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FEMALE LAWYERS ON THE RISE IN KUWAIT: POTENTIAL AGENTS OF REFORM?

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Introduction²

Kuwaiti women have had access to free public higher education since the late 1950s, and they have engaged in civic groups since the early 1960s.³ Education and civic engagement have been strengthened by the political enfranchisement of Kuwaiti women in 2005 which enabled them to be elected to the 50-member National Assembly.

I suggest that female lawyers and female professionals in the legal sphere are pressurizing Kuwaiti authorities in assertive ways, and with a freshness that deserves attention in a post-2011 era. Enfranchised Kuwaiti women who are trained in the field of law represent a powerful social group in articulating and representing women's interest in the public sphere.⁴ Kuwaiti women currently constitute a majority of law students at the Law Faculty at Kuwait University. Through multiple memberships in the Lawyers' Association, women's associations, and in human rights'

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² This article is based on a paper presented at the Middle East Association Annual Meeting (MESA), Denver, Colorado, 21 – 24 November 2015. Panel P0450: "Judges, lawyers, and change in the MENA: When and how do judicial practitioners challenge or defend the status quo?". It is edited in loving memory of Mary Ann Tétreault – great scholar, fabulous teacher, a wise and witty woman – who passed away on 11 November 2015.

³ Haya al-Mughni, *Women in Kuwait: The Politics of Gender* (London: Saqi, 2001).

⁴ On theoretical perspectives regarding 'women's issues' and women's interests', see Louise Chappell and Lisa Hill, eds., *The Politics of Women's Interests: New Comparative Perspectives*, Routledge Research in Comparative Politics (London: Routledge, 2006).

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groups, a post-2005 enfranchised generation of female lawyers lend power and voice to Kuwaiti women's demands and claims for reforming gendered Kuwaiti state laws and regulations. The empowerment of women in the judicial sphere come also by way of strengthened authoritarian rule in Kuwait in the aftermath of the 2011 Arab Uprisings, in particular after the eclipse of the Kuwaiti parliament as a significant arena for political representation as of 2012.

By and large, the Kuwaiti Sabah regime along with the other Gulf monarchies⁵ are increasingly engaging in what may be perceived as state feminist projects. Women-friendly policies, however, promote conflictual visions of the position of female citizens in society: On the one hand, policies support women's education and economic citizenship. New opportunities are opened up for women, such as appointments in ministerial positions, entry-level positions to the judiciary, and representation in administrative councils. On the other hand, women's legal capacity continues to be restricted through the segregation of sexes in higher education, mobility surveillance, and prohibition against working in certain sectors. Also, women-friendly policies are shored up by orthodox patriarchal interpretations of family law where female citizens remain under male guardianship within state laws.⁶

Commenting on women-friendly reforms under authoritarian rule in the oil rich Gulf states, historian Eleanor Abdella Doumato points out that these kind of changes "should alert us to the possibility that, for the time being, women who seek empowerment may be better off under authoritarian rulers willing to promote a feminist agenda."⁷ This perspective could well be added to another governance objective by ruling authorities related to harnessing control over Islamist groups with Muslim Brotherhood and Salafist orientations by means of supporting women's agendas. By seeking to strike a balance between policies that support female citizenship on the one hand, and policies that seek to harness Islamist forces in society on the other hand, these policies are "stuck in transition" – they move "sometimes backward, sometimes forward" between different shades of authoritarianism.⁸

⁵ The Gulf monarchies refer to the six member states of the Gulf Cooperation Council (GCC): Kuwait, Saudi Arabia, Oman, Qatar, The United Arab Emirates (UAE), and Bahrain.

⁶ Rania Maktabi, "Female Citizenship and Family Law in Kuwait and Qatar: Globalization and Pressures for Reform in Two Rentier States," *Nidaba* 1, no. 1 (2016), <http://journals.lub.lu.se/index.php/nidaba/article/view/15846>.

⁷ Eleanor Abdella Doumato, "Women in Civic and Political Life: Reform under Authoritarian Regimes," in *Political Change in the Arab Gulf States: Stuck in Transition*, ed. Andrzej Kapiszewski, Gwenn Okruhlik, and Mary Ann Tétreault (Boulder, Colo: Lynne Rienner, 2011), 215.

⁸ Andrzej Kapiszewski, Gwenn Okruhlik, and Mary Ann Tétreault, eds., *Political Change in the Arab Gulf States: Stuck in Transition* (Boulder, Colo.: Lynne Rienner, 2011), 7-8.

The rise of female lawyers in Kuwait: figures and features

German legal scholar Ulrike Schultz pointed out in her introduction to *Women in the World's Legal Professions* that “[w]hat remains to be written is the story of women lawyers in underdeveloped and in developing countries, including those belonging to the world of Islam”.⁹

The story of female lawyers in Kuwait has to begin with education. The state’s investment in higher education since the early 1960s has led to a noticeable increase in the number of female students who study law, and who become certified lawyers. In the early 1970s, around twenty women were registered as law students at the Faculty of Law at Kuwait University. By 1999, a change in gender balance occurred where the number of female law students started catching up with male law students.¹⁰ Today, women constitute a majority of registered law students at Kuwait University. The latest available data for the academic year 2011/ 2012 indicates that 60 percent of registered law students are women: out of 2,520 students, 1,520 were female and 990 were male.¹¹

In the past two decades, female lawyers have come to constitute roughly a third of the total number of practicing lawyers. Estimated 2010-figures show that Kuwait has 1,291 female lawyers out of a total of 4,319 lawyers. Also, Kuwait is among the Arab states with the highest ratio of female lawyers to total number of lawyers when compared to other Arab states such as Lebanon and Morocco. Female lawyers constitute approximately 30 percent in Kuwait, 29 percent in Lebanon, and 22 percent in Morocco of the total share of lawyers.¹² Similar percentages were achieved over a period of around a hundred years in Germany (32), Norway

⁹ Ulrike Schultz, "Women in the World's Legal Professions: Overview and Synthesis," in *Women in the World's Legal Professions*, ed. Gisela Shaw and Ulrike Schultz (Oxford: Hart Publishing, 2003), xxv.

¹⁰ Personal communication with professor Badria al-Awadhi, former Dean of the Faculty of Law at Kuwait University (1979 -1982), 22 April 2012 and 24 April 2016, and lawyer Shaikha al-Julaibi on 15 April 2012 who was a law student at Kuwait University in the 1990s.

¹¹ Registered law student in Kuwait University 2011 / 2012, *Annual Statistical Abstract 2012*, p. 192. URL: http://www.csb.gov.kw/Socan_Statistic_EN.aspx?ID=18, accessed 15 June 2016. The study of law has increasingly become an attractive avenue to an extent that a private law school – Kuwait International Law School (KILAW) established in 2011– offers full- and part-time BA- and MA-studies in law for those who either did not succeed to be admitted at the Faculty of Law at Kuwait University, or who study part-time. KILAW offers maximum of eight courses for each student per year (four courses per semester). Each course costs 500 KD (approximately 1650 USD in March 2015-currency), according to the clerk who guided me at the premises of KILAW, 11 March 2011.

¹² Estimated figures for Lebanon and Morocco are (number of female lawyers rendered first, followed by total number of lawyers in brackets): Lebanon 1,597 (5,595), and Morocco 4,640 (20,715). Ethan Michelson, "Women in the Legal Profession, 1970-2010: A Study of the Global Supply of Lawyers," *Indiana Journal of Global Legal Studies* 20, no. 2 (2013): 1115-17.

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(31), Denmark (28), and Sweden (22).¹³ Importantly, while non-citizen lawyers can work and obtain important positions within the judicial system in Kuwait, only Kuwaiti citizens are able to present cases in court. This factor contributes significantly to the rise in number of Kuwaiti women who are able to obtain and maintain jobs in competition with the non-citizen workforce who have equal or higher educational or professional credentials than the approximately four-year professionalization period of law studies at the Faculty of Law at Kuwait University.

Rising numbers of female lawyers is not necessarily correlated with reforms that strengthen women's civil rights. Rather, the main two reasons I present here are:

First, the marked increase in the number of professional women who are directly involved in women's legal issues has given leverage to demands for strengthening women's rights in Kuwait over the past decade, particularly within family law, i.e. legal issues related to marriage, divorce, custody of children, alimony and inheritance. Importantly, women who need legal advice in family law related issues are more inclined to seek out legal advice from female lawyers rather than from male lawyers. Female lawyers say that female litigants prefer to engage with them in cases related to family law. Female lawyers gather thereby first-hand knowledge on gaps in gendered state laws, and in particular the implementation of these laws through litigation processes where they represent women's interests.

Second, the enfranchisement of Kuwaiti women in 2005 has not significantly impacted parliamentary representation because few women have been elected over the past decade, notwithstanding four elected female MPs in 2009 - 2011.¹⁴ However, Kuwaiti women's enfranchisement adds leverage to the societal power of female lawyers in two other significant arenas: courts and the media, as will be elaborated on further below.

Up until 2013, I looked at how legal reform in family law occurred in the realm of parliamentary politics. However, societal pressures do not always lead to articulation of demands in the Kuwaiti National Assembly and to legislative reform.¹⁵ In addition to parliamentary

¹³ Percentage of female lawyers of total number of lawyers rendered in parenthesis. On the historical professional development of female lawyers, see Schultz, xxxiv.

¹⁴ Rania Maktabi, "Female Citizenship and the Franchise in Kuwait after 2005," in *The Crisis of Citizenship in the Arab World*, ed. Roel Meijer and Nils A. Butenschøn (Leiden / Boston: E. J. Brill, 2017).

¹⁵ Ibid. Among the GCC states, Kuwait has an unparalleled historical record of political participation and a rich heritage of autonomous and semi-autonomous organisations. Other GCC-states have assemblies and councils of a consultative and administrative nature: Oman has an advisory council, Qatar an appointed consultative assembly, the UAE a mixed system with an indirectly elected and appointed advisory council, while Saudi Arabia has an appointed advisory council. Rex Brynen et al., *Beyond the Arab Spring: Authoritarianism & Democratization in the Arab World* (Boulder, Colo: Lynne Rienner Publishers, 2012), 175. Bahrain was the first Gulf state with a representative parliament to grant female citizens political rights in

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politics, the realm of law, courts, and judicial practitioners, represent therefore a promising entry into an analysis of societal pressures for reform that strengthen female citizenship following what might be seen as the legal mobilization of Kuwaiti female lawyers.

‘Legal mobilization’ reflects what scholar on law and society relations Michael McCann sees as political processes whereby activists and lawyers engage in social struggles, court litigation, and social movements with the aim of transforming or reconstituting the terms of social relations of power and citizenship. According to McCann, studies on legal mobilization focus on the ‘legal naming, blaming, and claiming’ changes in the status quo.¹⁶

Given the observation that the number of Kuwaiti female lawyers is on the rise: When and how do Kuwaiti female lawyers constitute drivers for change in gendered state laws and regulations? How do they name blame, and claim change in gendered state laws?

In the following, I first present main features of gendered state law in Kuwait, and then point out Kuwaiti women’s experience with political representation after 2005. In the third section I analyze two spheres where female lawyers have pressured for change. In one sphere change occurred when female lawyers pressured to be able to enter the judiciary through entry-level positions which, in time, allows Kuwaiti women to become judges. In the other sphere, female lawyers are less unified, and status quo is maintained in the patriarchal nationality law. Despite repeated and increasing pressures for change, Kuwaiti women are, in contrast to male Kuwaitis, unable to confer nationality to their children if married to noncitizens. I conclude with reflections on the role of female lawyers and societal change under autocratic rule in contemporary Kuwait.

Female citizenship and the law in Kuwait

My point of departure in looking at the rise of female lawyers in Kuwait is through the theoretical lens of female citizenship and pressures to reform family laws in the Middle East and North Africa (MENA) region. Female citizenship refers here to the membership and participation of female citizens within a polity. I have addressed family law reform from a comparative perspective by inquiring into two main aspects: first, how women’s civic status and

2002, but Kuwait’s parliament remains unique, as it is the only elected representative assembly in the region following the Bahraini regime’s clampdown on protestors in 2011 and Bahraini parliament’s loss of legitimacy in the eyes of its Shi’i citizens.

¹⁶ M. McCann, "Law and Social Movements: Contemporary Perspectives," *Annual Review of Law and Social Science* 2 (2006): 21, 25.

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civil rights are premised by the state's family law which regulates matters related to marriage, divorce, custody of children, adoption, and inheritance; second, which forces of change impact legislative reform that strengthen female legal autonomy within state law.¹⁷

In Kuwait, as in most states in MENA, the principle of male guardianship permeates state laws in ways that create legal gaps at both the national and international levels.

At the national level the 1962 Kuwaiti Constitution proclaims the principle of equality and human dignity.¹⁸ However, in practice other state laws trump constitutional provisions because a Kuwaiti woman is legally capacitated primarily through her male kin. In the 1959 Nationality Law, for instance, Article 2 states that Kuwaiti citizenship is transmitted through a male citizen, depriving a Kuwaiti woman of the opportunity to transfer citizenship to her children if married to a noncitizen.¹⁹ In criminal law and family law, a Kuwaiti woman does not have an autonomous legal personhood because marriage, divorce, custody of children, sexual harassment, domestic violence, rape, and the right to independent abortion are matters conditioned by the consent, mediation, or abrogation of male kin. In general, social security laws premise that a Kuwaiti family is constituted of a Kuwaiti male head who is perceived as the main provider (*mu'il*).²⁰ Finally, labour and pension laws allow Kuwaiti female employees in the public sector to retire at the age of 45 (males at 55). While retirement is optional, early retirement schemes that push employed women in the public sector out of the labour market when they reach 45 represent a threat to women's economic citizenship as authorities seek to cater for rising youth unemployment.²¹

At the international level, Kuwait signed the 1979 UN Convention for the Elimination of all forms of Discrimination Against Women (CEDAW) in 1994, with reservations pertaining to

¹⁷ Maktabi, "Female Citizenship and Family Law in Kuwait and Qatar: Globalization and Pressures for Reform in Two Rentier States"; "Female Citizenship in the Middle East: Comparing Family Law Reform in Morocco, Egypt, Syria and Lebanon," *Middle East Law and Governance* 5, no. 3 (2013).

¹⁸ Article 29 states that "[a]ll people are equal in human dignity, and in public rights and duties before the law, without distinction as to race, origin, language or religion." *The Constitution of the State of Kuwait*, issued on November 11, 1962, The Secretariat General of the National Assembly, n.d.

¹⁹ Article 2 reads "[a]ny person born in, or outside, Kuwait whose father is [a] Kuwaiti national shall be a Kuwaiti national himself." Kuwait, 1959 Nationality Law, Retrieved at: <http://www.refworld.org/docid/3ae6b4ef1c.html>.

²⁰ Badria Al-Awadhi, *Al-Huquq Al-Siyasiyya Wal-Qanuniyya Wal-Insaniyya Lil-Mar'a Al-Kuwaitiyya [Political, Legal and Human Rights for the Kuwaiti Woman]* (Kuwait: privately published, 2006), 55-57, 208-10, 27.

²¹ Security Laws of 1976 and Law 128 of 1992, *Social Security Programs throughout the World*, accessed January 29, 2016, <http://www.ssa.gov/policy/docs/progdesc/ssptw/2012-2013/asia/kuwait.pdf>.

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gender equality in nationality laws (Art. 9), and matters related to marriage and divorce (Art. 16) on the grounds that it conflicts with provisions related to Islamic law (*Shari'a*).²²

Enter political rights after 2005

The parliamentary session in which Kuwaiti women received the vote on 16 May 2005 resulted in two amendments to Article 1 of Election Law 35 from 1962: the word “male” was deleted,²³ and a sentence added that states a woman is obliged to adapt to rules and norms based on the *Shari'a*, in order to placate conservative MPs.²⁴

In total 59 votes were cast: 35 were for (21 votes by elected MPs and 14 votes by ministers) and 23 against (all votes by elected MPs), with one abstention, while five MPs were not present.²⁵ If we include the abstention and those not present, elected MPs who opposed women’s enfranchisement numbered 29.²⁶

The six pro-women votes that secured the franchise reflect a fairly conservative societal atmosphere that is, by and large, not attuned to granting Kuwaiti women political rights. Nevertheless, the regime had important allies in the small but historically significant women’s movement that had been pushing for political rights since 1963.²⁷ Other supporters of women’s enfranchisement came from urbanised constituencies inhabited by the economically powerful elites with merchant backgrounds, liberals, and Shi‘i groups, as well as parts of the Muslim

²² United Nations, “Concluding observations of the Committee on the Elimination of Discrimination against Women – Kuwait,” October 18, 2011, accessed January 29, 2016, <http://www2.ohchr.org/english/bodies/cedaw/docs/co/CEDAW-C-KWT-CO-3-4.pdf>.

²³ Law 17 of June 4, 2005 reads “every Kuwaiti [...] has the right to vote” (*li-kull kuwaiti [...] haqq al-intikhab*); previously the Election law had stated that “every Kuwaiti male [...] has the right to vote” (*li-kull kuwaiti min al-thukur [...] haqq al-intikhab*), *Official Gazette*, June 5, 2005.

²⁴ The amendment reads “*yashtarit li-l-mar’a fi-l-tarshih wa-l-intikhab al-iltizam bi-l-qawa’id wa-l-ahkam al-mu’tamida fi-l-shari’a al-islamiyya*,” *Official Gazette*, June, 5 2005.

²⁵ In Kuwait, ministers also vote in parliament, which explains why 59 votes were cast, and not just those of the 50 elected MPs. All the information on the political affiliation and voting patterns of Kuwaiti MPs, as well as the voting results used here, are drawn from Michael Herb’s superb Kuwait Politics Database, accessed January 29, 2016, <http://www.kuwaitpolitics.org/>.

²⁶ The single abstention was by President of the National Assembly and former Finance Minister Jasem al-Khorafi (3rd circle). The five absent MPs included Salafi leader Ahmad Baqer (5th circle), Basil al-Rashed (10th circle), Abdullah al-Rumi (4th circle), Ali Khaled al-Sa’id (11th circle), and Walid al-Osaimi (14th circle). They are here counted as against granting women political rights because their opposition was articulated in public prior to the voting session. Before the 2008 elections, there existed 25 electoral circles, with 1st- 5th circles lying closest to Kuwait City’s centre.

²⁷ al-Mughni; Mary Ann Tétreault, “Kuwait’s Parliament Considers Women’s Political Rights,” *Middle East Report Online* (2004), accessed January 29, 2016, www.merip.org/mero/mero090204. Accessed January 29, 2016.

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Brotherhood's women's branch, led by Su'ad al-Jarallah, who were in favour of political rights for women, in contrast to the group's male leadership.²⁸

Voting patterns show that women vote for men, and not for women. None of the 28 female in 2006, nor the 27 candidates in 2008 who sought to be elected to parliament succeeded. The 2011 Arab Uprisings coincided with the Kuwaiti National Assembly's (KNA) thirteenth session (May 2009 – December 2011), during which four women – Aseel al-Awadhi, Rola Dashti, Salwa al-Jassar and Ma'souma al-Moubarak – were elected as the first ever female Members of Parliament in 2009.²⁹

The four female MPs impacted parliamentary politics in ways that highlighted women's issues despite the relatively short period they served as legislators. For instance, the number of law proposals raised in the parliamentary Woman and Family Committee during the two-year period while the four female MPs served as its members increased dramatically between 2009 and 2011. Approximately 70 percent of all proposals raised between 2006 and 2015 were raised during the two years women served as MPs.

Women's enfranchisement in 2005, and their parliamentary representation have thus been a driver for raising women-related issues higher up on the political agenda, not only by women, but also by politicians who opposed women's enfranchisement in 2005.³⁰

However, law proposals have not led to tangible results in terms of law reform that expand female citizenship, although significant bureaucratic changes safeguarded welfare services such as health and education for the families of Kuwaiti women married to noncitizens.

Although the number of elected women to parliament has been meager, women's extra-parliamentary mobilization is observable in courts and in the media. In the past decade, Kuwaiti female lawyers have engaged in the media, and they have turned litigation processes and courts into arenas of struggle for expanded female civil liberties. It was a judges' ruling at the Constitutional court in 2009 that created precedence enabling a Kuwaiti woman who raised a case against her ex-husband to gain an unconditional right to issue her own passport. The case was addressed by the Constitutional Court (*al-mahkama al-dusturiyya*) which overruled a 1994

²⁸ Su'ad al-Jarallah, interview with author, March 16, 2015. On Islamist politics and its impact on women in Kuwait after 1992, see Tétreault, *Stories of Democracy: Politics and Society in Contemporary Kuwait* (New York: Columbia University Press, 2000), 158-64; Haya al-Mughni, "The Rise of Islamic Feminism in Kuwait," *Revue des mondes musulmans et de la Méditerranée*, no. 128 (December 2010): 167-82.

²⁹ Maktabi, "Female Citizenship and the Franchise in Kuwait after 2005."

³⁰ Rania Maktabi, 'Reluctant Feminists: Islamist MPs in Kuwaiti Parliamentary Documents after 2005', paper presented at the Annual Conference for the British Society for Middle Eastern Studies (BRISMES), London, 24 – 26 June 2015, forthcoming in a special issue entitled "Middle Eastern Patriarchy in Transition" in *Die Welt des Islams*.

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decision that prohibited women to be given passports without the permission of male kin.³¹

Another court ruling in 2012 allowed female lawyers to be admitted to junior level exams which would eventually enable them to become appointed as public prosecutors.³²

Mediatized legal awareness-raising

The liberalization of the Kuwaiti media in 2006 – a year after women were enfranchised – resulted in a marked increase in the number of newspapers and satellite channels.³³ Programs that discuss legal issues on a weekly basis have proliferated in traditional media – newspapers, radio and TV-programs, and through social media. Female lawyers appear to have seized the moment in presenting themselves and being profiled as expert commentators and anchors in programs on legal issues. As such, female lawyers use the media to increase legal awareness, permeating mainstream as well as Internet-based private channels.

³¹ For the text of the ruling in Arabic, see *al-Anba'*, 21 October 2009.

³² "The position of judge is open to women", assured Yousef al-Mutwa'a, leader of the High Judicial Council (المجلس الأعلى للقضاء). *Al-Qabas*, 6 August 2016, <http://alqabas.com/162058/>.

³³ As of 2014, there exists a plethora of privately owned media outlets, including 14 Arabic- and three English-language newspapers, and 16 television stations. The state owns five local radio stations and nine television channels. A total of 75 percent of Kuwaitis are thought to use the Internet *Freedom of the Press* Kuwait: Freedom House, 2014, <https://freedomhouse.org/report/freedom-press/2014/kuwait#.VcG-wrWzmac>. On the impact of media liberalisation on Kuwaiti politics, see Kjetil Selvik, Jon Nordenson, and Tewodros Kebede, "Print Media Liberalization and Electoral Coverage Bias in Kuwait," *The Middle East Journal* 69, no. 2 (2015).



Lawyer Nivine Ma'rifi at the Kuwaiti Court of First Instance in Kuwait City, 21 May 2015. A young Shi'a woman is seeking divorce settlement from her husband. After nearly three years, they settled on her getting a divorce and keeping the daughter (9 years) in her custody on the condition that she relinquishes her economic rights.

By extension, Kuwaiti media and networking activities have become significant sites of struggle for addressing women's issues, including family law, at an extraordinarily rapid rate after Kuwaiti women received political rights in 2005.

Kuwaiti women are raising claims, judging from the propensity of many women to articulate their own demands, and they are making use of the abundant number of technological facilities and media platforms. Matters that only a decade ago were regarded as sensitive, such as the interpretation of religious tenets in family law, divorce, and domestic violence, are discussed in public in new ways. As such, Kuwaiti women are engaging in media activism "challenging prevailing social attitudes (...) [they] are breaking social taboos, raising new issues, and showing the enduring power of patriarchal values that lie before and behind state power."³⁴

³⁴ Courtney Radsch, "Unveiling the Revolutionaries: Cyberactivism and the Role of Women in the Arab Uprisings," (2012), http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2252556.

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Synergy effects between female lawyers and a supportive media is particularly noticeable. Five of ten Kuwaiti female lawyers interviewed in 2015 engaged in TV programmes on legal issues.³⁵



Discussing family law in “Magazine”, a weekly program on Scope TV, a private satellite TV-channel under the leadership of lawyers Nivine Ma’rafi (far left) and Abdulaziz Albanwan (second to the left). To the right, lawyer Laila Al-Rashed, and professor in Shari’a and civil law, Saad El-Enezi. The one hour program was aired on 16 March 2015. Photo by author who viewed the program in the studio.

The mediatization of family law issues is supported by Kuwait’s oldest women’s association, the Women’s Cultural and Social Society (established in 1963), which joined forces with the United Nations Development Programme (UNDP) in creating the *Wracati* project [‘my paper’ in Arabic] in 2012.³⁶

Lawyer Athra’ al-Rifa’i is involved in the *Wracati* project. She pointed out: “Divorce procedures are still difficult, but divorce has become considerably easier to obtain after 2003. The law ensures Kuwaiti women dignity in terms of basic economic rights”. Another lawyer, and former dean at the Faculty of Law at Kuwait University (1979-1982), Professor Badria al-

³⁵ Female lawyers and legal academicians interviewed by author include lawyer and prof. Badria al-Awadhi (22.4.2012, 22.3.2015, and 24.4.2016), Nawf al-Rimah (17.3.2015), *prof. Fatima al-Hewail (12.3.2015), *Areej Hamada (15.3.2015), Zahra Bin Haidar (17.3.2015), Nour Bin Haidar (17.3.2015), Shaikha al-Julaibi (15.4.2012, 23.3.2015), *Soad al-Shamaly (15.3.2015), Hagar al-Hagiri (9.3.2015), *Athra’ al-Rifa’i (18.4.2012, 23.3.2015), and *Nivine Ma’rifi (16.3.2015). Participants or presenters of TV programmes on legal issues on a regular basis are marked with (*).

³⁶ For an overview over studies in Arabic on women’s legal rights by Kuwaiti lawyers, see <http://www.wracati.com/>. Retrieved, 21 September 2016.

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Awadhi who is a pioneer in advocating Kuwaiti women's rights, pointed out that although the religious tide has grown stronger in recent years, Kuwaitis do not support fundamental religious leanings, but tend to prefer middle solutions: "Kuwaiti men, in general and particularly tribalists, do not accept the principle of equality. But, Kuwaiti women have become more educated. They are able to demand their rights. The Kuwaiti family law is not perfect. But judges and the courts attend to women's problems seriously."³⁷

Lawyers perceive the legislation of Law 12 on 22 March 2015, which establishes family courts, as an important institutional reform for strengthening judicial rulings in family law, and by extension preserving women's and children's civil rights.³⁸

Importantly, Kuwait is an affluent society, and this is reflected in the state's generous welfare schemes. For instance, a new law on housing was legislated in 2011. The law responded to demands raised by Kuwaiti women who were exempted from access to public housing schemes because they did not fulfil head of household conditions that premise a male. These Kuwaiti women are either married to non-Kuwaitis, divorced, widowed, or single, and have had demands pending in parliament since 1993. Seven of ten Kuwaiti lawyers interviewed mentioned housing as an important part of women's claims in cases of divorce and child custody. Conflicts regarding housing reflect the economic centrality of public housing and rent-free loans in Kuwaiti society, which are part of social welfare offered to citizens. Housing is, in principle, given to a couple when they marry. In reality, the marital home often becomes a male-controlled asset, because state laws privilege the male as head of household.

Lawyer Soad al-Shamaly pointed out: "The housing law has lots of holes for women, not for men. The Kuwaiti woman received housing rights in 2011, but regrettably she gets access to housing on certain conditions: she cannot inherit from her father or brother, and the loan she gets is half that of a male."³⁹

The articulation of family law issues after 2011 is characterized by a more open, explicit, and medialized public sphere, where alternative views and interpretation of family law tenets are expressed by female lawyers more broadly than they were a decade ago. The establishment of family courts reflects therefore a political will among political authorities as well as legal experts

³⁷ Author interview, 22 April 2012.

³⁸ As of March 2016 the Ministry of Justice is still preparing the institutional set-up of family courts in the state. See *al-Qabas*, 26 March 2016 "Proof of divorce: The family court law!" [*ithbat al-talaq: qanun mahkamat al-usra!*]. Retrieved at: <http://alqabas.com/8173/>.

³⁹ Author interview, 15 March 2015.

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in carrying out institutional reforms that are envisaged to safeguard women's civil rights in family law cases.

Pressures for change: reforming and maintaining the *status quo*

Two examples shed light on Kuwaiti female lawyers as potential drivers for change: in the case of the entry of women to the position of public prosecutors, Kuwaiti female lawyers challenged the status quo. In the case of pressures to change the 1959 Nationality Law, female lawyers do not stand united in challenging Kuwaiti women's legal incapacity in conferring Kuwaiti nationality to their children. Female lawyers maintain thereby – albeit indirectly – the *status quo*.

i) Change: Kuwaiti women lawyers' entry into the position of public prosecutor

In Kuwait, women are doing it for themselves, indeed. In 2009, female lawyers started a battle to be admitted to entry-level positions to the Administrative Court en par with male candidates. In these positions, lawyers are trained to become judges. Until today, no Kuwaiti woman has been admitted, and none have held the position of judge.

The battle of Kuwaiti female lawyers to become public prosecutors started with lawyer Shuruq al-Failakawi who sought a position at the Administrative Court in 2009 where she could become a public prosecutor (*mutda'i 'am* or *wakil niyaba*). Her application was not accepted on the grounds that the position was open only to male candidates. The issue was widely covered in the media after al-Failakawi, with the help of her lawyer, filed a case against the Ministry of Justice arguing that there are no regulations barring qualified women from applying.

Interestingly, the filing of the case in court was not initiated by al-Failakawi herself, but by her female lawyer al-'Unud al-Hajiri who pointed out:

I noticed that the announcement [for the positions at the Administrative Court] was only for males, but I couldn't find any constitutional, or even legal text which regulates this profession for males and not females. (...) I found a woman called Shuruq al-Failakawi who wanted to enter the field of judgeship, and she was prepared for the anticipated responses from some groups in society [*abdat isti'dad li-raddit al-fi'l al-mutawaqqi'a min qibal qita'at fil-mujtama'*].⁴⁰

By “anticipated responses”, al-Hajiri has Kuwaiti men with conservative Islamist leanings in mind – men who do not entertain the idea of women attaining public decision-making positions.

⁴⁰ Interview with al-'Unud al-Hajiri, lawyers, and politicians on the issue of the entry of Kuwaiti women into the position of judge. “The entry of women into judgeship: between salutation and caution” [*dukhul al-mar'a fi silk al-qada': bayna tarhib wa tahthir*]. *Al-Anba'*, 17 September 2012. Retrieved at: <http://www.alanba.com.kw/ar/kuwait-news/325194/17-09-2012->, 20 September 2016.

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One of these men is lawyer Saad El-Enezi who is a renowned scholar in Islamic jurisprudence and who has a PhD in civil law. In a discussion on the possibility of Kuwaiti women entering judgeship he commented: “if you look at the question from a democratic perspective, the answer will be ‘yes’, women should be judges. But, we are a Muslim country. Our norms entail that male judges are an important condition for decisions to become legally binding”.⁴¹

Al-Failakawi’s case was rejected by a judge in April 2010. The judge explained that female prosecutors were not in accordance with the *Shari’a* as postulated in article 2 of the Kuwaiti Constitution which states that “The religion of the state is Islam, and Shari’a shall be a main source of legislation”. MPs such as Salafists Dr. Ali al-’Umeir and Dr. Walid al-Tabtaba’i, along with ex-MPs ‘Ammar al-’Ajami, and ‘Abdellatif al-’Umeiri argued that “this case is jurisprudential, and not political” [*al-qadiyya shar’iyya, wa laysat siasiyya*]. The Directory of Fatwa and Legislation (*Idarat al-fatwa wal-tashri’*) disapproved also of the decision on the grounds that the entry of women violates article 2 of the Kuwaiti Constitution which states that the religion of the state is Islam, and that Islamic Sharia shall be a main source of legislation.⁴²

On the other hand, al-Hajiri was encouraged by many groups and individuals. She recalls her supporters. These include Egyptian judge Noha al-Zaini “who particularly supported me continuously in raising my case” along with

the local press, the Kuwait Bar Association, The Women’s Cultural Society, The Graduate Society; the Faculty of Law [at Kuwait University], (...), Centre for the development of woman (...), Dr. Ghanim al-Najjar, Dr. Su’ad Bin Tifla, Lulu’a al-Mulla, Najla al-Naqi, Ibrahim al-Milifi, Dr. Ali al-Baghli, lawyer Mohammad al-Jasem, political activist Dahem al-Qahtani, lawyer Thukra al-Rashidi, international organizations, diplomatic bodies, among them the American Embassy.⁴³

In July 2011, while al-Failakawi’s case was pending in court, the Administrative Court had a new advertisement for entry level exams. Six female law graduates applied. When their applications were rejected, all six filed separate lawsuits against the Ministry of Justice arguing that barring women from public jobs was unconstitutional.

Less than a year later, a court decision on 22 April 2012 cancelled the Ministerial Order that excluded women from jobs at the Ministry of Justice. The decision enabled Minister of Justice, Yacoub al-Sane’ to announce two years later – in May 2014 – that 22 female lawyers

⁴¹ Author present at the shooting of ‘Magazine’, a legal program on the channel-based Scope TV where four lawyers discussed family law in Kuwait, 16 March 2015.

⁴² *Al-Anba’*, 17 September 2012. Retrieved at: <http://www.alanba.com.kw/ar/kuwait-news/325194/17-09-2012->, 20 September 2016.

⁴³ *ibid.*

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were to be admitted to entry-level positions which would eventually allow them to become public prosecutors.⁴⁴

In short, Kuwaiti women challenged and changed the status quo – to reiterate McCann – by naming exclusionary practice at the Kuwaiti Administrative Court, blaming the limiting of opportunities of women in the judicial field, and claiming the right for employment on equal terms with male lawyers. It is a matter of time before Kuwaiti women become qualified for the position of judges.

ii) *Defending the status quo by not challenging it: The 1959 Nationality Law*

Kuwaiti women's demands for equal nationality play into deeply political issues that Kuwait has grappled with since its establishment as a territorial state in 1922. The approximately 10,000 Kuwaiti women married to non-Kuwaitis has to be seen in light of the constitution of the Kuwaiti population.⁴⁵ Comprising around 35 percent of the total three million population, Kuwaitis are a numerical minority in their state.⁴⁶ Moreover, a substantial segment of the Kuwaiti population consists of stateless *Bidun* ('without' in Arabic) meaning literally 'without citizenship' – who were included as part of the Kuwaiti citizenry until 1985, but who were excluded from the census after the liberation of Kuwait from Iraqi occupation (August 1990 – February 1991).⁴⁷ During the 2011 Uprisings, *Biduns* –who constitute around five percent of the population⁴⁸ – staged violent protests in demand of Kuwaiti nationality for the first time in public on the streets.⁴⁹ Kuwaitis who protested, some in support of the plight of the stateless *Bidun*, included

⁴⁴ The government was reshuffled on 6 January 2014, and al-Sane' entered the government officially on 26 October 2014. See Michael Herb: Kuwait Database <http://www2.gsu.edu/~polmfh/database/govt38.htm>.

⁴⁵ The exact number of Kuwaiti women married to non-Kuwaitis is unknown, but Kuwaiti women's organizations operate with the figure 10,000. See *Al-Watan*, 6 February 2014, <http://alwatan.kuwait.tt/article/details.aspx?id=336184>

⁴⁶ *Kuwait: Annual Statistical Abstract 2014*, Central Statistical Bureau, State of Kuwait. Retrieved at: http://www.csb.gov.kw/Socan_Statistic_EN.aspx?ID=18.

⁴⁷ For an analysis of official census figures published by the Kuwaiti Ministry of Planning in the Annual Statistical Abstract on the Bidun population before 1990 and after 1992, see chapter 6 on the demographic constitution of post-1991 Kuwait in Rania Maktabi, "The Gulf Crisis (1990-1991) and the Kuwaiti Regime: Legitimacy and Stability in a Rentier State" (M.Phil. thesis, Department of Political Science, University of Oslo, 1992).

⁴⁸ According to Human Rights Watch (2014) which operates with the figure of 105,702 Kuwaiti Bidun, though the number is probably higher due to the politicization of census figures. See also Claire Beaugrand, "Torn Citizenship in Kuwait: Commodification Versus Rights-Based Approaches," *Challenges to Citizenship in the Middle East and North Africa Region* (April 2015), <http://eprints.lse.ac.uk/61773/1/Challenges%20to%20citizenship%20in%20the%20Middle%20East%20and%20North%20Africa%20region.pdf>. Retrieved, 22

⁴⁹ Marie Brokstad Lund-Johansen, "Fighting for Citizenship" (MA, University of Oslo, 2014).

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members of parliament and well-known politicians. Some of them were imprisoned during several clampdowns by police forces. By September 2014, for instance, Kuwaiti authorities had stripped nationality from thirty-three Kuwaiti protestors.⁵⁰

In short, since the 1990s, the politicization of census figures, the inclusion or exclusion of residents based on tribal affiliation, and the influx of war refugees and migrants since the 1940s have played into the politics of citizenship, including women's full nationality rights. As such, part of the problem regarding the exclusion of Kuwaiti women from full nationality rights is related to the constitution of the citizenry, and to kinship relations between Kuwaiti nationals and stateless *Bidun* through tribal alliances and cross-border intermarriages.

Despite the tense political context during the uprisings, Kuwaiti women mobilized. In 2011, the association *Kuwaiti Women with No Limits* was established, and two years later, Fatima al-Hewail, a professor in law at Kuwait University, joined as a volunteer legal advisor. "Not all politicians are supportive of women. The law is made and administered by males. Also, the Minister of Interior has discretionary power. We have to address this point much more seriously than we have done up to now. We have to differentiate between discretionary power and state sovereignty, when raising nationality cases in court", she pointed out.⁵¹

Divisions that are found within Kuwaiti society at large on how to address the existence of the stateless *Bidun* population are reflected among female lawyers who have different views on the subject of statelessness.

Of the ten female lawyers I interviewed, El-Hewail most clearly supported Kuwaiti women's capacity to have full nationality rights, and thereby be able to confer citizenship to their children:

Why can a woman become a minister and decide a range of political decisions, but is unable to decide the man she wants to share her life with without being punished for that choice? ... There is always an opinion that a woman who marries a non-Kuwaiti is being exploited [*mustaghilla*]... this is not true... The state should not cut the wings of women... On the contrary, the state should give women wings and help her to fly... the problem is that we do not question the law. We see it, and then we swim in this pond called the law. People tend to forget: these laws are made by us. We made them, we can change them.⁵²

Most lawyers agree that reforming the nationality law is difficult. Professor in law, Badria al-Awadhi argues that administrative reforms are needed, and that Kuwait could start by adopting the Saudi Arabian "point-system" which enables noncitizens to gather points according to

⁵⁰ *Human Rights Watch*, 'Government critics stripped of citizenship', 19 October 2014.

⁵¹ Author interview, 12 March 2015.

⁵² *Ibid.*

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criteria that reflects personal belonging to the state, such as birth, affiliation with citizens, and education.⁵³ Another of them is Soad al-Shamaly who pointed out:

The nationality law is a sovereign law [*qanun siyadi*]. It is difficult to raise anything that has to do with the nationality law in parliament – even to discuss it. It is an issue closely related to the [exercise] of sovereignty according to what the leader of the state sees fit. It is he who may change segments of the nationality law. I do not believe it will be changed at all.⁵⁴

Lawyer Areej Hamada adds: “You know, the Kuwaiti nationality has many privileges (*mumayyizat*), not all nationalities have such.”⁵⁵

Whereas both lawyers are supportive of women’s rights with reference to equal access to housing benefits as male Kuwaitis, they do not present clear-cut support for Kuwaiti women’s capacity to confer citizenship to their children. They are representative of the majority of the female lawyers I interviewed who agree that socio-economic reforms related to closing gendered gaps in the Housing Law by strengthening women’s rights to ownership in the marital home, or working on a law on domestic violence, are easier to attain than pressuring for changes in the Nationality Law. The latter was perceived as part of the exercise of state power, and thereby seen as outside their realm of influence.

The issue of extending full citizenship rights to Kuwaiti women divides women in general in Kuwait, and this is reflected among female lawyers. The division is particularly noticeable after Kuwaiti women became enfranchised in 2005. Women’s groups of different political shades – including Islamist groupings such as the Women’s branch of the Muslim Brotherhood – united with liberal women’s and human rights’ groups in demanding political rights for Kuwaiti women before 2005. Islamist women leaders supported the enfranchisement of Kuwaiti women, and coordinated their support with other women’s groups in their opposition to the non-favorable ideological position of the Muslim Brotherhood’s male leadership.

After their enfranchisement, Kuwaiti women are divided on the issue of granting women full civil rights with men in nationality law. Suad Al-Jarallah, leader of the women’s branch of the Muslim Brotherhood, for instance, is clear on Kuwaiti women’s housing rights, and in particular Kuwaiti women married to non-Kuwaitis:

I am concerned about the security of the country. [...] some Kuwaiti women have taken Iranians, there is some danger there, security-wise, some have taken a Syrian, and another an Iraqi [...] there are some

⁵³ Author interview, 24 April 2016.

⁵⁴ Author interview, 15 March 2015.

⁵⁵ Author interview, 15 March 2015.

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difficult signs there (*fi 'ilamat mu sahle*) [...] why should we open windows? This is a policy related to the security of the country.⁵⁶

Al-Jarallah expresses concerns shared by wider segments of the Kuwaiti citizenry. In parallel, the Women's Cultural and Social Society (WCSS) – projected a more explicitly marked support towards Kuwaiti women married to noncitizens, including stateless *Bidun*. Upon marking the International Women's Day on 8th March 2015, which also marks ten years of women's enfranchisement, the WCSS chose one case as a main point of struggle: The banner under which they united with numerous women's groups was "Solidarity in support of the rights of children of a Kuwaiti female citizen married to a non-Kuwaiti".⁵⁷

The issue of mixed marriages between Kuwaiti women and non-Kuwaiti males, and the legal, social and economic rights of children born out of these mixed marriages, will most likely be among the most politicized issues with regards to strengthening female citizenship in Kuwait in the future.

Conclusion

Women in the legal sphere in Kuwait – in terms of their numbers and their scope of action – represent a new societal force which pushes for strengthened female citizenship in Kuwait. This is most clearly seen in their ability and willingness to articulate issues that were not debated widely in public previously, i.e. before Kuwaiti women were enfranchised in 2005.

The state's promotion of twenty-two female Kuwaiti lawyers in the judicial sphere in 2014, the creation of family law courts in 2015, and opening up for women judges in the near future, are three means through which Kuwait seeks to promote its image as a modern and moderate regime while at the same time sustaining and bolstering authoritarian governance after 2011. Such measures reflect the politics of monarchical liberalization through women-friendly policies which seek to balance the interests of autocratic hereditary rule by holding two reins. First, by stretching a soothing hand to conservative constituencies while filtering away orthodox leanings, including non-violent and legitimate criticism, thereby harnessing authoritarian rule. Second, by lending an ear, perhaps even two after 2011, to liberal and civic-oriented secular and

⁵⁶ Author interview, 16 March 2015.

⁵⁷ "وقفة تضامنية لدعم حقوق المرأة الكويتية المتزوجة من غير كويتي" [Solidarity stance in support of the Kuwaiti woman married with non-Kuwaitis], *al-Ra'iy*, March 10, 2015.

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religious groups who support autocratic rule and semi-democratic political systems as long as they are rules-based.⁵⁸

The rise of female lawyers in Kuwait cannot be seen undetached from the enfranchisement of Kuwaiti women in 2005. Political rights for women have impacted socially and politically in ways that go beyond their representation in the electoral channel. Courts and numerous media outlets provide politically vibrant sites where issues and claims are raised by female lawyers on behalf of female litigants. These claims include a Kuwaiti woman's right to initiate and end a marital relationship without the consent of male kin, access to housing, the equalization of parental responsibility for children, and strengthening the civil rights of Kuwaiti women married to non-Kuwaitis and the status of their children.

When and how female lawyers challenge or defend the status quo depends on the type of issue raised. Gendered regulations and administrative laws – such as access to jobs as public prosecutors – were more susceptible to societal pressures which led to reform. Gendered state laws pertaining to nationality are, however, less likely to be susceptible to societal pressures by female lawyers in the near future.

Female lawyers in Kuwait can be seen as agents for societal change because they challenge norms that are intrinsic in a patriarchal societal order through which male and elder rights are privileged in state laws in new ways after 2005.

However, whether the rise of female lawyers is linked to changing the *status quo* in Kuwaiti society at large is questionable. For one, social class in Kuwait plays a strong role as a stabilizer of social change. All of the female lawyers I interviewed belong to middle and upper class echelons in Kuwaiti society. Kuwaiti lawyers thus belong to a privileged social stratum who may believe that their socio-economic interests will be breached by reforms in the nationality law. The inclusion of more inhabitants as part of the privileged citizenry is most probably related to the distribution of welfare among larger segments of the population. A potential decrease, or deterioration, in economic privileges and financial support related to welfare services such as health, education, housing, and employment opportunities represent probable scenarios, seen from the perspective of Kuwaiti citizens.

Reluctant support to reform in the nationality law among female lawyers sustains the status quo, and remains the most politically sensitive gendered issue a decade after Kuwaiti women's enfranchisement.

⁵⁸ Brynen et al., 173-88.

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