



الجمعية الكويتية لحقوق الإنسان  
KUWAIT SOCIETY FOR HUMAN RIGHTS



المركز الكويتي للدراسات والبحوث  
Kuwait Center for Studies and Research



MEPI

# Women Rights in State of Kuwait

Under the Convention on Elimination  
of All Forms of Discrimination  
Against Women (CEDAW)

**Fundamental - Analytical Study**

**Kuwait Center for Studies and Research**

**Prepared by:**

Saleh Hasan Al-Hasan

Dr. Mohammed Khaled Al-Shaker

Mohamed Khaled Mohamed





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## Introduction

Since the fifties of the last century, the feminist movement within Kuwait society has not abated, keeping pace with Arab experiences, forming a milestone in its Gulf region. In November 1953, the first symposium calling for women's rights was held, in which a group of Kuwaiti women participated, calling for the provision of clubs, scientific, literary, and cultural societies, and theaters in girls' high schools along with opening cinemas<sup>(1)</sup>. This was helped by the nature of Kuwaiti society as a society in which women have historically remained alongside men from the diving community to the present day, which has produced a societal nature that distinguished Kuwait by its civilization and the openness towards democracy whenever the opportunity arose.

The Kuwaiti feminist movement, despite its history, did not have the ability to form an organized movement that would empower it to obtain its rights equally with men, despite the legal obligations of the government of the State of Kuwait, which refers to an unprecedented legal interaction in theory, especially in the context of the compatibility and harmonization between international covenants and conventions and the Kuwaiti Constitution.

The conflict of Kuwaiti legislations with the provisions of the Constitution has led to the growth of the number of problems, whether legal, juristic, or societal, which have prevented the optimal women empowerment in Kuwait... Consequently, these legislations have reflected a clear and obvious distinction regarding many rights, such as the right to have got jobs, equality in the public burdens, the right of equality before the law, the right to work, and so on

The issue of women has become a global affair and concern, whether at the level of international organizations or non-governmental organizations, so that this issue has become like any other issue related to determining the political system whether it is a democratic system or not, or any other issue related to defining the state, as a legal state or otherwise.

Since the end of World War II and the emergence of the United Nations and the adoption of its charter in the year 1945, this organization has intended to activate its role in protecting women's rights by internationalizing and consolidating their rights in many declarations,

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(1) The symposium was attended by Sheikha Al-Humaidhi, Ghanima Al-Marzouq, Hind Suleiman Al-Muslim, and Sheikha Ahmed Al-Anjari. See: Hamad Muhammad Al-Saeedan, "The Kuwaiti Short Encyclopedia, Part 3, Edition 2, Kuwait 1981. In the same topic, see: Al-Raed Magazine, 2nd Volume, 2nd Year 1953-1954, Edition 2, Publications of the Kuwaiti Research and Studies Center, Teachers Club, Kuwait 1999

charters and international treaties until the Convention on Elimination of All Forms of Discrimination Against Women (CEDAW) has been ratified.

In addition, this adoption came as a coronation of five-year consultations conducted by multiple working teams and the Committee concerned with the Status of women and the General Assembly. This convention was presented for signature, ratification, and accession under United Nations General Assembly Resolution No. 34/180 of December 18, 1979, and entered into force in 1981, and Kuwait has joined the Convention by Emiri Decree No. 24 of 1994, and since that date, the State of Kuwait has become legally bound by all that was stated in the convention, except for what it expressly reserved. However, the fact still indicates the lack of the practical implementation of many of the convention provisions, in addition to the existence of many laws, legislations, decisions and regulations that contradict the convention despite not contradicting the Kuwaiti public order.

## Chapter One

### **Women's Rights in the State of Kuwait in the Constitution and Legislations (National Law)**

The Kuwaiti Constitution disregarded women's rights specifically or by designation, as the term "woman" was not mentioned in all articles of the Kuwaiti Constitution, so women's rights in Kuwait seemed to emerge within the general theoretical framework of the rights of the citizens and the rights of individuals and their general freedoms. In addition, Article 8 referred to in Chapter Two of the Constitution that provided for the basic foundations of Kuwaiti society saying that: «The state safeguards the pillars of society and guarantees security, tranquility and equal opportunities for citizens». As well as, Article 9 of the same chapter affirmed that «The family is the basis of society, based on religion, morals and patriotism, the law preserves its existence, strengthens its ties, and protects motherhood and childhood». However, Article 29 of the Kuwaiti Constitution is more close to considering women as an active partner in Kuwaiti society, as Chapter Three of the Constitution which includes public rights and duties provided for: "All people are equal in human dignity and in public rights and duties before the law, without distinction to race, origin, language, or religion.» Further, Article 30 of the Kuwaiti Constitution stipulates that "Personal liberty is guaranteed» and article 41 guarantees that "Every Kuwaiti has the right to work and to choose the type of his work. Work is a duty of every citizen necessitated by personal dignity and public good. The State shall endeavor to make it available to citizens and to make its terms equitable».

Returning to the provisions contained in the Kuwaiti Constitution that are consistent with international standards with respect to citizenship, justice and equality, despite the ratification of the State of Kuwait to many conventions in this regard, including the Convention on Elimination of All Forms of Discrimination Against Women (CEDAW), however, women's rights in Kuwait are still- in many legislations- not applied.

## First Topic

### Women's Rights within the Context of the Kuwaiti Constitution

The provisions of the Kuwaiti Constitution formed a general theoretical framework for the rights of Kuwaiti citizens, without accessing the privacy of women that was observed by modern Constitutions which include international standards for women's rights and provide them with special protection.

Despite the Kuwaiti Constitution observed this issue, many laws, internal regulations, and administrative decisions still ignore the principle of the supremacy of the Constitution and its legal force that is superior to other laws, which led to the disruption of many Articles of the Constitution related to women's rights in Kuwait, and their application in a discretionary manner, whenever women empowerment activities try to defend them or obtain their rights.

#### First: The international Treaties or Conventions in the Kuwaiti Constitution:

In principle, the rules of international law, including international treaties and conventions, constitute binding rules for the administration or public authorities, provided that the rules contained therein are ratified by the competent authority in the state, on the understanding that upon ratification and publication, they shall become part of the internal law of the state. Thereupon, both of the public authority and individuals must respect them.

In practical terms, the rank of provisions contained in the treaty or international convention -in terms of its superiority to the Constitution or not- differs from one country to another, and the reason for this superiority is due to the inclusion of the supremacy of these international treaties or conventions in the Constitution <sup>(2)</sup>, accordingly, their application as a mandatory force that surpasses national laws, including the Constitution. Recognizing this issue, the Kuwaiti legislator took a middle path, when It gave the treaty -according

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(2) For example, in some countries, such as France, international treaties and conventions are ranked higher than the Constitution, and this is what the Fourth Republic's Constitution of 1946 stated in its Article 26, and what was confirmed by Article Fifty Five of the Fifth Republic's Constitution of 1958, where the ratified treaties and conventions are ranked higher than the laws. As for Egypt, the occupy the same rank as ordinary laws, evidenced by what was stipulated in the Constitution of the Arab Republic of Egypt in 1956 in Article 134, and what the interim constitution proclaimed on March 25, 1964 in Article 125 which stipulates that "the President of the Republic concludes treaties and informs them to the Nation Assembly, accompanied by appropriate statement, then they have the force of law, after its conclusion, ratification and publication, and the 1971 Constitution of the Arab Republic of Egypt adopted the same substance.

to Article 70 of the Constitution- the force of law after its conclusion and ratification, that made the Convention on Elimination of All Forms of Discrimination Against Women (CEDAW) subject to both of the interpretation of the legislations and the discretionary management.

Consequently, the Kuwaiti legislator's commitment to the international conventions and treaties has emerged as a moral and non-binding obligation in the framework of practical application, in addition to the legislator's failure to implement the Articles of the Constitution itself in many provisions, including the constitutional provisions that are compatible with the Convention on Elimination of All Forms of Discrimination Against Women (CEDAW).

## **Second: Kuwaiti Women's Rights in National Laws and Legislations:**

Returning to the provisions contained in the Kuwaiti Constitution that are consistent with the international standards regarding citizenship, justice and equality, and despite the ratification of the State of Kuwait on many conventions in this regard, including the Convention on Elimination of All Forms of Discrimination Against Women (CEDAW) women's rights in Kuwait are still far from practical application since any Kuwaiti parliamentarian, or any decision of an administrative employee can simply impair women's rights, in a clear distraction from the principle of Constitutionalism, which makes the administration subject to the law, by obliging it to the principle of the sequence of legal rules in the context of issuing or refraining from the administrative decision by the control of the adherence to the principle of legitimacy, which stipulates that legal rules are graded with different ranks starting with treaties, international conventions, the Constitution, law, then internal regulations and ending with the administrative decision as a legal action issued by the competent administrative authority and by its individual will, with the intent to cause legal effects by the creation, amendment or cancellation of legal rights and duties, or more precisely by the creation, amendment or cancellation of legal centers in the country.

In order for individuals to obtain their rights, this process is regulated by judicial oversight over the actions of the administration, thus the legal elements of the state are completed by the oversight of the actions of the various authorities, as this task is carried out by courts of all kinds, whether regular or administrative, depending on the nature of the judicial system applied in the state, whether it is a uniform judicial system or a dual judicial system.<sup>(3)</sup>

From this point in particular, the role of the judicial oversight over the work of the Legislature

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(3) Dr. Raafat Fouda - The sources of administrative legitimacy and its curves - The Arab Renaissance House - Cairo - 1995 - p. 9 -10, and in the same topic see: Dr. Majed Ragheb Al-Helou - Administrative Judiciary - University Press House in Alexandria - 1995 - p. 10 -11.

(Parliament) in assessing and interpreting the laws and in monitoring the actions of the Executive (Administration) by examining the extent of conformity and appropriateness of the administrative decisions issued in accordance with the legislative provisions, this is because of the ability of both of the administrative judiciary and the administrative courts to supervise and control the discretionary authority of the administration, which often gives the administration man an entitlement in applying the legal provision ranging from permission and prevention. Particularly from this point, the importance of the practical practice of interpreting and assessing the will of the legislator included in the laws and the extent of direction of the administration man in issuing the administrative decisions and their conformity to the law and the Constitution appears, as this process does not stop at the limits of interpretation, but goes beyond it to understand the spirit of the provision in a way that is appropriate for the public interest.

On this basis, the importance of developing the mechanisms of the administrative judiciary work in Kuwait along with keeping pace with recent developments appears, particularly in its ability to interpret the will of the legislator and its conformity to the constitutional and international provisions, especially related to the CEDAW, requesting from the administration (the executive branch) to express sufficient reasons to issue its decisions based on the provisions of the Constitution and the international conventions, as well as the extent of the legislator's ability to adapt and harmonize these provisions with the provisions of the convention.

Women's rights in Kuwait have become a victim of the actions of the administrative authority in the framework of its application of laws in accordance with the Constitution. This position is assisted by the failure of the legislator to enact the laws necessary for interpreting the constitutional provision, so women's rights in Kuwait in general seemed to be Subject to the discretionary authority of the administration, which led many rights to be a victim of the invalid legislative practices in addition to the failure to achieve the ultimate goal of the discretionary authority, which is the public interest. Consequently, It went beyond the real goal of the legislator from this authority, which is to protect individuals based on their specific and objective circumstances. Most of the decisions related to women's rights in Kuwait became tainted by the abuse of power due to its violation of the Constitution, laws, and international conventions.

## Second Topic

### Women's Rights in Kuwait between Justice and Equality

Kuwaiti legislations and internal regulations vary in terms of their interpretations of the theoretical and conceptual framework of the Kuwaiti Constitution, especially in the framework of the public office which constitutes a mechanism for measuring the integration of women in society, and thus determining the role of individuals upon whom the state depends in achieving its goals. That is why the public office is carefully observed by the legislator and the jurists in the various countries, as it determines the role of the public employee in general is determined, the role of women in accordance with the economic and social philosophy of the state, the extent of their contribution in the economic, political and social fields, and their role in contributing to the organization of the administrative system of the state.

Within the framework of the rights of the working women in Kuwait, the Kuwaiti Civil Service Law, for example, did not mention any explicit reference to distinguish women from men in the framework of the public office, as it suffices to define the public office as "A national service entrusted to those who carry it out, and the state employees in the performance of their work target the public interest ", accordingly, it disregarded the special women's rights, knowing that the legislator redressed this in The Law of Labor in the Private Sector No. 6 of 2010, which addresses the rights of laborers in the private sector, including Kuwaitis and non-Kuwaitis. However, it is unknown the criterion that the Kuwaiti legislator used to differentiate between laborers in the private and public sectors within the framework of women's rights. On the other hand, The Law of Labor in the Private Sector is counted unprecedented for its explicit differentiating between men and women, forming a legislative victory by disclosing what the Constitution disregarded when referred to the word "women". As The Law of Labor in the Private Sector No. 6 of 2010 defines the laborer as: "The Worker: Any male or female person who performs a manual or mental work for an employer under the employer's management and supervision against remuneration".

The Worker: Any male or female person who performs a manual or mental work for an employer under the employer's management and supervision against remuneration

Consequently, the Kuwaiti legislator has managed -within the framework of The Law of Labor in the Private Sector- to further elaborate the concepts related to determining the legal status of women's rights in Kuwait, when the law also designated a special chapter for the employment of women and provided them with special protection.

## First: Kuwaiti legislator and women's rights in Kuwait:

Although there are many cases of discrimination against women, the Kuwaiti legislator has singled out many laws and legislations that specifically stated women's rights, whether in the governmental or private sectors and in this regard, it can be said:

### 1 - Political Rights

After decades of demands, Kuwaiti women obtained their electoral rights in 2005, after they demonstrated unprecedented courage in their Gulf surroundings, where they were confronted each time with rejection. The Kuwaiti woman's obtaining of this legitimate right was a major step in the framework of the application of the legal interpretation of the provision of Article 29 of the Kuwaiti Constitution, which addressed the public rights and duties, as it considered women as an active partner in Kuwaiti society by stipulating that: "All people are equal in human dignity and in public rights and duties before the law, without distinction to race, origin, language, or religion.". Therefore, this achievement constitutes a development not only at the level of combating discrimination against women in Kuwait, but they are also an important step towards the interpretation and application of the principle of "supremacy of the Constitution", which observed the idea of citizenship within its general framework. Accordingly, the Kuwaiti Constitution gave natural rights that amount to international standards in the framework of the equality of men with women, without exceeding it to the idea of justice that strives in favor of the physiological and societal privacy of women in general, and which the Constitution did not observe when it disregarded the word "women" in particular.

As well as, women's gain of their electoral rights has achieved a worthy equality with men, without exceeding to the rest of political rights, which is confirmed by the fact that despite more than a decade since Kuwaiti women have obtained their political rights, the number of women in Kuwaiti Parliament is still few and decreasing. It is thought that it is because of the lack of ability of Kuwaiti women to obtain the other political rights as an integrated package. For example, without limitation, in the first active participation of women in the national elections in 2009, the Kuwaiti women managed to obtain four seats in parliament after difficult competitions. While the national elections of November 26, 2016 resulted in only one woman obtaining one seat in Parliament, which places Kuwait at the bottom of the global rankings <sup>(4)</sup>. Further, the number of women who decided to participate in the electoral process as candidates has witnessed a steady decrease, from 11.1% in 2006, to 2.5% in 2013. Moreover, the number of female candidates in the 2016 elections did not exceed 15 candidates out of two hundred and eighty seven candidates, which reflects a slight development in the framework of Kuwaiti women's participation in the elections.

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(4) See: United Nations High Commissioner for Human Rights, United Nations, "Statement of the end of the mission of the Working team on the issue of discrimination against women in law and in practice to the State of Kuwait, 15 December 2016: at the link:

[NewsEvents/Pages/DisplayNews.aspx?NewsID=21037&LangID=A](https://www.unhcr.org/news-events/pages/display-news.aspx?NewsID=21037&LangID=A)

While the Working team on the issue of discrimination against women in law and in practice, which is a thematic mandate follows the mechanism of procedures relevant to the Human Rights Council, had declared, in a statement at the end of a nine-day visit to the State of Kuwait on 15 December 2016, that it regretted that there is no representation of women in Kuwait at the municipal level <sup>(5)</sup>, and that Kuwaiti women still face obstacles that prevent them from exercising their political rights, as the working team expressed that the electoral campaigns and voting mechanisms are often conducted through informal or traditional institutions or networks (such as Al Diwaniya) <sup>(6)</sup>. In addition, while being in 2020, there are only two female Ministers out of the sixteen-member cabinet and the number of women Ministers in successive governments did not exceed three women Ministers in the Cabinet, noting that Kuwaiti women have proven unprecedented efficiency in various professional fields, which requires the removal of all obstacles that prevent them from obtaining their right to equality in the development of the country.

## 2 - Kuwaiti Nationality Law:

According to Article 2 of the Kuwaiti Nationality Law issued by Emiri Decree No. 15 of 1959 15/1959 “Every person born in Kuwait or born abroad from a Kuwaiti father is Kuwaiti”. Consequently, the Kuwaiti Nationality Law clearly disclosed the transgression of the most important rights of Kuwaiti women, which is their right to give their nationality, either to her children or to her husband, and that is in clear violation of the provision of Article 29 of the Kuwaiti Constitution, which prohibits discrimination on the basis of sex.

Thereupon, the discrimination between the women’s right and the men’s right to a nationality is obvious. As Article 7 of Emiri Decree No. 15 of 1959 considered the minor children of a naturalized Kuwaiti as Kuwaiti, and gave them the right to decide to choose their original nationality during the year following their attainment of adulthood. While the children of the naturalized who are born after his acquiring of the Kuwaiti nationality shall be deemed Kuwaitis in an original capacity. This provision shall apply to those who were born before the entry into force of this law. Accordingly, the minor children of a foreigner - who acquired Kuwaiti nationality - are considered Kuwaitis by naturalization and by the force of law unless they decide to choose their original nationality during the year following their attaining the age of maturity.

As for his children who are born after acquiring the Kuwaiti nationality, they are considered Kuwaitis in an original capacity, and this paragraph was added by Law No. 44 of 1994 in which discrimination in favor of sex was granted to the naturalized foreigner, while Kuwaiti women did not obtain this advantage, although the rights that the law granted to men have negative repercussions on the social level, as it will result in distinction and discrimination between members of the same family.

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(5) United Nations High Commissioner for Human Rights, op. Cit.

(6) United Nations High Commissioner for Human Rights, ibid.

As for what was stated in paragraph 2 of Article 5, which stipulated that the son of a Kuwaiti woman married to a foreigner must maintain residency until reaching the age of maturity, if his father was a prisoner foreigner, or his mother was irrevocably divorced, or her husband died, as the law stipulated that the Minister of Interior shall be given discretionary power in granting nationality, which makes it a mere grant subject to the discretionary power of the Minister, while it is a mere human right.

Consequently, the administrative decision becomes in a legal rank above the international treaties, the Constitution, and the law, which is deemed an infringement of the “Principle of Legitimacy”, which is considered the most important legal principle, in which the state with its bodies, institutions and individuals are subject to the provisions of the law, otherwise its actions are considered illegal and tainted by invalidity. As the submission to the principle Legitimacy is the watershed that defines the idea of a legal state that respects human rights, by defending the rights and public freedoms of individuals without discrimination based on sex.

In this regard, Dr. Masoumeh Al-Mubarak reviewed her experience within the Kuwaiti parliament, and especially within the Women and Family Committee in Parliament, about the possibility of Kuwaiti women passing their nationality to their children, and stated that the orientations were different by members of the committee, where some viewed nationality as an advantage and we should not grant this advantage for anyone, and therefore they see that a Kuwaiti woman who married a non-Kuwaiti shall bear the consequences, as if she committed a mistake. Therefore the view was very negative towards the possibility of passing Kuwaiti women their nationality to their children. So every time this issue was opened for discussion, it was closed for not conciliation within the committee itself. Dr. Al-Mubarak affirmed her belief in the provision of Article 29 of the Kuwaiti Constitution, as she presented a proposal of a law separate from the committee, including that Kuwaiti children are treated like Kuwaitis until they reach the age of 21, after which they can choose between the nationality of their mother and the nationality of their father, and they may not combine the two nationalities. But unfortunately, she could not complete this proposal for its exit from Parliament .<sup>(7)</sup>

At the international level, and based on recent developments in the right to a nationality in international human rights law, the right to a nationality has become a basic human right, which means the right of everyone to acquire, change and retain a nationality, as international human rights law requires that the states' right to decide who its nationals are is not an absolute right, and it only has to comply with its human rights obligations with regard to granting and stripping the nationality <sup>(8)</sup>, especially in the context of the

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(7) An interview conducted by the Kuwaiti Society for Human Rights with Dr. Masoumeh Al-Mubarak on women's rights in the State of Kuwait.

(8) OHCHR website (the right to a nationality and statelessness), [www.ohchr.org/AR/Issues/Pages/Nationality.aspx](http://www.ohchr.org/AR/Issues/Pages/Nationality.aspx)

special obligations of states to ratify international covenants and conventions in the field of human rights.

The discrimination between men and women appears in the Kuwaiti Nationality Law, as Article 8 of the same law, which gave the man the right to confer his nationality on his foreign wife, while legislator did not give this right to Kuwaiti women, depriving the Kuwaiti woman married to a foreigner of the right to pass the nationality to her children, which led to repercussions and effects that go beyond the right to a nationality represented in problems related to personal status, and therefore her children will not be able to obtain the right to their mother's inheritance in immovable property, such as real estate. The reason for this is that the Kuwaiti legislator does not allow foreigners to own property in Kuwait. Although they are allowed to occupy some public jobs, and being accepted into the military and the Ministry of Interior, their salaries are lower than that of their fellow citizens in the same work.

### **3 - Residential Welfare:**

Law No. 2 of 2011 amended some provisions of Law No. 47 of 1993 regarding residential welfare for the irrevocably divorced Kuwaiti women and the widowed Kuwaiti woman if any of them has children the right to obtain housing loans provided by the Savings and Credit Bank (SCB) in order to provide adequate housing. According to this law, the Savings and Credit Bank provides adequate housing at a low rental price for widows, divorced and women who are married to not Kuwaitis and single women older than 40 years old.

This positive development opens the opportunity for women who were excluded before that. However, Kuwaiti women's rights related to housing welfare are still -in general-subject to the discretionary interpretations of the administration regarding the decisions and regulations issued by the administration, which sometimes replace the will of the legislator, and at other times replace the will of the Constitution. For example, Articles 3 and 7 of the Residential Welfare Regulations issued by Resolution of the Minister of State for Housing Affairs No. 31 of 2016 constituted an explicit violation of Articles 7, 8, 9, 16, 18, 29, 30, 70 and 177 of the Kuwaiti Constitution, which reveals a discrimination between a Kuwaiti man married to a non-Kuwaiti, and a Kuwaiti woman married to a non-Kuwaiti, as the regulation limited the right to obtain in-kind and monetary benefits established by the Residential Welfare Law to the Kuwaiti man, authorizing him to apply for housing alternatives, while Kuwaiti women were deprived of this welfare, and this is a clear violation of the Principle of Equality and equal opportunities included in the Kuwaiti Constitution, as well as it constitutes an assault on the personal freedom guaranteed by the Constitution regarding Kuwaiti woman's right to choose her husband, and an assault on private property by denying Kuwaiti woman access to various housing alternatives, and this is also inconsistent with the provisions of the Constitution that gave in Article 70 the international treaty a binding force equal to the binding force of the law, and an unjustified

violation of the Convention on Elimination of All forms of Discrimination Against Women, which emphasized the adoption of legislative and non-legislative measures appropriate to women's access to their rights just men.

In this regard, Dr. Masoumeh Al-Mubarak<sup>(9)</sup> believes that women enjoyed residential welfare in the past, but they lost it with a stroke of a pen, and they are no longer under the umbrella of residential welfare, which is deemed a loss of women's basic rights. In addition, "Al-Mubarak" indicates that this is contrary to the provision of Article 29 of the Constitution, and during her presence in the Kuwaiti parliament, a discussion was held about the Residential Welfare Law concerning its loopholes and faults, then a vision was agreed upon to achieve women's equality to men and bridge the discriminatory gap, as their right in residential welfare was completely suspended, because Article No. (1) Of the law was granting the right to residential welfare to a man who has a family, after that an ambitious vision was set for the law but there was intense opposition. After controversy, a vision was developed to include several segments of which are Kuwaiti women married to non-Kuwaitis and have children, those married to non-Kuwaitis with no children, the divorced women who have children, the widow women who have children and the divorced woman with no children, and the unmarried woman so that these segments have the right to obtain residential welfare or housing loans no more than what men obtain.

Through her parliamentary experience, Al-Mubarak continues: The enactment of the law requires votes in the parliament and many parliamentarians are against the law. However, instead of presenting it to voting, the Parliament suggested forming a commission consisting of the Women's Affairs Committee and the Housing Committee, and this has already been done and it was in our favor, because voting can lead to rejection of the bill, after which the law proposal was discussed through a series of meetings and the government was present with us at all stages of the discussion until the law that gives women the right to residential welfare was passed, but there were some restrictions that have been put in this law Such as low-cost housing, and we have proposed to replace it with low-rent housing, so that the woman bears part of it and the state bears the other part.

Further, it must be noted that the government has amended the law before its promulgation and has included complex conditions such as that related to unmarried women and has also set executive regulations that prejudice the right of women through the woman's entitlement of a housing loan of 45 thousand dinars, and this was never mentioned, since the basic principle was that the woman deserves a housing loan that does not exceed

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(9) An interview conducted by the Kuwaiti Society for Human Rights with Dr. Masoumeh Al Mubarak, the first woman Minister in the history of Kuwait, Minister of planning and minister of state for administrative development affairs in 2005, Minister of transportation 2006 and Minister of health by ministerial formation in 2007. She is also considered the first female parliamentarian who won the 2009 elections for the Kuwaiti National Assembly as she came first in the first electoral district.

what the man obtains, but they interpreted it as less than the loan that man obtains. After the meeting with the Minister of Housing informing him about the amendments that were added, he promised that the regulations would be amended, and indeed it was discussed in the cabinet and amended and the loan became 70 thousand dinars for both of men and women but after man has been granted 30 thousand dinars as building materials and others in addition to the loan of 70 thousand dinars and this indicates how much this discriminatory view against women is rooted, and hence the idea of respecting the provision of Article 29 of the Constitution is excluded for many minds .<sup>(10)</sup>

In the same matter, Dr. Khadija Al-Muhaimid said that the legislator did not adhere to many laws related to the Female Kuwaiti Citizen in compliance with the spirit of the Constitution in fairness to her constitutional rights, such as Residential Welfare Laws, which still do not include all women segments as well as men, for example unmarried female citizen in the event of the death of her parents and the sale of family housing to share its price among the heirs, she finds herself without a residence. In addition, the second paragraph of Article 5 of the Nationality Law does not allow the woman passing her nationality to her children while this right is permissible for a Male Kuwaiti Citizen who is married to a non-Kuwaiti woman. As well as, the Female Kuwaiti Citizen cannot adopt health care for her children and relatives in equality to the Male Kuwaiti Citizen .<sup>(11)</sup>

Moreover, Dr. Alanoud Supports the aforementioned, as she sees that the Kuwaiti legislator did not comply with the provisions of the Constitution, since the sixties of the last century when many laws that did not comply with the articles of the Constitution have been enacted, for example the political right, as it was not given to women until late in the year (2005) although Article (29) of the Constitution did not differentiate between male and female citizens. Further, there are many other examples of the unfairness regarding the women's rights in the articles of the Penal Code and other laws besides the deficient rights such as residential welfare, health care, naturalization and other laws and provisions that are inconsistent with the spirit and articles of the Kuwaiti Constitution.

On the other hand, Al-Sharekh continues that the Kuwaiti legislation including those that did not violate the Constitution, did not find their way to practical application in the field of Kuwaiti women's rights, based on the principles of equality and justice, which were included in the international standards, especially the Convention on Elimination of All Forms of Discrimination against Women .<sup>(12)</sup>

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(10) An interview conducted by the Kuwaiti Society for Human Rights with Dr. Masoumeh Al Mubarak, on women's rights in the State of Kuwait.

(11) Dr. Khadija Al-Muhaimid is a human rights activist, Vice President of the National Family Security Association, and a member of the Supreme Council for Family Affairs of the Council of Ministers.

(12) Dr. Alanoud Al-Sharekh, a researcher and academic activist in women's rights, and head of the team to repeal Article (153) of the Penal Code.

Similarly, Dr. Ghadeer Asiri believes that there are many bills related to women that are archived instead of being discussed and resolved, as the will of the legislator has not yet taken into consideration international conventions related to women's rights which are ratified by the State of Kuwait, because we are in a society governed by customs, traditions and norms that includes many discriminatory images against women, and here it is the responsibility of the state to contribute to raising awareness of women's rights in all fields, and enhances women's participation in holding leadership positions and decision-making positions.<sup>(13)</sup>

#### **4 - The Penal Code :**

The Penal Code discriminated in the provision of Article (153) between a man and a woman in terms of the penalty imposed for committing a crime of murder because of adultery, for it stipulated that everyone who surprised his wife in a case of adultery, or surprised his daughter, mother, or sister, in adultery with a man and murdered her at once, or murdered the who commits adultery with her, or murdered them together, he shall be punished with imprisonment for a period not exceeding three years and a fine not exceeding 3000 rupees or one of these two penalties, which means that the legislator reduced the responsibility for a man if he does this and transformed the crime from a felony to a misdemeanor. While It did not give the woman the same right of reducing the penalty if she committed the murder crime because of adultery of her husband, but she became accused of the crime of murder, and this constitutes a clear and explicit discrimination between men and women.

In another context, the Kuwaiti Penal Code determined severe penalties for the crime of kidnapping, but it stipulated in Article (182) that If the abductor marries the one he abducted, in a legally-recognized marriage with the permission of her guardian, and the guardian agrees that the abductor not undergo punishment, then he is not sentenced to punishment. Therefore the law undoubtedly disclosed that no criminal charges will be issued against the kidnapper or rapist if he marries his victim with the permission of her guardian, allowing the perpetrator the possibility of impunity and in this way it diminishes and ignores the woman's will and her human dignity.

As well as, the law itself allowed that persons may be physically disciplined through Article (29) which stipulated that there is no crime if the act occurred in using the right to discipline from a person to whom the law conferred this right, provided that he committed the prescribed limits and his tendency to merely discipline. So it is obvious that this encourages incitement to violence. Then there is inconsistency and contradiction between the provisions of the Kuwaiti Penal Code and the Convention on Elimination of

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(13) Dr. Ghadeer Asiri, an activist and academic, held the position of Minister of Social Affairs in the Kuwaiti government in 2019

All Forms Discrimination against Women as it stipulated in Article (2) thereof that it is necessary to repeal all national penal provisions that constitute discrimination against women, and contradicts the goal of this convention to achieve full equality .<sup>(14)</sup>

## 5 - The Law of Persons with Disabilities :

It is stipulated in Article (2) of Law No. 8 of 2010 regarding persons with disabilities that “provisions of this law are applicable to the Kuwaiti disabled and the children of the Kuwaiti from a non-Kuwaiti, within the bounds of medical and educational welfare, and employment rights stated in the law herein”. Thereupon, the law of persons with disabilities clearly specifies that it applies to the children of a Kuwaiti woman who is married to a non-Kuwaiti within the limits of health and educational welfare only without specifying any financial allocations for her children with disabilities similar to those of Kuwaiti woman and a Kuwaiti father, and without specifying any financial allocations for her as a mother who takes care of children with disabilities, and that is in clear violation of the provision of Article 29 of the Kuwaiti Constitution, which prohibits discrimination on the basis of sex and as well as it contradicts the provision of Article (3) of the same law that “A non-Kuwaiti person with disability whose mother is Kuwaiti is treated just as Kuwaitis from birth and all his/her life by a decision issued by the Minister of Interior in accordance with Law No. 21 of 2000 amending some provisions of Emiri Decree No. 15 of 1959 on the Kuwaiti Nationality Law. As the treatment of a non-Kuwaiti person with disability whose mother is Kuwaiti came absolute and was not limited within the scope of health and educational welfare as mentioned in Article 2.

Further, the law did not provide for general principles for the rights of women with disabilities in accordance with the provisions of Article 6 of the Convention on the Rights of Persons with Disabilities.

## 6 -Kuwaiti Women Guardianship over Their Children:

Article (209) of the Kuwaiti Personal Status Law No. 51 of 1984 stipulated that: “a-Guardianship over the soul shall be the responsibility of father, then the agnate grandfather and then the agnate relative himself according to the order of inheritance, provided that he is mahram, b- in the event that there are multiple persons who are

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(14) Concluding observations submitted by the Committee on the Elimination of Discrimination against Women regarding the fifth periodic report of Kuwait on November 22, 2017, where the committee expressed its concern in paragraph (b) within the constitutional and legislative framework regarding the provisions stipulated in the Penal Code, including mitigation that follows the punishment of a man who murders a woman in the name of the so-called preservation of honor (Article 153), and allows corporal discipline (Article 29), and not to address criminal charges against the kidnapper or rapist if he marries his victim with the permission of her guardian (Article 182).

entitled to the guardianship, and are all eligible, the court chooses the most suitable one, c- If there is no one entitled to the guardianship, the court shall appoint the most suitable one from others, and Article (110) of the Kuwaiti Civil Law No. 67 of 1980 stipulates that: "Guardianship over the minor's money is to his father, then to the guardian chosen by the father, then to the grandfather of the father, then to the guardian appointed by the court, taking into account the provisions of Article 112.

It is not permissible for the father or grandfather to refrain from guardianship without an acceptable excuse. Therefore, Kuwaiti women do not have the right to guardianship over their children except by a judgment issued by the court, and many administrative regulations and decisions do not give women the right to guardianship over their children, which results in many negative effects that affects a woman's life in managing her children's public affairs, especially in the area of health and educational welfare.

**Among the administrative decisions and regulations that exclude Kuwaiti women from their right to guardianship:**

- The Ministry of Health Regulations: which deprives a woman of the health guardianship over her children and their family members by not accepting her signature in hospitals in cases that require medical or surgical intervention for their children, which is a clear discrimination against women, and the Parliamentary Health Affairs Committee rejected the proposal which was submitted by one of the representatives in the Kuwaiti National Assembly in the beginning of 2020, to give women the right to sign the treatment of their children and their family members in hospitals and the required approvals to perform surgeries and medical procedures for them.
- Regulations and internal systems of student affairs in the Ministry of Education: which stipulates in the fourth item regarding student transportation that: "The student may not be transferred except with the consent of his guardian personally and it is strictly forbidden to carry out the transfer process by the mother or uncle or any other person even if the mother is divorced and has custody, unless by a power of attorney" <sup>(15)</sup>, and this violates the provision of Article 29 of the Kuwaiti Constitution, which prohibited discrimination on the basis of sex, and is also deemed an infringement of the "principle of supremacy of the Constitution" which necessitates taking appropriate measures to preserve the supremacy of Constitutional legal rules, by not allowing other legal rules to violate it.

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(15) Website of the Ministry of Education in the State of Kuwait

## 7 - Education:

It is provided for cases of dismissal in Item 4 of Article 7 of the secondary stage basic document issued by the Ministry of Education as "The female student is dismissed if she gets married during the study period and in return she is allowed to register in the centers of elder learners or learning in houses"<sup>(16)</sup>, and that means that if she gets married during her study in the secondary stage, her name will be struck off and she can register in the centers of learners care which are centers that provide education, but to a lesser extent in the discipline and quality that is necessary for students at that stage to complete their studies well and obtain high degrees compatible with their educational ambition. On the other hand, if the male student gets married during his study at the secondary level, this clause does not apply to him and therefore he is not separated.

Regarding the admission ratios in higher education, we find some institutes and colleges affiliated with the Public Authority for Applied Education and Training adopt different rates in the admission of male and female students in some specialties. We notice that the male admission rates are less than those of female students giving them a greater chance of acceptance comparing to the females<sup>(17)</sup>, which confirms that there is a clear discrimination against women, without this discrimination forming any connection with the idea of maintaining public order, and therefore many laws and administrative practices with their regulations and decisions still constitute a clear contradiction with the provisions of the Kuwaiti Constitution.

### **Second: Discrimination against Women in Kuwait: The Compatibility of Principle of Justice and Principle of Equality with the Convention on Elimination of All Forms of Discrimination Against Women (CEDAW):**

Kuwaiti women have experienced a marked slowdown in obtaining their natural position in occupying the public office, and they still face many obstacles to assuming senior leadership positions, despite the fact that Kuwaiti women have proven competence and know-how in some sectors such as the health sector. However, Kuwaiti legislation is still far from the Principle of Equality of women to men, and therefore its failure to achieve the Principle of Justice, which constitutes the legal basis for the controversy of the relationship between women's rights and international standards. Consequently, achieving the Principle of Equality to men in a facility without another does not mean that Kuwaiti women have begun to overcome discrimination. For example, Kuwaiti women managed to assume the position of director in the Ministry of Health, however they did not occupy except one of the positions of the ministries undersecretaries who were

(16) The primary document for the secondary stage in the Ministry of Education  
<https://www.moe.edu.kw/docs/Wathaiq/Wathaiq/highySDoc.pdf>

(17) Specializations and percentages available to submit an application to join the colleges and institutes of the Public Authority for Applied Education and Training for the academic year 2019/2020,  
[www.paaet.edu.kw/mysite/Default.aspx?tabid=7551&language=ar-KW](http://www.paaet.edu.kw/mysite/Default.aspx?tabid=7551&language=ar-KW)

twelve. While the women headed the majority of the 100 clinics in Kuwait, headed half of the hospitals in Kuwait and twenty-two women managed to take over the position of the Public Prosecutor in November of 2014. Accordingly, they proved that they are able to be in equality with men, so this does not mean that they have completely overcome the difficulties of discrimination against them. On the contrary, we can notice that this constitutes a veiled discrimination as it is applied in some sectors only, which we consider a confirmation of her nature as a female through her holding positions and jobs that essentially favor women.

While women remained in many other sectors suffering from not being equal to men and that was in explicit contradiction and opposition to the provisions of the Kuwaiti Constitution. For example, Kuwaiti women are still far from achieving equality with men in the judiciary positions, despite having taken over some positions in the prosecution, which requires legislative and societal urge to enable them to get judicial positions, after the expiration of the required service period in the Public Prosecution, which is specified for six years.

Therefore, this would encourage the activation of this positive experience by encouraging the Kuwaiti legislator to continue and develop this initiative, and to keep the door open to future generations.

The same applies to Kuwaiti women working in the police force, where Kuwaiti women occupied an important place, and worked in various sectors, as there are more than 358 women working in the police force, and also a woman held the position of spokesperson for the Ministry of Interior, added to that 49% of the investigations department are women<sup>(18)</sup>, which indicates the ability of Kuwaiti women to occupy these jobs and to be equated with men.

In this regard, Dr. Khadija Al-Muhaimid confirms that there are equitable Kuwaiti legislations, but they are not applied in fact, for example, that the percentage of women in leadership positions be no less than 30% in order to achieve international recommendations, as this provision is not applied in fact. As well as, the percentage of women from 2015 to 2020 in the Kuwaiti parliament is decreased from four female parliamentarians to one female parliamentarian, and the number of women Ministers was no more than two out of 16 women despite the high percentage of women who are scientifically and professionally qualified in society in a manner that exceeds males, and despite the approval of the Civil Service Bureau to be a priority for the qualified Kuwaitis whose mother is Kuwaiti to be appointed after the Kuwaitis, but this did not find any activation on the ground.<sup>(19)</sup>

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(18) United Nations High Commissioner for Human Rights, *ibid*.

(19) Khadija Al-Muhaimid is a human rights activist, Vice President of the National Family Security Association, and a member of the Supreme Council for Family Affairs of the Council of Ministers, *op.cit*.

Whereupon it can be said that: perusing these statistics, including those of the reports of the United Nations High Commissioner for Human Rights, proves that Kuwaiti women achievements regarding the public office can neither be considered as an achievement of the Principle of Justice, nor can it be classified as progress within the framework of the international standards concerned with issues of discrimination against women, as these numbers and statistics are still within the framework of the principle of gender equality secured by the authority of the supremacy of the Kuwaiti Constitution, and these rights are natural rights established by the principle of citizenship. Thereupon, we affirm that this does not mean that Kuwaiti women have reached the Principle of Justice, which considers the privacy of women within the framework of International standards that addressed issues of discrimination against women, first and foremost the CEDAW.

Perhaps what confirms our hypothesis is that the majority of statistics that indicate the role of women in the public job relate to jobs that prioritize women due to their nature, such as health, while Kuwaiti women's assumption of the leadership positions that reflect the Principle of Justice with men remained relatively low. For example women's percentage in Ministries is 13%, 7% as undersecretary, 13% as assistant undersecretary, 19% as general manager of a body or institution, 9% as deputy general manager of a body or institution, 21% as assistant secretary general, 2% as ambassador, 42% as member of the fatwa and legislation.<sup>(20)</sup>

Since Kuwaiti women remained almost deprived of diplomatic positions and did not reach high levels in them, as the received statistics indicate that their percentage as ambassador is 2%, and the working team on the issue of discrimination against women in law and in practice has stated in its report on its visit to the State of Kuwait, that out of Eighty-four ambassadors, there are only two female ambassadors, one of whom is in the Cooperation Council. Until 2014, Kuwaiti women who have been diplomatically trained did not hold diplomatic positions in fact, as their work has been limited to the position of "political researcher". However, Kuwaiti women still have the opportunity to develop regulations and laws that empower them to hold diplomatic positions, especially after they obtained the right to take the exam, which in 2014 empowered two out of five female candidates to be admitted to the diplomatic position. Consequently, all political researchers working for the Ministry before 2014 can have the same fair opportunities to become diplomats.

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(20) The third periodic report submitted by the State of Kuwait in 2018 to the Committee on Economic, Social and Cultural Rights, schedule No. (2) page 25, file:///C:/Users/asus/Downloads/G1844204.pdf

### **Third: Special Protection for Women between the Civil Service Law of 1979 and The Law of Labor in the Private Sector No. 6 of 2010:**

#### **1 - Civil Service Law of 1979:**

The civil service legislation granted women working in the government sector according to the decree of the Civil Service System 1979, a package of benefits through which the decree attempted to achieve justice for Kuwaiti women, by reconciling their family duties and their job duties. As this law gave women a leave with a full salary for two months in the case of childbirth, a leave for half the salary for a period of four months following the childbirth leave, another leave for childcare with a full salary to accompany her child in the event of his illness or being in hospital, and special leave in two cases; the first is for family care which shall not be less than 6 months and not more than three years throughout the service period, and the second is for an official task or secondment. The law also granted women a social allowance for their children in two cases, the first of which is the death of their father or his inability to earn while not receiving any salary, pension, or assistance from the public treasury on a regular basis, and the second is to support her children when not receiving their child support from those who are obligated to spend on them.

As well as, this law gave the woman the right to a sick leave with a full salary in the event that she suffers from a terminal illness, and this sick leave is granted by a decision of the competent medical authority for a period of no more than two years. The law also granted Muslim women working in the government sector whose husband dies a special leave with a full salary for a period of four months and ten days from the date of death, which is the period of the prescribed Waiting Period in the personal status of Muslims.

Perusing the nature of the rights that the Civil Service Law gave to Kuwaiti women, they are considered natural rights that have no relation with the issues of discrimination against women, since most of them are rights within the framework of Islamic legislation that God has assigned to them for more than 1400 years, and therefore they are different from those rights that were brought about by the recent developments of the contemporary state, and the transition of societies into challenges with which they need to give new roles and tasks to women that have become half of the society which is characterized by modern democracy and sustainable development, and which focuses on the role of the individual in achieving development at all levels, depending on human development which does no longer differentiate between male and female.

Furthermore, Dr. Masoumeh Al-Mubarak believes that the Kuwaiti Civil Service Law is full of discrimination against women, and during her membership in the Kuwaiti Parliament,

this law was discussed by the Women's Committee, and the committee developed a proposal to amend approximately 14 articles of the law, including the topic of promotion in leadership and supervisory positions in the Ministries of state and governmental bodies, as the percentage of women assuming leadership positions does not exceed 5% only, while the rest is for men, as this percentage does not correspond to the presence of women in the work sectors, and does not match their distinctiveness and qualifications.

Al-Mubarak continues that they set a criterion based on what the United Nations approved, and it is 30% for women, on the condition of efficiency. When it was submitted to the National Assembly, along with the rest of the proposals, it was fiercely rejected, on the argument that it paves the way for the approval of the quota system. Accordingly, the government had issued some decisions, noting that the decision is not like the law, so we recognized that the quota is absolutely unacceptable.

As for her experience in the Ministry of Health, Al-Mubarak says: Upon holding the Ministry of Health, there were approximately 13 assistant undersecretaries at that time, and there was no woman among them, despite the presence of distinguished female doctors, and it is not logic that none of them has proficiency to be an assistant undersecretary. The same is applied in the Ministry of Planning, where Al-Mubarak was the first woman undersecretary, thanks to her belief in efficiency, which she considered part of the fight against corruption.<sup>(21)</sup>

On this basis, women's rights, according to contemporary international standards, do not stop at achieving the Principle of Equality only, if we take into account the physiological nature of women as they have their own specificity. Consequently, we see that the phrase commonly known as "equality of women to men" is a loose phrase, which does not give women all their rights in comparison to their human nature, which urges us to call to achieve the Principle of Equality accompanied by the appropriateness and conformity of Kuwaiti laws and legislations to international conventions relating to women, such as the Convention on the Nationality of Married Women and the Convention on Elimination of All Forms of Discrimination Against Women (CEDAW)

On this basis, we can say that: The Kuwaiti Labor Law has made great legislative reform in the framework of amending many articles related to the Civil Service Law, however it has not yet observed the conformity of Kuwaiti women's rights to the international standards, especially the Convention on Elimination of All Forms of Discrimination against Women, acceded to by the State of Kuwait since 1994.

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(21) Interview conducted by the Kuwaiti Society for Human Rights with Dr. Masoumeh Al-Mubarak, op.cit.

## 2 -Labor Law No. 6 of 2010:

The Law of Labor in the Private Sector constituted a more advanced step in the framework of women's rights in Kuwait, as the law addressed some cases of special protection for women in the fourth chapter, Articles from 22 to 26, as follows:

- Equality between men and women in remuneration: The Labor Law in the private sector in 2010 equated remuneration between men and women if they perform the same work, and the definition of the laborer provided for "Every male and female performs work for the employer in exchange for a wage", and Article 46 stipulated that "The service of the worker shall not be terminated without any justification or as a result of his activity in the syndicate or a claim or his legal rights in accordance with the provisions of the law. The service of the worker may not be terminated for reason of gender, race or religion", which is a legislative step that can be considered as an application of international conventions, which stipulates that women are equal to men in remuneration, which is stipulated in Article 26 of Law 6 of 2010 stating that " A working woman shall be entitled to remuneration similar to the remuneration of a man if she performs the same kind of work".
- Prohibition of Women's Night Work: The law did not stop at the "Principle of Equality" between men and women, but instead it adopted the "Principle of Justice", when the law regarded the special nature that distinguish women, so the law prohibited –including but not limited to- the employment of women at night, taking into consideration the nature and structure of Kuwaiti society, and preserving its specificity in this society, by providing the appropriate conditions for the employment of women, and protecting them from the social and health effects when they have to work outside the house at night, which is stipulated in Article 22 of the law as: " It is prohibited to employ women at night during the period from 10:00 at night to 7:00 in the morning. This excludes hospitals, sanatoriums private treatment homes and establishments in respect of which a resolution by the Minister of Social Affairs and Labor shall be issued. The employer shall, in all cases referred to in this article provide them with all security requirements as well as transportation means from and to the workplace".
- Prohibition of Immoral Work for Women: The Kuwaiti legislator adopted the special nature of Kuwaiti society and public order since it prohibited the employment of women in dangerous and hard works, as well as it prohibited the employment of women -according to the provision of Article 23- in immoral work that exploits their femininity in a way contrary to public morals. Further, it prohibited to employ them in agencies that provide services to men only.
- Maternity care: Where Article 24 of the Labor Law 6 of 2010 stipulated that: " A pregnant working woman shall be entitled to paid maternity leave of 70 days, not included in her other leaves provided that she gives birth within this period. The employer may

not terminate the services of a working woman while she is on such leave or during her absence from work because of a sickness that is proved by a medical certificate that states that the sickness resulted from pregnancy or giving birth”.

A working woman deserves a paid leave that is not deducted from her other leaves for a period of seventy days to give birth, provided that the giving birth takes place during it, and the employer may not terminate the service of the laborer while she enjoys this leave or because of its absence from work for a healthy circumstance as a result of pregnancy or delivery provided that this is proved by medical certificate”. The law also granted her two hours for breastfeeding, according to the provision of Article 25 which stipulated: “The working woman shall be allowed a two-hour break during her working hours in order to feed her baby according to such conditions as shall be set forth in the Ministry’s decision. The employer shall establish a nursery for children below the age of 4 at the place of work in the event where the number of female workers exceeds 50 or the number of workers exceeds 200”.

## Third Topic

# The Principle of Legality and Women's Rights in Kuwait: The Compatibility Extent of Internal Legislation with the Constitution.

Since the Kuwaiti Constitution did not include women's rights in particular, and therefore they are subject to various interpretations, whether with regard to their conformity with international conventions, laws, legislations or internal regulations, added to that the Kuwaiti State Council's failure to relieve women's difficulties which they face in filing a lawsuit before the Constitutional Court. Further, Kuwaiti women did not seriously fight for obtaining their rights due to lack of education or self-exercise of the Principle of Legitimacy, as a general principle arranging obligatory compliance of the administration and the legislator with the Constitution, consequently, devoting the culture of obtaining their rights before the administrative judiciary that is concerned with defending the rights and public freedoms of individuals.

### First: What is meant by the Principle of Legitimacy?

The Principle of Legitimacy means that the state with its bodies, institutions and individuals - rulers and ruled people - are subject to the law and its provisions, so that they do not go beyond its limits. In addition, this principle requires that the administration in its relations, actions with individuals shall respect the provisions of the law, otherwise its actions are considered illegal and subject to nullity before the administrative judiciary which is concerned with administrative oversight over the administration's actions and the extent of its application of laws and regulations.

The Principle of Legitimacy is not adopted in general, as it is -undoubtedly- subject to the different social, economic and political conditions in different countries. States often agree that this subjugation gives the state's actions the legitimacy, puts them in the ranks of legal states, and takes them out of the ranks of countries that violate human rights and public freedoms, as "The legal state has possibilities and essential natural elements that include the existence of a Constitution determines the system, sets the main rules for exercising the power in the state, and shows the relationship between its three powers the Legislative, the Executive and the Judiciary"<sup>(22)</sup>.

### Second: Administrative Judiciary and Women's Rights in Kuwait:

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(22) Dr. Suleiman Muhammad Al-Tamawi, Administrative Judiciary, the first book, the judiciary of abolition, the Dar Al Fekr Al Araby, Cairo, 1996, p. 35 and beyond

The importance of applying the Principle of Legitimacy within the framework of empowering Kuwaiti women from their rights does not only stop at the limits of obliging the legislative and executive powers to the extent of conformity of the Constitution to international conventions, or the conformity of the law to the Constitution, or the conformity of regulations and administrative decisions to the law, but also go beyond to the most important advantage enjoyed by the administrative judiciary, since it is a structural judiciary, and not just an application judiciary such as the civil judiciary, as it is able to interpret legal provisions and estimate the extent to which the actions of the administration or legislation are in conformity with the legal provisions. Therefore, the administrative judiciary presents appropriate solutions to regulate the relationship of administration with individuals, as a basic pillar to protect and guarantee respect for the rights and freedoms of individuals from the injustice and arbitrariness of the administration, and for this reason the judiciary is characterized by experience and effectiveness in resolving disputes that arise between individuals and administration.

## **1 - Kuwaiti Women's Rights between International Conventions and the Constitution:**

The Kuwaiti Constitution explicitly provided for the Principle of Equality in Part 2 which included "Fundamental Constituents of Kuwaiti Society" and in particular Article 7 stipulated that: " Justice, Liberty, and Equality are the pillars of society; co-operation and mutual help are the firmest bonds between citizens". Consequently the Kuwaiti Constitution adopted an economic and social philosophy that is largely consistent with the Universal Declaration of Human Rights, based on the obligation of the Kuwaiti legislator to provide effective ways for achieving equality between citizens, within the framework of equality in public rights and duties. As Article 29 includes that "All people are equal in human dignity and in public rights and duties before the law, without distinction to race, origin, language, or religion"

Further, the Kuwaiti Constitution establishes the Principle of Equality, consistent with the provision of Article 25 of the International Covenant on Civil and Political Rights, which Kuwait ratified by Law No. 12/1996, that included in paragraph 1 of Article 2 of Part Two that "Every State party to this Covenant undertakes to respect the rights recognized therein, and to guarantee these rights to all individuals within its territory and those who are under its guardianship, without any discrimination as to race, color, sex, language, religion, political or non-political opinion, national or social origin, wealth, paternity or otherwise.

Paragraph 2 also included that "Every State party to the present Covenant undertakes, if its existing legislative measures or other measures do not, in effect, guarantee the enforcement of the rights recognized in this Covenant, to take, in accordance with its

constitutional procedures and the provisions of this Covenant, the legislative or non-legislative measures necessary for this enforcement .<sup>(23)</sup>

Whereupon, it can be said that the Kuwaiti Constitution is in conformity to the human rights that are stipulated in international covenants and conventions regarding the enforcement of basic human rights. However, the practical practices for empowering women politically, socially, and economically in the State of Kuwait continue to suffer from inconsistencies between these rights and the Constitution on the one hand, and with international covenants, conventions and declarations on the other hand.

In many aspects, this is due to the lack of the legal and societal culture that helps women obtain their rights, in addition to the absence of executive procedures provided by the Kuwaiti government to ensure the implementation of provisions related to women's rights, which are mechanisms affirmed by the International Covenant on Civil and Political Rights ratified by the State of Kuwait, where the third paragraph of the aforementioned Article 2 stipulates that "Every state party to this Covenant undertakes to ensure an effective method of grievance for anyone whose rights or freedoms recognized in this covenant are violated, even if the violation was made by persons acting in their official capacities, and to ensure that the allegedly violated rights of every grievant in this way, shall be determined by a competent judicial, administrative or legislative authority, or any other competent authority stipulated by the legal system of the state, and to develop the possibilities of the judicial grievances, and that the competent authorities enforce the judgments issued in favor of the grievant."<sup>(24)</sup>

## **2 -Kuwaiti Women's Rights between the Constitution and the Law (Theory and Practice):**

The articles of the Kuwaiti Constitution guaranteed to women a set of rights as an active partner in building society. Kuwaiti women's rights did not stop at the Constitutional provision, but rather were included in the Kuwaiti law. Labor legislation in Kuwait has unambiguously made clear its position of the working women, as the Civil Service Law stipulated that public jobs are national service entrusted to those in charge of them, and state employees in the performance of their jobs target the public interest, and it is noted that the provision is general and includes both of men and women. However, the new labor law of the private sector No. 6 of 2010 is clearer as it stipulated that "The Worker: Any male or female person who performs a manual or mental work for an employer under the employer's management and supervision against remuneration".

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(23) The International Covenant on Civil and Political Rights, which was adopted and submitted for signature, ratification and accession under the United Nations General Assembly Resolution 2200 A (D-21) of December 16, 1966, date of entry into force: March 23, 1976, in accordance with the provisions of Article 49.

(24) International Covenant on Civil and Political Rights, *ibid.* A, B, and C

On this basis, all provisions governing the employment of male laborers are applied to women laborers - without discrimination or distinction – as there is no difference in working conditions, in working circumstances or in the enjoyment of the rest of the rights. Rather, the new labor law has singled out a special Part for the employment of women in order to provide them with special protection. Articles (22) to (26) of Chapter Four included the rules and provisions related to the employment of women such as equality between men and women in implementation of international conventions that stipulated that women have the right to work, as is the case of men, and as long as women are subject to all provisions of the labor legislation to which men are subject, it is fair to equate them in remuneration if they do the same work, and labor legislation has adopted this principle, as Article 26 of Law No. 6 of 2010 stipulates that: “A working woman shall be entitled to remuneration similar to the remuneration of a man if she performs the same kind of work.”

Whereupon, it can be said that constitution as well as the law in most of its articles, was fair enough to women. However the question is about the Kuwaiti legislator’s adherence to the Constitution provisions –in general-, and whether the Kuwaiti legislations including those that did not violate the Constitution, managed to make the Kuwaiti women’s rights practically applied, based on the principles of justice and equality included in international standards, especially the Convention on Elimination of All Forms of Discrimination Against Women (CEDAW).

This question and others will be answered - next - in Chapter Two..

## Chapter Two

### **Convention on Elimination of All Forms of Discrimination Against Women (CEDAW) and Kuwaiti National Law**

The conflict between the provisions of the Constitution and Kuwaiti legislations has led to the emergence of a number of problems, whether legal, juristic, or societal, that prevented Kuwaiti women from obtaining their rights, and thus a clear and apparent violation of many of women's rights in Kuwait, such as the right to occupy positions, equality before general burdens and the right to work, etc.

Returning to the legal obligations of the Kuwaiti government regarding Kuwaiti women's rights, the latter's performance indicates an unprecedented legal interaction in theory, especially in the context of the appropriateness and conformity between international conventions and covenants and the Kuwaiti Constitution regarding the women's rights, which have attracted the global attention and concern both at the level of international organizations, NGOs, and civil society organizations, so that this issue has become like any issue related to determining the essence of the political system whether it is democratic or not, as well as the form of the state if it is legal or not.

With regard to the State of Kuwait, it was a pioneer in the democratic performance at the political level, whether at the level of the Arab Gulf region or the Arab world, and this is evident through its international human rights obligations, whether they are voluntary or contractual obligations. Therefore Kuwait has acted like a legal state, which adopts and adheres to the individuals' rights and general freedoms within the human rights framework, which became a governmental commitment to the international community that reflects the nature of the political framework of the regime without discrimination in citizenship.

## First Topic

### **The Dialectic Relationship between the Kuwaiti Public Order and the International Standards: The Extent to Which Women's Rights in Kuwait Are Compatible With the (CEDAW) Convention**

There are often discussions about the extent to which women's rights conform to the State of Kuwait, starting with the conformity of these rights with the provisions of the Constitution, law, administrative decisions or internal regulations, and ending with the level of their compatibility with international standards, foremost of which is the Convention on Elimination of All Forms of Discrimination Against Women (CEDAW).

However, this equation often ignores discussing its conformity to the principle of "public order" as the most important legal principle, which is applicable in all countries of the world. This principle constitutes a basic generator of Constitutional articles and a foundation of the spirit of the Constitutional provision, which takes into account the set of philosophies, ideas, beliefs, ideologies, customs, traditions and ethics that prevail in a specific society during a specific period of time, which is called "public order".

In exposing the idea of public order, many countries, including advanced democracies, often reserve certain provisions and articles in ratifying or acceding to the international conventions. Similarly, Kuwait and many countries made reservations on the Convention on Elimination of All Forms of Discrimination against Women (CEDAW), and this is due to the change and difference of the idea of public order from one country to another, either because of the contradiction of these articles with the supreme interest of the nation to which the public order is heading, or the specific or current circumstances are not appropriate.

It is an idea that human rights organizations often do not adopt when they deal with the international legal provision as an absolute rule, without taking into consideration the breach of the idea of public order as one of the most important legal principles accepted in all countries of the world. As this breach may lead to confusion and a social rift that threatens the entire country. However, this does not mean that reservations be random or not restricted as that may undermine women's rights, and thus disavowal of the international obligations.

Since the national legislator has the capacity to adapt and harmonize these national legislation with international standards and conventions, especially in the context of applying matters unrelated to violating the public order, such as those related to women's rights to nationality, remuneration, education, or work equally to men in areas such as in

the diplomatic corps, the public prosecution, the judiciary, its membership in Parliament and the political positions (as we will see in this topic)

## **First: Women's Rights in Kuwait and the Convention on Elimination of All Forms of Discrimination Against Women (CEDAW): CEDAW:**

Since the last century, feminist movements in the State of Kuwait have known many concepts such as women's rights, women's competence, women's participation, and the fate of women. Talking about women's rights in Kuwait have been escalated more and more with the development of concepts of human rights, which have become a global concern at the level of countries and international organizations, which have worked on women's rights to work, education, remuneration, and the social role, then the Convention on Elimination of All Forms of Discrimination Against Women (CEDAW) that constitutes the international rights document for women, signed by more than 189 countries, forming an executive legal mechanism for the United Nations, to obligate the member states of the United Nations to the principles and rules of the United Nations Charter, which explicitly stated in its preamble "Both men and women equally enjoy the basic human rights".<sup>(25)</sup>

The the Convention on Elimination of All Forms of Discrimination Against Women (CEDAW) didn't not only constitute a theoretical legal document for women's rights, but also included practical and executive measures that countries must take to eliminate discrimination against women in various aspects of life. This convention entered into force on December 3, 1981, and the number of countries that ratified it or accessed to it reached about 120 countries, in addition to a number of other countries that signed it. Further, the convention consisted of six parts that contain 30 articles, in addition to the preamble, which touched on the Principle of Equality between men and women, and included the rights that must be given to women, and measures that shall be taken by states to eliminate discrimination against women in political and public life, and to equate them before the law with men. Therefore, the Convention came to affirm the Principle of Equality that has been provided for in Article Two of the Universal Declaration of Human Rights 1948.<sup>(26)</sup>

## **Second: The Dialectic Relationship between the Kuwaiti Public Order**

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(25) In the preamble of the United Nations Charter, it is stipulated that «We are the peoples of the United Nations, and we have committed ourselves to reaffirming our faith in fundamental human rights, in the dignity and destiny of the individual, and in the large and small rights of men, women and nations «.

(26) Article 2 of the Universal Declaration of Human Rights states that «Everyone has the right to enjoy all the rights and freedoms set forth in this declaration without any discrimination in terms of sex, color, religion, political opinion or any other opinion, or national or social origin, wealth, country, or any other position without any discrimination between men and women. "The United Nations General Assembly also considered discrimination between them and men as prejudice that amount to a crime against human dignity. See: The Universal Declaration of Human Rights, United Nations website, at the link:

[www.un.org/ar/universal-declaration-human-rights/index.html](http://www.un.org/ar/universal-declaration-human-rights/index.html)

## and the Convention on Elimination of All Forms of Discrimination Against Women (CEDAW)

Until the beginning of the twentieth century, and in the pre-oil stages, the social circumstances in the Arab Gulf states were simple -in general- which was reflected on the various scientific, healthy, cultural and material aspects that prevailed. The nature of the desert region and the isolation experienced by Kuwait, like the rest of the Arab Gulf states, had a role in shaping the behavioral patterns within Kuwaiti society, which was relatively stable as a somewhat homogeneous society, which resulted in a kind of reconciliation, harmony and synergy and that gave a sense of social security.

The large and extended family system also played a pivotal role in devoting security and stability, in a society that was so busy with the search for living, moving for grazing, and diving in search of pearls<sup>(27)</sup>, so the father was the absolute authority of the family, which gave acceptance and a great impact on the stability of Kuwaiti families socially and psychologically.

Thereupon, the reality imposed a significant interdependence between members of society because they needed each other as well as de to social and security considerations, therefore this case formed one of the components of the Kuwaiti public order which still needs other stages to cause social change on many issues, which cannot be jumped over or measured by historical developments for the emergence of the idea of the modern state, in both Arab and Western countries. From this point in particular, the Kuwaiti public order that establishes the social contract which historically based on two main factors, the first relates to the historical nature of the Kuwaiti society, while the second factor is closely related to the Islamic religion, and its pivotal impact on the formation of the Kuwaiti public order.

### 1 - The History of the Family Nature of the Kuwaiti Society:

The discovery of oil in Kuwait in the middle of the last century led to rapid transformations in Kuwait compared to other Gulf countries, forming the beginning of real social change, especially after the formation of stable human groupings around this new economic resource, as a starting point towards stability, urbanization and development at all levels which led to the social transformation and its effects on the Kuwaiti public order, starting from the emergence of urban centers and cities in their current form, which is the same period that formed the beginnings of the feminist movement in Kuwait (as aforementioned).

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(27) For a detailed discussion see: Omar Obaid Hassana, «The Social Effects of Urbanization (The Gulf City as a Model)» Gulf Society, Its Characteristics and Reality, «on the link: [https://www.islamweb.net/newlibrary/display\\_umma.php?lang=&BabId=1&ChapterId=2&BookId=2101&CatId=201&startno=0](https://www.islamweb.net/newlibrary/display_umma.php?lang=&BabId=1&ChapterId=2&BookId=2101&CatId=201&startno=0)

Addressing the social situation in the State of Kuwait indicates a number of factors that still constitute common and solid facts that cannot be overcome in the context of the history passing and its societal transformations; Consequently, the idea of public order coincides with the knowledge of the traditions, status, systems, and character of this society, the most prominent of which is the community's belief being the most prominent factor that makes individuals organize into one interconnected group, as a basis for setting common rules of understanding between members of society and formulating its culture in one system .

## **2 - Islam and Its Impact on the Formation of the Kuwaiti Public Order:**

The Arab Gulf region is one of the rare regions in the world that all its inhabitants embrace a single religion, which is Islam by almost 100%, and this religious unity indeed constituted -historically- the only source of community organization, cohesion and building in the rest of the Arabian Gulf.

Thereupon, Islam has formed the religion of all people of Kuwait, which has left a clear and evident effect in all aspects of life. This fact, according to sociologists, constitutes common facts that must be taken into account in order to understand any society, especially in the field of recognizing its systems, traditions, and nature. Among the most prominent of these facts is religion <sup>(28)</sup>, which was the only factor for arranging the Kuwaiti society in an interconnected group, as it set common rules for understanding between members of society and formulating its culture in one system, which had - and still has - the greatest impact in many aspects of the life of the Gulf society, its interdependence and cohesion.

Consequently, Islam formed the first factor that society has been emerged from and that contributed to its stability in addition to melting all its slides in a single crucible. Further, Islam helped to collectively accept the decisions of the authority with respect to the development issues at all levels, and in all the private and public affairs such as customs of clothing, food and drink, as well as marriage ceremonies and events, which was clearly reflected in the daily life interactions of people whose details became closely linked to the religious construction of Kuwaiti society, and a behavioral aspect of mutual relations between members of society.

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(28) ibid

## The Appropriateness and Conformity of Kuwaiti Legislations to the Idea of Public Order:

Given the importance of adopting the idea of public order, we can observe the period of approximately 35 years, between the fulfillment of the CEDAW 1979 Convention and the fulfillment of the United Nations Charter 1945 and the Universal Declaration of Human Rights 1948. During this period, women's rights remained within their global framework definitely in the theoretical framework and this due to the historical conditions that rocked the countries of the world after the Second World War, and which prevented the observation of many democratic and human rights issues included in international covenants, including the Universal Declaration of human Rights and the United Nations Charter, due to the circumstances of the societies of these countries that were prioritizing public order over women's rights during that period, before many of these countries succeeded in developing the idea of democracy itself, as a concept of adopting developmental aspects requested consideration of the issue of women who constitute half of society, and hence their role in building and development, such developments that most Middle Eastern countries have not yet reached.

Therefore, we note that the overall and actual implementation of the Convention on Elimination of All Forms of Discrimination Against Women (CEDAW), despite the democratic developments in Kuwait, still needs stages of developments in the Kuwaiti societal mindset, which constitute the idea of the Kuwaiti public order and its supreme interests, and thus the ability to more fully implement the requirements of the Convention on Elimination of All Forms of Discrimination against Women. As this dialectic constitutes a kind of relationship of influence and impact between the implementation of the Convention on Elimination of All Forms of Discrimination Against Women (CEDAW) and the general system, which reflects the most important controls governing the implementation mechanisms of the convention.

On the other hand, it is not possible to look at the idea of the public order as an absolute rule in giving women their rights, and therefore the importance is focused on the extent of the suitability and harmonization of Kuwaiti legislation with the idea of public order as there are many rights that Kuwaiti women still did not obtain despite these rights are not violating the Kuwaiti public order. This made many of the rights stipulated in the Constitution virtually unrealized.

The Kuwaiti state has fulfilled its duties towards Kuwaiti women starting from the inclusion of these rights in the Constitution that constitutes the social contract for all Kuwaitis, and ending with its signing of the Convention on Elimination of All Forms of Discrimination Against Women (CEDAW), although there are many cases of conflict with the convention, whether in the legislative provisions, or the administration decisions, which still do not comply with Kuwait's obligations in the convention, which showed a transgression of its reservations while it stressed and insisted on the appropriateness and conformity of

the Convention on Elimination of All Forms of Discrimination Against Women (CEDAW) to the requirements of the Kuwaiti public order. So we find many practices that disclose clear and evident discrimination against women, without this discrimination having any relevance to the idea of maintaining public order. Consequently, many laws, administrative practices and decisions still constitute a clear contradiction with the provisions of the Constitution and the Convention on Elimination of All Forms of Discrimination Against Women (CEDAW).

The idea of the principle of public order, as one of the most important legal principles established in legal jurisprudence, is due to a number of reasons at the internal level, and is represented by the role of the state as a public authority to interfere in the social and economic fields. As for the external level, it is related to the role of the legislator to exclude the application of foreign laws that contradict the internal public order in a way that secures the stability of society and hence the public interest.

In this regard, we can point out that the Convention on Elimination of All Forms of Discrimination against Women itself, and despite being an international convention, many democratic countries have expressed reservations about some of its articles, for the purpose of being appropriate and consistent with the national Constitution, which constitutes a group of philosophies that prevail in a specific society during a specific period.

On this basis, the Convention on Elimination of All Forms of Discrimination Against Women (CEDAW) was signed by more than 189 countries, among which more than fifty countries expressed reservations and objections to the convention, including 38 countries that refused to implement Article 38 of the convention, which relates to ways of settling disputes related to understanding the convention. For example, Australia has indicated in its reservation that there are some restrictions due to the nature of its constitutional system. Similarly, the convention was not signed by both of the Holy Chair, Iran, Somalia, and Sudan for reasons related to their current conditions governing public order in these countries, and the nature of the state as well as its political system.

## Second Topic

### Women's Rights in Kuwait and the Change of Public Order by Changing the Public Interest

Tracking historical developments in the countries of the world indicates that giving women the rights of equality and justice with men in many of its historical developments is thanks to the idea of devoting the right of women to work above all, and thus integrating them in society gradually, through their ability to change their position within Kuwaiti society and public order, to achieve the public interest of the country. For example, when European countries needed during the Second World War the women to work in ammunition factories, and women proved their ability to do so, it became inappropriate and illogical to deny them the right to vote <sup>(29)</sup> because of their active societal participation, so the right to vote was more than just a reward for military action which in later stages, helped dispel fears of women entering other fields, particularly the other participation. Taking into consideration that many European countries did not give women the right to vote- for instance - except in the later stages of the second half of the twentieth century.<sup>(30)</sup>

#### First: Kuwaiti Women And The Role Of The Right To Work In Changing The Concept Of The Public Interest:

Kuwaiti society has gone through great stages and developments on the way to democracy and human rights. In the feminist field, Kuwaiti history records the names of Kuwaiti women who were able to form a historical break from one stage to the next. In 1937, it was the beginning of organized education for girls in schools, and before this date, girls' education was limited to pamphlets, milayas, and volunteers. In the same year, Maryam Abdel-Malek Al-Saleh Al-Mobaed worked as a teacher in the middle school, which was affiliating to the so-called "Department of knowledge", and recorded her name in the history of Kuwaiti women as the first employee in the Ministry of Education, and the first employee in Kuwait. <sup>(31)</sup>

In 1959, the voice of the first Kuwaiti broadcaster heard on Kuwait Radio, it was the voice

(29) For more details you can see: Ramirez, Francisco O. Yasemin Soysal, and Suzanne Shanahan. «The Changing Logic of Political Citizenship: Cross-National Acquisition of Women's Suffrage Rights, 1890 to 1990, American Sociological Review 1997, pp 45- 735.

(30) For more details you can see: Ramirez, Francisco O. Yasemin Soysal, and Suzanne Shanahan. «The Changing Logic of Political Citizenship: Cross-National Acquisition of Women's Suffrage Rights, 1890 to 1990, American Sociological Review 1997, pp 45- 735.

(31) History of Education in the State of Kuwait - Volume Two - First Edition - Kuwait Research and Studies Center - Kuwait 2002. In the same topic see: Pages of the historical development of girls' education in Kuwait - First Edition - Written by Maryam Abdul-Malik Al-Saleh - Kuwait 1975.

of "Diaa Al-Ghanem", and she was presenting the children's program, and Nouriya Al-Sadani followed her as the second broadcaster<sup>(32)</sup>. While in 1960, Kuwait Radio started broadcasting the "Women's Corner" program as a special program for women and children, and it was then presented by "Amina Al Ansari", who was focusing on Kuwaiti women's affairs and rights, through her meetings with mothers and women in their homes. In early 1961, the number of Kuwaiti women participating in presenting "Women's Corner" program increased, including Sharifa Al-Saleh, Lu'lu'ah Al-Essa, Sarah Al-Zaid, Jasmiya Al-Marzouq<sup>(33)</sup>. More recently, many Kuwaiti women have been demanding full citizenship rights, as approved by the current Kuwaiti Constitution. In spite of this, this movement is still just individual or group attempts, which did not amount to a historical accumulation related to individual cases of the Kuwaiti women mentioned above, as well as the feminist's organizations and associations in civil society did not amount to the forming of a Kuwaiti societal culture that works on making a change in the Kuwaiti collective mind towards women, Or at the level of plea for the implementation of the provisions included in the Kuwaiti Constitution, by taking advantage of the general democratic climate of the State of Kuwait, and thus benefiting from the idea of modern democracy in development which urgently needs to confirm the idea of citizenship without discrimination between men and women.

In spite of the women's gains, the phenomenon of discrimination between men and women is still visible on the ground, whether due to the weak societal mobility of Kuwaiti women themselves, who still did not prove themselves by benefiting from the right to work granted to every Kuwaiti citizen, and the evidence for that is that Kuwaiti women's participation in the national labor market is still less than half the participation of non-Kuwaiti residents. As of March 31, 2010, the number of the female workforce in the private sector reached 16,764 Kuwaiti women and 56,835 non-Kuwaiti women<sup>(34)</sup>, which reveals a defect related to the role of Kuwaiti women themselves. As well as this reveals that Kuwaiti women are not benefiting from the right to work as the most important factor that presents women as a partner in society and that contributes to changing the stereotype of Kuwaiti women within Kuwaiti society.

On this basis, Kuwaiti women's mobility in work has remained slow compared to individual historical attempts, which has contributed to preserving the societal culture of the inability of Kuwaiti women to influence the general economic and social life. On the other hand, this was clearly reflected in the legislative performance, which still suffers from a lack of application and interpretation of the constitutional provisions. Consequently, women's

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(32) See: The book of Kuwaiti Women in the Past and Present - First Edition - Written by the Arab Women Renaissance Committee in Kuwait. See: The book of Kuwaiti Women in the Past and Present - First Edition - Written by the Arab Women Renaissance Committee in Kuwait.

(33) The Silver Jubilee Book of Kuwait Radio - First Edition - Written by the Ministry of Information - Kuwait, 1975.

(34) United Nations Organization, Reports Submitted by States Parties under Article 18 of the Convention on the Elimination of All Forms of Discrimination against Women, Report of the State of Kuwait, August 12, 2010

rights in Kuwait are still victim of complacency by both women and the legislator. This was reflected in the idea of changing and developing the public order by changing and altering the public interest.

More importantly, and in terms of statistics that indicate that Kuwaiti society is a youth community, as young people constitute approximately 60% of the population, and thus its ability of development and acceptance of the women role in society is more than ever before. Further, this is reinforced by the education rates of both of males and females, Where the United Nations statistics indicate that primary school enrollment rates for girls are higher than that for boys, by 85% for girls, while it is 81% for boys. As well as, illiteracy has decreased to 5% for women compared to 3% for men <sup>(35)</sup>. Accordingly, they are precursors to a future actual change in the structure of the Kuwaiti public order, which in later stages will assist in more integration of Kuwaiti women into their society. Provided that this is accompanied by legislative mechanisms capable of conforming laws related to women's rights with the Constitution, which helps remove all forms of discrimination against women in Kuwait as included in the CEDAW Convention and provided that this is not understood as an escape from the main structures that maintain public order within the framework of the public interest.

In this regard, the roles of human rights organizations working within the human rights framework become more important in their ability to influence the reports of the committees submitted to the United Nations and the Human Rights Council. For example, the report of the working team on the issue of discrimination against women in law and practice in Kuwait on May 24, 2017 stipulated that "Only girls learn lessons related to cooking, sewing and managing family affairs, and educational curricula often present a traditional image of women as a wife and mother".

Returning to these reservations, it can be said that these observations do not rise to the level of the role of these committees in the required change in terms of laws that do not contradict public order. Further, issues such as cooking and sewing have no relation with giving a stereotype to Kuwaiti women, in an environment that family bonding is deemed one of the most important bonds that increases the cohesion of Kuwaiti society, where the family factor (mother and father) is one of the most important components of societal interconnection, and consequently a pillar of the system not only in Kuwait, but in the absolute majority of Asian and Levant countries, including Japan, which considers the family system a pillar of cohesion and development of the Japanese state.

As well as, the reservations mentioned in the report of the working team about its visit to the state of Kuwait on the issue of discrimination against women in law and

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(35) United Nations, General Assembly, Human Rights Council, thirty-fifth session, report of the working team on the issue of discrimination against women in law and practice in Kuwait, May 24, 2017, p. 19

practice contradict the Kuwaiti Constitution which stipulated in Article 9 “The family is the foundation of society, based on religion, morals and patriotism, the law preserves its existence, strengthens its ties and protects motherhood and childhood “.

Within the framework of the compatibility and consistency with public order, we agree with what the same report mentioned regarding its criticism of gender segregation in governmental primary and secondary schools, which have been justified for religious, cultural and social considerations, since women have been participating men all over the Arab and Islamic history that constitutes the Kuwaiti public order as a prominent feature throughout history. Obviously, Arab and Islamic history has proved that women played an important role alongside men as a nurse who treats the wounded men in wars and as a teacher such as Aisha, may God be pleased with her, the husband of the Prophet, peace be upon him and also as a military leader such as Laila Al-Ameryah and Khawlah Bint Al-Azwar and others. In addition, this contradicts the position of women in many government facilities in Kuwait as a doctor in hospitals, and as an employee in the Public Prosecution, the Police and Education. Therefore, the segregation and separation between boys and girls in primary and secondary schools are not justified, as it has no relation with the idea of public order and the public interest.

Furthermore, Dr. Alanoud Al-Sharekh sees that one of the most prominent challenges that prevent Kuwaiti women from obtaining their rights is, including but not limited to the fact that we live in a male society where men dominate, as women have not reached decision-making positions in sufficient numbers to make the pivotal change, and therefore women’s rights are not a priority, added to that the customs and traditions, the dominance of traditional heritage in the composition of society and lack of legal awareness.

In the same regard, Dr. Khadija Al-Muhaimeed believes that the most prominent challenges that prevent female Kuwaiti citizens from obtaining their full rights as a citizen is the confusion between the Islamic legislations and the mere laws and administrative decisions, such as depriving female citizen of passing her nationality to her children along with not empowering the woman and depriving her of adopting her health care for her children and first-degree relatives, in addition to the influence of customs and traditions that detract from the women’s rights as citizens according to Sharia and Constitution.

While Engineer Maha Al-Baghli, a member of the Municipal Council, believes that most laws in Kuwait are in line with the Kuwaiti Constitution regarding equality between women and men, and some of them need to be amended such as their rights to housing and passing Kuwaiti nationality to their children in the event of their marriage to a non-Kuwaiti. However, there are deficiencies in the application of some laws which are due either to lack of awareness, or to the control of some customs on the application of the law. Further, in the event that the legislation conforms to the international standards, the customs, traditions, and insufficient awareness of women remains the biggest

challenge, because most of the society does not believe in the equality of women to men, and that women's rights are lesser than those of men, especially that Kuwaiti society does not support the participation of women, in addition to the harshness of norms and the media that makes efficient women do not want to go through the experience. So Al-Baghli suggests that they shall increase the awareness programs, supporting women's issues, making the campaigns led by civil society institutions focus on those issues and activating the role of civil society institutions that have worked on this for years. As well as, Al-Baghli called for more serious government efforts by developing curricula to include awareness lessons for male and female students confirming the requirements of equality and justice for all <sup>(36)</sup>.

While the attorney Alaa Al-Saidi asserts that the Kuwaiti legislator was fair to women as per the Kuwaiti Constitution which stipulates that people are equal and then Kuwaiti women have obtained their political, legal and social rights. However, some provisions are still in need of activation and practical application especially in the field of women's rights in accordance with international standards. In addition, there is some kind of discrimination with respect to women's ways of treatments in some state institutions and civil society especially in terms of women's accession to the management and leadership positions and this is due to the fact that the man used to be the leader. Thereupon, the most important challenges facing Kuwaiti women become obvious namely proving competence, ability and double effort that women exert to deliver their message.

Al-Saidi also believes that Kuwaiti women have the right to participate in general and civil elections, whose members are elected by public polling, but in practice, we do not find women as members of the board of directors of a cooperative society, for instance, or in some civil society associations, or in some civil institutions, which depend on polling and this is because the experiment is new to society, in addition to the woman's unwillingness to take part in this field seriously and effectively. Therefore, we need today to empower women to hold positions, especially since women's movements have played their role in the required positive impact. However it is still needed that women's work be fairer by empowering them to enter all state institutions and its public and private sectors, because women today suffer from some currents and parties' conducts in addition to the tribal mentality that sometimes prefer men to women <sup>(37)</sup>.

## **Second: Kuwaiti Women and the Right of Nationality: Between the Nature of the Kuwaiti System and the Standards of International Law: :**

The State of Kuwait, upon accession to the Convention on Elimination of All Forms of Discrimination Against Women (CEDAW), has preserved the article of nationality on the argument that nationality is a matter of sovereignty, and it is believed that the State of

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(36) Engineer Maha Al-Baghli, member of the Municipal Council.

(37) Lawyer Alaa Al-Saidi is an activist in women's rights.

Kuwait has its reasons for that compared to the nature of the Kuwaiti public order and the public interest of the state. Since Kuwait is historically one of the importing countries for large numbers of foreign laborers, and therefore the indulgence of the matter of nationality, may constitute a threat to society and the Kuwaiti state in general. However, this does not mean that the legislator generalize the matter absolutely without looking at the circumstances of each case separately, especially those cases that if they are neglected, it may lead to the dissolution of the Kuwaiti family, then negative effects to what Kuwait has preserved..

## **1 - The Nationality of Women within the Framework of the Kuwaiti Public Order:**

We can define the controls and standards governing the relationship of dual influence between the Kuwaiti public order and the rights stipulated in the Convention on Elimination of All Forms of Discrimination Against Women (CEDAW), to achieve the final goal of the convention, which is eliminating all forms of discrimination against women in Kuwait within the framework of Kuwaiti public order as a superior public interest.

Article 8 of the Kuwaiti Nationality Law issued by Emiri Decree No. 15 of 1959 stipulates that "The marriage of a foreign woman to a Kuwaiti does not result in becoming a Kuwaiti, unless she announces the Ministry of Interior of her desire to gain this nationality, and the marital status continues for a period of five years from the date of announcing her desire, and the Minister of Interior, before granting her a nationality certificate, may decide to deprive her of the Kuwaiti nationality by way of subordination to her husband. He (the Minister of Interior) may also exempt her from all of this period or some of it. If the marriage is terminated before the expiration of the period referred to in the previous paragraph due to death or divorce, and the foreign woman has a son or children from her husband, and she maintained her residence in Kuwait until the expiration of this period, so she may be granted Kuwaiti nationality by decree based on the suggestion of the Minister of Interior. "

Whereupon, the legislator has made the power to grant nationality subject to the discretionary power of the Minister of Interior, in line with the nature of the Kuwaiti public order, which is radically different from the mechanism for granting nationality in developed countries, where foreign labor constitutes a high percentage, which can affect both of the Kuwaiti demographics and the social structure. However they enjoy the advantages of the Kuwaiti citizen. On the other hand, the tax system is inconsistent with the system of rights entrusted to the individual in exchange for their duties from the economic view, such process which can make the naturalized person integrate within the framework of the concept of citizenship, insofar as he/she is consumer more than being actor in development, as is the case in developed countries, which work on sustainable democracy with its developmental dimension besides its political dimension.

Perhaps the Kuwaiti society demography confirms our hypothesis as figures and statistics issued by the United Nations in 2016 indicate that Kuwait is the second richest country in the Arab Gulf, and ranks 48th out of 188 countries in the human development index <sup>(38)</sup>, and the total population is about 4 million people, of whom 2.8 million are residents, and 1.2millioncitizens.<sup>(39)</sup>

## **2 - The Appropriateness and Conformity of the Kuwaiti Legislator of the Right of Nationality with the Convention on Elimination of All Forms of Discrimination Against Women (CEDAW):**

When Kuwait joined the Convention on Elimination of All Forms of Discrimination against Women, the naturalization period for foreign women was five years, subject to the discretion of the Minister of Interior, and this is the period that the legislator considered short, probably because of its fear of separation after a short period of marriage in addition to its fear that the purpose of marriage would be merely to obtain the nationality. Apparently, compared to the advantages that the Kuwaiti nationality holder enjoys, this period the Kuwaiti legislator considered not enough for a foreign women to be integrated into Kuwaiti society in the long-term.

We believe that the legislator dealt with the provision as an absolute rule in a clear contradiction to women's rights, and it is better to take into consideration her family status. If she is a Kuwaiti mother, this is deemed a sufficient presumption for her integration into Kuwaiti society and its public order and thus acquiring the nationality, without neglecting the condition of residency for a period of five years, and without there being any role for the discretionary authority of the Minister of Interior, due to the discretionary authority may deprive her from the nationality, which leads to disintegration within the same family due to the difference in nationality.

In July 2019, the Cabinet of Ministers approved the amendment of Article 8 of Emiri Decree No. 15 of 1959 regarding the Nationality Law, so that the nationality is granted to the wife of the Kuwaiti citizen after 18 years of marriage, and the justification for the decision was to ascertain the issue of integration into Kuwaiti society. We believe that this amendment negates justice due to the repercussions of being considered a foreign citizen during the 18-year period, and she is the mother of a Kuwaiti family, which leaves great repercussions on the stability and tranquility of the same family. It was more appropriate for the legislator to maintain the five-year condition of residency and her maternity condition for Kuwaitis, to be equal to her children. The new amendment once again restored the discrimination between men and women, and this is in clear

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(38) See: United Nations Organization Program, Human Development Report 2015, Working for Human Development.

(39) See: Annual Health Report of 2014, issued by the National Center for Health Information.

contradiction with Article 8 in Part Two of the Constitution, which provides for:

“The State safeguards the pillars of Society and ensures security, tranquility, and equal opportunities for citizens”.

It also contradicts Article 9 of the Constitution, which stipulates that “The family is the corner stone of Society. It is founded on religion, morality, and patriotism. Law shall preserve the integrity of the family, strengthen its ties, and protect under its support motherhood and childhood”.

In addition to the clearly contradiction with Article 29 of the Kuwaiti Constitution, which stipulates that “All people are equal in human dignity and in public rights and duties before the law, without distinction to race, origin, language, or religion”, Consequently, the Kuwaiti Constitution adopted the nature of the societal structure in Kuwait, and the nature of the demographics of Kuwaiti society, through which the Kuwaiti Constitution did not include only the Kuwaiti citizen, but “all people” in the State of Kuwait.

The aforementioned decision also contradicts the recent developments of the concept of the right to a nationality in accordance with international standards, as this right has become a basic human right, and it means the right of everyone to acquire, change and retain nationality. Contemporary international laws have also decided that the right of states to determine who are their nationals is not an absolute right, and that states in particular must comply with their human rights obligations with regard to the granting and stripping of nationality.

Consequently, the arbitrary deprivation of nationality actually increases the deprivation of persons affected by this procedure, and accordingly the deprivation of enjoyment of human rights, which makes those deprived of nationality more vulnerable to human rights violations, especially in the case of married women.

On the basis of this specificity, the United Nations General Assembly issued in 1957 the “Convention on the Nationality of Married Women” <sup>(40)</sup> as an international convention

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(40) The issue of married women nationality remained one of the most important issues in the field of women rights, which faced the United Nations after its establishment. The United Nations Commission on the Status of Women was created, and this issue became one of the priorities of its agenda. The committee launched a study in 1948 that recommended to the United Nations Economic and Social Council that legislation be drafted to give women equal rights with men, as set out in Article 15 of the Universal Human Rights Declaration until the agreement entered into force on August 11, 1958. See: Convention on the Nationality of Married Women

[https://treaties.un.org/doc/Treaties/1958/08/19580811%2001-34%20AM/Ch\\_XVI\\_2p.pdf](https://treaties.un.org/doc/Treaties/1958/08/19580811%2001-34%20AM/Ch_XVI_2p.pdf)

that entered into force in 1958, and its number of state parties until 2013 reached 74 countries. For these reasons, we exhort the Kuwaiti legislator to adopt the privacy of the married woman, especially when she is a mother of Kuwaiti children, and to treat her nationality as a right and not as a gift.

The right to a nationality has become one of the most important rights recognized within a range of international instruments and covenants, including the Universal Declaration of Human Rights, the International Convention on Elimination of All Forms of Racial Discrimination, the International Covenant on Civil and Political Rights, the Convention on the Rights of the Child, the Convention on Elimination of All Forms of Discrimination Against Women (CEDAW), Convention on the Nationality of Married Women, Convention on the Rights of Persons with Disabilities, and the International Convention on the Protection of the Rights of All Migrant Laborers and Members of Their Families. The Office of the High Commissioner for Human Rights OHCHR has also demanded- especially with respect to the women's right to nationality- to reform nationality laws that include discrimination against women and affect the enjoyment of the rights of her children and husband. In 2013, OHCHR submitted a report to the Human Rights Council on this issue, entitled "Discrimination against women in matters related to nationality". The report discussed cases in some countries for women not enjoying equal rights to those of men to regarding acquiring, changing or retaining their nationalities, and other cases of women not being allowed to pass their nationalities to their children and husband on the same basis, which often results in cases of statelessness. The report examined the negative repercussion of discriminatory nationality laws that affects the woman's enjoyment of her rights and the enjoyment of the rights of her children and husband, as well as the measures to eliminate discrimination against women in nationality laws, and necessary procedures for fully implementing states' human rights obligations towards the equality of nationality rights.

### **Third: The political rights of Kuwaiti women and the Kuwaiti public order:**

Under the Convention on Elimination of All Forms of Discrimination against Women (CEDAW), the role of states that have joined the Convention does not stop at the limits of accession or ratification, nor does its obligations stop when the provisions of the CEDAW Convention are included in the Constitution, provisions and legislations; as the state is responsible for adhering and committing to removing all obstacles that prevent women from participating on an equal basis in the three state powers, whether legislative, judicial or executive.

## **1 - Women's Rights and Appropriate Measures to Eliminate Discrimination in the Political Rights:**

Despite the continuing demands in Kuwait to promote women's rights, and despite their inability to bridge the gaps related to discrimination against them, these claims

as a practice have constituted an acceptance within the Kuwaiti public order, which has been reinforced by Articles of the Constitution, as strengthened by the recognition and cooperation of the Kuwaiti state by admitting the obligations related to the enforcement of human rights, since its accession to the CEDAW Convention. As the State of Kuwait took a positive step in this field when it withdrew its reservation to Article 7 of the CEDAW Convention, which stipulated that “The states parties take all appropriate measures to eliminate discrimination against women in the political and public life of the country, in particular those that guarantee women their rights on an equal basis with men, including, the right to vote in all elections and public referendums, and the eligibility to be elected in all the bodies whose members are elected by universal suffrage in addition to participating in determining the government policy and implementing this policy, applying for public office and performing all public service tasks at all governmental levels as well as participating in any non-governmental organizations or societies concerned with public and political life in the country.

However, the executive practices in Kuwait still lack practical plans regarding women’s participation in political life.

In this regard, Dr. Sheikha Al-Jassem believes that the Kuwaiti Constitution stipulates that there shall not be discrimination on the basis of sex, but not all Kuwaiti laws are equitable, especially regarding personal status, as it detracts from the eligibility and independence of women. Al-Jassem asserts that the problem of legislation in Kuwait is that it is based on Sharia law that sees woman as incomplete person, does not have full capacity, and must have a guardian and protector. Dr. Sheikha presents her point of view in this regard by saying: “The Sharia is flexible, and there are less strict doctrines than others, but the Gulf region and tribal environment are so hardline that the legislator adopted unfair laws against women. Sometimes these laws are based on the norms and not a clear or specific legal text. One of the most prominent challenges that Al-Jassem has talked about is the apparently hardline culture of society, since Kuwaiti society lives a dual life whereas the Kuwaiti individual practices what he/she wants abroad or secretly, but does not dare challenge the prevailing hard-line culture against women. As for the factors that restricted women’s participation in political life are firstly the culture of society that separates men and women not only at the level of councils, but even at the level of thought, debate, and dealing with events, in addition to intimidation and fighting against women who dare to run for elections. Moreover, Dr. Sheikha Al-Jassem believes that Society is bullying and intolerant, and there are a large number of women who believe that the best place for women is the house and that the women are not suitable for politics. Further, Al-Jassem asserts that the Kuwaiti state did not hinder women’s roles in elections, but there are cultural factors that must be changed, and the state, however, shall cooperate and enact the quota law for a certain period until Kuwaiti women become serious rival to men, since the civil society is able to influence when it plans, unites, participates with government agencies and the media, and forms a lobby with some parliamentarians .

<sup>(41)</sup>The Kuwaiti Constitution, as a social contract reflects the philosophy and nature of the Kuwaiti system, included a clear recognition of women's rights and equality with men. Thereupon, the Constitution is deemed the solid ground that combats all forms of discrimination against women. However, there are many cases of discrimination that women still suffer in Kuwait, while they are compatible with the nature of the Kuwaiti public order. In Article 29, the Kuwaiti Constitution devoted the international human rights standards by stating that "All people are equal in human dignity and in public rights and duties before the law, without distinction to race, origin, language, or religion."

Consequently, Kuwait's withdrawal of its reservation regarding the appropriate measures to eliminate discrimination against women for their participation in political life reflected coherence consistent with the nature of the Kuwaiti public order. Accordingly, the political participation of Kuwaiti women has become a foregone conclusion due to the explicit recognition and provision of the Constitution, which makes the participation of women in life Politics totally unrelated to its contradiction with the nature of the Kuwaiti public order.

Theoretically, Law No. 17 of 2005 constituted a legislative victory for the birth of an integrated package of legislative measures and procedures, and judicial decisions that granted women the right to political participation, and that repealed discriminatory provisions, and gave Kuwaiti women their full and equal rights with men with respect to vote and election rights. On the practical level, these reforms have collided with narrow interpretations of sharia that have no basis in our true religion and that had negative effects. Perhaps the concept of "Bay'ah" "pledge of allegiance" in Islam is a clear expression of political participation in selection and voting, as the Prophet, peace and blessings of God be upon him, conducted Bay'ah with Men and women alike, and therefore Islam has established the right of women to political participation. As Allah the Almighty says: "O Prophet! When believing women come to thee to take the oath of fealty to thee, that they will not associate in worship any other thing whatever with Allah, that they will not steal, that they will not commit adultery (or fornication), that they will not kill their children, that they will not utter slander, intentionally forging falsehood, and that they will not disobey thee in any just matter,- then do thou receive their fealty, and pray to Allah for the forgiveness (of their sins): for Allah is Oft-Forgiving, Most Merciful". (Al-Mumtahina: 12)

As well as, Islam gave women the right of the political guardianship As Allah the Almighty says: "The Believers, men and women, are protectors one of another: they enjoin what is just and forbid what is evil: they observe regular prayers, practice regular charity, and obey Allah and His Messenger On them will Allah pour His mercy: for Allah is Exalted in power,Wise", (At-Taubah:71).<sup>(42)</sup>

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(41) Dr. Sheikha Al-Jassem, a faculty member at Kuwait University, is an activist in women's rights.

(42) For a detailed discussion on this topic see: Dr. Manjia Al-Swaihi, "Does Islam Forbid Policy to Women," Elaf Electronic Newspaper, November 1, 2008, at the link: <https://elaph.com/Web/ElaphWriter/2008/10/378416.html>

On this basis, Kuwaiti women managed to obtain their political rights, and practically the year 2005 can be considered the year of the feminist movement in Kuwait, as the skepticism and opposition campaigns did not prevent the appointment of Dr. Masoumeh Al-Mubarak on June 12, 2005, as the first woman Minister (of planning and administrative development) in the country's history, providing a vivid example of the ability of Kuwaiti women to obtain their legitimate rights according to the provision of the Constitution. Undoubtedly, that happened after a great struggle and many calls for women's rights that lasted for more than a quarter of a century. On June 20, 2005 Dr. Masoumeh Al-Mubarak had entered the National Assembly as the first woman Minister to be sworn in under the dome of the Kuwaiti National Assembly, amid fierce opposition from the parliamentarians objecting to women's political rights, and then the Kuwaiti women attempts to confirm their political participation continued. In March 2007, Nuria Al-Subeih was appointed as the first Minister of Education and Higher Education, and on April 12 of the same year she was sworn in, amid some parliamentarians' protest because she was not wearing the hijab. As well as, on May 28, 2008 Dr. Mouddey Al-Hamoud, was appointed as Minister of State for Housing Affairs and Minister of State for Development, and the opposition did not stop, since on June 1, 2008 a number of members withdrew from the opening session protesting that the two women Ministers Al-Hamoud and Al-Subeih were not wearing Islamic clothes <sup>(43)</sup>. These practices are not under the Constitution and are not consistent with the nature of society and Kuwaiti public order which elected the two women Ministers, and brought them to the dome of the Kuwaiti National Assembly.

Whereupon, it can be said that: The restriction of the political participation of women in Kuwait is due to two factors:

### **The First Factor: Kuwaiti society is suffering from absence of culture of the essence of the contemporary democratic state:**

This is why confusion between personal conditions (as a special case for individuals) and the idea of a contemporary democratic institution (as a legal person). The institution in legal jurisprudence can not have a religion like the natural person, as the role of Individuals is limited to complying with the idea of citizenship with the rights and duties without distinguishing between men and women. Accordingly, the issue of the role of women in society has become compatible and consistent with the idea of the modern state, in which everyone, rulers and individuals is subject to the law, regardless of their religion, ethnicity, gender, or origin.

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(43) <https://altaleea.com/?p=16118>

## **The Second Factor: The Kuwaiti government's failure to activate its role in setting the necessary executive mechanisms to empower women to have their right of the political participation:**

This is due to the lack of legal mechanisms that determine the quota system for Kuwaiti women, in addition to the lack of real interpretation of laws in accordance with the Constitution, in away that helps remove the social backgrounds and customs that prevented setting the mechanisms that guarantee the participation of women in political life. Accordingly, they have become mere convictions that contradict the provisions of the Kuwaiti Constitution and Kuwait's international obligations related to non-discrimination against women.

On this basis, the authorities concerned with women's rights shall demand the Kuwaiti state to put these mechanisms into planning and implementation as those related to, including but not limited to, the creation of a mechanism to determine the quota system in political representation, along with taking measures that support this process under the direct supervision of the state in order to reach the political representation of women at all levels. This will lead to providing special support, including training and assistance in election campaigns, for introducing women candidates, highlighting their identities, facilitating their ability to communicate, enabling women candidates to compete on an equal basis with men candidates and establishing a quota system for political representation of women at all levels, noting that this procedure will remain insufficient to ensure the effective participation of women in political and public life if it is not accompanied by a strategy and clear plan of action for gender equality, and the empowerment of women to obtain a full range of measures related to them, as there is no effective action in Kuwait to date that supports these rights and political participation of women.

Historically, Kuwaiti women have been an important actor in public life, which ultimately enabled them to obtain their electoral rights in 2005; however they still suffer from a low level of representation in Parliament. In the elections of 2009, Kuwaiti women won only 4 seats in front of severe opposition, while the elections of 2006 resulted in only one woman out of 50 members of Parliament, which places Kuwait at the bottom of the list of countries in this field, as Kuwait ranked 173 out of 190 countries, furthermore the percentage of female candidates declined from 11.1% in 2006 to 2.5 in 2013.

In addition, in the elections of 2016, the number of female candidates did not exceed 5%, while no women were nominated at the municipal level, noting that the issue of political participation no longer constitutes any conflict with customs and traditions or with the requirements of the public interest or the public order., which indicates that Kuwaiti women still suffer from not having self-education about the methods and mechanisms of political participation. On the other hand, they also suffer from many institutional

obstacles that regulate the political process whether the election, voting or nomination. Perhaps this is due to the fact that women in Kuwait are still far from political groupings, participating in political events, parties, and groups that are still predominant by male ideology. This is due to the absence of the state's role in imposing a certain percentage of women in political groupings, which made the political participation of women in Kuwait in delay and inferiority compared to the provisions of the Constitution and the international obligations of the State of Kuwait with regard to human rights, particularly the CEDAW Convention.

Further, Dr. Khadija Al-Muhaimeed believes that one of the most important factors that restricted the political participation of women in Kuwait was the suspicion that Islam deprives women of political rights, in addition to the power of customs and traditions and that the political experiences of women are few and short-aged that rooted in the popular subconscious the heritage stockpile of women's ineligibility to political responsibility.<sup>(44)</sup>

In the same regard, Dr. Alanoud Al-Sharekh sees that one of the most important factors that restricted the political participation of women in Kuwait was the lack of a political and popular base to support the political work of women because of the women's refrainment from exercising the political right for a period of more than forty years. During this period, the politician man managed to form a big political base in addition that the candidate politician man often has a leadership background represented in being a president of some authority, member of the board of directors of a sports club, president or member of the board of directors of a cooperative society, etc., that paves the way for him. On the other hand, the secondary elections and religious political currents in which women are not taken into consideration. While the last factor that restricts the women political practice is the stereotype affected by the school curricula in which women are depicted as only suitable for staying at their houses, which has caused many Kuwaitis not to trust women.<sup>(45)</sup>

## **2 - Kuwaiti women and the Kuwaiti parliament: between formal and societal acceptance, and male rejection within Parliament.**

Kuwaiti women obtained the right to vote in 1985, but this right was not activated until 16 May 2005 when it was approved by the Kuwaiti parliament to restore the right to vote

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(44) Khadija Al-Muhaimid, human rights activist, Vice President of the National Family Security Association, and member of the Supreme Council for Family Affairs of the Council of Ministers. Ibid..

(45) Dr. Alanoud Al-Sharekh, a researcher and academic activist in women's rights, and head of the team to repeal Article (153) of the Penal Code.

for women and the result was votes 10 against the law compared to 40 with the law.<sup>(46)</sup> Thereupon, the Kuwaiti women had the right to vote and to be elected in the Kuwaiti National Assembly. On the same date -due to an unjustified constitutional challenge - one of the Kuwaiti parliamentarians was able to withhold the articles of the Constitution, so he canceled the procedure that prevented women from participating in the Municipal Council elections for the first time in the history of Kuwait.

In May 2009, four women <sup>(47)</sup>succeeded in the National Assembly elections and obtaining seats in Parliament, which constituted a start to prove their worth and eligibility to obtain the rest of the rights equally with men, especially since Parliament is the most important Constitutional institution that empowers Kuwaiti women to access all areas of life by the enactment and amendment of laws that do justice to women in addition to arguing for laws conformity to the Constitution.

In this regard, it is necessary to mention the efforts made by the Kuwaiti state before this date, represented by the efforts of the late Emir Sheikh Jaber Al-Ahmad Al-Sabah, who in the Emiri Decree issued on May 25, 1999 expressed his desire to grant women their political rights to vote and be elected, but this decree has not been implemented due to the members of Parliament did not vote for it and rejected the law by 41 votes in the session of November 22, 1999, but it undoubtedly constituted a real starting point towards giving Kuwaiti women their political rights.

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(46) For example, a number of claims and suggestions had started earlier during the preparation for the 1971 National Assembly elections, when the list of the People's Representatives presented the first national program of action in Kuwait stipulating the endeavor to give women their full political rights in December 1970 under which they ran for elections to the National Assembly in 1971-1975. On December 11, 1971, MP Salem Khaled Al-Marzouq submitted, during the third legislative term, a proposal for a bill granting educated Kuwaiti women the right to vote. On February 15, 1975, MP Jasim Al-Qatami and Rashid Al-Farhan presented the first detailed bill that would give women their full political rights to vote and be elected. Between 1981 and 1985 MP Ahmed Fahd Al-Tokhaim proposed a law to amend the first article of the electoral law and recognize women's rights. In the sixth legislative term, whose elections were held on February 20, 1985, MP Abdul Rahman Khalid Al-Ghunaim proposed a law that gives women the right to vote and be elected. On April 17, 1991, the late Prince Sheikh Jaber Al-Ahmad, in his speech on the occasion of the last ten days of Ramadan for the year 1411 AH, promised to study the issue of women's political rights, as His Highness said: I will study the issue of women's participation in parliamentary life in order to play their full role in building and advancing society. In 1992, during the seventh legislative term, MP Hamad Al-Joan proposed a law granting women their political rights to vote and be elected, and during the same legislative term, MP Ali al-Baghli, Abd al-Mohsen Jamal, Jasim al-Saqr, and Abdullah al-Nibari proposed a law giving women the right to vote and be elected. In the eighth legislative term, whose elections began on October 7, 1996, MPs Sami al-Manis, Abdullah al-Nibari and Dr. Hassan Jawhar proposed a law granting women their political rights at the end of December 1996. During this legislative term itself, on January 29, 1997, MPs Salah Khorshid and Abbas Al-Khudhari submitted a proposal that gives women their political rights, but the National Assembly refused to pass legislation granting women their parliamentary rights more than once. For a detailed discussion see: <https://altaleea.com/?p=16118>

(47) Masoumeh Al-Mubarak, Salwa Al-Jassar, Aseel Al-Awadi, and Rola Dashti had finally arrived after a long struggle for demanding their political rights, and Dr. Masoumeh Al-Mubarak recorded her historical roles and activities in this regard where the arrival of Kuwaiti women in Parliament was the first step to obtain their effective political participation. *ibid.*

It can be said that the political rights of Kuwaiti women still suffer from a deep gap between the desire of the Kuwaiti state represented by Emiri decrees, and the penetration of the male culture in Kuwaiti society, which appears every time in the Kuwaiti parliament, and prevents the arrival of a bloc of feminist members to the Parliament to obtain its rights. Consequently, in the face of this problem, the Kuwaiti state, before issuing the decrees, shall set a package of procedures and mechanisms that guarantee the vote and election processes, along with adopting the quota system in this field.

For example, the late Emir Sheikh Jaber Al-Ahmad issued Decree Law No. 9 of 1999 amending Article 1 of Law No. 35 of 1962 regarding elections for members of the National Assembly so that "Every Kuwaiti aged twenty-one according to the Gregorian calendar has the right to vote and the naturalized whose naturalization did not exceed twenty Gregorian years is excluded, in accordance with the provisions of Article 6 of the Emiri Decree No. 15 of 1959 of the Kuwaiti Nationality Law. On November 23, 1999, during the ninth legislative term, the National Assembly rejected Decree Law No. 9 of 1999 and the then president of the National Assembly, Jassem Al-Khurafi, announced that the Internal Affairs and Defense Committee's report provided for rejection of the decree, as the vote result was 62 members represent the total voters, 41 members approved the report and 21 members disapproved it.

In the same session, the National Assembly approved an urgent proposal of a law submitted by 14 members similar to the decree law which provides for giving women political rights to vote and be elected to Parliament, which was also rejected by the parliament, and the result of the vote on this proposal in the same session was 31 members approved the proposal, 30 disapproved it, and one member abstained from voting out of the total attendance of 62 members. Then, the National Assembly returned at the session of November 30, 1999, and overturned this proposal by a law was submitted by five parliamentarians in the session of August 2, 1999, which stipulated an amendment to the first article of Law No. 35 of 1962 regarding the National Assembly elections. The result of the vote came with 32 members disapproving, 30 approving, and two abstaining.<sup>(48)</sup>

### **3 - Kuwaiti Women and Political Participation in the Municipal Council:**

In a step that constituted a transformation in the history of Kuwait, a member of the Municipal Council Khalifa Al-Khurafi submitted a proposal to the president of the Assembly on January 29, 2001, requesting from the government to enact a law that gives women the right to vote, be elected, and be appointed to the Municipal Council. In May 2005, the Kuwaiti National Assembly failed to pass a bill granting women their political rights to vote and run for municipal elections, after 29 parliamentarians voted for the project, while two parliamentarians voted against it and 29 parliamentarians abstained .

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(48) Op.cit.

<sup>(49)</sup>On March 17, 2002, the Appeals Committee of the Constitutional Court rejected two cases filed by two women citizens against the Minister of Interior in his capacity as an appeal against the decision of the Ministry of Interior, which decided not to accept the registration of their names and other women in the electoral lists, and demanded the revocation of the administrative court's rulings, which had previously rejected their case due to the decision of the Ministry of Interior regarding the refusal to register the applicants in the electoral lists<sup>(50)</sup>. The supplementary elections of the Municipal Council in April 2006 have recorded an important event in the political history of women in Kuwait, as they exercised their right to vote and be elected for the first time, after the National Assembly approved Law No. 17 of 2005 which gave political rights to women in Kuwait, but these elections were limited to one district, however, this event constituted the first nomination process for Kuwaiti women, as Janan Bushehri came second in 2006 with 1807 votes out of 28188 voters in the district, i.e. 6% of the total number of voters and 17% of the participants in the vote.

As well as, Khaleda Al-Khader also got 79 votes, while Youssef Al-Sweileh came first with 5,436 votes, a difference of 3,629 votes, while the total number of the participants in the vote reached 10,739. Consequently, the number of those who did not vote was 17,449 voters. This historic step of the Municipal Council was preceded by the Council of Ministers' approval on June 5, 2005 of the appointment of two women among 6 personalities for membership of the Municipal Council for the first time in the history of Kuwait; they were Sheikha Fatima Al-Sabah and Fawzia Al-Bahr. Then the women participated again on June 26, 2006 and Khaleda Al-Khader got 120 votes. While the first female voter in the history of Kuwait, was 73-year-old Roqaya Hussain Ali, who cast her ballot at Arwa Bint Al-Hareth School in Rumaithiya in the municipal elections in April 2006.<sup>(51)</sup>

The entry of Kuwaiti women into political life constituted a breakthrough (victory) towards the recognition and affirmation of the rest of women's rights as activating its participation in parliament and Municipal Councils and reaching Ministerial positions will undoubtedly constitute a real start to its ability to gain access to their rights as per the administrative decisions, executive regulations, Law, Constitution and the international conventions including the Convention on Elimination of All Forms of Discrimination against Women (CEDAW), and thus their ability to transform the provisions of the Kuwaiti Constitution into real fact, through its participation in the plans and programs of governmental and private bodies related to the right to education, housing, employment, nationality, and personal freedom, in order to establish principles of justice and equality between men and women.

On this basis, Kuwaiti women still face many difficulties in the exercise of their political rights and their ability to obtain their political representation. This is due to a number

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<sup>(49)</sup> <https://www.lahaonline.com/articles/view/8529.htm>

<sup>(50)</sup> <https://altaleea.com/?p=16118>

<sup>(51)</sup> Op.cit.

of reasons, foremost of which is the societal cultural heritage in the region as a whole, in addition to the lack of institutional structures that could help them participate in the political work and not leave it exclusively to men. In this regard, it is mainly the responsibility of the Kuwaiti state to work on the creation of institutions capable of developing short and long-term strategies that help women gain access to their right to political representation, in accordance with the Constitution and the Convention on Elimination of All Forms of Discrimination against Women, by removing all barriers that prevent equal participation of women.

#### **Fourth: Kuwaiti women accession to the judiciary and the Kuwaiti public order professions:**

Returning to the successes and achievements that have been led to by Kuwaiti women during their occupancy of many positions, in which they proved unprecedented competence at all political, economic, health and social levels in the country. However, the Kuwaiti woman's accession to the judicial positions continued to be a source of push and pull. Although the Supreme Judicial Council issued a decision accepting the papers of girls in the position of prosecutor in preparation for their assumption of the judiciary, which indicates societal acceptance approved by Kuwaiti legislations decades ago, as it is known that the Public Prosecution is a preparation for the judiciary as well as the Public Prosecution and litigation procedures do not deviate from the tasks assumed by the judiciary. Nevertheless, Kuwaiti women's accession to this position remained a matter of push and pull within Kuwaiti society, despite its compatibility with the Constitutional framework that considered the judiciary in the same rank with the rest of the public positions in the state, which the Kuwaiti Constitution guaranteed to be occupied without discrimination.

On this basis, the failure of the Kuwaiti women to be appointed in the judiciary can be attributed to the legislative failure to interpret the provisions of the Constitution. Especially since Kuwaiti women held high positions - for example as Ministers – which gave them the full power to decide and determine according to their sole discretion in many matters, which are deemed parallel – or even matching - the judicial profession within the framework of ruling and determination of the individual affairs. This is confirmed by, since the eighties of the last century, an idea has been formed in Kuwait regarding the establishment of a specialized prosecution for juvenile affairs, some of its members are women, and this idea did not find any opposition or clamor within Kuwaiti society, due to the absence of any objection in the law, or any social rejection of this idea, especially by Sharia jurists' opinions.

## 1 - Kuwaiti law and the conditions for being appointed in the judiciary:

Article 19 of the Judicial Organization Law / Decree Law No. 23/1990 provided for the conditions for being a judge which are: to be a Muslim, to be a Kuwaiti, and if not, it is permissible to appoint a person whose nationality is Arabic, to have legal capacity, to be not judged in judicial or disciplinary cases for a breach of honor or honesty, to be of good conduct and reputation, and to have a license of law or Sharia or any equivalent high licenses.<sup>(52)</sup>

Consequently, according to the Kuwaiti Constitution, the provision went beyond the issue of discrimination between men and women in assuming the judicial profession. As for Articles 20 and 23 of the same law which stated "The Judiciary Men", it cannot be taken as a linguistic indication that only men are allowed to be appointed in the judiciary. As in the Arabic language which has been adopted by the Kuwaiti Constitution in Article 3, "The Official Language of the State," the word "man" means everyone who walks on his legs<sup>(53)</sup>, and therefore it does not limit the appointment to males, it is just like to say "Statesmen", "Clergymen" and "Lawmen". By comparing with Kuwaiti law, jurisprudence in Kuwait noted the extension of the legal wording to include men and women in other places. For example, Law 36/1982 mentioned the phrase "Firemen", as well as the third article of the election law which states that "The use of the right to vote is banned for the Armed forces men and the policemen", "Nevertheless the administration has interpreted the right to vote for every male and female in the police".<sup>(54)</sup>

In addition, the Kuwaiti Constitution determines the Principle of Equality in Article 7 of thereof, which states that "Justice, freedom and equality are the pillars of Kuwaiti society". This article is in Chapter Two of the Constitution, which talks about "the basic foundations of Kuwaiti society". According, the Constitution specified the political, economic, and social philosophies it adopted to govern the principles and values of Kuwaiti society. As well as, Article 29 of the Constitution reinforced this Principle of Equality by stipulating that: "All people are equal in human dignity and in public rights and duties before the law, without distinction to race, origin, language, or religion". This article is in the third chapter containing "General Rights and Duties" which is derived from the Universal Declaration of Human Rights.

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(52) See: Article 19 of the Judicial Organization Law / Decree-Law No. 23/1990.

(53) This is like to say: Rajal (walked) , yarjol(to walk) , rajlan (walking) then he is rajel (walker) rajal (tied by its legs) the sheep, or suspended it with its feet, and the woman rajalt (gave birth to it starting with his legs) her baby

(54) Dr. Mohammed Al-Faili, « Women assuming Judiciary positions in Kuwait: Being Male and female are not of the conditions for assuming the judiciary, and the interpretation of» administrative «violated the principle of equality, 5/19/2010, at the link:

<https://www.aljarida.com/articles/1461810767275186800/>

On this basis, the Kuwaiti Constitution establishes the Principle of Equality in its two known forms, which are equality by law, and equality before the law, as found in the provision of Article 25 of the International Covenant on Civil and Political Rights, which Kuwait ratified by Law No. 12/1996 and which provided on an equal footing the opportunity to hold public office <sup>(55)</sup>, and thus the opportunity for the Kuwaiti women to assume the judicial positions in consistency with the public interest that should be related to the Constitution.

In this regard, it is necessary to peruse the interpretation of the Administrative Court in case No. 2492/2009, which was inconsistent with the public interest and contrary to the Constitution <sup>(56)</sup>, because it derived its ruling by rejecting the appeal regarding the girls' application for enrollment in the Institute of Judicial Studies, on the basis of its discretionary power which depended in its estimation on Article 2 of the Constitution, that provides for "The religion of the State is Islam, and the Islamic Shari'a shall be a main source of legislation, "and thus its choice of jurisprudential provisions is in accordance with the same article.

When the government prepared and submitted the draft Constitution, the draft of the second article thereof was "The religion of the state is Islam, and Sharia is the main source of legislation," so the Constitution committee modified this provision to be "and Sharia is a main source of legislation," in order to make other sources related to the personal status of non-Muslims available, as well as to open the door before the idea of a democratic civil state and man-made laws, which gave women many references to be appointed in the judiciary, whether the Kuwaiti Constitution or the international human rights instruments, foremost of which is the Convention on Elimination of All Forms of Discrimination against Women (CEDAW). Consequently, the recognition of the condition of juristic guardianship is no longer evidence - on its traditional interpretations - to prevent the woman's assumption of the judicial professions.

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(55) Ibid.

(56) The facts of the case are summarized by the announcement of the Ministry of Justice to open the door for admission for male Kuwaiti law school graduates to join the Institute of Judicial Studies, and whoever accepts and passes the preparation program is appointed to the Public Prosecution Service, which allows at a later time to be appointed to the judiciary. The plaintiff submitted her papers to the institute, and the administration refused to accept receiving her papers, and she filed a grievance before the administration. She also filed a lawsuit before the Judicial and Prosecution Department of the Court of Cassation to challenge the negative decision not to accept the examination of her application to join the Institute of Judicial Studies, but the book management in the court declined to register a newspaper They called her. After that, she filed in front of the administrative department of the total court, contesting the negative administrative decision to refuse to accept the receipt of her application. And the government submitted with the defense of its essence that the opinions of Sharia jurists differ in the permissibility of the female mandate for the judiciary. . The government's defense concludes from this that the administration has the right to take what it views from these views, without having violated the principle of equality as long as the second article of the constitution decides that «the religion of the state is Islam and that Islamic law is a major source of legislation.» Before this defense, the plaintiff argued that the regulation issued by the administration, including the condition of masculinity in applicants to join the institute, was unconstitutional because it violated the principle of equality and the principle of freedom to choose work, ibid.

In addition to the aforementioned, it should be indicated that women occupied the judicial professions in a number of Arab Gulf states, including Bahrain, the United Arab Emirates, and Qatar, and social life in Kuwait is an integral part of the Arab Gulf community in which Islam is the first factor with the greatest impact in many of life aspects as well as the shared history, customs, traditions and many other features which are endless.

## **2 - The extent of the Constitutionality of the plea that Kuwaiti women should not be appointed in the judiciary:**

The administrative court and the idea of the barring statute: It is believed that the failure to accept the plea of the unconstitutionality of the organizational decision that stipulated the "Masculinity of the candidate" by the administrative court in Kuwait is clearly out of updates and most developed jurisprudence opinions, as the court justified its appeal on the argument that it has no jurisdiction due to the existence of a barring statute between the Constitution and the law regulating the judiciary, which prompted some jurists in Kuwait to say that: "The court's analysis is logical, and as a result the violation of the regulation to the Principle of Equality becomes one of the elements of the legitimacy of the regulation, as the regulation has breached the Principle of Equality prescribed in Article 19 of the Law of organizing the Judiciary by adding a condition that was not established by law and is against the law".

In replying to this, it can be said that the Constitutional barrier or the barring statute (the existence of a decision that violates the Constitution, while it is consistent with the law) has been subjected to legal jurisprudence opinions, that went beyond the traditional role by estimating and interpreting the extent of legitimacy of decisions and laws within the principle of the sequence of legal rules, till the role of the administrative courts became laws making source through developed judicial opinions, going beyond to what is known as the "Transparent Law", as the administrative judge has become an oversight of the discretionary authority of the administration by asking the decision-making administration to express sufficient reasons to justify its harmful action, and comparing that to the extent of direction of the administration's will to achieve the public interest in the framework of the public interest.

Consequently, the ability of the administrative judiciary to bypass the regulation or law that included a violation of the Constitution and to apply the extent of the legality of the decision is based on the Constitution directly, in view of the goal of the administrative decision and the purpose of the administration man to achieve the public interest.

Accordingly, claiming that it is not permissible for a woman to be appointed in the judiciary, or imposing the condition of masculinity, as in case 2492/2009 cannot be adopted, as this is inconsistent with the nature of the Kuwaiti public order, and the changing circumstances

of society whose majority has recently comprehended women's work in all areas, including the ministries. Therefore, the task of the administrative court in restricting the authority of discretionary administration becomes an urgent legal action, due to its ability to compel the administration to justify its actions within the framework of the public order and the public interest. As well as because of its more access to contemporary jurisprudence opinions in application of the Transparent Law, and not being restricted by the idea of the Constitutional barrier, which has prevented women from obtaining their rights in many fields and from being equal to men.

## Third Topic

### National Mechanisms for Activating Women's Rights in Kuwait

The Kuwaiti women supported the men in all state facilities in Kuwait including Civil Society Organizations which are entrusted to present and publish the culture of citizenship, social correlations, and culture of human rights in addition to non-discrimination between men and women. The Kuwaiti civil society succeeded in many of its initiatives by sustaining and defending the women rights, taking the advantage of the Kuwaiti constitution provisions which stipulate, as in Article 43 thereof, that "Freedom to form associations and unions on a national basis and by peaceful means is guaranteed in accordance with the conditions and manner specified by law...". Further, Article 44 of the Constitution provides that "Individuals have the right of private assembly without permission or prior notification, and the police may not attend such private meetings". Based on that, the Kuwaiti Constitution opened the door for men and women to perform the civil work, as the Kuwaiti women's contribution in this field has been considered as activation for her role in all fields which are guaranteed under the Kuwaiti constitution.

#### **First: Activating the role of civil society organizations and their roles in the work of United Nations Committees.**

The priority of applying the obligations stipulated in the Kuwaiti constitution undoubtedly requires activating the societal and legal culture regarding women's rights in Kuwait. Civil society organizations have thereby undertaken its role in parallel with the universal culture due to the importance of civil society organizations as a key input to the process of human and economic development; by seeking to establish a common vision in all fields between the government and civil society organizations, so that women are enabled to express their opinion on legislation and laws related to their rights and empowering them politically and economically in the community and labor market.

The matter of coordination between the Civil Society Organizations and International Non-Governmental Organizations has become the top priority of defending the human rights, particularly the women rights as they represent the community pulse in neutral and informal ways and away from the influence of government policies. Consequently, the constant coordination between Kuwaiti society organizations and the Kuwaiti government will have the most important impact on the empowerment of women in Kuwait, by developing a national strategy that enforce laws and legislation in cooperation with various bodies and ministries; that will lead to following-up the reports presented to the United Nations in relation to the recommendations adopted by the committees concerned with enforcement of the Convention on Elimination of All Forms of Discrimination Against Women (CEDAW).

Civil Society Organizations have more effective and flexible methods in responding to the needs that support in enforcement of human rights conventions, particularly the CEDAW, whereas civil society organizations enjoy freedom of movement and exchange of ideas horizontally within society including the access to all classes of society through the basic participation.

From this particular point, importance of the role of civil society organizations in Kuwait is shown through their roles in sustaining the women rights in Kuwait generally and their contributions particularly in activating the committees' reports presented to the United Nations and the Human Rights Council and its bodies, regarding the determination and activation of appropriateness and harmonization between reports of these committees, the public interest and the nature of public order in Kuwait. This shall be through the ability of civil society organizations to be a third and middle way between society and the institutions of State of Kuwait on the one hand, and its role in conveying the true image of reality of the social structure, demographics and prevailing culture in Kuwait, and expressing the opinion about the preservations made by the government on the other hand, and the extent to which the Kuwaiti public system is accepting or rejecting some of the clauses set forth in the CEDAW Convention, considering the possibility of its enforcement or not, based on the specific conditions that govern the reality of Kuwaiti society, or those that govern its values, principles and cohesion. For example, the Report of the Working Group on the issue of discrimination against women in law and in practice on its visit to State of Kuwait in 2017 expressed concerns about the situation of women in prostitution (sex workers) which is criminalized in Kuwait. The report on trafficking in persons, especially women and children, recognized the existence of sexual exploitation of women, mainly non-nationals. The experts recall that the criminalization of women in prostitution places them in a situation of injustice, vulnerability and stigma and is contrary to international human rights standards. Further, the report of Committee on the Elimination of Discrimination against Women has systematically reiterated that "women should not be criminalized for being in a situation of prostitution"<sup>(57)</sup>

Based on that, the aforesaid report regarding the situation of "prostitution" is not absolutely compatible with the values, principles and cohesion of Kuwaiti society, being as a Gulf, Arab and Middle Eastern society, in which the pillars of societies are based on on family cohesion, values and traditions that govern the public order and the supreme ultimate interest. As for the issue of sexual exploitation of non-nationals, it is a self-evident criminal under the Kuwaiti laws.

From this particular point, the role of civil society organizations appears in conveying the nature of Kuwaiti society and the extent of its acceptance of this or that case, in order to preserve the general structure of society and avoid collapse of the values on which it is

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(57)See the Report of the Working Group on the issue of discrimination against women in law and in practice on its visit to State of Kuwait, Human Rights Council, 35th session, June 2017.

based, given the philosophy that governs this society in a specific time period that forms one of the pillars of legal jurisprudence starting with the constitution which reflects set of philosophies, ideologies and beliefs that govern a specific society in a given period of time, as a fundamental principle in doctrine and jurisprudence.

On the other hand, civil society organizations work in coordination with the Kuwaiti government to express opinions on issues that are no longer in violation to the nature of the Kuwaiti public order and issues of changing this system by changing the public interest. On the other hand, civil society organizations proceed in introducing to the Committees concerned with supervising the enforcement of the conventions ratified by the State of Kuwait, especially the Committee on the Elimination of Discrimination against Women (CEDAW), the issues that do not violate the Kuwaiti public order, especially those related to the right to work, political participation, the nationality right, and in all the rights of Kuwaiti women which are still revolving around the theory, and pushing the Kuwaiti government to turn it into a tangible reality.

In this regard, civil society organizations can exchange Arab and foreign expertise with respect to setting programs, plans and strategies that repel all forms of discrimination against women, especially with the advancement of social media, which have made use of these expertise possible, and thus providing more creative mechanisms in dealing with the Kuwaiti government on the one hand, and contributing to the reports of the working groups concerned with the issue of elimination of discrimination against women, whether in law or in practice, and defining the actual problems that face women in Kuwait.

Historically, the peaceful climate of Kuwait has been the most favorable environment for the growth of an active civil society which is able to be a bulwark against any shudders facing the State. However, Kuwait faced political reasons imposed by the post-first Gulf War political challenges that led to the retreat of civil society organizations and public benefit associations. This was corresponding an expansion of the rentier state concept, which resulted to the actual retreat in the contribution of civil society sectors. Volunteering work is essentially based on commitment and self-motivations, as it expresses independent energies outside the governmental framework. Nevertheless, what can be observed in Kuwait is that civil work has become a reflection of government action, and has even become unable to continue without government support; which constitutes a weakness that prevents independence of civil society organizations in general.

In Kuwait, there are 145 Private Public-Benefit Associations which are officially registered in Ministry of Social Affairs, in addition to 73 Volunteering Teams <sup>(58)</sup>, 71 Unions approximately and 46 Business Federations. We believe that such numbers are able to fill the gap within the framework of empowering Kuwaiti women whether in terms of societal

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(58) Assistant Undersecretary for the Development Sector at Ministry of Social Affairs, Ms. Hana Al-Hajeri.

culture or in terms of legislative gaps and mechanisms for implementing the provisions of the constitution. However, the dilemma that still faces civil society organizations is their inability to create networking tools between them and the government in an effective way, through following-up the societal and legal issues and forming specialized committees of experts and legal teams that work to approve women's participation in all areas. This requires civil society organizations and volunteering teams not to focus on individual or unpremeditated work, whether in management or directing policies by their owners and giving importance to making strategies, plans, teamwork and participation in decision-making.

Civil society organizations in Kuwait suffer from weak financial support due to their inability to develop their own resources, which often depend on direct financial support in the absence of their ability to invest in projects that contribute to the integration of women in society, and dependence of most of them on government support, which affects its independence and mechanisms of their works.

From this particular point, the importance of revising and developing the legislative, legal and institutional framework regulating the work of Kuwaiti civil society is evident through the freedom of forming public benefit societies, unions and federations and reconsidering existing legislations in a way that achieves a new organization consistent with the aspirations, and development of nature of the relationship between the state and civil society by including civil society development issues as one of the basic components in development. This shall be realized by involving civil society organizations in development processes and forming their teams to follow up the state's developmental plans, with the aim of evaluating and reviewing the progress in achievement of the developmental projects in general and the status and role of Kuwaiti women in this process, in addition to involving the civil society organizations in execution of some developmental programs and projects and volunteering initiatives <sup>(59)</sup>. Consequently, involving the civil society organizations in developing the government work in so that it forms as a partner and a fourth power in addition to its three legislative, judicial and executive powers.

In this regard, Dr. Khadija Al-Muhaimeed believes that one of the most important mechanisms that we need to apply for the activation of woman rights at the national level is by establishing an effective institutional partnership among executive government institutions and civil society institutions at the level of planning and implementation in this field through organizing a smart real partnership among civil society institutions which believe in all citizenship rights for Kuwaiti women and the effective communication between these institutions that believe and is active in getting Kuwaiti citizenship rights and the legislative authority to codify the legitimate demands for woman, controlling its application, investing paper and electronic (print, audio, and visual) media that work on disseminating awareness of citizenship rights for Kuwaiti women, following up and

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<https://arabic.cnn.com/middleeast/2016/11/04/civil-society-kuwait-opinion>

endorsing official local statistics studies that mentoring the development of Kuwaiti citizenship rights in the real life in an accurate scientific way .<sup>(60)</sup>

The Undersecretary of the Ministry of Social Affairs, Hana Al-Hajeri believes that the Kuwaiti legislator has been able in general to comply with the provisions of the constitution with respect of supporting women to realize their right. From the legislative aspect, "Al-Hajeri" believes that the State of Kuwait is distinctive in those legislations that are related to woman rights and its application taking into consideration taking all measures that would realize equality and justice. This is clearly manifested in the developmental projects related to developmental goals in particular those related to the goal of achieving gender equality. However, there are still many of challenges - according to Al-Hajeri - the most prominent of which are those that stand against women to obtain their right, the woman's view of herself and the man's view of her as well as the legal challenges. For example, Kuwait national labour law prohibits women from working in hazardous jobs, though women have already accessed the field of that work, a matter that reflects the discrepancy between what is mentioned in the law and reality as well as violence against women, in addition to the absence of the law that criminalize this violence, the failure of women related civil society institutions to play its role in the service of women's issues in general and focusing only the issue of violence against woman. The most prominent challenges that women encounter in this issue are the unequal opportunities between women and men and the preference of the later over her in leading positions in the State, women's lack of confidence in themselves especially in the participation of woman in the political life, which we clearly observe in the election of the nation council along the experience of women since they were given their political rights. Moreover, Kuwaiti women lack experience in the field of election compared to men and the traditions and customs represented in exploiting woman voting for members of the tribe or sect without granting her the freedom to take election decision or even to run for candidacy.

The Undersecretary of the Ministry of Social Affairs, Hana Al-Hajeri, offers a set of visions and trends to ensure the participation of women on top of which working on awareness programmes, in particular those provided by civil society organizations concerned with human rights, to support women to participate in the election of entities which members are elected by public suffrage, and finding a database for competent, qualified, and experienced women. Moreover, finding an institution concerned with the numbers of women to participate in the electoral process, whether by nomination or election, by providing them with the necessary expertise and persuading the Kuwaiti legislator to take more specific steps on the ability of women to occupy the judicial career. Al-Hajeri said that many civil society organizations are working on supporting some of the candidates for parliamentary work, in addition to playing the actual role that qualifies them to lead public opinion, calling for the cancellation of all forms of discrimination against women, taking special measures that aim at accelerating the effective equality between men

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(60) Khadija Al-Muhaimeed, Rights Activists, Vice-President of National Family Security Association, and member of the Supreme Council for Family Affairs under Council of Ministers, *ibid*.

and women, through developing a national mechanism concerned with women, taking legislative measures that empower women, including development plans and all that contribute in women's empowerment in various fields .<sup>(61)</sup>

In the same context, Dr. Alanood Al-Sharekh believes that the civil society, especially women's organizations, is able to positively influence government and community, but "the required level" is an elastic term because we always need more awareness to adopt new and various issues. Since the extent of the influence is linked to the level of awareness, we may say, for example, that as the issue of demanding the political rights has been resolved, there is greater awareness among young people of the need for women to participate in the management of the State and society and avoid marginalizing their role. However, we still find that the issue of protecting them from violence and providing care for battered women lacks the adequate awareness and attention from the authority and society. For example, this issue has been sponsored a campaign by Ithar volunteering group and other civil society associations for repealing Article (153). However, public benefit associations alone have not been able to put an end to this phenomenon without interaction with the National Assembly and the government. This interaction has already occurred but is still slow and insufficient .<sup>(62)</sup>

## **Second: Empowering women through the role of the Ministry of Youth:**

the Kuwaiti Ministry of Youth was established in 2013 so that the ministry with its youth shall be the alternative wealth for the correction of the paths of development socially and economically. In 2017, Kuwait was celebrated as the capital of youth concurrently with the 12th anniversary of the endorsement of the Political Women's Rights Act on May 16, 2005. The access of young Kuwaitis into the National Assembly represents an access for young ambitious woman to realize their rights as men. Four women joined the parliament at the same time, a matter that many Kuwaiti women found it an opportunity to demand the establishment of a ministry for women.

The issue of empowering women has become the most consistent idea with the recent developments of the idea of sustainable development, as an issue that linked today more than ever before to the concept of citizenship, which requires mobilizing all the potentials of society in development and growth. Consequently, activating the right of equality between men and women, especially in the young societies in which the youth constitute the largest percentage, as is the case in State of Kuwait in which the youth constitute about 60% of the population; the thing that helps to establish a modern vision for the position of women in Kuwaiti society.

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(61) The Undersecretary for Development Sector in Ministry of Social Affairs, Ms. Hana Al-Hajeri

(62) Dr. Alsnoud Al-Sharekh, a researcher, academic, women's rights activist and a founding member of Abolish Article (153) of the Panal Code, *ibid*.

On this basis, the youth and the situation in Kuwait constitute the most important strategic force that will help to empower women more and more in the foreseeable future. Surveys conducted by committees and groups concerned with the elimination of discrimination against women have shown a great desire among Kuwaiti young women to participate actively in public and political life, especially with the existence of special methods of work provided by the Kuwaiti government through the use of information and communications technology.

### **Third: Activating the Kuwait Council of State:**

Pursuant to signing the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) by State of Kuwait and under the constitutions and laws, women in Kuwait enjoy the right of resorting to the judiciary in case of violation of any of her rights. The judicial authority in Kuwait provides all means of equality and justice, and therefore women in Kuwait have the right to demand enforcement of the laws related to the enjoyment of their rights, including the provisions of the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) which have become a national applicable law after Kuwait has joined thereto<sup>(63)</sup>. Further, the Article 2 of the Convention urges to adopt appropriate legislative and other measures prohibiting all discrimination against women, establish legal protection of the rights of women, and refrain from engaging in any act or practice of discrimination against women<sup>(64)</sup>. Consequently, the Convention enforced a constitutional and legal entity to ensure there is no discrimination between women and men along with providing the mechanisms to support eliminating all discrimination by public entities or individuals.

Conversion of the aforesaid to actual practice and legislative reality is undoubtedly subject to activation of the Kuwait Council of State which is concerned with defending the individuals' rights and their public freedoms, among which is the women rights, in order to be the judicial body concerned with the administrative judiciary functions, Al-Iftaa (legal advice), drafting laws, monitoring the administrative resolutions particularly monitoring the discretionary authority of administration, and providing the independency to the administrative judge in monitoring the administrative authority actions while applying the laws. Consequently, Kuwaiti women are given the sole potentiality to activate and amend the legislative performance, whereas this qualifies them to challenge the decisions of Administration before the relevant administrative judiciary represented by the State Council, where the latter undertakes the enforcement of internal laws and regulations. It also gives women in Kuwait the right to follow up on obtaining their rights after exhausting the sequenced litigation methods before the administrative authority. Accordingly, the administration authority, which has always invoked its discretionary

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(63) State of Kuwait ratified the Convention on the Elimination of All Forms of Discrimination Against Women by Emiri Decree No. 24 of 1994.

(64) See Article 3 (Para. A, B, C, D and E), Convention on the Elimination of All Forms of Discrimination against Women.

authority to interpret the provisions of the Constitution, laws and regulations without having a direct monitor determine the extent to which its decision is directed towards achieving the public interest, shall be restricted. Consequently, activation of the work of the Kuwait Council of State has become an absolute necessity to defend the rights and public freedoms of individuals in general including women's rights in particular.

On this basis, the administrative judiciary is one of the most important ways to empower Kuwaiti women to obtain their rights stipulated in the Kuwaiti constitution, especially those related to the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW).

The importance of activating the Kuwaiti Council of State is not limited to this point, but it goes beyond it including assessment, interpretation, and restriction of the discretionary authority granted to the administration within the limits of the public interest included in the Constitution and laws, and devising appropriate solutions to regulate the relationship of Kuwaiti women with administration, by making use of the State Council, where its judges enjoy the expertise and effectiveness in resolving disputes that arise between individuals and administration, in addition to its advantages that are not limited to its role as an applied judiciary such as civil judiciary, but rather it undertakes its missions as a structural judiciary for many rights, especially those related to the elimination of all forms of discrimination against women.

#### **Fourth: National Bureau for Human Rights:**

Pursuant to the law No. 67 of 2015, the National Bureau for Human Rights was established. It is an independent national human rights institution aims to enhance and protect the human rights and works to disseminate and promote the respect for public and special freedoms in light of the rules of the constitution and the provisions of international conventions ratified by the State of Kuwait. National Bureau for Human Rights

The National Bureau for Human Rights is considered one of the most important national mechanisms for the protection and promotion of human rights, and it comprises some committees, including the Women's Committee. The Bureau also undertakes a large number of missions and functions including expression of opinions, recommendations, proposals and reporting to the concerned authorities on issues related to the promotion and protection of human rights, the issues referred thereto by the National Assembly and Council of Ministers, the right to receive complaints, monitor cases of human rights violations in addition to studying and investigating the facts about them, refer them to the relevant authorities, coordinate with them and follow up on them, and guide the complainants to the legal procedures to be followed and help them in taking such procedures or settle and resolving the complaints with the authorities. Further, its important competencies include following up the enforcement of freedom related

articles of the constitution, the international conventions and treaties related to human rights in State of Kuwait, submitting the necessary proposals to the concerned authorities with respect to ensuring their enforcement, cooperating with the United Nations and its subsidiary bodies, and coordinating and communicating with NGOs concerned with the protection of human rights.<sup>(65)</sup>

### **Fifth: Kuwaiti Council of Ministers' Women Affairs Committee:**

It is one of the national sub-committees concerned with women's affairs. It works to enhance and coordinate cooperation with all relevant bodies to support women's issues, hold seminars and conferences, organize discussion and research seminars, and issue publications, studies and reports in all fields related to women. The Committee has also an important role in giving opinion and studying issues related to Kuwaiti women that are referred to by the Council of Ministers. Therefore, this Committee is considered one of the important national mechanisms that affect the enhancement of women's participation in decision making, attainment of gender equality, and enforcement of the Convention on the Elimination of All Forms of Discrimination Against Women.

### **Sixth: Women and Family Committee in the National Assembly:**

This committee is an interim committee in the National Assembly (Parliament) and plays an important role in proposing the drafts of laws and decrees as being one of the national assembly committees which constitutes the legislative authority concerned with legislation and supervision of the work of the executive authority and its enforcement of laws in the State of Kuwait. One of its most prominent competences is to support the political, economic and social role of women in the society and monitor the implementation of the strategic plans the State develops for women, in addition to discussing those plans with various official institutions and monitoring the implementation of the national legislation impacting Kuwaiti women in particular and women in general, amending what is in conflict with the provisions of international agreements signed and authenticated by the State of Kuwait and studying the legal, justice, educational, media, administrative and social aspects related to women in an attempt to improve them through legislation, seminars, and conferences in the field of empowering and developing their role in the society.

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(65) Law No. 67 of 2015 on Establishment of National Bureau for Human Rights.

## Fourth Topic

# International Mechanisms for Activating Women Rights in Kuwait

Depriving women of their rights has driven the international society to pay more attention to their issues and became the focus of international attention after the feminist movement has struggled for the sake of recognizing their rights. As a result of that activity, the United Nations Charter has affirmed the equal rights between men and women, which was further reinforced by the affirmation of the Universal Declaration of Human Rights that everyone enjoys equal rights without any discrimination based on sex. Then, this was followed by a number of international treaties, the most important of which are the two treaties on human rights, where they affirmed the duty to ensure equality between men and women in the right to enjoy all economic, social, cultural, civil and political rights, and international conventions as concluded under the auspices of the United Nations and the specialized agencies that encouraged the equality between women with men in rights, until it was approved to ratify the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), and then establishment of a number of international mechanisms enforce and activate women's rights, whether they are contractual mechanisms based on international treaties or non-contractual mechanisms based on the Charter of the United Nations.

## First: Contractual Mechanisms:

They are ten human rights treaty bodies <sup>(66)</sup> that are made of independent experts who mandated to monitor the enforcement of the core international human rights treaties <sup>(67)</sup>. Every State party in a treaty is committed to take the necessary steps to ensure that every person in the State enjoys the rights provided in the treaty. Further, they are made of independent and efficient experts whom are nominated and elected by the State parties for renewable definite period of four years.

It is noteworthy that all these Committees are concerned with women's rights according to the Convention created for the Committee; however we will address the Committee on the Elimination of Discrimination Against Women which is our interest among the contractual mechanisms in this research paper.

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(66) Human Rights Treaty Bodies are:

- 1- Human Rights Committee CCPR) monitors implementation of the International Covenant on Civil and Political Rights (1966) and its two optional protocols.
- 2- Committee on Economic, Social and Cultural Rights (CESCR) monitors implementation of the International Covenant on Economic, Social and Cultural Rights (1966).
- 3- Committee on the Elimination of Racial Discrimination (CERD) monitors implementation of the International Convention on the Elimination of All Forms of Racial Discrimination (1965).
- 4- Committee on the Elimination of Discrimination against Women (CEDAW) monitors implementation of the Convention on the Elimination of All Forms of Discrimination against Women (1979) and its optional protocol (1999).
- 5- Committee against Torture (CAT) monitors implementation of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment (1984).
- 6- Committee on the Rights of the Child (CRC) monitors implementation of the Convention on the Rights of the Child (1989) and its optional protocols (2002).
- 7- Committee on Migrant Workers (CMW) monitors implementation of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (1990).
- 8- Committee on the Rights of Persons with Disabilities (CRPD) monitors implementation of the International Convention on the Rights of Persons with Disabilities (2006).
- 9- Committee on Enforced Disappearances (CED) monitors implementation of the International Convention for the Protection of All Persons from Enforced Disappearance (2006).
- 10- The Subcommittee on Prevention of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (SPT) established pursuant to the Optional Protocol of the Convention against Torture (OPCAT) (2002). Visits places of detention in order to prevent torture and other cruel, inhuman or degrading treatment or punishment.

For more details, see the website of the United Nations High Commissioner for Human Rights (OHCHR) [www.ohchr.org/AR/HRBodies/Pages/Overview.aspx](http://www.ohchr.org/AR/HRBodies/Pages/Overview.aspx)

(67) The Core Covenants of Human Rights are:

International Covenants on Civil and Political Rights (1966) and its two Optional Protocols.

International Covenant on Economic, Social and Cultural Rights (1966)

International Convention on the Elimination of All Forms of Racial Discrimination (1965)

Convention on the Elimination of All Forms of Discrimination against Women (1979) and its Optional Protocol (1999)

Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1984) and its Optional Protocol (2002)

Convention on the Rights of the Child (1989) and its two Optional Protocols (2000).

International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (1990)

International Convention on the Rights of Persons with Disabilities (2006).

International Convention for the Protection of All Persons from Enforced Disappearance (2006)

## **The Committee on the Elimination of Discrimination against Women (CEDAW):**

it is the body which consists of 23 independent experts in field of women's rights from around the world that monitors implementation of the Convention on the Elimination of All Forms of Discrimination against Women. Countries who have become party to the Convention (States parties) are obliged to submit regular reports to the Committee on how the rights of the Convention are implemented. During its sessions the Committee considers each State party report and addresses its concerns and recommendations to the State party in the form of concluding observations. Further, in accordance with the Optional Protocol to the Convention, the Committee is mandated to: (1) receive communications from individuals or groups of individuals submitting claims of violations of rights protected under the Convention to the Committee and (2) initiate inquiries into situations of grave or systematic violations of women's rights. These procedures are optional and are only available where the State concerned has accepted them. Further, the Committee formulates general recommendations and suggestions. The general recommendations are directed to States and concern articles or themes in the Conventions.<sup>(68)</sup>

The civil society's role is highlighted in its participation and activation of its role in producing the "shadow" reports which are submitted to the Committee on the Elimination of Discrimination against Women for its consideration in the national reports of State of Kuwait and in the list of issues as well as in providing information reports in the framework conducting a follow-up. In such case, these reports have to particularly focus on the recommendations identified in the concluding observations for conducting the follow-up and to include brief information <sup>(69)</sup>, with respect to the measures taken by the authorities and evaluate the extent of its effectiveness.

It may also state any failure to take the necessary measures to implement the recommendations, and the civil society organizations may desire to comment on the replies provided by the state and pursue the civil society reports with respect to the follow-up of the same rules of reports that are submitted to be taken into account in the reports of the State party and the list of issues which are considered public, whereas they become either available on the website of Office of the United Nations High Commissioner for Human Rights (OHCHR) or confidential if its required by the organization which submitted the report.

Additionally, members of treaty bodies can participate in regional, sub-regional and

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(68) For more details, see the website of the United Nations High Commissioner for Human Rights (OHCHR) [www.ohchr.org/AR/HRBodies/cedaw/Pages/Introduction.aspx](http://www.ohchr.org/AR/HRBodies/cedaw/Pages/Introduction.aspx)

(69) The Committee on the Elimination of Discrimination Against Women (CEDAW) requires that reports must not exceed at maximum 3,500 words.

national workshops on implementation as organized by civil society, United Nations and OHCHR Agencies or governments, whereas the participation of civil society in the workshops is urged.<sup>(70)</sup>

Monitoring the state's implementation of the recommendations which are directed thereto constitutes one of the important activities of civil society to ensure the accountability of government. Additionally, circulating information and raising awareness with respect to the results and recommendations directed to the state is considered a useful means to enhance the implementation of human rights obligations by the state, as implementation becomes possible when the rights holders are aware of the rights they deserve and claim. Reducing or filling the gaps of human rights knowledge by increasing awareness and circulating information through various media means and social media campaigns are considered effective means for promoting the implementation.<sup>(71)</sup>

With regard to receiving communications from individuals or groups who approach the Committee on the Elimination of All Forms of Discrimination against Women with allegations of violations of rights protected under the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) or initiate inquiries into situations of grave or systematic violations of women's rights according to the Optional Protocol to the Convention (1999), it is not available, as the State of Kuwait did not join the formerly mentioned protocol and consequently did not accept this procedure.

## **Second: The Non-contractual mechanisms:**

They are mechanisms based on the provisions stipulated in the Charter of United Nations upon their establishment. They are concerned with the Human Rights Council established by the General Assembly under Resolution 251/60 dated March 15th, 2006.

### **1 - Special Procedures:**

They are made up of independent human rights experts mandated to report and advise on human rights from a thematic or country-specific perspective. The special procedures system is a central element of United Nations Human Rights mechanisms and covers all human rights (civil, political, economic, social and cultural). As of August 1st, 2017, there are 43 thematic and 12 country mandates.

Further, the Special Procedures undertake country visits; and takes the necessary

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(70) A Guide for Civil Society on how to follow up on United Nations Human Rights Recommendations

(71) A Guide for Civil Society on how to follow up on United Nations Human Rights Recommendations, *ibid.*

measures regarding individual cases and concerns of a broader structural nature by sending messages to States and other authorities which are seeking to draw their attention to alleged violations or abuses, conducting thematic studies and convening expert consultations, and contributing to the development of international human rights standards; engage in advocacy and raise public awareness; and provide advice for technical cooperation.<sup>(72)</sup>

It is noteworthy that civil society elements, individually or collectively, can relate to and work with special procedures unlike human rights treaty bodies, whereas special procedures can be activated even if the state has not ratified the instrument or treaty concerned. It is not necessary to exhaust the local remedies before contacting Special Procedures. Therefore, the Special Procedures can be used at any country or on any human rights issue within the limits of existing state mandates.<sup>(73)</sup>

It's necessary to indicate that all thematic mandates are concerned with the rights of women according to the subject matter of each state, but we will address two important thematic mandates in the mechanism of Special Procedures from non-contractual mechanisms.

## **A- The Working Group Concerned with Discrimination Against Women in Law and Practice:**

The group is composed of five independent experts elected on basis of the principle of balanced geographical representation on the issue of discrimination against women in law and in practice. Period of the mandate is renewable three years. Upon the invitation of the states, the mandate holders undertake country visits to analyze the human rights situation at the national level. Some countries have sent “permanent invitations” to the special procedures, which means that they are ready to receive a visit from any thematic mandate holder. Among the most important major tasks that define the Working Group mandate is to initiate a dialogue with the states and relevant United Nations entities, national human rights institutions, and experts specialized in the various legal systems and civil society organizations with the aim to identify, strengthen and exchange viewpoints on best practices related to the elimination of discriminatory laws against women or that involves discrimination against them in terms of implementation or implication, prepare a summary of best practices, work in close coordination with other Human Rights Council bodies, and report annually to the Council on the issue of discrimination against women in practice and in law.

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(72) For more details, see the website of the United Nations High Commissioner for Human Rights (OHCHR) [www.ohchr.org](http://www.ohchr.org)

(73) See the Guide for Civil Society – Work with United Nations Program for Human Rights – Special Procedures.

The civil society's role in supporting the visit requests to the mandate-holders is highlighted by submitting proposals to the mandate-holders to request a visit to State of Kuwait<sup>(74)</sup>, and provide essential information to justify the visit and work to mobilize support for the government and other relevant stakeholders such as members of parliament to ensure that the visit requests are met. Civil society organizations can also organize<sup>(75)</sup> or participate in side events during the convening of the Human Rights Council on the subject contained in the thematic report, and refer to findings and recommendations contained in thematic reports to enhance the activities of actors in civil society such as mobilizing support, building capacities, raising awareness and monitoring.

It's necessary to note that the Working Group on the issue of discrimination against women in law and in practice submitted a report to the Human Rights Council on its visit to the State of Kuwait during the period from 6-15 December 2016, and the report contained a number of important conclusions and recommendations. Here, it is the responsibility of the civil society in the State of Kuwait to follow up on these conclusions and recommendations and mobilize the necessary support towards the government to implement these recommendations.

## **B- The Special Rapporteur on Violence Against Women, its Causes and Consequences:**

The special rapporteur on violence against women, its causes and consequences, according to her mandate, undertakes several missions, whereas she is requested to seek and receive information on violence against women, its causes and consequences from governments, treaty bodies, specialized agencies, other special rapporteurs responsible for various human rights questions and intergovernmental and non-governmental organizations, including women's organizations, and to respond effectively to such information. The special rapporteur also recommends measures, ways and means at the local, national, regional and international levels to eliminate all forms of violence against women and its causes, and to remedy its consequences. Further, she works closely with all special procedures and other human rights mechanisms of the Human Rights Council and with the treaty bodies, taking into account the request of the Council that they regularly and systematically integrate the human rights of women and a gender perspective into their work, in addition to undertaking country fact-finding visits and submits thematic reports annually to the United Nations General Assembly and the Human Rights Council.<sup>(76)</sup>

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(74) The Working Group on the issue of discrimination against women in law and in practice visited State of Kuwait on 6-15 December 2016.

(75) The side events on the Human Rights Council are limited to NGOs in consultative status with the United Nations Economic and Social Council (ECOSOC).

(76) For more details, see the website of the United Nations High Commissioner for Human Rights (OHCHR) [www.ohchr.org](http://www.ohchr.org)

Civil society may contribute to the work of the special procedures in some ways, including submission of individual allegations of human rights violations to the relevant special procedures mandate-holders, such as submitting individual complaints to the Special Rapporteur on violence against women, its causes and consequences through the individual complaint form that includes some of data prepared particularly for this purpose<sup>(77)</sup> , providing support for country visits and information and analysis on human rights violations, performing a preventive role by providing information on the introduction of new legislation which may lead to human rights violations, working on follow-up to the recommendations issued by the Special Rapporteur on violence against women, its causes and consequences and mobilizing the necessary support towards the government to enforce these recommendations.<sup>(78)</sup>

## 2 - Human Rights Council Complaint Procedure:

This procedure was established to address consistent patterns of gross and reliably attested violations of all human rights and all fundamental freedoms occurring in any part of the world and under any circumstances. The complaint procedure addresses communications submitted by individuals, groups, or non-governmental organizations that claim to be victims of human rights violations or that have direct knowledge of such violations. It is confidential procedure with a view to enhance cooperation with the State concerned, taking into account that this procedure is neutral, objective, efficient, victims-oriented and conducted in a timely manner. A complaint can be submitted against any country irrespective of whether the country has ratified any particular treaty or made reservations under a particular instrument.

Human Rights Council Complaint Procedure is undertaken by two working groups; the Working Group on Communications which assesses the admissibility and the merits of the communications and its thematic principles, and then refers all accepted communications and related recommendations to the Working Group on Situations.

on the basis of the information and recommendations provided by the Working Group on Communications, the Working Group on Situations presents the Council with a report on consistent patterns of gross and reliably attested violations of human rights and fundamental freedoms, and to make recommendations to the Council on which course of action to take.

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(77) An individual complaint form for the rapporteur on violence against women, its causes and consequences, through the below link below:

[www.ohchr.org/EN/Issues/Women/SRWomen/Pages/Complaints.aspx](http://www.ohchr.org/EN/Issues/Women/SRWomen/Pages/Complaints.aspx)

(78) The Guide for Civil Society – Work with United Nations Program for Human Rights – Special Procedures, P. 109.

In order to be admissible under the Human Rights Council complaint procedure, a complaint has to meet the following criteria:

1. It shall be in writing and has to be submitted in one of the six UN official languages (Arabic, Chinese, English, French, Russian and Spanish).
2. It shall contain a description of the relevant facts (including names of alleged victims, dates, location and other evidence), with as much detail as possible, and shall not exceed 15 pages.
3. It must not be manifestly politically motivated.
4. It must not be exclusively based on reports disseminated by mass media.
5. It is not being already dealt with by a special procedure, a treaty body or other United Nations or similar regional complaints procedure in the field of human rights.
6. Domestic remedies have been exhausted, unless it appears that such remedies would be ineffective or unreasonably prolonged.
7. It must not use a language that is abusive or insulting.
8. The complaint procedure is not mandated to seek remedies in individual cases or to provide compensation to alleged victims.<sup>(79)</sup>

### **3 - The Universal Periodic Review (UPR):**

It was established by the United National General Assembly on 15th March 2006 under resolution No. 60/251, which established the Human Rights Council itself. The goal of this new mechanism is the improvement of the human rights situation in every country, protection of human rights everywhere, reminding the States of their responsibility for respecting all human rights and essential freedoms and enforce them fully. It also involves a periodic review of the human rights records of all 193 United Nations Member States once every four years.

The Universal Periodic Review (UPR) is a State-driven process, under the auspices of the Human Rights Council, which provides the opportunity for each State to declare what actions they have taken to improve the human rights situations in their countries and to fulfil their human rights obligations. As one of the main features of the Council, the

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(79) For more details, see the website of the United Nations High Commissioner for Human Rights (OHCHR) [www.ohchr.org](http://www.ohchr.org)

Universal Periodic Review is designed to ensure equal treatment for every country when their human rights situations are assessed.

Participation in the Universal Periodic Review (UPR): Resolution 5/1 provides for the participation of all relevant stakeholders in the process. Accordingly, the participation of regional intergovernmental organizations, national human rights institutions as well as civil society representatives, including non-governmental organizations, human rights defenders, academic institutions and research institutes, is envisaged at relevant stages. Civil society may contribute to work of the UPR, inter alia, by:

- Participating in consultations held by governments to prepare their national reports on the human rights situation in their countries.
- Preparing submissions on the human rights situation in States under review for potential inclusion in the summary of stakeholders' submissions prepared by OHCHR. The OHCHR summary is taken into consideration by the Working Group when reviewing States.
- Contributing to the follow-up to the implementation of review outcomes.<sup>(80)</sup>

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(80) The Guide for Civil Society – Work with United Nations Program for Human Rights – Universal Periodic Review (UPR).

## Conclusion

In view of the foregoing, we conclude that the State of Kuwait remained a pioneer in the democratic performance in this region, which was reflected in its international obligations in the field of human rights. The Kuwaiti Constitution applied the international standards with respect to the women's rights, but the Constitutional practices are still suffering from the inability of the Kuwaiti Legislator to activate, interpret and apply the Constitutional provisions within the framework of women's rights. This is due to some reasons that are related to the traditional societal accumulation of male culture in the Gulf Arab community including Kuwait, or those related to the lack of executive mechanisms for legislative practice in the framework of the principle of the supremacy of the Constitution and the principle of the sequence of legal rules, or those related to the default of the role of civil society organizations and NGOs in empowering Kuwaiti women from their rights, which have resulted in what can be described as moody or individual practices, whether by the administration (the Executive), or by the parliament (the Legislature), which still suffers from the lack of an influential women's parliamentary bloc within it, which prevented Kuwaiti women from being able to participate in enacting and supervising laws that empower them to obtain their rights, starting from their ability to challenge administrative decisions, through their rights guaranteed by the Constitution, and ending with their rights stipulated in the Convention on Elimination of All Forms of Discrimination Against Women (CEDAW). This was helped by the lack of activation of the Kuwaiti State Council, as the most important institutions concerned with defending the rights and public freedoms of individuals, which carry out the tasks of implementing the "Principle of Constitutionalism" and the "Principle of Supremacy of the Constitution."

## RESULTS AND RECOMMENDATIONS

### RESULTS:

- ▶ The feminist movement in Kuwait has a historical dimension, but it has not been able to form an organized mobility with collective plans and strategies that empower women to obtain their rights in equality to men.
- ▶ In theory, the international obligations of the government of the State of Kuwait indicate a legal interaction between the Kuwaiti Constitution and the Convention on Elimination of All Forms of Discrimination against Women (CEDAW). As the Kuwaiti Constitution achieved the international standards concerning women's rights, but the factual legislative practice still suffers from the inability of the Kuwaiti legislator to activate, interpret and apply Constitutional provisions within the framework of women's rights.
- ▶ A lot of Kuwaiti legislations contradict the provisions of the Kuwaiti Constitution, which led to the failure to activate the Convention on Elimination of All Forms of Discrimination against Women, due to the many legal, juristic, and societal problems that prevented Kuwaiti women from obtaining their rights.
- ▶ Kuwaiti legislation reflected a clear and distinct discrimination in many rights, such as the right to assume jobs, equality before public burdens, the right to equality, the right to work, the right to nationality, the right to housing, the right to political participation, and so on.
- ▶ The Kuwaiti Constitution did not consider women's rights in particular, as the term "woman" was not mentioned in all its articles, so women's rights appeared to be integrated with the rights of individuals and their public freedoms. Moreover, the Kuwaiti Constitution failed to cope with modern Constitutions which provided for special protection for women's rights, as it did not observe women's privacy. So this led to the issuance of discriminatory decisions and legislation, which included the rights of men and ignored women's rights.
- ▶ The Kuwaiti Constitution did not prioritize international treaties and conventions over national laws, but it equated them with the law, and consequently the CEDAW Convention lost its legal force in terms of being ratified and deemed as a relationship between Kuwait and the United Nations, which made the convention subject to the interpretations of the legislator on the one hand, and the discretion of the administration on the other hand.
- ▶ The study emphasized the necessity of adopting the recent developments of the

right to nationality in accordance with international standards, as this right has become a basic human right, and is not a mere gift by states. Consequently, everyone has the right to acquire, change and retain their nationality.

- ▶ The study affirmed -based on the principles and rules of international human rights law- that the right of states to decide who are their nationals is not an absolute right, and that states in particular must comply with their human rights obligations with regard to the granting and stripping of nationality.
- ▶ The study indicated that the Kuwaiti legislator deprives Kuwaiti women married to a foreigner of their right to pass the nationality to their children, which leaves serious repercussions that go beyond the right to nationality represented in problems related to personal status and those children's right to their mother's inheritance in immovable property such as real estate, as it is not permissible for foreigners to own property in Kuwait.
- ▶ Kuwaiti women are still far from achieving equality with men in the judiciary positions, despite having held some positions in the Public Prosecution, and despite the expiry of the required service period in the Public Prosecution specified in six years.
- ▶ In the framework of achieving the principle of gender equality in Kuwait, numbers and statistics still indicate that there is default in the application of the provisions of the Constitution, and thus the existence of violation of the principle of "the supremacy of the Constitution" on the one hand, and the Principle of Equality before public burdens on the other hand.
- ▶ Kuwaiti women have not reached the Principle of Justice in the framework of public office, and statistics still refers to a deep gap compared to international standards on issues of discrimination against women.
- ▶ The recognized women's rights in Kuwait are natural rights which are recognized by the principle of citizenship, which means that the Principle of Justice has not been achieved, and that requires legislative reforms within the framework of international standards that stipulated issues of discrimination against women, particularly the CEDAW Convention.
- ▶ The majority of the statistics reached by the study in the context of women's assumption of jobs is related to jobs that are consistent with the female nature, such as health, while other jobs that reflect their equality with men remained relatively low. For example, Kuwaiti women still suffer from lack of equality with men in political participation, and almost deprived of the diplomatic positions, while leadership positions in the country that reflect the Principle of Justice with men

remained relatively low, for example, the percentage is 13% as Minister, 7% as an undersecretary, 13% as an assistant undersecretary, 19% as a general manager of a body or institution, 9% as a deputy general manager of a body or institution, 21% as an assistant secretary general, 2% as an ambassador, 42% as a member of the fatwa and legislation.

- ▶ Kuwaiti women's rights related to residential welfare are still subject to the discretionary interpretations of the administration represented by the decisions and regulations issued by them, and therefore this right conflicts with the will of the legislator and Law No. 2 of 2011 on the one hand, and the provisions of the Constitution on the other hand.
- ▶ The study revealed that the Kuwaiti women themselves play a weak role within Kuwaiti society, as their participation in the labor market still does not amount to half of the participation of non-Kuwaiti residents, and therefore Kuwaiti women do not benefit from the right to work as the most important participation that they provide as a partner in society, which can contribute to changing the societal culture, and allows them to influence the Kuwaiti society.
- ▶ The study found that the reports of the committees concerned with the implementation of the CEDAW Convention ignored the idea of public order and its change from one country to another, according to the superior interest of the nation and its higher values, as well as the failure of these committees to adopt progressive developments according to the specific circumstances, which need more mechanisms to develop societal culture with some issues related to human rights.
- ▶ The political rights of Kuwaiti women are still suffering from a deep gap between the desire of the Kuwaiti state represented by Emiri decrees, and the penetration of the male culture in Kuwaiti society, which appears every time in the Kuwaiti parliament, and prevents the arrival of a feminist parliamentary bloc within Parliament to obtain their rights.
- ▶ The study concluded that women's political participation is restricted because of the default of the Kuwaiti government's role in setting the necessary legal mechanisms to empower women to exercise their political participation right in a quota system, in addition to the lack of real interpretation of laws in accordance with the Constitution which affirms stereotypes and social backgrounds that involve discrimination against women, and the absence of a culture of the modern democratic state in Kuwaiti society.
- ▶ The study supported the adoption of the nature of the Kuwaiti public order, regarding Kuwait's reservation to granting nationality, but it does not fully support its reference to the discretionary authority of the Minister of Interior.

- ▶ The study clarified that granting nationality in Kuwait differs radically from the developed countries, where foreign employment in Kuwait constitutes a high percentage, which can affect the Kuwaiti economy and demographics as well as its impact on the Kuwaiti societal structure, in addition to the lack of a tax system consistent with the system of rights of the individual in exchange for duties in economic terms, which makes the naturalized a consumer more than being a contributor to development as is the case in developed countries.
- ▶ The study showed that the structure of the population in Kuwait is an important factor in the reservation of the State of Kuwait to grant nationality, as the number of residents in Kuwait exceeds half of the total population of 4 million people, as 2.8 million are residents, and 1.2 million are citizens. Thus, the indulgence in granting nationality will lead to serious economic and societal repercussions.
- ▶ The study indicated the privacy of a married woman, especially when she is a mother of Kuwaitis, and treating her nationality as a right and not as a gift. In order to preserve the stability of the family included in the Kuwaiti Constitution.
- ▶ The study showed that the woman's assumption of judiciary positions is not related to the requirement of masculinity in both of jurisprudence and law, which is in line with the provisions of the Constitution, the public interest, developments in the nature of the Kuwaiti public order, and changes in the conditions of society, which its majority now understands women's work in all fields. As the Kuwaiti women's attainment of ministries and their work in Fatwa and Legislation Department by 42% is a legal presumption that she can take up the judiciary.
- ▶ The study emphasized in many places the importance of activating the administrative judiciary and realizing its restricting role of the discretionary administration, in compelling the administration to justify its actions within the framework of public order and the public interest.
- ▶ The issue of the role of women in society has become consistent and compatible with the idea of the modern state, which deals with the sustainable development as an impotent idea as it is the ground of the legal state in which everyone, of rulers and ruled people, is under the law, regardless of their religion, ethnicity, gender, or origin.
- ▶ Civil society organizations have more effective and flexible methods in responding to the needs that help to implement the conventions on human rights, particularly the Convention on Elimination of All Forms of Discrimination against Women (CEDAW), by disseminating information and raising awareness of the results and recommendations directed to the State of Kuwait, as implementation becomes possible when the rights holders are aware of their worthy and demanded rights,

as filling or reducing human rights knowledge gaps by increasing awareness and disseminating information across various means including social media campaigns is considered an effective means to enhance implementation of international human rights obligations.

- ▶ Civil society organizations enjoy freedom of movement and the exchange of ideas horizontally within the community, including reaching all social segments through grassroots participation.
- ▶ The peaceful climate in Kuwait constitutes the most favorable environment for the growth of an active civil society that is able to be a strong dam against any obstacles facing the work of the Kuwaiti government.
- ▶ Kuwait, for political reasons after the first Gulf War, faced political challenges that led to the decline of civil society organizations and NGOs. At the same time, the concept of the rentier state has been expanded within the Kuwaiti public order, which led to the actual decline in the contribution of civil society sectors.
- ▶ The study showed that the overall civil work in Kuwait was unable to play its role in empowering women, as it is often a reflection of government action, and it became unable to continue without the support of this sector, and the study considered this as weakness point that prevents the independence of civil society organizations and NGOs, which are mainly based on investing independent energies outside the governmental framework, and working with independence and self-motivation.
- ▶ Civil society organizations in Kuwait are still unable to effectively create networking tools with the government, by the follow-up of societal and legal issues, and creating specialized joint committees of legal organizations and teams that work to establish women's participation in all areas.
- ▶ Civil society organizations in Kuwait still suffer from weak financial support and the failure to develop their own resources, which often depend on direct financial support because of clear inability to invest in projects that contribute to the integration of women in society.

## RECOMMENDATIONS

- ▶ The study recommends that the Kuwaiti State Council shall be activated as an independent administrative judiciary, since it is concerned with defending the rights and public freedoms of individuals by reviewing the actions of the administrative authority, which practically supervises the implementation of laws and regulations in accordance with the Constitution, which helps to enforce laws according to the provisions of the Convention on Elimination of All Forms of Discrimination against Women (CEDAW).
- ▶ The Kuwaiti government shall be urged to withdraw its reservations to the Convention on Elimination of All Forms of Discrimination against Women, which do not violate the Kuwaiti public order, especially those related to equality to men such as women's right of passing the nationality to their children, the charge and guardianship of their children.
- ▶ The study recommends the necessity of raising the legal awareness of Kuwaiti women, whether by governmental or non-governmental institutions through seminars and conferences, in a way that helps women to know the legal mechanisms that empower them to activate and amend the legislative performance.
- ▶ The study also recommends the adoption of the principle of "Transparent Law", keeping pace with modern jurisprudence opinions and limiting the adoption of the "Constitutional Barrier" as an absolute rule, which in many areas prevented women from obtaining their rights equal to men, due to the implementation of decisions and laws that ignore women's rights, without considering its conformity with the Constitution based on what is known as the "Transparent Law" principle.
- ▶ Activating the legal and judicial bodies concerned with reviewing the discretionary authority of the administration, to require it to clarify sufficient reasons to justify its harmful act when issuing administrative decisions that affect women's rights, and are inconsistent with the Constitution, in addition to examining the will of the administration with respect to achieving the public interest.

- ▶ Reconsidering the Kuwaiti Nationality Law within the framework of equality between men and women, especially in matters of a human dimension that have no relation with the principle of sovereignty, especially those that relate to maintaining the stability and tranquility of the Kuwaiti family in accordance with the Kuwaiti Constitution.
- ▶ Recognizing the right of Kuwaiti women to pass their nationality to their children on an equal basis with Kuwaiti men, and to remove the barriers faced by Kuwaiti women married to non-Kuwaitis in obtaining residential welfare.
- ▶ The study also recommends reducing the consequences of arbitrary deprivation of nationality and its effects, which make those who are deprived of nationality more vulnerable to human rights violations.
- ▶ The study calls on the Kuwaiti legislator to consider the privacy of a foreign woman married to a Kuwaiti, especially when she becomes a mother of Kuwaiti children, and to consider giving her the nationality a right and not a gift. Taking into account her family status, if she is a Kuwaiti mother, then this is sufficient presumption for her integration with the structure of the Kuwaiti society and its general system, and hence she is entitled to obtain the nationality.
- ▶ The study recommends reconsidering the approval of the Council of Ministers issued in July 2019 regarding the amendment of Article 8 of Emiri Decree No. 15 of 1959 on the Nationality Law, which decided to grant the foreign wife of a Kuwaiti citizen the nationality after 18 years of marriage, as the study considers that this decision has prejudice to women's rights, due to the repercussions of being considered a foreigner during this 18-year period.
- ▶ The study calls on the Kuwaiti legislator -within the framework of granting the nationality to the citizen's wife- to maintain the five-year residency requirement and the requirement of being a mother of Kuwaiti children to be as her children. Since the new amendment restored the discrimination between men and women, due to its contradiction with Articles 8 and 9 of the Constitution, which stipulates that "The family is the corner stone of Society. It is founded on religion, morality, and patriotism. Law shall preserve the integrity of the family, strengthen its ties, and protect under its support motherhood and childhood."

as well as it represents a clear contradiction with Article 29 of the Kuwaiti Constitution, which stipulates that “ All people are equal in human dignity and in public rights and duties before the law, without distinction to race, origin, language, or religion”.

- ▶ Activating the procedure that the Kuwaiti legislator has taken regarding Kuwaiti women's appointment in the public prosecution as a step to reach for the judiciary after the expiration of the required service period in the public prosecution which is six years, in order to enable future generations of Kuwaiti women in assuming the judiciary positions.
- ▶ The necessity of removing the existing barriers which prevent Kuwaiti women from being employed in unconventional career paths, such as working in the army, the National Guard, and the General Fire Service.
- ▶ Achieving substantive gender equality, in accordance with the provisions of the Convention on Elimination of All Forms of Discrimination against Women, at all stages of the implementation of the 2030 Agenda for Sustainable Development.
- ▶ Developing the skills and capabilities of Kuwaiti women, so that they can engage in the labor market in the context of achieving the goals of the national development plan emanating from the vision of His Highness the Emir of the state, Sheikh Sabah Al-Ahmad Al-Jaber Al-Sabah, of the State of Kuwait by 2035 (New Kuwait).
- ▶ The study recommends focusing on the roles of civil society organizations, especially human rights associations in the State of Kuwait, and their role in affirming the contemporary democratic culture, which is based on the principle of citizenship, and taking comprehensive measures, through education and awareness-raising, so as to eliminate harmful practices and discriminatory stereotypes.
- ▶ The necessity of repealing all national penal provisions that constitute discrimination against women, including those that allow the reduction of penalty for a man who murders a woman in the name of what is called preservation of honor (Article 153), as well as repealing Article (182) of the Penal Code to

prevent kidnappers and rapists from escaping from Criminal prosecution by getting married to their victim with the permission of her guardian.

- ▶ Adoption of a comprehensive law to criminalize all types of violence against women and prosecution and punishment of the perpetrators, along with providing remedies for the victims.
- ▶ The study recommended the necessity of establishing a mechanism for determining the quota system in political representation, and taking the required measures to support this process under the direct supervision of the state, in order to reach political representation for women at all levels and branches of government.
- ▶ Provision of special support, including training and assistance in election campaigns, in order to introduce women candidates, shed the light on their personalities and facilitate their ability to communicate.
- ▶ Enabling female candidates to compete on an equal footing with men candidates and developing a clear gender equality strategy and action plan.
- ▶ Urging the Kuwaiti government to join the Optional Protocol annexed to the Convention on Elimination of All Forms of Discrimination against Women.
- ▶ Seeking to build a common vision in all fields between the government and civil society organizations, so that Kuwaiti women can express their opinion on legislation and laws related to women's rights, and empowering them politically and economically in the society and labor market.
- ▶ Continuous coordination between civil society organizations and the Kuwaiti government, by developing a national strategy that works to implement laws and legislations in cooperation with various bodies and ministries for follow-up of the reports submitted to the United Nations regarding the recommendations adopted by the Committee concerned with the application of the Convention on Elimination of All Forms of Discrimination against Women (CEDAW).

- ▶ Motivating civil society organizations to contribute more to the reports of the committees submitted to the United Nations and the Human Rights Council on the application of the CEDAW Convention, by their role in the report of the appropriateness and conformity between the reports of the committees and the nature of the Kuwaiti public order, by taking advantage of their ability to convey the true image of the reality of societal structure, demographics and prevailing culture in Kuwait, whether to the entity concerned with making observations about the reservations of the government, or to the entity concerned with the Kuwaiti public order acceptance or rejection of some of the items included in the convention, given the possibility of application or not according to the specific circumstances that govern the reality of Kuwaiti society, or those that govern the values and principles and cohesion of Kuwaiti society.
- ▶ Encouraging civil society organizations to exchange Arab and foreign experiences in developing programs, plans, strategies, and holding seminars and lectures that can combat discrimination against women.
- ▶ The study also recommends that civil society organizations, women's initiatives and volunteer teams should not resort to individual or improvised work, whether in management or directing policies, and giving importance to making strategies, plans, collective action and participation in decision-making.
- ▶ The necessity to review and develop the legislative, legal and institutional framework regulating the work of Kuwaiti civil society through the freedom to form public benefit societies and professional, social and cultural organizations; as well as to review the existing legislation, in order to achieve a new regulation that includes setting a quota system for women.
- ▶ Developing the relationship between the state and civil society to empower women from their rights, and involving civil society by setting up follow-up teams for the state's development plans with the aim of evaluating and reviewing progress in the implementation of development projects, in addition to involving them in developing government work, so that they form a partner and a fourth Power alongside their three Powers the Legislature, the Executive and the Judiciary.

- ▶ The continuation of reinforcing the institutional capacity of the National Committees for the Advancement of Women, by setting clear goals and responsibilities, ensuring equal participation of women in a systematic and continuous manner, and setting up national developmental plans that empower women to obtain all their rights which are still in the theoretical framework.
- ▶ Empowering women within the framework of the Ministry of Youth work system, so that the Ministry's work mechanisms become more consistent with recent developments of human development, along with activating the right to equality between men and women in Kuwait.
- ▶ Establishing a modern vision for the position of women in Kuwaiti society through the Ministry of Youth, as Surveys conducted by committees and groups concerned with eliminating all forms of discrimination against women demonstrated a great desire among Kuwaiti young women to participate actively in public and political life.
- ▶ Emphasizing the quota system in the nomination and elections, which allows for an effective female parliamentary bloc within Parliament, that helps Kuwaiti women to participate in enacting and supervising laws in accordance with the Constitution, and their rights stipulated in the Convention on Elimination of All Forms of Discrimination against Women (CEDAW).
- ▶ Working to establish a National Women's Council that includes a group of Kuwaiti women who are known for their competence and experience and who are interested in women's affairs, so that the opinion of this Council is taken before the approval of any law proposal, bill or any draft organizational decision related to any matter that affects the rights or duties of Kuwaiti women.

The background features several overlapping circles and semi-circles. Some are solid light blue, while others have vertical stripes in shades of teal, light blue, and pink. The overall aesthetic is clean and modern.

# Women Rights in State of Kuwait

Under the Convention on Elimination  
of All Forms of Discrimination Against  
Women (CEDAW)

Fundamental - Analytical Study





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