



Kuwaiti women's entry into judgeship in 2020: The long journey from law graduates in 1967 to public prosecutors in 2013, and what happened on the path towards the judiciary

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Abstract

On 30 June 2020, Kuwait celebrated the appointment of eight female judges for the first time in the nation's history. Women's access to judgeship was preceded by the admittance of women as public prosecutors in 2013, which is the main gate to become a judge in Kuwait. As of 2020, female prosecutors constitute 27 per cent of the total number of public prosecutors in Kuwait. The article points out drivers for change in Kuwaiti society which opened up for women's appointment as judges. It addresses the five-year period between 2013-2020 preceding the appointment of women judges, and debates that arose when eight women judges were appointed amidst the coronavirus pandemic which broke out in March 2020. Three questions are explored: First, how and why have Kuwaiti women been appointed as judges in 2020, more than five decades after women entered the field of law studies in 1967? Secondly, what forms of opposition were voiced in public through the Kuwaiti media against appointing women as judges? Thirdly, which civil society groups supported women's entry into judgeship, and what arguments did they use to counter the arguments of the opposition?

Key words

Women; judgeship; Kuwaiti; coronavirus

Resumen

El 30 de junio de 2020, Kuwait celebró el nombramiento de ocho juezas por primera vez en la historia del país. El acceso de las mujeres a la judicatura fue precedido por la admisión de mujeres como fiscales en 2013, que es la puerta principal para llegar a ser juez en Kuwait. En 2020, las mujeres fiscales constituyeron el 27% del total de los

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fiscales de Kuwait. El artículo señala los factores de cambio en la sociedad kuwaití que se abrieron para el nombramiento de juezas. Aborda el lustro 2013–2020 que precedió al nombramiento de juezas, y los debates que surgieron cuando se nombraron ocho juezas en medio de la pandemia de coronavirus que estalló en marzo de 2020. Se exploran tres cuestiones: en primer lugar, ¿cómo y por qué se ha nombrado a mujeres kuwaitíes como juezas en 2020, más de cinco décadas después de que las mujeres entraran en el campo de los estudios jurídicos, en 1967? En segundo lugar, ¿qué formas de oposición se manifestaron en público a través de los medios de comunicación kuwaitíes contra el nombramiento de mujeres como juezas? En tercer lugar, ¿qué grupos de la sociedad civil apoyaron la entrada de las mujeres en la judicatura y qué argumentos utilizaron para contrarrestar los argumentos de la oposición?

Palabras clave

Mujeres; judicatura; kuwaití; coronavirus

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1. Introduction

Kuwait is a hereditary Emirate where citizens have shared power with the ruling dynasty through an electoral system since 1963 (Tétreault 2000). Notwithstanding periods when the ruler dissolved parliament (in 1986 and 2012 for instance), the Kuwaiti parliament is a unique political institution in the Gulf. Women's position in Kuwait has also been stronger in terms of legal and political rights, compared to other Gulf monarchies (Doumato 2011). However, Kuwait has been surprisingly late at opening the door for female law graduates to become public prosecutors and judges compared to the other Gulf states.¹ Female law graduates were, for instance, not admitted at the Kuwait Institute for Judicial and Legal Studies (KIJLS) before 2013.² The KIJLS is the only institution in Kuwait where candidates are able to undergo entry-level exams in order to get training and eventually be appointed as prosecutors, and thereafter as judges. Seven years passed after allowing women to be trained as prosecutors at the KIJLS before eight women judges were appointed on 30 June 2020. Kuwait was, until that date, amongst the few remaining Arab states where women have not become judges.

The relationship between judges and their potential allegiance to the Kuwaiti regime which includes those in political power is, to a large extent transparent in the sense that female as well as male judges do not necessarily support the ruling political regime in Kuwait. Rather, one would anticipate that judges in a hereditary state are, in general, part of decision-making on behalf of rulers, and thereby part of the regime itself.

Judges, whether men or women, rule in the name of the Amir (prince in Arabic), Kuwait's ruler, who is the head of executive authority. In principle, the ruler does not hold judicial power. However, in reality, in a non-democratic and autocratic state, the executive and judicial powers of rulers overlap. A main characteristic of this overlap is that the judiciary in Kuwait is not autonomous. The head and judges of all courts, including the Constitutional Court, are appointed by the Amir (through a princely, *amiri*, Decree). Moreover, the opening words of juridical verdicts and legal judgements that are passed in Kuwaiti courts reads as follows: "In the name of Allah, most gracious and most merciful, in the name of his highness the Amir", then details of the ruling follow. In other words, in Kuwait, the rubber stamp of the executive resides heavily on the judicial branch of decision-making.

During the global Corona pandemic crisis which erupted after March 2020, a national total shut down was announced by Kuwaiti authorities and minimal administrative work kept running. Skepticism around the probable announcement of the long-awaited appointment of female judges was raised as the due date of the women's promotion to judgeship was anticipated to be on May 2020 (Qanat Al A'lam TV 2019). The suspense

¹ The six Gulf states include three hereditary monarchies – Kingdom of Saudi Arabia, Kingdom of Bahrain (formerly an Emirate which was declared an "Islamic constitutional monarchy" in 2002), and the Sultanate of Oman. Kuwait, Qatar and the United Arab Emirates (UAE) are hereditary emirates. Bahrain appointed the first woman judge in the Gulf in 2006. In the UAE and Qatar, women were appointed as judges in 2008 and 2010. In Saudi Arabia, a woman legal professional – Shaimaa Sadeq Al Jibrān – was appointed as arbitrator in a commercial law case in 2016 and functioned as *de facto* judge in the Jeddah Administrative Court. For more on women's entry into the judiciary in the Gulf monarchies, see Maktabi 2020a.

² The Arabic title of the Kuwait Institute for Judicial and Legal Studies (KIJLS) is *Ma'had al-kuwait lil-dirāsāt al-qadā'iyya wal-qānuniyya*, [معهد الكويت للدراسات القضائية والقانونية], see <https://www.kijls.moj.gov.kw/AR/Pages/default.aspx>

was raised in the following month when a Kuwaiti newspaper, *Al Anbaa*, published an article on 10 June 2020 which illustrated the expectations of female activists who have been strong supporters of female judges. Lulwa Al-Mulla, president of the Women Cultural and Social Society (WCSS) which is Kuwait's oldest women's association (est. in 1963), proclaimed that appointing female judges enhances women's rights and establishes justice in society. Athra Alrifai, a long-standing activist lawyer, argued that appointing women in the judiciary is a public duty.

Muna Al-Arbash, head of the woman committee at the Lawyers' Association and an activist lawyer, argued that women in the judiciary support the state's nationalization policy known as *takweet*, i.e. the Kuwaitization of the labor force. Her argument feeds into gendered aspects of Kuwait's skewed labor force where noncitizens constitute a large part of the workforce. In Kuwait, migrant workers and non-Kuwaitis comprise around 80 per cent of the total labor force. Kuwaiti authorities have therefore initiated policies that support replacing foreign employees with citizen employees in jobs in the public and private sectors (Kapiszewski *et al.* 2011). Al-Abrash pointed out that jobs in the most sensitive public positions such as the judiciary, and public prosecution were ripe for Kuwaitization, especially after female public prosecutors (hereafter referred to as "PPs") have proven their worth in the previous stages of judiciary.

Civil society was on its toes. Finally, on 30 June 2020, the Supreme Judicial Council, headed by Counselor Yusuf Al-Mutawa, approved the appointment of eight female judges to join the judicial corps as of September 2020. The eight newly appointed female judges – Lulwa Al-Ghanim, Fatima Abdel-Moneim, Fatima Al-Kandari, Fatima Al-Farhan, Bashair Al-Rakdan, Rawa Al-Tabtabae, Sanabel Al-Houti, Bashair Abdul-Jalil – had served as public prosecutors for several years (Habib 2020). This announcement came more than five years after the first Kuwaiti female law graduates were allowed to pass entry-level applications that enabled them to access positions at the public prosecution office in 2013. Opposition against the appointment of the eight female judges was raised right after the appointment was announced. Resistance towards, and criticism against, women's entry into the judiciary was expressed by social groups such as conservative political force and individuals. Some Kuwaiti lawyers, including female lawyers, were also suspicious about the appointment of women judges.

The first-time appointment of eight women judges in June 2020 can be seen from three perspectives: First, in terms of administrative procedures to strengthen the efficiency Kuwaiti legal system in times of crisis caused by the COVID-19 pandemic; second, as an expression of relentless efforts by the Kuwaiti women's movement to achieve gender equality, and the potential impact of women judges on the long-term adjudication of women's rights; and third, as a significant and inevitable step towards the Kuwaitization of the judiciary by 2025 (KUNA news 2019b), given that female law graduates currently outnumber male law graduates at Kuwaiti law faculties.

The article is divided in three parts. Part two focuses on Kuwaiti women's first-time appointment as judges in 2020. The main question discussed is, given that Kuwaiti women have been able to study law since 1967, why it has taken so long for Kuwaiti women to obtain positions as judges? An elaboration of women's entry to the judiciary follows in part two. Part three discusses the pressures exerted by the women's rights movement in Kuwait in support of appointing women judges, and the relationship

between the appointment of women judges and PPs as means to nationalize the workforce after the COVID-19 pandemic.

1.1. A Note on Methodology

In my position as member of the Faculty of Law at Kuwait University since 2015, I teach 4th year male and female students, and since 2019, postgraduates as well. My professional position allows me thus to get to know young students aged between 22 and 25 years who study law. Students have shared their views and experiences with the written and oral exams among themselves and with me. For instance, graduate students exchange information about exams, processes of application for jobs, interviews and training periods as lawyers. Some graduates who applied for training as public prosecutors (PP) at KIJLS have shared their experiences during the training year. At times, students and graduates share their aspirations with me and ask questions about working careers. Also, it is common that students share their opinions in discussions in class on what they have heard and read about regarding the position of PPs. Some of my former students have applied for PP positions at the Supreme Council of Judiciary (SCJ) after graduation.

It is fairly common that law graduates apply for jobs as PP because it is a prestigious position. In fact, the position of PP is particularly attractive for those with high grades (known as GPA). Also, law graduates envisage that they may be appointed as judges later on when they have served as PPs for some years. Whereas some are admitted as trainees at the KIJLS, others are not. Obtaining a job as trainee is a highly competitive career path in Kuwait. Since 2014, i.e. after the position of PPs opened up for women, I have noted that competition among law graduates to get a job as PP has grown.

In addition to conversations with my students, I have volunteered as legal advisor to the organization Kuwaiti Women without Limits between 2014–2016. The organization seeks to reform the patriarchal nationality law in Kuwait which bars Kuwaiti women married to non-Kuwaitis from conferring nationality to their children on equal terms with Kuwaiti men married to non-Kuwaiti women.

I have also been a board member of Kuwait's largest women's association, The Women Cultural and Social Society since 2016. In 2016 and 2017, the WCSS organized a conference and a forum on women in the judiciary. On both occasions, I engaged in discussions on drivers for change, as well as barriers that impede women from entering the judiciary shared by experiences of women judges in different Arab states.³ One of the presenters at the conference in 2017 was PP Lulwa Al Ghanim who three years later was one of the eight appointed women judges. At the conference, Al Ghanim talked about her experience as public prosecutor. Her presentation was later shared at the WCSS's YouTube channel and it provides valuable insights which are part of the discussion below on women's experiences as PPs in Kuwait (Al-Ghanim 2017).

³ The WCSS issued a booklet that includes the presentations of participants at the 2016 conference on *Women in Judiciary on Arab Women Judges Experience*, WCSS, Kuwait 2–3 March 2016. However, no papers submitted in the Women in Judiciary Forum 2017, except Dr. Mashel Alhajer's, cited in this paper; see WCSS 2016.

1.2. The Kuwaiti Labor Force: Facts and Figures

The structure of the Kuwaiti labor force is worth probing into because it has some specific characteristics which impacts the entry of women, including women judges, in the workforce, as is elaborated on further below.

Estimates of the size of the Kuwaiti population varies between 3–4 million, of which the Kuwaiti citizenry comprises roughly a third (WorldoMeter 2020).⁴ The last official census was carried out in in 2018 and showed that Kuwaiti citizens comprise 1,303,246 persons, while the total number of inhabitants, including migrants and stateless, was around 2,923,674 persons (Kuwait Central of Statistical Bureau, 2017–2018). One of Kuwait's largest newspapers, *Aljarida*, had a detailed report on the demographic development of the Kuwaiti population. In 2019, the Kuwaiti population comprised of 4.8 million persons of which Kuwaiti citizens constituted around 29 per cent (1.4 million). The Kuwaiti population was expected to reach 5 million by 2020 (Y. Alabdullah 2019). Kuwaiti citizens comprise thus around a minority of one third of the total number of inhabitants in Kuwait, rendering noncitizens a majority of the population.

As for the Kuwaiti workforce, the majority of Kuwaitis work in the public sector, while the private sector is composed mainly of non-Kuwaitis. More than 76 per cent of the 41,634 persons employed in the public sector are Kuwaiti nationals, while non-Kuwaitis constitute 23,7 per cent (9,7718 persons) (LMIS 2019). In the private sector, Kuwaiti nationals constitute 28 per cent of the workforce while 72 per cent are non-Kuwaitis, most of whom do not carry a university degree according to Maryam Al-Aqeel, Minister of State for Economic Affairs (KUNA News 2019a).

The skewed demographic and employment structure in Kuwait has given rise to Kuwaitization policies, popularly referred to as *takweet*.⁵ These policies aim to eliminate unemployment among the national workforce as an essential part of the national developmental plan of the state, known as New Kuwait Vision 2035 (Ministry of Foreign Affairs 2021). The aim is to achieve a more balanced demographic structure where the national population comprises around half of the population. Through Vision 2035, the government seeks to raise the number of Kuwaitis employed in the public and private sectors to 85 percent of the total labor force by 2025 (Alsharq News 2020). As for the judiciary, the aim is to have 90 percent Kuwaitis employed (KUNA News 2019b).

By August 2018, the government had terminated the work contracts of 3,140 expatriates in the public sector as part of the Kuwaitization policies (Alkhaleej Online 2018). The number of non-Kuwaitis losing their contracts is rising because all ministries are

⁴ According to WorldoMeter (2020), "In June 30, 2012, the population of Kuwait was estimated at 3,268,431 persons according to the Central Statistical office. In this census, the number of Kuwaitis reached 1,128,381 while the rest were non-Kuwaitis and foreigners".

⁵ Through the Kuwaitization policy, the government seeks to reduce unemployment rates among citizens in Kuwait. Two main objectives of Kuwaitization are to replace the expatriate workforce in the public sector by citizens, and to reduce the number of expatriates employed in the private sector. For that, private companies and institutions are required to earmark a percentage of jobs to citizens, and there are a range of incentives to encourage employers to hire citizens, such as the monthly sum of money paid from the national budget to support the national workforce in the private sector. Kuwaiti lawyers, benefit from such incentives because a substantial segment of law graduates work in the private sector. See Central Statistics Bureau 2014.

working towards complying with the *takweet* policy. The COVID-19 pandemic has clearly impacted the scale and speed of Kuwaitization policies. Working hours have, for instance, been reduced (Mubashir Alkuwait 2020). Some ministries, such as the Ministry of Oil and ministry of Electricity and Water, announced that it stopped appointing expatriate workers in the Kuwait Petroleum Corporation and its subsidiaries for the year 2020/2021 (Fu'aad 2020). Other ministries, such as the Ministry of Housing, aimed to reach their *takweet* goal by 2021 and terminated the contracts of 30 per cent of expatriate employees by 2019 (Almusleh 2020). In July 2020, roughly four months after the pandemic broke out in March, the municipality of Kuwait City terminated the contracts of 50 per cent of its expatriate employees (Alkhaleej Aljadeed 2020). Most probably, some government agencies, such as the judiciary and the health sector, will not reach their Kuwaitization targets as fast, due to their special characteristics and needs.

Foreign students are accepted to law schools in Kuwait. However, noncitizens – with the exception of nationals from Gulf states – are legally prohibited from practicing as licensed lawyers. Only Kuwaiti citizens with a degree in law are allowed to be members of the Kuwaiti Bar Association and are thereby able to raise cases in Kuwaiti courts.⁶ Non-Kuwaitis with law degrees, including professional careers as lawyers before migrating to Kuwait, cannot practice as lawyers before Kuwaiti courts. In general, non-Kuwaiti lawyers are employed as legal consultants (*mustashar*). They assist Kuwaiti lawyers in raising cases in court, or they work in law firms or business companies.

Due to the state's support to the national workforce in the private sector, salaries for citizens who work in the field of law are markedly higher than salaries paid to non-citizens with law degrees.

2. Kuwaiti Women's Path Towards Judgeship (1967–2020)

Given that Kuwaiti women have been able to study law since 1967, why has it taken so long for Kuwaiti women to be appointed as judges?

Figures from the Faculty of Law at Kuwait University show that the total number of graduates in 2018 was 559 of which 354 were females and 176 males. In 2017, the total number of law graduates was 538 of which 290 of were females and 215 males (Kuwait University, alumni record, law school, 2016–2017). With the forces of the growing numbers given, it is expected that, over time, female law graduates will occupy a higher percentage of positions in the judiciary.

In Kuwait, law graduates are not entitled to be called lawyers after they graduate. They become lawyers after years of training with experienced lawyers (Law no. 62 of 1996).⁷ Special rules apply for candidates who seek to enter judgeship: Law graduates are required not to have practiced as lawyers and not been previously employed, as indicated in the advertisement for the position of public prosecutors announced by the Supreme Council of Judiciary (SCJ).

⁶ A condition to become member of the Kuwaiti Bar Association (KBA), known as *Jam'iyyat al-muhamiyyin al-kuwaitiyya*, is to have Kuwaiti nationality. As of 2021, the KBA has 4133 members. See <https://www.uianet.org/en/directory/kuwait-bar-association>.

⁷ Article 1 of Law no. 62 of 1996 amending Law no. 42 of 1964 on the regulation of the legal profession before courts.

Until 2012, advertisements for applications made by the Ministry of Justice for PP positions were directed only to male graduates from the Faculty of Law or the Faculty of Shari'a. Female law graduates were not expected to apply. Indeed, no female law graduates tried to apply before 2009 when Shorouq Alfailakawi sent an application, as will be elaborated on further below.

Although female law graduates were eventually admitted in 2012, advertisements calling for law graduates were directed to "male applicants only" as late as 2016, i.e. four years after females were allowed to apply for positions as PP trainees.⁸

The "male only" condition was challenged by one female law graduate in 2009. That year, Shorouq Alfailakawi, a law graduate with eligible qualifications applied for the job as PP trainee. She was denied an application receipt by the Supreme Judicial Council (SJC), which is the responsible legal institution for accepting applications on behalf of the Ministry of Justice, on the ground of her sex. The SJC referred her to the official advertisement which had a similar wording as the 2016 advertisement.⁹ The sentence reads: "The Ministry of Justice announces its need to fill the position of junior legal researcher for Kuwaitis – males only" (Appendix 1).

In December 2009, Alfailakawi filed a lawsuit against the Ministry of Justice and the SCJ. Three years later, in January 2012, the Court of Appeal, upheld the ruling of the Court of First Instance against her claims (Sa'eed 2012). The verdict came in defense of the Ministry of Justice and the SCJ, pointing out that the administration has full discretion to assess whether the time is suitable for women to enter the judiciary due to some considerations, such as an evaluation of the woman's performance within the job before admitting more women.

That same year, in 2012, a group of six female law graduates filed a similar lawsuit as Alfailakawi's. This time, they went with their case to the Constitutional Court. The six female claimants challenged the male condition mentioned in the call for applicants to the entry-level exams to PP positions. They argued that the Ministry of Justice has invented this requirement on no valid legal ground, and argued that the job announcement was in violation of Article (19) of the Law on Organizing the Judiciary and article (29) of the Kuwaiti Constitution, depriving female law graduates of their right to apply for the advertised jobs in the public sector. In April 2012, the Constitutional Court ruled in their favor based on article (29) of the Constitution (Al-Watan 2012).¹⁰

After the six women had filed cases in 2012, The Ministry of Religious Endowments (*Awqaf*) and Islamic Affairs issued a religious advisory – *fatwa* – on 11 October 2012. The *fatwa* (Appendix 2), referred to different Islamic scholars' opinions with regards to women in judgeship. A main argument presented in the *fatwa* is that the ruler's authority, i.e. the Kuwaiti Emir who holds the highest political position in Kuwait, should weigh heavily when a dispute occurs, and that he is empowered to issue and

⁸ See Appendix 1 which is a copy of the "males only" advertisement. It announces that law candidates are able to apply for a PP position between 7–28 August 2016.

⁹ The Supreme Judicial Council (SJC) is affiliated with the Ministry of Justice. It is entitled to accept applications, make interviews, and appoint applicants to the position of public prosecutors in Kuwait.

¹⁰ Article 29 of the Constitution of the State of Kuwait states: "The people are peers in human dignity and have, in the eyes of the Law, equal public rights and obligations. There shall be made no differentiation among them because of sex (may be read as gender), origin, language or religion".

approve laws and decisions in accordance with established regulations. The *fatwa* could be read as a way through which decision-makers at the Ministry of Justice and Religious Endowments to legitimize the verdict made by the Constitutional Court on admitting women to the PP office.

Although the *fatwa* is a significant official document, political pressure against women's entry to the PP office continued to be raised. Civil society was split into supporters and opponents. While Kuwait's largest women's organization, the WCSS, and another liberal organization, the Graduates Society, cheered the *fatwa*, politicians and elected MPs were split. Ali Al-Omair and Walid Al-Tabtaba'i, who belong to the overtly conservative Islamist Salafist party, announced the need for a more solid and competent *fatwa*. Other MPs, like Ammar Al-Ajmi and Abdullatif Al-Amiri who belong to moderate parties stated that "the issue is jurisprudential, not political" (Zaki 2012).

Despite a heated debate (Khalifa 2012), the judicial ruling in favor of women's rights to apply for the PP position, was final and it was executed immediately (Alnajjar and Alyousef 2014). Based on the judicial verdict in the case No. 3134/2011 Administrative/7, female law graduates were granted the right to be admitted as trainees to the PP offices, allowing them to complete the obligatory one-year study to be able to obtain the position of PP. The following year, in 2013, Minister of Justice Yaqoub Alsane', admitted 22 female law graduates for the job as trainees at the PP office. They started their one-year study and training at the Kuwaiti Institute of Legal and Judicial Studies (KIJLS). By 2014, they had graduated their study along with their male counterparts and were appointed as PPs.

Upon the admission of the first 22 female law graduates to be trained as PPs in 2013, the SCJ announced that it will not accept more women for the job until the performance of those admitted had been evaluated (Alabdullah 2014). As a consequence, the announcements for positions to the PP office reiterated the "male only" requirement in 2015 and 2016 (Appendix 1). The evaluation would, according to SCJ officials, take five years divided into one year studying and training at the KIJLS in 2013–2014, and four years of service as PPs from 2014 to 2018. After five years' service as PP, a candidate would potentially be deemed competent to be promoted to judgeship (Alabdullah 2014).¹¹

In 2017, four years after the first group of females were appointed as PPs in 2012, the advertisement called for applicants of both sexes – males and females (Appendix 3).

In 2018, five years after the first 22 Kuwaiti women had served as PPs, the SCJ decided to open the door again for females to apply for the position of PP. Notably, the announcement came out calling for female and male graduates from the Faculty of Law as well as from the Faculty of Shari'a to apply. As a result, a second group of women was admitted numbering 24 out of a total of 93 admitted candidates. The following year, in 2019, a third group was admitted including 18 women out of a total of 82 candidates. These figures indicate that the number of female law candidates admitted constituted roughly 25 per cent of the total number of candidates by the year 2020.

¹¹ Notably, in 2014, Mounira Al-Waqyan, one of the 22 women admitted as Kuwait's first female law candidates at the KIJLS graduated with top degrees with a GPA of 94.76 per cent followed by a male, Ahmed Al-Mutairi who got a GPA of 94.1 per cent.

A year before the due date for their promotions in PP or judgeship, Kuwaiti media and proponents for women's rights started airing their views in social media. "Soon, the first female judge will be appointed", was a headline (Qanat Al-'alam, 21 June 2019). Aljazeera noted that "[f]or decades she waited for it, Kuwaiti women are awaiting appointment as judges" (Alkafrawy 2020b). Such pressures could be viewed as means to encourage the SCJ to appoint female judges. Indeed, both supporters and opponents were waiting for the decision of the SCJ: would women be appointed as judges in the near future?

3. Kuwaiti women's entry to the judiciary

Kuwaiti women's path towards entering the judiciary mobilized opponents and proponents of women's presence in powerful decision-making positions such as becoming judges and adjudicators. In 2013, when the first female law graduates were admitted to the PP office, women constituted 22 out of the 62 candidates who were enrolled at the Kuwait Institute for Legal and Judicial Studies (KILJS). More than a third of the total number of candidates were women, sending a clear political signal that Kuwaiti authorities were willing to invest in women's training into judgeship.

Female law graduates had studied at Kuwait University's Law School which is public, and at Kuwait International Law School (KILAW) which is privately owned.¹² Whereas the majority of men admitted at the KILJS were graduates from one of these two law schools, a minority of candidates were graduates in Islamic Jurisprudence from Kuwait University's Faculty of Shari'a. They are here referred to as "Shari'a graduates" because their main professional specialization is Islamic jurisprudence, rather than civil law.

Notably, whereas all the females admitted as candidates to be trained as PPs were graduates in civil law, some males admitted to the PP's office were Shari'a law graduates. In Kuwait, Shari'a graduates are allowed to apply for the PP position, and with time they may become judges, as explained further below.

Notably, the KIJLS, where law graduates are trained as PP, admits law graduates from universities in the other Gulf monarchies, mostly from the UAE and Bahrain. Interestingly, Bahraini judge Muna Alkuwari, who was appointed as judge in 2006, studied and got her judicial training in Kuwait at the KIJLS in 2003, ten years before Kuwaiti female law graduates were admitted to that institution (WCSS 2017, 25–26).

3.1. *The Experiences of Women PPs*

Through their experience over the short period of roughly five years, female PPs have proven their competence in the various tasks assigned to them, including crimes of all kinds said Attorney General Councilor Dhirar Alasousi in an interview in September 2017 with Al Qabas, one of Kuwait's most influential newspapers (Habib 2017).

¹² An important difference between the public Faculty of Law at Kuwait University and the privately owned KILAW is that the latter offers courses in English and Arabic to all students while the Faculty of Law offers only few courses in English. While Arabic is the main language used at Kuwait University, KILAW is a bilingual law school where students are required to study at least six, and up to 12, legal courses in English during their four-year study. See KILAW n.d.

The timeline through which applicants become PPs, whereafter some are promoted to judgeship, consists of several stages each requiring a certain amount of time and training experience. The application process starts with the candidate filling forms where they answer personal questions. One applicant answered questions in 2018 about her previous and current social, economic, sport, and political activities, while another applicant that same year responded on a question on whether she had any charitable activities. The following year, in 2019, one applicant answered a question about her reading interests such as books, magazines, and periodicals. All had to answer questions about the names and jobs of their spouses, family members, siblings, and closest friends. There is also a question on the reason of application to a PP job. Some female applicants emphasized that it is a good opportunity for them to serve in the PP and become judges after getting the experience required for judgeship.

After filling the application, applicants take a written exam which assesses their general legal knowledge. According to some applicants, the legal exam is perceived as a general requirement, while the personal interview weighs more heavily than the legal exam for two reasons. First, Sharia graduates have no prior studies in civil law. Therefore, civil law graduates have an advantage compared to Shari'a graduates. Shari'a graduates are expected to get necessary legal knowledge through their one-year study after being admitted to the PP office (Al-Watan 2012). Secondly, the personal interviews are meant to explore the applicants' personality, their willingness to learn and other personal qualities which may not be found in the written exam.

The one-year comprehensive training program provided to admitted applicants is based on article 72 of Decree Law No. 23 of 1990 Concerning the Organization of the Judiciary (23/1990), which requires training as "an essential duty" of the job of PP (H. Alabdullah 2019). Enrolled candidates study all domains of law. The tutoring is based on the KILJS school's curriculum which is intensive and practical. The curriculum relies heavily on case law whereby candidates have to practice and gain expertise by proceeding current cases pending before courts, as well as analyzing cases that have been settled, i.e. cases where judges have reached final verdicts.

3.2. Expectations Surrounding Women Trained as Public Prosecutor and Judges

Articles 25-27 of the Decree Law No. 23 of 1990 Concerning the Organization of the Judiciary (23/1990) prevent members of the Public Prosecution (PPs) and judges from conducting any work which is defined as inconsistent with the dignity and independence of the judiciary. Judges and PPs are, furthermore, prohibited from expressing political views or receiving awards while in office.¹³ They are also prohibited to combine a position in the judiciary with the practice of trade, and they cannot enlist as candidates in parliamentary elections. Also, starting with the year of study at the KIJS, both male and female candidates for PP-positions are informed of their duty to be less involved in social relations and occasions. Notwithstanding gender-based social differences, general restrictions apply to all PPs in order to guarantee neutrality for future judges to be. Restrictions include refraining from giving an opinion in public or social media on political issues or ongoing cases or getting involved in public political

¹³ The ICJ permits judges and PPs to conduct work deemed necessary and not contradicted with their duties. See Decree Law No. 23 of 1990 Concerning the Organization of the Judiciary (23/1990).

debates, as pointed out in figure 5. PPs are furthermore requested to avoid social contact with lawyers and political events, and dress appropriately, preferably by wearing the official dress for men and modest clothes for women.

On 1 June 2020, the Supreme Judicial Council (SJC) announced that eight Kuwaiti women were appointed as judges. The following month, an Administrative Decision No. 6/2020 was issued on 20 July 2020 by the Attorney General's Office. It reiterated the SJC's Decision No. 11/2020, issued five years earlier on 18 May 2015. This decision prohibited all "men of the bench" (*rijal al-qada'*) and public prosecution (*al-niyaba al-'amma*, النيابة العامة) from "presenting any program or responding to a meeting [whether] through visual, oral or audible media sources, or participating in their making without the prior permission (*dun ithin musbaq*, دون إذن مسبق), including presentation of viewpoints through social media or other sources – in order to preserve the authority and prestige (*haybat*, of the court and maintaining its position." (Appendix 4) This Administrative Decision restricts to a large extent the possibility to obtain direct information from trainees, PPs and judges. It makes it clear that exchanging any information from persons appointed in judicial positions exposes them to the liability established in this regard.

An elaboration over potential challenges and opportunities that face male PPs and judges are arguably the same kind of challenges and opportunities faced by women PPs and judges. In addition, women PPs and judges in Kuwait face, in general, other types of gendered obstacles in carrying out their profession shared by women PPs and judges in other Arab states (Lindbekk and Sonneveld 2017).

In Kuwait, social norms and practice have had an impact on women's opportunities to be admitted as PPs and judges. Obstacles which women face in their pursuit of a career in judiciary are country- and context-specific. Nonetheless, there is a "striking degree of commonality in the obstacles faced by women seeking to pursue a judicial career" in Arab states, as pointed out in a report issued by the Economic and Social Commission for Western Asia (Economic and Social Commission for Western Asia – ESCWA – 2019, p. 39).

In Kuwait, some women are prevented from applying to the position of PP by their families, and in particular their fathers, grandfathers, uncles, brothers or husbands, and sometimes male cousins. Others are not supported by their near family, while most are exposed to skepticism of their diminishing chances to get married, and establish families if they pursue such career. "Family pressure and approval, particularly from the relevant male guardian, often has a significant bearing on women's ability to pursue an education, enter employment and choose a career" (ESCWA 2019, p. 43). Moreover, the hardship of the job makes women less attractive as candidates in arranged marriages which is the dominant path for marriage in Kuwait. Supportive families fear that a daughter might not marry because they know what it means for a young woman to pursue a career in PP: Fully occupied, long working hours, late work, and on call 24/7. From a social perspective, this job is not for a wife or a mother according to common perceptions. There are also thoughts of women PPs and judges becoming masculine and cold-blooded because of the time spent in a man's job. These considerations also expose female PPs to a well-known and feared social problem – isolation.

Such assumptions are comparable obstacles in the Muslim world. In an article on women judges in Pakistan, Rubaya Mehdi found out that gaining an understanding of local

customs makes a big difference in the way judges dispense justice. She argued that “female judges make a difference in dispensing justice by displaying a greater willingness to take local customs into account than their male colleagues” (Mehdi 2017, p. 211). Mehdi pointed out that female judges are in some cases more sensitive to the condition of women and children, and how they as litigants are affected by judgments. Based on women’s different experience within the society, female litigants may benefit from female judges’ understanding within the judge position, particularly in cases where women suffer most from bias judgements, such as in divorce and custody cases. In these types of cases, women judges are in a position where they can relate to the problems which female litigants bring to the court.¹⁴

In Kuwait, female law graduates have invented ways to live comfortably along with what they describe as masculinized high intensity jobs, such as working as prosecutors in the judiciary. One female student who graduated in 2018 applied for the position of PP that same year. Before she was admitted, she shared her views of the future with her fellow students. At the time, she envisioned a professional career despite her skepticism that it may challenge private prospects for marriage and family. “With time, marriage could eventually come along the way”, she said. Moreover, she was keen to accept a marriage relationship where her working career is upfront, and only if it enriches the quality of her life as she planned for it.

Another female law graduate from 2018 considered marriage only if it accommodates her personal and career ambitions. She was determined to match with a man of her generation who shares her views of personal career commitments within a marital relationship. Some of the young women law professionals see their opportunity to join the judiciary as too precious to be given up for any other familial or social gains. For instance, Ihsan Zuhdi, a Jordanian woman judge, pointed out that long working hours and cases dealt with at home urges a woman judge to have an understanding and supportive husband and family. Likewise, the Emirati woman judge Mouza Alshimmiri said that an understanding family is key to a woman judge’s success (WCSS 2017).¹⁵ Moreover, women and men in Muslim societies in general, and in Kuwaiti society specifically, have a custom understanding of keeping social distancing at work. However, in the judging process, it may be difficult to cope with such distancing (Mehdi 2017, p. 212).

All in all, women PPs and judges carry the responsibility of their successors who will be pre-judged by the performance of the women judges and PPs who came before them. Lulwa Alghanim, a Kuwaiti woman who was admitted as PP (2014), participated in a forum on women judges organized by the WCSS in March 2017. In June 2020, Alghanim was appointed as one of the eight first-time Kuwaiti women judges. Three years prior to her appointment, she shared some of her insights as a female prosecutor-in-training at

¹⁴ In Kuwait, the amount of *nafaqa*, i.e. child support (the sum of money paid by the husband/father to the divorced woman/wife and his children), is subject to the judge’s discretion of the extent of the husband’s insolvency.

¹⁵ Conversation with the women judges at the Women in Judiciary conference which I attended. See the proceedings of this conference in a booklet entitled *Arab Women Judges Experience*, organized by the WCSS, Kuwait 2–3 March 2017.

the WCSS conference, that the studying atmosphere at the KIJLS is both friendly and encouraging for female trainees to prosper within the profession (WCSS 2017).

4. Impact of Women Judges on Kuwaiti State and Society: Kuwaitization, Adjudication, and Women's Rights

The first-time appointment of eight women judges in Kuwait in June 2020 can be seen from three perspectives: (i) in light of the COVID pandemic in 2020 which strengthened calls for the Kuwaitization of the workforce, including the judiciary, (ii) in terms of women's entry into positions of authority and power in times of crisis; and (iii) in light of future challenges where Kuwaiti female judges find their place in court.

4.1. The COVID pandemic in 2020: Pressures for Kuwaitizing the workforce

In late February 2020, the Kuwaiti Ministry of Health imposed quarantine rules for travelers coming from more than 14 states, including China and Iran (Alkhalidi 2020). The Council of Ministers decided to entrust the Ministry of Interior and the Ministry of Foreign Affairs and Ministry of Health, to stop issuing entry visas for foreign nationals on 8 March 2020. Shortly after, the airport was shut down (Sky News Arabiya 2020). Six days later, on 14 March, the Kuwaiti government approved a series of measures to combat the spread of the virus. These included a total shut down, including the closure of ministries, courts, commercial complexes, entertainment centers, shopping malls and public markets, except for food stores (Alkafrawy 2020a).

The outbreak of the pandemic made it difficult for noncitizen judges to return to Kuwait on time when the judiciary started functioning on the 21 June 2020, because flights to and from Kuwait halted (Alyoum Assabea 2020). Civil aviation started functioning again in August 2020, roughly two months after the judiciary resumed working. In the meantime, Kuwait announced a ban on commercial aviation to and from 31 countries including Egypt. Importantly, Egyptian judges make up one third of the Kuwaiti courts' capacity, while two thirds – 67 per cent – are composed of Kuwaiti judges (Alabdullah 2020b).

Before the COVID pandemic broke out, the head of the High Council of Judiciary, Yousef Almutawaa, elaborated on the aim of Kuwaitizing the judiciary. He referred to the Supreme Judicial Council (SJC) where a policy plan aimed at meeting the target where 90 per cent of all judges in Kuwait would be citizens in five-years' time, i.e. around the year 2025. He informed that as of 2019, the total number of judges was 1,111 of which 730 judges were Kuwaitis, and 381 were non-Kuwaitis. All judicial leadership positions were in the hands of Kuwaiti citizens, and the majority of judges in Courts of First Instance – 96.5 per cent – were Kuwaitis. Non-Kuwaiti judges were mainly found in appellate courts, that is in Courts of Cassation (KUNA News 2019b).

During the COVID-shutdown in 2020, Kuwaitis strengthened their demands for Kuwaitizing the workforce. Independent MP Abdul Karim Al-Kandari, pointed out that the shortage of staff among the judiciary which occurred after the shutdown of civil aviation confirmed the urgent need for *takweet*. He argued that it is important not to be dependent on expatriates, especially in light of the increasing numbers of Kuwaiti law graduates of both sexes every year, as well as the (then anticipated) inclusion of women in judiciary (Al Qabas 2020). Al-Kandari opposed thereby the statement made by the

President of the Court of Appeal, Muhammad Bin Naj, who argued for the necessity of Egyptian judges returning back from Egypt in order for the courts to be able to work in full capacity (Alabdullah 2020b). On the contrary, Al-Kandari confirmed the urgent need to nationalize the judiciary so that it is freed from depending on foreign employees under all circumstance.

MP Al-Kandari's arguments are in line with Kuwait's *takweet* policies. A report issued by the Civil Service Bureau revealed that five government agencies had reached their target whereby 95 per cent of jobs were nationalized.¹⁶ According to the Central Administration for Statistics, the number of expatriates working in the government sector declined during the first nine months of 2020 by 15 percent, reaching 82,000. At the same time, the number of employed citizens increased by 5 percent reaching 315,000 citizen employees (Azza'by 2019).

Professor Mohammad Almuqatei is another leading activist in support of Kuwaitization of the judiciary. Formerly a professor at the Faculty of Law at Kuwait University, he is the founder, and one of the owners of KILAW, a private law school established in 2008. In one tweet, Almuqatei addressed the head of the SCJ, and the presidents of the Court of Appeal, and Court of First Instance:

The judiciary is a sovereign and national authority. All members of the judiciary must be Kuwaitized. Just as a minister or a member of the National Assembly may not be a non-citizen, the judge or deputy prosecutor may not be a non-citizen. The necessities of the past have ended with the lack of Kuwaitis with law graduates. (Almuqatei 2019) [Translated by author]

In a more brutal language Almuqatei wrote in another tweet:

It is unconstitutional to assign judgeship and judicial consultancy to foreigners. Article 6 of the constitution defines the judiciary as one of the three public authorities, and should be run by nationals according to this article. Even public jobs, which are of a less sensitive nature, are to be run by nationals according to article 26. Foreigners in the judiciary leads to nullification of judgements. (Almuqatei 2020) [Translated by author]

With these sharp arguments in favor of nationalizing the judiciary, Almuqatei highlighted that the law of judiciary allows the appointment of non-Kuwaiti judges and councilors in limited cases and only when there are no Kuwaiti judges to take on the job, which is not the case with Kuwait anymore in 2020. Almuqatei's critical views were supported by civil society groups. On 18 May 2020, 30 civil society associations made a collective statement where they demanded the *takweet* of the judiciary, calling it a national and constitutional necessity and a sovereign requirement (Aljarida 2020). Part of the statement read "it is a demand to highlight the essence of the state's sovereignty and independence. This was confirmed by Article 19 of Decree Law No. 23 of 1990 regarding the organization of the judiciary in which it is stipulated that the person in charge of the judiciary must be a Kuwaiti national" (Alanba 2020c).

¹⁶ These public agencies include the Ministry of Social Affairs, the Capital Markets Authority, the Municipality of Kuwait, the Stock Exchange Company, and the Citizen Service Centers of the Ministry of the Interior (Azza'by 2019).

4.2. Women's entry into the judiciary in times of crisis

The 2020 global pandemic uncovered how problematic it is for the judiciary to rely on non-national judges and councilors in Kuwait. This is important because the rise of women to power is often, though not always, related to a crisis or a societal need for reserve forces to step to the fore. Feminist scholars have theorized around this aspect: in times of crisis, decision makers have an opportunity to make use of women as previously "unused" resources (Elomäki 2015).

The appointment of eight women judges in June 2020 occurred roughly six months after the outbreak of the COVID-19 pandemic in Kuwait in February 2020.¹⁷ Timing represents an important aspect in shedding light on the appointment of women judges during a crisis, namely the COVID-19 pandemic, which erupted in Kuwait and the rest of the world by March 2020 (WHO 2020). The announcement urges us to reflect on potential linkages between women's entry into positions of authority and power, and the state's response to emergency situations. For the first time in 2020, a large number of prosecutors were chosen to be judges in the Court of First Instance in one go. The social and political context surrounding the appointment of women judges in the aftermath of the epidemic crisis is therefore important to probe into.

The inclusion of women in the judiciary is expected to fasten the process of *takweet*. The state needs to make use of the national workforce, and women constitute a valuable human resource.

As of 21 May 2020, the percentage of Kuwaitis in the judiciary reached 70 per cent, according to Head of the Court of Appeal, Counselor Mohamed bin Naji, who said that achieving a 100 per cent nationalization of the judiciary should not be rushed. The number of cases considered by the courts is huge, he argued, requiring the availability of the full capacity of judges. He also pointed out that non-Kuwaiti judges make a third of the professional forces of Kuwaiti courts and that they cannot be easily replaced (Alabdullah 2020a).

Importantly, the Kuwaitization of the judiciary started long before the impact of the COVID-19 pandemic in 2020. Yet, the crisis that arose during the global pandemic appears to have strengthened pressures that called for better governance in the legal and judicial sphere. Critical remarks against the dependence of Kuwaiti courts on foreign workforce were raised during the height of the crisis between March – August 2020. Concerned parties argued for the need to protect the work of courts from disruption again.

4.3. Future Challenges: Finding their Place in Court, and Entering Family Courts

The distribution of female PPs in different offices reflect that graduates from the Kuwait Institute for Judicial and Legal Studies (KIJLS) became public prosecutors by means of a decree. They were distributed to different prosecution offices and districts such as the

¹⁷ The list of nominees to this promotion included the names of 54 male candidates in high positions within the judicial administrative hierarchy before reaching judgeship, such as presidents and directors. The list also included male prosecutors with five years of experience in prosecution, along with the eight women to become judges for the first time in the country's history. The newly-appointed women judges were to be distributed to different departments in Courts of First Instance (*al-mahkama al-ibtida'iyya*) (Lazim 2020).

capital Kuwait City, Hawalli, Farwaniya, as well as specialized prosecution offices. The specialized prosecution offices include the Prosecution of Drugs and Wine, the Juvenile prosecution, the Personal Status prosecution, the Public Funds prosecution, the Public Media, Information and Publishing Affairs prosecution, the Criminal Execution Affairs prosecution, and the Financial Market prosecution. Each of these prosecution office has its specialization and scope of work.¹⁸

Normally, newly-graduated public prosecutors are distributed to all of the aforementioned prosecution offices except two: The Public Funds Office and Kuwait City (Kuwait's capital) prosecution office. Notably, cases that are raised in the capital involve national security cases. In 2020, the Public Prosecutor's main office in Kuwait City received for the first time a newly appointed female prosecutor. The appointment of the female judge occurred despite the common pattern that prosecutors appointed to that office usually needed four to five years' experience.

On 11 September 2019, the head of the High Council of Judiciary, councillor Yousef Almutawa'a, stated that women professionals who work as prosecutors "have proven that they are qualified for judiciary". He added that women are expected to fit in as adjudicators in plans for establishing new judicial and administrative circles (KUNA 2019). Such political signals indicate that the rise of women to positions of power in court is often, though not always, related to a crisis or a new need. The councillor did not mention other circles of judiciary, such as criminal courts and monetary courts where adjudication is well established. Could the potential appointment of women in administrative and governmental circles mean an institutionalized marginalization of female judges by relegating them to the newly established administrative districts? This is a question worth pondering over in the future because it might illustrate the development of new legal institutions in Kuwait where gender plays a significant role in re-organizing the Kuwaiti legal and judicial structure.

Opposition to the appointment of women judges in Kuwait is, I suggest, based on rejecting the possibility of women's potential entry as judges in family courts (*mahkamat al-usra*).¹⁹ Opposition against the appointment of female judges has resonance in potential future legal tensions between women's expanded professional role as decision-makers in the state's judicial system, and women's contained citizenship and civil status at the individual level as reflected in the state's family law, also known as personal status law (Maktabi 2016, pp. 28–30; 2020a, pp. 372–376).

Opposition comes also from men who believe that their authority over women is ingrained in Islamic jurisprudence and embedded in Kuwait's family law. Male

¹⁸ Normally, prosecutors are relocated every three years so that they receive diversified experience. However, female prosecutors had until January 2021 not been sent to the drug and wine prosecution office. Most probably, this is due to an understanding that it is uncomfortable and dangerous for female prosecutors to work in an atmosphere where social norms pertaining to abstention of alcohol in public spaces, in addition to drugs, are socially stigmatized and strongly regulated by state authorities. Kuwait and Saudi-Arabia are the two only states in the GCC member states where the import and export of alcohol is banned by law, making selling or buying alcohol a criminal act. However, in Kuwait, consuming alcohol in private is not punished by law.

¹⁹ Judges in family courts apply the Kuwaiti personal status law codified in 1984, also known as personal status law. The law regulates kinship related matters including marriage, divorce, custody, alimony (*nafaqa*) and inheritance (Al Awadhi *et al.* 2009).

authority within family law extends to other issues than marriage and divorce, and includes custody (*ri'aya*) and alimony (*nafaqa*) of spouses and children. In general, a Kuwaiti mother has to obtain the authority of her children's father in matters regarding their welfare and economic affairs. To be in a position where a woman has power to make a final judgement at home, as well as in court, represents therefore a tremendous step in extending Kuwaiti women's agency and power within Kuwaiti society which is overtly conservative.

In Egypt, a state which can be compared to Kuwait in terms of widespread conservative attitudes towards women in leadership positions, Sonneveld found out that women judges represent a societal threat not only in terms of obtaining seats in the bench, but also as drivers for structural change in social norms more broadly. She argues: "Following these assumptions and concerns, not only might women assume (judicial) authority over men in the public sphere, but their advance in the judiciary would also transform the gendered nature of authority inside the home" (Sonneveld 2017, pp. 54–55). In other words, women holding the position of judge represent a threat to some segments in Kuwaiti society who fear change not only in the judiciary, but also in social patterns of patriarchal authority as expressed with reference to Egypt. This is while proponents of women judges, on the other hand, see the presence of female judges in family courts as a necessity to achieving more justice in Kuwait in general, and to women specifically.

Usually, it takes years of experience as judge – ten to fifteen years – before one qualifies to adjudicate family law cases in Kuwait. Some proponents for Kuwaiti women's entry into the judiciary point out that women judges are particularly well-fit to handle cases in family and juvenile courts because they have different perspectives and experiences on legal matters. Even though gender-specific features can be shown to exist in the form of judge behavior and working style, there is no evidence to suggest they affect the actual outcome of particular cases. Some women judges have been found to factor in the interests of women in some cases, as an example of positive effect of them being on the bench. However, examples of the opposite exist (Schultz and Shaw 2013, Alhajeri 2017, Lindbekk and Sonneveld 2017).

Supporters of women's inclusion in the judiciary expect that women in judicial decision-making positions add specific qualities to rulings. Alhajeri expresses such thoughts after observing performance gaps that, according to her, arise when the bench consists of only male judges. Some of these shortcomings include male perspectives on issues related to child custody, domestic violence, sensitivity to children's emotional needs, in addition to male judges' hesitation to apply compassionate rules and failure to deal with serious administrative challenges to reach justice (Alhajeri 2017, p. 2). The ESCWA study on women judges in the Middle East finds similar insights. Male and female judges (re)produce and challenge gender hierarchy in their dispensation of justice. Gender, alongside with other factors, influence judging and vice versa (ESCWA 2019, pp. 1–4).

Notably, in Western liberal states, women judges have specialized in family law adjudication since the 1980s (Mather 2003). This has also been the case to a certain extent in Arab states where Islam is dominant religion. For instance, the two first female judges appointed in the West Bank in Palestine, Asmahan Youssef Al-Wihidi and Kholoud Al-Faqih, were judges in Sharia law where specialization in family law is central (ESCWA

2019, pp. 33–34). In Libya, women judges have presided in lower courts that deal with family law issues (*ibid.*, p. 34), while women judges in Indonesia have adjudicated in Islamic courts since 1989 (ESCWA 2019, pp. 33–34).

My qualified assumption for the foreseeable future is that women judges will most probably not be appointed to family courts in Kuwait any time soon for three reasons. First, appointing women as judges in family courts, where the personal status law is applied, runs against standard procedures which require at least ten years' experience. Secondly, women in decision-making positions where legal and religious issues overlap is a deeply sensitive matter politically as well as socially and may require more time to merge. In Kuwait, family law is generally perceived as deeply ingrained in matters related to religious law. A woman who adjudicates in family law has not been a norm. Those who opposed women's appointment as judges have expressed their worst fears concerning the strengthening of women's legal capacity which is consequently related to curbing and limiting the principle of men's guardianship over women as embedded in several state laws (Maktabi 2016, 2017). Thirdly, Islamist forces in Kuwait have always been worried that women judges would spell into women presiding as judges in family courts. Islamist forces are skeptical about whether women judges would push for verdicts and interpretations of Islamic Shari'a within family law in ways that would grant women more legal authority. This might in turn render men with less authority over women, such as in matters related to housing where men are defined as heads of household (Law No. 47/1993 on the regulation of house care), or in custody over children after divorce where fathers, rather than mothers, maintain legal guardianship over their children. These issues fall directly within or around the concept of guardianship of men over women in Shari'a rulings as codified in the Kuwaiti personal status law.

The development of case law towards legal changes in marriage and divorce matters is, at the time of writing (January 2021), uncertain. However, social and political forces that push for reforms in favor of widened civil rights for Kuwaiti women have grown stronger over the past fifteen years, particularly after Kuwaiti women gained political rights in 2005. A recent United Nations study in collaboration with the International Commission of Jurists noted that:

Women's presence in courts dealing with personal status issues (such as marriage, divorce, child custody and inheritance) varies depending on the set-up of the national judicial system. In States where family matters are adjudicated by civil courts, for example in Tunisia, women tend to be well represented in such courts. However, in States where personal status matters are resolved in religious courts, female judges remain generally excluded from sitting on such courts. In light of the evidence highlighted (...), exclusion from the courts where matters of marriage, divorce and custodies are adjudicated has devastating consequences for women's rights. (ESCWA 2019, pp. 33–34)

I anticipate that it is a matter of time before aforementioned obstacles to women judges wane, and they are able to adjudicate personal status issues in family courts in Kuwait. Some socio-cultural obstacles have to be acknowledged. For instance, I have noticed amongst female students, graduates and those who volunteer in civil society, that young persons between 20 and 30 years of age have expressed suspicion about the capability of women to adjudicate due to clerical interpretations in Shari'a such as the impermissibility of being a woman judge, known as *haram*, meaning that which is

forbidden. This notion resides strongly in the sub-conscious of young Kuwaiti citizens, including young women. Until female judges are qualified to sit in family law courts, the KIJS might probably introduce legal arguments for women judges to be trained in family courts in order to overcome skepticism among a new generation of Kuwaiti youth. Older generations seem to share the skepticism towards women judges as those expressed by young Kuwaitis. Conservative citizens, both older and younger age cohorts, prefer *status quo*, and support thereby groups who maintain and seek to maintain Islamist ideals regarding women's contained personhood within Islamic jurisprudence. The young and the older generations share thereby religious doubts regarding the appointment of women as decision-makers in court.

Monique Cardinal has researched on the appointment of women judges in Syria between 1975 and 2009 and has found similar observations regarding a cross-generational aversion to appointing women in decision-making positions in criminal courts (Cardinal 2017).

5. In conclusion

The appointment of women judges in Kuwait signals the inclusion of women as authoritative actors in legitimizing and adjudicating legal norms in the Emirate. The minoritarian size of the Kuwaiti citizenry, long-term plans for nationalizing the Kuwaiti workforce, the timing of the crisis, and administrative needs to carry out vital rule of law procedures without depending on non-citizen judges are factors that shed light on the inclusion of women on the bench in Kuwait in 2020.

Women judges will most probably be appointed as councillors after approximately 15 years' judgeship experience. Given that the appointment of women judges is a final political decision which will not be withdrawn, I anticipate that female judges in Kuwait will, in time, become councillors, and part of the decision-making process that reflects the judicial powers of the state. As such, the appointment of women judges signals the inclusion of women as authoritative actors in legitimizing and adjudicating legal norms in Kuwait. By extension, Kuwaiti women will be part of high-ranking decision-making positions and processes that reflect the judicial powers of the state.

One important question remains pending. Why are the numbers of women admitted to Public Prosecution since 2013 considerably less than the number of males admitted as PPs? And until when will this unequal access to that important position remain to be the case? Women constitute roughly a third of those admitted to the Public Prosecution office while they outnumber male law graduates. As indicated above, 22 women and 40 men were admitted as PP trainees in 2013 at the Public Prosecution Office. Six years later, in 2019, the ratio is 18 women and 64 men. This is somewhat perplexing given hard evidence that the number of female law graduates has surpassed the number of male law graduates. In other words, the important gate into judgeship positions in Kuwait is unequal and gendered, given evidence that female law graduates outnumber male law graduates, while they constitute roughly a third of those admitted as PPs.

Given that the appointment of women judges is a fairly new occurrence, it is too early to come with reflections on whether the appointment of female judges and prosecutors in Kuwait will change Kuwaiti law in the foreseeable future. Will the entry of women judges in Kuwait affect gender-role attitudes, style of work, women's rights, and the

nature of traditionally male-dominated professions in Kuwait? Time will show, and more research in that domain remains to be done.

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Appendix 1

Copy of "male only" advertisement for the position of public prosecutors announced by the Supreme Council of Judiciary (SCJ) in Kuwaiti newspapers in 2016. Retrieved at The Ministry of Justice advertisement gate:

<https://www.moj.gov.kw/AR/pages/Search03.asp?xt0>.

تعلن وزارة العدل عن حاجاتها لشغل وظيفة باحث قانوني

مبتدئ للكويتيين (الذكور فقط)

شروط التعيين :

1. الحصول على إجازة الحقوق أو الشريعة (تخصص فقه أو أصول فقه) من جامعة الكويت أو من جامعة أخرى معترف بها وذلك لخريج العام الدراسي (2015 / 2016).
2. عدم سبق التقدم لشغل هذه الوظيفة من قبل أو التقدم للإختبارات والمقابلات الشخصية.
3. ألا يقل المعدل الجامعي عن (2.33) نقطة من سلم الأربع نقاط والحصول على معدل لا يقل عن 75% وفقاً للنظام المنوي وذلك بالنسبة للحاصلين على إجازة الحقوق أو الشريعة (تخصص فقه أو أصول فقه).
4. ألا يزيد السن عن (25) سنة ميلادية وقت الحصول على الشهادة الدراسية.
5. عدم سبق العمل بالشهادة الجامعية لدى إحدى الجهات الحكومية أو القطاع الخاص.
6. الإجتياز بنجاح الإختبارات والمقابلات الشخصية التي تجري من قبل لجنة الإختيار وذلك وفقاً للنظام المعمول به في هذا الشأن.
7. عدم سبق الحكم بالإدانة تأديبياً وجنائياً أو جنحة مخلة بالشرف أو الأمانة أو تباعد بينه وبين حسن السلوك.
8. يخضع المتقدمون في حالة قبولهم لدورة تدريبية في معهد الكويت للدراسات القضائية والقانونية حسب القواعد التي يضعها المعهد في هذا الشأن سواء في المدة أو نظام التدريب ، وذلك وفقاً لما تقتضيه طبيعة الوظيفة وحاجتها ، علماً بأن المقبولين سيتم تعيينهم على كادر الوظائف العامة المدنية بوظيفة (باحث قانوني مبتدئ) وسيتم نقلهم من الكادر العام إلى الكادر الخاص بوظيفة (وكيل نيابة ج) بعد اجتيازهم الدورة التدريبية في المعهد بنجاح .
9. يحصل المقبولين بوظيفة (باحث مبتدئ قانوني) على المزايا المادية والبدلات المنصوص عليها في نظام الخدمة المدنية المقررة للوظيفة المذكورة .

المستندات المطلوبة :

- صورة شخصية .
- صورة البطاقة المدنية .
- صورة شهادة الميلاد .
- صورة شهادة الجنسية .
- شهادة بعدم سابقة الحكم عليه .
- الشهادة الجامعية مبين فيها التقدير العام أو معدل التخرج وكشف الدرجات وإذا كان المؤهل العلمي من خارج الكويت يجب احضار معادلة مصدقة من وزارة التعليم العالي .
- شهادة من المؤسسة العامة للتأمينات الاجتماعية بعدم تسجيل المتقدم كعضو من قبلها .

وعلى المتقدم الدخول على موقع وزارة العدل (www.moj.gov.kw) اعتباراً من يوم الأحد 2016/8/7 وحتى يوم الأحد 2016/8/28 للإطلاع على الشروط وإستمارة طلب شغل الوظيفة ، وإرسال الطلب بعد تعبئة كافة البيانات المطلوبة لإستمارة طلب شغل وظيفة وإرفاق جميع المستندات المطلوبة بصيغة PDF بواسطة البريد الإلكتروني التالي: apply@moj.gov.kw على ألا يتجاوز حجم الملفات المرفقة بالبريد الإلكتروني عن 10MB ، كما سيتم استبعاد الطلبات الغير مستوفية للمستندات المطلوبة .

للاستفسار : يرجى الاتصال بالأرقام التالية : 22486739 ، 22486717 ، 22486741 .

والله ولي التوفيق .

Appendix 2

Copy of the *fatwa* issued by the Ifta' and Islamic Research Sector dated 11 October 2012 where the Ministry of *Awqaf* and Islamic Affairs presents different Islamic scholarly opinions with regards to the issue of women in judgeship positions.

STY OF AWQAF AND ISLAMIC AFFAIRS
I-Ifta And Islamic Research Sector
Secretary of Al-Ifta And
Islamic Research Sector Office

وزارة الأوقاف والشؤون الإسلامية
قطاع الإفتاء والبحوث الشرعية
مكتب الوكيل المساعد
لقطاع الإفتاء والبحوث الشرعية

الأمة الوسط

الموافق : 2012/10/11م

الكويت في 25 ذو القعدة 1433 هـ

دراسة صادرة عن مكتب قطاع الإفتاء والبحوث الشرعية
(آراء الفقهاء في تولي المرأة منصب القضاء)

اختلف الفقهاء في تولي المرأة القضاء ، ولهم ثلاثة آراء :

الرأي الأول : وهو (المالكية والشافعية والحنابلة ، وهو أيضاً رأي الأمامية) الذين يرون عدم جواز تولية المرأة للقضاء ، واستدلوا بقوله صلى الله عليه وسلم - لن يفلح قوم ولوا أمرهم امرأة - - رواه البخاري - ولأن القاضي يحضر محافل الخصوم والرجال ، ويحتاج إلى كمال الرأي ومشاورة العلماء ، والنساء لمن أهلاً لذلك ، وقد نبه الله تعالى إلى نسيانتهن في آية المداينة بقوله تعالى - **أَنْ تُفِيلَ إِحْدَاهُمَا فَتُذَكَّرَ إِحْدَاهُمَا الْأُخْرَى** - الآية 282 من سورة البقرة.

الرأي الثاني : يرى الحنفية أن قضاء المرأة جائز في كل شيء إلا في الحدود والتعاصم ، اعتباراً بشهادتها فيما يجوز شهادتهن فيه وحدهن أو مع الرجال يجوز قضاؤها فيه ، لأن في الشهادة معنى الولاية ، ولا يجوز في الحدود والتعاصم ؛ لأن شهادتهن لا تقبل في ذلك . [قال ابن الهمام - وأما الذكورة فليست بشرط إلا للقضاء في الحدود والدماء ، فتقضي المرأة في كل شيء إلا فيها - ونص على أن مقلدها آثم للحديث المتقدم] .

الرأي الثالث : أجاز ابن جرير الطبري للمرأة تقلد القضاء مطلقاً (ورواية عن بن القاسم من المالكية) وعلل ولايتها بأنه يجوز أن تكون مفتية فيجوز أن تكون قاضية ، وأجاز ابن حزم لها أن تلي الحكم - عدا الخلاف - للحديث المتقدم ، وقد روي عن عمر بن الخطاب رضي الله عنه - أنه ولي الشفاء (امرأة من قومة السوق) - ، وأنه صلى الله عليه وسلم قال - **المرأة راعية على مال زوجها** وهي مسئولة عن رعيتها - - رواه البخاري ومسلم - ، ولأنها مخاطبة بالأمر بالمعروف والنهي عن المنكر كالرجل ، ويقول الله تعالى - **إِنَّ اللَّهَ يَأْمُرُكُمْ أَنْ تُؤَدُّوا الْأَمَانَاتِ إِلَىٰ أَهْلِهَا...** الآية 58 من سورة النساء ، وهذا متوجه بعمومه إلى الرجل والمرأة ، والحر والعبد ، والدين كله واحد ، إلا حيث جاء النص بالفرق بين الرجل والمرأة ، وبين الحر والعبد ، فيستثنى من عموم إجمال الدين .

وأما من حيث سلطة ولي الأمر في ترجيح أي من الآراء في المسائل التي وقع فيها الخلاف ، فقد قرر الفقهاء في القاعدة الفقهية الكلية المشهورة أن حكم الحاكم يرفع الخلاف في المسائل الاجتهادية إذا كان رأيه في ذلك يحقق مصلحة معتبرة شرعاً ، والحاكم هو من له سلطة إصدار وإقرار القوانين والقرارات حسب النظم المرعية .

الوكيل المساعد
لقطاع الإفتاء والبحوث الشرعية

مجمع الوزارات - مبنى رقم ١٣ - الدور الثالث - تلفون : ٢٢٤٤٤٣٧٢ - فاكس : ٢٢٤٤٤٣٧٢ - ص.ب. : ١٣ - الصفاة - ١٣٠٠١ الكويت
Ministries Complex - Block 13 - 3rd Floor - P.O. Box: 13 Safat - 13001 Kuwait - Tel.: 22444372 - Fax : 22452530 - 22468249

Appendix 3

Advertisement in 2017 calling for law graduates –women and men– to apply for the PP office during the period dated 29 October 2017–19 November 2017: The text in this appendix is identical with the announcement text rendered in appendix 1, except that the “for males only” requirement is replaced with a “for Kuwaiti males and females” requirement.



وزارة العدل

اعلان تعان وزارة العدل عن حاجتها لشغل وظيفة باحث قانوني مبتدئ (للكويتيين ذكور - إناث)

شروط التعيين :

- 1- الحصول على إجازة الحقوق أو الشريعة (تخصص فقه أو أصول فقه) من جامعة الكويت أو من جامعة أخرى معترف بها، وذلك لخريجي عام (2016/2017) فقط.
- 2- عدم سبق التقدم لشغل هذه الوظيفة من قبل.
- 3- ألا يقل المعدل الجامعي عن (2.33) نقطة من سلم الأربع نقاط والحصول على معدل لا يقل عن (75%) وفقاً للنظام المنوي بالنسبة للحاصلين على إجازة الحقوق أو الشريعة (تخصص فقه أو أصول فقه).
- 4- ألا تزيد السن على (25) سنة ميلادية وقت الحصول على الشهادة الدراسية.
- 5- عدم سبق العمل بالشهادة الجامعية لدى إحدى الجهات الحكومية أو القطاع الخاص.
- 6- اجتياز الاختبارات والمقابلة الشخصية التي تجرى من قبل لجنة الاختبار، وذلك وفقاً للنظام المعمول به في هذا الشأن.
- 7- عدم سبق الحكم عليه بالإدانة تأديبياً وجنائياً بجريمة جنائية أو جنحة مخلة بالشرف أو الأمانة أو تباعد بينه وبين حسن السلوك.
- 8- يخضع المتقدمون في حالة قبولهم لدورة تدريبية في معهد الكويت للدراسات القضائية والقانونية حسب القواعد التي يضعها المعهد في هذا الشأن، سواء في المدة أو نظام التدريب، وذلك وفقاً لما تقتضيه طبيعة الوظيفة وحاجتها، علماً بأن المقبولين سيتم تعيينهم على كادر الوظائف العامة المدنية بوظيفة (باحث قانوني مبتدئ) وسيتم نقلهم من الكادر العام إلى الكادر الخاص بوظيفة (وكيل نيابة ج) بعد اجتيازهم الدورة التدريبية في المعهد بنجاح.

9- يحصل المقبولون بوظيفة (باحث قانوني مبتدئ) على المزايا المادية والبدايات المنصوص عليها في نظام الخدمة المدنية المقررة للوظيفة المذكورة.



10- يجب تقديم الطلبات في الفترة من يوم الأحد الموافق 2017/10/29 حتى يوم الأحد الموافق 2017/11/19 الساعة (12:00) نياً.

المستندات المطلوبة:

- صورة شخصية.
- صورة البطاقة المدنية.
- صورة شهادة الميلاد.
- صورة شهادة الجنسية.
- الشهادة الجامعية مبين فيها التقدير العام أو معدل التخرج وكشف الدرجات، وإذا كان المؤهل العلمي من خارج الكويت يجب إحضار معادلة مصدقة من وزارة التعليم العالي.
- على المتقدم الدخول على موقع وزارة العدل (www.moj.gov.kw) للاطلاع على الشروط وتعبئة استمارة طلب شغل الوظيفة من طريق الرابط ([link](#)) الموجود بالصفحة الرئيسية بموقع الوزارة، وإرفاق جميع المستندات المطلوبة بصيغة (pdf) علماً بأن الرابط سوف يتم تفعيله الساعة 12:00 A.M يوم الأحد 2017/10/29 وسيتم إغلاقه يوم الأحد 2017/11/19 الساعة 12:00A.M.
- ولأي استفسار يرجى إرسال رسالة بواسطة البريد الإلكتروني التالي (applv@moj.gov.kw) أو الاتصال على الأرقام التالية:
22486739 - 22486717 - 22486741
- علماً بأنه سيتم استبعاد الطلبات غير المستوفية للمستندات المطلوبة وأن يتعهد مقدم الطلب بأن جميع المعلومات المدخلة صحيحة.

Appendix 4

Copy of Administrative Decision 6/2020 issued on 20 July 2020 by the Attorney General's Office reiterated Supreme Judicial Council Decision 11/2020. The decision relies on a previous decision dated 18 May 2015 which prohibits judges and Public Prosecutors from expressing personal experiences and engaging with the media in order to preserve the authority and prestige of the court.

الرقم :

إدارة مكتب النائب العام
The Attorney General Office

الكويت في ٢٠٢٠/٧/٢٠ الموافق :


تعميم رقم (٦ / ٢٠٢٠)

نسترعي انتباه السادة أعضاء النيابة العامة إلى أن المجلس الأعلى للقضاء قد أصدر قراره رقم ٢٠٢٠/١١/٢٠٢٠ بتاريخ ٢٠٢٠/٧/٧ بالتأكيد على ما تضمنه قراره السابق الصادر بتاريخ ٢٠١٥/٥/١٨ - استناداً إلى المادتين ٢٧،٢٥ من قانون تنظيم القضاء - من منع كافة رجال القضاء والنيابة العامة من تقديم أية برامج أو إجراء لقاء أو تصريح في وسائل الإعلام المرئية أو المسموعة أو المقروءة أو المشاركة في فعاليات دون إذن مسبق ، أو إبداء الآراء من خلال مواقع التواصل الاجتماعي أو أي وسيلة أخرى - حفاظاً على هيبة القضاء وحرصاً على رفعة شأنه .

لذا

ندعو جميع السادة أعضاء النيابة العامة إلى الإلتزام بما توجبه هذه القرارات خشية التعرض للمسئولية المقررة في هذا الشأن .

النائب العام
ضرار علي العسوس



صدر في ٢٠٢٠/٧/٢٠

ag@moj.gov.kw ايميل الإدارة Fax: +965 - 22437659 Tel.: +965 - 22463233 - +965 - 22404124