at <http://www.cedaw2012.org/index.php/press-room/fast-facts-about-cedaw>.

only seven countries have not ratified the treaty.<sup>38</sup> Notably, the United States has not yet ratified CEDAW.<sup>39</sup>

CEDAW serves as a map for countries to follow in achieving equality for women. The first six articles of CEDAW define discrimination and provide directives for countries to implement in order to counteract and eliminate discrimination against women.<sup>40</sup> For example, Article 2 directs countries to codify equality for women in their respective constitutions and law.<sup>41</sup> Part II of CEDAW focuses on elimination of discrimination against women in a country's political arena. Importantly, and relevant to this paper, Article 7 affords women voting rights.<sup>42</sup>

### **III. Saudi Arabia**

#### **A. Basic Law and Islam**

On March 1, 1992, King Fahd issued, by royal order, the Basic Law in Saudi Arabia.<sup>43</sup>

Article I of the Basic Law of 1992 declares the religion of Saudi Arabia to be Islam with its

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<sup>38</sup> *Id.*

<sup>39</sup> Benshoof, *supra* note 34, at 121.

<sup>40</sup> Ekaterina Yahyaoui Krivenko, *Islamic View of Women's Rights: An International Lawyer's Perspective*, 2 J. E. Asia & Int'l L. 103, 108 (2009).

<sup>41</sup> CEDAW Part 1 Article 2

"States Parties condemn discrimination against women in all its forms, agree to pursue by all appropriate means and without delay a policy of eliminating discrimination against women and, to this end, undertake: (a) To embody the principle of the equality of men and women in their national constitutions or other appropriate legislation if not yet incorporated therein and to ensure, through law and other appropriate means, the practical realization of this principle."

<sup>42</sup> CEDAW Part 2 Article 7

"States Parties shall take all appropriate measures to eliminate discrimination against women in the political and public life of the country and, in particular, shall ensure to women, on equal terms with men, the right: (a) To vote in all elections and public referenda and to be eligible for election to all publicly elected bodies; (b) To participate in the formulation of government policy and the implementation thereof and to hold public office and perform all public functions at all levels of government; (c) To participate in non-governmental organizations and associations concerned with the public and political life of the country."

<sup>43</sup> Eleanor Abdella Doumato, *Faith & Freedom: Women's Human Rights in the Muslim World* 143 (Syracuse University Press 1995).



constitution as the Quran and the Sunnah.<sup>44</sup> Islam literally means submission to the will of God and a Muslim is the term used for an individual who submits to the will of God and follows Islam.<sup>45</sup> Islam is not just a religion; it is a way of life for its followers. Islamic law “promotes rights for everyone when in fact there is no consensus as to what constitutes a right or who is entitled to exercise that right.”<sup>46</sup> Islamic law does not explicitly deny women voting rights, and the act of voting by females violates neither Islamic law nor international law. Article VII of the Basic Law specifies that the Quran is the source of authority of the government. There is no process for amendment in the Quran and the Quran explicitly states that it is not to be changed.<sup>47</sup>

Shari’a is the term used to describe the overall law of Islam that governs the lives of all Muslims.<sup>48</sup> Shari’a literally means “the path to a watering hole.”<sup>49</sup> Shari’a law is comprised of four sources.<sup>50</sup> The first and most important source is the verses of the Quran.<sup>51</sup> Second is the Sunnah.<sup>52</sup> The Sunnah is a set of rules developed from the conduct and practice of the Prophet Muhammad. If the Quran does not address an issue, Saudi government looks to the Sunnah.

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<sup>44</sup> Saudi Arabia Basic Law of 1992, Article I

“The Kingdom of Saudi Arabia is a sovereign Arab Islamic State. Its religion is Islam. Its constitution is Almighty God’s Book, The Holy Quran, and the Sunnah of the Prophet. Arabic is the language of the Kingdom. The City of Riyadh is the capital.”

<sup>45</sup> Rodolphe J. A. De Seife, *The Shari’a: An Introduction the Law of Islam* 5 (Austin & Winfield 1994).

<sup>46</sup> Doumato, *supra* note 43, at 136.

<sup>47</sup> Quran 6:115

“And the word of your Lord has been fulfilled in truth and in justice. None can alter His words, and He is the Hearing, the Knowing.”

Quran 18:27

“And recite, what has been revealed to you of the Book of your Lord. There is no changer of His words, and never will you find in other than Him a refuge.”

<sup>48</sup> Malise Ruthven, *Islam in the World* 460 (Oxford University Press 2006).

<sup>49</sup> *Id.*

<sup>50</sup> James Dudley, *Human Rights Practices in the Arab States: The Modern Impact of Shari’a Values*, 12 Ga. J. Int’l & Comp. L. 55, 57 (1982).

<sup>51</sup> *Id.*

<sup>52</sup> *Id.*

Next is the ijma of the ulama, who are the religious jurists of Islam.<sup>53</sup> Ijma is translated to mean consensus while ulama is translated to learned ones.<sup>54</sup> Thus, the ijma is what religious scholars collectively determine when both the Quran and the teachings of the Prophet are silent.<sup>55</sup> Finally, Shari'a law is derived from the process of kiyas, which is the reasoning used by the ulama to interpret and apply the Quran and the Sunnah.<sup>56</sup> This "reasoning by analogy" is what is used to find out what is closer to the Quran.<sup>57</sup> Religious officials define the rights afforded by shari'a.<sup>58</sup> Thus, it is these officials who determine the scope of women's rights. These subjective interpretations create inconsistent application of Shari'a law.<sup>59</sup> Ambiguity offers the flexibility that is necessary when interpreting the laws favorably to women's rights, however, no guide for the government is provided.

The court system in Saudi Arabia has qadis, or judges, who are appointed by the King.<sup>60</sup> Qadis are trained in religion and apply Shari'a on a case-by-case basis.<sup>61</sup> Their decisions apply only to the parties involved in a particular case.<sup>62</sup>

The Quran applies equally to both Muslim men and women.<sup>63</sup> According to the traditions of the Prophet Muhammad, women in the first Islamic communities were feminists and

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<sup>53</sup> *Id.*

<sup>54</sup> *Id.*

<sup>55</sup> De Seife, *supra* note 45, at 25.

<sup>56</sup> Dudley, *supra* note 50, at 57.

<sup>57</sup> De Seife, *supra* note 45, at 25.

<sup>58</sup> Doumato, *supra* note 43, at 142.

<sup>59</sup> *Id.* at 144.

<sup>60</sup> Cindy G. Buys & Stephanie Macuiba, *Is reform a reality for women in Saudi Arabia?* The Catalyst, Illinois State Bar Association (2012) at <https://www.isba.org/committees/women/newsletter/2012/06/isreformarealityforwomeninsaudiArab>.

<sup>61</sup> *Id.*

<sup>62</sup> *Id.*

<sup>63</sup> Quran 49:13

"O mankind, we created you of a single soul, male and female."

proponents of women's rights.<sup>64</sup> One woman who frequently took part in Muhammad's battles, Nusaiba, asked the Prophet why Allah always addressed men instead of women in the Quran.<sup>65</sup> In the story, "God himself recognized the justice of Nusaiba's complaint, and henceforth the revelations were addressed to both sexes."<sup>66</sup> Nevertheless, there are still inequities between men and women.

Although Basic Law offers several rights to the citizens of Saudi Arabia, the Law does not address women's rights specifically. For example, Article 30 provides for the right to education.<sup>67</sup> The next provision, Article 31, commands that each citizen will be provided with health care.<sup>68</sup> Notably, Article 26 guarantees protection of human rights.<sup>69</sup> Article 26 of Basic Law states, "The state shall protect human rights according to the Shari'a."<sup>70</sup> However, what is protected by Shari'a is ambiguous because it remains uncodified in statutes and subject to the interpretation of the Council of Senior Ulama.<sup>71</sup> The Senior Ulama is comprised of 18 members, all men, who are appointed by the King and have their own agendas, which often do not include consideration of women.<sup>72</sup> The King must approve decisions made by the Senior Ulama.<sup>73</sup>

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<sup>64</sup> Ruthven, *supra* note 48, at 151-152.

<sup>65</sup> *Id.*

<sup>66</sup> *Id.*

<sup>67</sup> Saudi Arabia Basic Law of 1992, Article 30

"The State shall provide public education and commit itself to the eradication of illiteracy."

<sup>68</sup> Saudi Arabia Basic Law of 1992, Article 31

"The State shall look after public health and provide health care for every citizen."

<sup>69</sup> Saudi Arabia Basic Law of 1992, Article 26

"The State shall protect human rights in accordance with the Shari'a."

<sup>70</sup> Doumato, *supra* note 43, at 144.

<sup>71</sup> *Id.* at 143.

<sup>72</sup> *Id.* at 144.

<sup>73</sup> *Id.*

Thus, “Islamic governments, rather than Islam, are the true obstacles to women gaining equality in the public domain.”<sup>74</sup>

In a recent article, Dr. Hossein Esmaeili, an international and Islamic law scholar and former Middle Eastern Legal Consultant, outlines three approaches to conflicts between Shari’a and human rights.<sup>75</sup> The first approach is that since Shari’a is holy law, it is superior to any other law that is created by mankind.<sup>76</sup> This is the approach currently taken by authorities in Saudi Arabia.<sup>77</sup> The next approach is that Shari’a principles and human rights are irreconcilable and can never coincide.<sup>78</sup> This is the most extreme view. The final approach posits Islam as strong religion with steadfast traditions that can be accommodated in modern societies.<sup>79</sup> This approach should be taken to afford women greater rights, especially with respect to voting.

#### **B. The role and rights of women in Saudi Arabia**

The status of women in Islamic societies is a stark contrast to notions of equality in the United States and the Western world. Tradition and modern practices clash when it comes to reshaping women’s roles in an Islamic society such as Saudi Arabia. However, unlike in other nations, especially Middle Eastern countries, where women were afforded the right to participation in the electoral process decades ago, the absence of women at the polls is largely

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<sup>74</sup> Joelle Entelis, *International Human Rights: Islam’s Friend or Foe? Algeria as an Example of the Compatibility of International Human Rights Regarding Women’s Equality and Islamic Law*, 20 Fordham Int’l L. J. 1251, 1300 (1997).

<sup>75</sup> Hossein Esmaeili, *On a Slow Boat Towards the Rule of Law: The Nature of Law in the Saudi Arabian Legal System*, 26 Ariz. J. Int’l Comp. L. 1 (2009).

<sup>76</sup> *Id.* at 36.

<sup>77</sup> *Id.*

<sup>78</sup> *Id.*

<sup>79</sup> *Id.* at 37.

due to fear and hesitation. In contrast, the abuse of women's human rights in Saudi Arabia, specifically in the area of voting, results most prominently from religion.<sup>80</sup>

Women's rights in Saudi Arabia depend heavily on the country's political climate and traditional views of a woman's role in society. The Quran declares that women and men are equal.<sup>81</sup> Nevertheless, Saudi Arabia remains one of the most restrictive countries when it comes to women's rights. A 2005 women's survey created to facilitate efforts to expand the rights of women in the Middle East and North Africa scored Saudi Arabia as the lowest number, a 1.0 on a 5.0 point scale, in the category of Political Rights and Civic Voice due to the denial of the right to vote for women citizens.<sup>82</sup> However, the Quran does not explicitly state anything about women's rights.<sup>83</sup> To that end, men and women have very different roles in Saudi society, where women are subservient to men. In Saudi society, women have little to no ability to act independently.

### **C. Obstacles affecting women's right to vote in Saudi Arabia**

Most of the restrictions placed on women due to religious practices are not established in written law or decrees.<sup>84</sup> However, the Saudi government is the main enforcer of these

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<sup>80</sup> Adrien K. Wing & Peter P. Nadimi, *Women's Rights in the Muslim World and the Age of Obama*, 20 *Transnat'l L. & Contemp. Probs.* 431, 437 (2011-2012).

<sup>81</sup> Quran 49:13

“O mankind, we created you of a single soul, male and female.”

<sup>82</sup> Sammena Nazir, *Challenging Inequality: Obstacles and Opportunities Towards Women's Rights in the Middle East and North Africa*, 5 *JJIS* 31, 38, 39, 40, 42 (2005).

The author of the report made the following recommendation – “Legal and traditional barriers to women's participation in politics, government, and the private sector should be removed. Governments should take concrete steps to promote women's leadership in politics and business, including various forms of affirmative action and complaint mechanisms for victims of bias. The governments of Kuwait, Saudi Arabia, and the UAE should allow all citizens the right to vote.”

<sup>83</sup> Sifa Mtango, *A State of Oppression? Women's Rights in Saudi Arabia*, *Asia-Pacific Journal on Human Rights and the Law*, 49, 52 (2004).

<sup>84</sup> Human Rights Watch, *Perpetual Minors: Human Rights Abuses Stemming from Male Guardianship and Sex Segregation in Saudi Arabia*, 4 (2008).

practices.<sup>85</sup> These restrictions create an obstacle for women's full participation in society. On equality between the sexes, the Council of Senior Religious Scholars, which operates as a forum for communication between the monarch and religious officials, said it would be "against the laws of God and against the laws of nature."<sup>86</sup> This justification for denying Saudi women basic human rights is seen time and time again.

The most notorious restriction placed on Saudi Arabian women is the driving ban. Saudi Arabia is the only country in the world that bans women from driving.<sup>87</sup> The reasoning behind the ban on driving is that driving requires women to remove their veil.<sup>88</sup> Additionally, driving creates the possibility that women will interact with men who are not related to them.<sup>89</sup> These same concerns will be implicated when women exercise their right to vote. Importantly, how will women access the polls if the polls are not in walking distance of their homes? Women will be forced to find a driver that is willing to bring them to their polling place.

Next, women are subject to male guardianship. Males must accompany women wherever they go and must also make decisions for women. A woman's father, husband, son, or uncle can act as her guardian. A woman who ventures out in public without a male guardian risks being detained or assaulted in the streets.<sup>90</sup> This practice derives from ambiguity and misinterpretation of the Quran.<sup>91</sup> Women must have permission to travel, go to work or school, get married, make

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<sup>85</sup> *Id.*

<sup>86</sup> *Id.* at 7-8.

<sup>87</sup> *Id.* at 28.

<sup>88</sup> Mtango, *supra* note 83, at 60.

<sup>89</sup> Human Rights Watch, *supra* note 84, at 29.

<sup>90</sup> Purva Desphande, *The Role of Women in Two Islamic Fundamentalist Countries: Afghanistan and Saudi Arabia*, 22 *Women's Rts. L. Rep.* 193, 199 (2000-2001).

<sup>91</sup> Quran 4:34

"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."

decisions regarding their children, and undergo medical procedures.<sup>92</sup> Both the male guardianship laws and the driving ban make it such that a woman would have to be escorted to the polls and essentially told what decision to make. Since the Quran cannot be changed or amended, this restriction is unlikely to be changed. Continued adherence to guardianship practices ensures that women will never be able to fully realize their rights. Thus, guardianship creates another barrier for access to the polls.

Among the other restrictions that are placed upon women that will impact their exercise of voting is veiling. Saudi women are required to wear a black veil to conceal their faces.<sup>93</sup> However, veiling is not required as part of Islam.<sup>94</sup> Muslim women, including Saudi Arabian women, who are required to wear a veil as a construct of their religion are likely hesitant, if not banned, from unveiling at the polls. For Middle Eastern women, religion and culture often clash at the polls. This could interfere with the right to vote because a woman would likely need to show her identify and she cannot if she is wearing a veil. In other countries that have electoral codes that require women who wear veils to lift their veil at the polls in order to exercise their right to vote results in a small percentage of women at polls.<sup>95</sup> Veiling also raises concern about voting fraud.<sup>96</sup>

In 2001, the Saudi government allowed women to get their own personal identification card, although they must still obtain permission from their male guardian to obtain the card.<sup>97</sup>

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<sup>92</sup> Human Rights Watch, *supra* note 84, at 2-3.

<sup>93</sup> Mtango, *supra* note 83, at 53.

<sup>94</sup> *Id.* at 54.

<sup>95</sup> Maltbie, *supra* note 2, at 967.

<sup>96</sup> See John Borneman, *Veiling and Women's Ineligibility*, 30 *Cardozo L. Rev.* 2745, 2756 (2009) ("Democracy requires periodic visibility, specifically of the fact: when you go to vote, for example").

<sup>97</sup> Human Rights Watch, *supra* note 84, at 25 (Previously, women were listed under a family identification card issued to her husband or father).

However, the majority of society does not recognize a woman's identity card.<sup>98</sup> For example, in an interview with a Saudi woman in 2005 she told Human Rights Watch that when her daughter tried to get a cellular telephone, the salesman would not honor the identity card her daughter produced and instead demanded that her daughter remove her veil to uncover her face and bring in a male guardian.<sup>99</sup> These same problems will likely be run into when Saudi women exercise their voting rights even if they have a personal identification card.

Moreover, lack of education for women acts as a voting barrier. Education of women is not a priority in several Muslim countries.<sup>100</sup> Saudi Arabian women have little to no opportunity for higher education in their country. In the 1990s, the Permanent Council for Scientific Research and Legal Opinion in Saudi Arabia issued an Islamic legal opinion about women with respect to higher education, finding that "for a woman to progress through university education...is something we have no need for."<sup>101</sup> Primary schools for girls did not even open until the 1960s.<sup>102</sup> "Education for girls stopped at puberty, when strict seclusion at home began and veiling in public became mandatory."<sup>103</sup> In Article 153 of the Saudi Policy on Education, it states that, "A girl's education aims at giving her the correct Islamic education to enable her to be in life a successful housewife, and exemplary wife and a good mother."<sup>104</sup> Moreover, due to the system of segregation, women typically have less academic opportunities as compared to men and attend education facilities with lower standards.<sup>105</sup> Interestingly, when Human Rights

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<sup>98</sup> *Id.* at 26.

<sup>99</sup> *Id.*

<sup>100</sup> Wing et. al., *supra* note 80, at 439.

<sup>101</sup> Human Rights Watch, *supra* note 84, at 8.

<sup>102</sup> Amani Hamdan, *Women and Education in Saudi Arabia: Challenges and Achievements*, 6 International Education Journal 42, 47 (2005) at <http://files.eric.ed.gov/fulltext/EJ854954.pdf>.

<sup>103</sup> *Id.*

<sup>104</sup> Article 153 of the Saudi Policy on Education.

<sup>105</sup> Human Rights Watch, *supra* note 84, at 3.



Watch interviewed female students in 2008, those students reported, “Unlike for their male counterparts, the gates to their colleges and departments are locked during teaching hours.”<sup>106</sup>

Literal interpretations of the Quran limit women’s access to education and justify their oppression. However, Islam actually encourages the education of women. Furthermore, even the Prophet Muhammad taught, “The search of knowledge is a duty for every Muslim male and female.”<sup>107</sup> Lastly, as previously examined in this paper, a woman’s access to education is dependent on her male guardian.<sup>108</sup>

Finally, men and women are not allowed to mix in public. Saudi Arabia has a system of sex-segregation, which extends to all public facilities, including restaurants and transportation.<sup>109</sup> The rationale behind this practice has been set out by Saudi Arabia’s Permanent Council for Scientific Research and Legal Opinions: “Loose interaction across gender lines is one of the major causes of fornication, which disintegrates society and destroys its moral values and all sense of propriety.”<sup>110</sup> Women and men have historically been forbidden from mixing in public. “Traditionalists argue that women could never be allowed to vote because they would have to mix with men in polling places.”<sup>111</sup>

One proposed solution to this issue is separate polling places.<sup>112</sup> In 2005, Saudi Arabia held municipal elections and women were denied the opportunity to vote because there were no separate polling places for men and women.<sup>113</sup> However, segregated polling places open the door for more violence against women in a place where voting by women is allegedly against

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<sup>106</sup> *Id.*

<sup>107</sup> Hamdan, *supra* note 102, at 54.

<sup>108</sup> Human Rights Watch, *supra* note 84, at 14.

<sup>109</sup> Mtango, *supra* note 83, at 55.

<sup>110</sup> Human Rights Watch, *supra* note 84, at 12-13.

<sup>111</sup> Judith E. Tucker, *In the House of the Law* 148 (1998).

<sup>112</sup> Maltbie, *supra* note 2, at 989.

<sup>113</sup> Human Rights Watch, *supra* note 84, at 3.

religious mandates. First, separate polling places attract violent radicals who have the ability to wait and target women at their polls.<sup>114</sup> Furthermore, if a polling place closes due to violence, then women are denied the opportunity to cast their ballot altogether.<sup>115</sup>

#### **IV. Blueprint for Change**

##### **A. Education, awareness, and international law**

Women's education is not only a gateway for other opportunities, but also a force for economic, political, and social development and change. Education leads to access to resources and information. As mentioned above, Saudi women are at a disadvantage because they generally receive an education that is incongruous to their male counterparts. Therefore, the first step necessary in the campaign for greater rights for women in Saudi Arabia, including assurance that they will be able to vote in the 2015 municipal elections, is prioritizing women's education. Prioritizing education will likely lead to increased participation by women in the public sphere. Education empowers women to first know their rights and then have the confidence to fight for their rights if necessary. Saudi women must also be made aware that their religion originally intended that women be educated.<sup>116</sup> The next step in ensuring that women will gain the right to vote is to center education on women's issues and women's involvement in the political sphere. This provides the necessary foundation needed for women to understand the electoral process and make informed decision-making regarding political candidates. Women must consider campaigning to increase continuing education of women and lessen the gender gap between males and females in education.

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<sup>114</sup> Maltbie, *supra* note 2, at 990.

<sup>115</sup> *Id.*

<sup>116</sup> Hamdan, *supra* note 102, at 54.

Moreover, Saudi women must raise awareness to the obstacles they will likely face when they exercise voting right to help counteract and remedy those obstacles. First, Saudi women can raise awareness by peaceful demonstrations and organized campaigns for women's rights. This will raise awareness at least locally. Demonstrations or rallies will likely attract media attention. With access to media, Saudi women can solicit aid from women's organizations in other countries to help their cause.

International law also calls for equal protection of the law. Elections "must provide the opportunity for full and equal participation by both women and men" in order to meet international standards.<sup>117</sup> Saudi Arabia has only ratified a few international treaties of human rights. In 2000, it ratified the Convention on the Elimination of All Form of Discrimination Against Women.<sup>118</sup> CEDAW prohibits sex discrimination and promotes equality between the sexes.<sup>119</sup> Saudi Arabia should ratify other international human rights treaties, such as the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social, and Cultural Rights.<sup>120</sup> Doing so will not only afford women more rights and protections under the law, but will legally bind the Saudi authorities by the provisions delineated in those treaties. Moreover, the Saudi government must honor, rather than ignore, the international treaties it has signed on to, especially CEDAW. As a signatory of CEDAW, Saudi Arabia is legally required to act to end discrimination against women as expeditiously as possible.<sup>121</sup>

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<sup>117</sup> United Nations, *Women in Elections: Guide to Promoting the Participation of Women in Elections* 10 (2005).

<sup>118</sup> 18 December 1979, 1249 UNTS 13 (ratified by Saudi Arabia on October 7, 2000)

<sup>119</sup> Mtango, *supra* note 83, at 50.

<sup>120</sup> 16 December 1966, 999 UNTS 171; 19 December 1966, 993 UNTS 3.

<sup>121</sup> Human Rights Watch, *supra* note 84, at 4.

## **B. Leading by example**

Saudi women must follow the footsteps of those historical figures such as Kate Sheppard in New Zealand and Elizabeth Cady Stanton in the United States to organize women's right movements. This will also spread awareness about women's rights issues in Saudi Arabia and the Middle East. There are some prominent women in Saudi Arabia already beginning to stir change and those women are mentioned below.

In April 2011, Samar Badawi became the first woman to file a legal challenge with the Board of Grievances to the voting ban after she was denied when she attempted to register to vote.<sup>122</sup> The Board of Grievances is an administrative tribunal in Saudi Arabia.<sup>123</sup> Badawi filed a lawsuit against the Ministry for Municipal and Rural Affairs when a municipal election center would not register her to vote.<sup>124</sup> Her argument rested on the on the fact that CEDAW, as well as Islamic law, is silent when it comes to restricting women's participation in political affairs.<sup>125</sup> In her complaint she made the following requests: "to order an immediate suspension of all election procedures until the court has ruled on the complaint and to annul the administrative decision to bar me [Badawi] from my right to vote for and stand for election to the municipal councils which is in breach of the relevant regulations, and order the object of the complaint to permit me to take part in the election, whether as a voter or as a candidate."<sup>126</sup>

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<sup>122</sup> Abeer Allam, *Saudi woman fights vote ban in court*, The Financial Times Limited, April 28, 2011 at <http://www.ft.com/intl/cms/s/0/1fefe1d8-71e2-11e0-9adf-00144feabdc0.html#axzz2mGFKf0V3>.

<sup>123</sup> Samir Shamma, *Law and Lawyers in Saudi Arabia*, 14 Int'l & Comp. L. Q. 1034, 1037 (1965).

<sup>124</sup> *Aspiring woman voter takes ministry to court*, The Saudi Gazette at <http://www.saudigazette.com.sa/index.cfm?method=home.regcon&contentID=2011042999422>.

<sup>125</sup> Allam, *supra* note 122.

<sup>126</sup> *Aspiring woman voter takes ministry to court*, *supra* note 124.

Other Saudi women have followed the advancement of Badawi. The same month that she filed her complaint, a group of women participated in a demonstration against the electoral system in Saudi Arabia at a voter registration office in the city of Jeddah.<sup>127</sup> In Dammam, religious police arrested three women who tried to register to vote and the women's defaced pictures were placed on Internet newspapers.<sup>128</sup> Another woman, Nouf Abdelaziz, received emails and Twitter messages telling her that her attempt to register to vote in the city of Al-Khobar was "evidence you are a loose woman."<sup>129</sup> Saudi women must act instead of remain silent if they are to be able to vote in the 2015 municipal elections.

### **C. Codification in the Basic Law**

To add backing to King Abdullah's promise, Saudi women's right to vote must be codified in the Basic Law as a constitutional right. The Saudi government and religious officials can look to the way in which other countries have enumerated women's right to vote in their constitutions.

As previously discussed, the New Zealand Bill of Rights Act mandates that every citizen over the age of eighteen years have the right to vote.<sup>130</sup> Similarly, the Nineteenth Amendment to the United States Constitution guarantees that the right to vote "shall not be denied or abridged by the United States or by any State on account of sex."<sup>131</sup> Saudi Arabia should seek to emulate one of these progressive nations when crafting a constitutional amendment allowing women the right to vote.

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<sup>127</sup> Assaad Abboud, *Saudi king gives women right to vote*, September 25, 2011 at <http://www.google.com/hostednews/afp/article/ALeqM5hOtxXFdygP8wEpuWmusYZZY6tZnQ?docId=CNG.f4c0cf19383379475a875952cf853bc5.611>.

<sup>128</sup> Allam, *supra* note 122.

<sup>129</sup> *Id.*

<sup>130</sup> New Zealand Bill of Rights Act 1990, Part 2, Section 12.

<sup>131</sup> United States Constitution, Nineteenth Amendment.

Other Middle Eastern nations have codified women's right to vote in their respective constitutions. In Pakistan, the right is incorporated via Article 25 of the constitution, which does not specifically deal with voting rights, but instead equal protection in general. It mandates that "all citizens are equal before [the] law and are entitled to equal protection of [the] law."<sup>132</sup> The next subsection of the Article goes on to say, "There shall be no discrimination on the basis of sex."<sup>133</sup> This constitutional provision operates to afford Pakistani women the right to vote. Similarly, Article 33 of Afghanistan's constitution provides "the right to elect and be elected" to every citizen.<sup>134</sup> Article 22 extends this protection to women.<sup>135</sup>

Lastly, codification would be consistent with Saudi Arabia's obligations under CEDAW. Although the addition of the right does not guarantee that the Saudi government will not or cannot infringe on the right to vote, codification of the King's promise would be a starting point in ensuring that women are able to participate in the 2015 municipal elections.

#### **D. What can the United States do?**

Professor Adrien K. Wing has published several articles on issues facing Muslim women.<sup>136</sup> In a recent article, Professor Wing made several recommendations for the Obama administration to improve women's rights in Muslim countries.<sup>137</sup> Several of Professor Wing's recommendations are adopted here and used as a model for steps that the United States can take to aid in empowering Saudi women in their fight for the right to vote.

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<sup>132</sup> Pakistan Constitution Article 25, subsection (1).

<sup>133</sup> Pakistan Constitution Article 25, subsection (2).

<sup>134</sup> Afghanistan Constitution Article 33 Chapter 2, Article 12.

<sup>135</sup> Afghanistan Constitution Article 22, Chapter 2, Article 1.

<sup>136</sup> See Adrien K. Wing, *An Agenda for the Obama Administration on Gender Equality: Lessons from Abroad*, 107 Mich. L. Rev. First Impression 124 (2009); Adrien Wing & Hisham Kassim, *The Future of Palestinian Women's Rights*, 64 Wash. & Lee L. Rev. 1551 (2007); Adrien K. Wing, *Twenty-First Century Loving: Nationality, Gender, and Religion in the Muslim World*, 76 Fordham L. Rev. 2895 (2008).

<sup>137</sup> Wing et. al., *supra* note 80, at 447.

One important step that the United States can take is to ratify CEDAW. This would make the United States more credible in the international arena as a proponent of human rights, specifically those of women.<sup>138</sup> Ratification of CEDAW would be consistent with the United States' commitment to human rights issues, as it has ratified other international human rights treaties and agreements.<sup>139</sup> Ratification by the United States would also provide drive and influence to the remaining countries that have yet to ratify.<sup>140</sup> The United States needs to show that it is on board in the fight for women's human rights and this is the first step. As Professor Wing noted in her article, "the United States is the world's lone democracy that has yet to ratify CEDAW."<sup>141</sup>

Additionally, Professor Wing recommends that the United States aid in the improvement of education for Muslim women.<sup>142</sup> To increase education, the United States could provide funding and incentives to countries to improve education.<sup>143</sup> For example, the United States could offer Muslim countries funding to update education facilities, lower the cost of education, and hire additional teachers.<sup>144</sup> Finally, the United States could offer an increased amount of scholarships to Muslim women to attend universities in the United States.<sup>145</sup> Taking these steps would increase Muslim women's access to education.<sup>146</sup> Increased access to education would likely provide the necessary tools for women to be empowered to exercise their right to vote.

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<sup>138</sup> *Id.* at 448.

<sup>139</sup> *Id.* at 450.

<sup>140</sup> *Id.*

<sup>141</sup> *Id.* at 449.

<sup>142</sup> *Id.* at 454.

<sup>143</sup> *Id.* at 455.

<sup>144</sup> *Id.*

<sup>145</sup> *Id.*

<sup>146</sup> *Id.*

Increased access to education would place more women in the workforce. More women in the workplace would “strengthen women’s economic empowerment.”<sup>147</sup>

An interesting proposal by Professor Wing is that the United States encourages the United Nations to send “Observer Missions” to Muslim countries suspected of human rights violations against women.<sup>148</sup> Observer Missions investigate the conditions in a country and then compile a report.<sup>149</sup> In the last two decades, the United Nations have sent observers to Syria, Uganda-Rwanda, and Sierra Leone.<sup>150</sup> The United States could advocate that the United Nations send an Observer Mission to Saudi Arabia to investigate whether King Abdullah is honoring his promise to allow women to vote, as well as other human rights violations against women.

Next, the United States should provide support to organizations of women’s advocates in Muslim countries, typically known as “Islamic feminists.”<sup>151</sup> Professor Wing recommends, “The United States should focus its support on the advocates who are pushing for increased women’s rights within the tenets of Islam, rather than from outside values.”<sup>152</sup> As previously mentioned, women’s voting rights fall within the purview of Islam and Shari’a law. Similarly, Council on Foreign Relations Senior Fellow Isobel Coleman has argued recently that both men and women

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<sup>147</sup> *Id.*

<sup>148</sup> *Id.* at 459.

<sup>149</sup> *Id.*

<sup>150</sup> See <http://www.un.org/en/peacekeeping/missions/unsmis/> (United Nations Supervision Mission in Syria established on April 21, 2012 to monitor violence); <http://www.un.org/en/peacekeeping/missions/past/unomur.htm> (June 1993 to monitor the border); <http://www.un.org/Depts/DPKO/Missions/unomsil/Unomsil.htm> (July 1998 to monitor security and respect for international humanitarian law)

<sup>151</sup> Wing et. al., *supra* note 80, at 460.

<sup>152</sup> *Id.*



in Muslim countries are beginning to advocate for progressive views of Islam that support women being afforded greater rights.<sup>153</sup>

The support offered by the United States could take many forms. First, the United States can support the organizations of these activists with money and fundraising.<sup>154</sup> Next, the United States can create media outlets to gain international attention for Muslim women's rights activists.<sup>155</sup> Media support would raise awareness to women's rights issues in Saudi Arabia, including voting. Through media, people can become more vocal about the human rights abuses women are subjected to in Saudi Arabia.

## V. Conclusion

One academic at a Riyadh University confirms the skepticism detailed in this paper surrounding whether reforms can be implemented in time for the 2015 municipal vote in Saudi Arabia. She said, "The possibility for political participation is open, because it's being discussed. But I am not sure if it will happen." She went on to say, "I respect the King for trying to make a change. This might encourage women, but they will have to fight hard against social conservatism."<sup>156</sup>

There is nothing in Islamic law to say that allowing women the right to vote and women actually exercising that right violates the religious beliefs of the citizens of Saudi Arabia. That

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<sup>153</sup> Council on Foreign Relations, "*Quiet Revolutionaries*" are Empowering Women in the Middle East, writes Isobel Coleman in *New CFR Book*, April 26, 2010 at <http://www.cfr.org/women/quiet-revolutionaries-empowering-women-middle-east-writes-isobel-coleman-new-cfr-book/p21973> (Coleman traveled to Saudi Arabia, Iraq, Iran, Afghanistan, and Pakistan to study "how activists are working within the tenets of Islam to create economic, political, and educational opportunities for women").

<sup>154</sup> Wing et. al., *supra* note 80, at 461.

<sup>155</sup> *Id.*

<sup>156</sup> Martin Chulov, *Saudi Women to be Given Right to Vote and Stand for Election in Four Years*, *The Guardian*, September 25, 2011 at <http://www.theguardian.com/world/2011/sep/25/saudi-women-right-to-vote>.

being said, the different restrictions placed on women, including the driving ban, male guardianship laws, veiling, under-education, and the system of sex segregation, create major obstacles in the exercise of the right to vote in Saudi Arabia. These are religious and societal norms that have been established for hundreds of years and are unlikely to change merely because King Abdullah has promised that Saudi Arabian women will be allowed to vote in the 2015 municipal elections. Thus, even if this promise is not as empty as it seems, in practice Saudi women will still likely be disenfranchised.

The Quran views men and women as equal in the eyes of God and since God is the source of Islamic law, a parallel can be made that since men and women are equal before God, Islamic law recognizes equal protection.<sup>157</sup> Islamic law is open to interpretation, which provides the necessary flexibility for Middle Eastern authorities to reform the current legal system that is still oppressive to women. Although the verses of the Quran are permanent, Saudi Arabia's Basic Law of 1992 could and should be amended to afford women greater protection under the law.

With time, all women will likely have the right to vote. It is up to women in Saudi Arabia to follow the lead of other female reformers around the globe to petition their government. However, this depends on government authorities recognizing that Islam does not prohibit women from having this right. The government needs to come to a different interpretation of Shari'a law, affording women more rights, and realize that this does not violate the principles of Islam. But even this is a struggle, as no organized feminist movement in Saudi Arabia exists, although there are individual women who are striving towards equality between the sexes as mentioned in this paper. Saudi women are raised to be subordinate and their

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<sup>157</sup> Entelis, *supra* note 74, at 1305.

upbringing creates reluctance, hesitation, and even resistance when it comes to a women's rights movement. Education and awareness will help to advance women's rights.

The legal and religious system in Saudi Arabia may be too strict to allow for change. Challenges in logistics, such as male guardianship and gender segregation, make it difficult to imagine that Saudi women will be voting in 2015. One cannot expect a country to abandon centuries of religious tradition in exchange for modern human rights in only two more years. Saudi Arabia asserts that its authority to deny women basic fundamental human rights is based in religion. No singular action is going to ensure that Saudi women are able to vote in 2015. The culmination of several forces and people working together progressively is the only way to guarantee that King Abdullah's promise to the women of Saudi Arabia is not an empty promise.