
INTRODUCTION

There have been several elections in Kuwait in the last decade due to the recurrent dissolution of the parliament by the courts and dismissal by the emir. Nonetheless, over the last several years it has often had one of the higher voter participation rates in the Gulf. In Kuwait's most recent parliamentary election on July 27, 2013, however, the turnout among registered voters decreased to 51.9 percent. The opposition called for a boycott of the election in response to a controversial change the emir made to the electoral process: in late 2012, the government changed the number of candidates for whom a voter can vote from four candidates per district to one candidate. This reform was seen by the opposition as a way of increasing the number of pro-government candidates winning office.

The law with regard to voter registration in Kuwait, however, has not changed since 1962. While the process for creating, updating and maintaining a high quality, accurate registration list appears to be generally effective, a lack of transparency and access to information makes it difficult to assess completely. Even observers close to the process are unclear on the details as to how the voters list is compiled and maintained. Rules around *eligibility* to register to vote, rather than about the quality of the list itself, are more clearly problematic under international legal obligations and good practices. As a result of the eligibility criteria, detailed below, only a small portion of people residing in Kuwait are allowed to register to vote and participate in elections. In 2013, only about 440,000 people were registered to vote in a country that has over 3 million residents.¹¹¹

Though Kuwait did not experience the same levels of turbulence and demand for change witnessed in other countries during the Arab Spring of 2011, there have been a number of unprecedented protests in Kuwait in recent years, including in response to the change in the election law in 2012.

INTERNATIONAL AND REGIONAL AGREEMENTS

Kuwait has not ratified all of the international and regional treaties that address elections, but it has ratified some of the most important ones: the International Covenant for Civil and Political Rights (ICCPR), the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), and the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW). Kuwait ratified the ICCPR with the following reservation to Article 25(b): "The provisions of this paragraph conflict with the Kuwaiti electoral law, which restricts the right to stand and vote in elections to males. It further declares that provisions of the article shall not apply to members of the armed forces or the police." Kuwait granted the right to vote to women in 2005, but it has not officially changed its position with respect to the ICCPR. However, Kuwait has withdrawn its reservation

111 "Annual Statistical Abstract: Chapter 3," Kuwait Central Statistical Bureau, 2011; "Factbox: Kuwait's Political System and Voting Rules," *Reuters*, July 25, 2013, <http://www.reuters.com/article/2013/07/25/us-kuwait-election-system-idUSBRE96O0FN20130725>.

to Article 7(a) of CEDAW, which provides the right to women to vote and stand for election.¹¹² It continues to bar the military and the police from voting.

LEGAL FRAMEWORK

Kuwait's own constitution states in Article 6 that the system of government shall be democratic, under which sovereignty resides with the people. It also provides for equality under the law without distinction to race, origin, language or religion - though gender is not included-- as well as freedom of expression and freedom of association within the parameters of the law.

According to Kuwait's Election Law No. 35, one must be 21 years of age in order to register to vote (one can register at 20 in order to be eligible for an election that will take place when he or she has reached the age of 21). In a highly unusual provision, naturalized citizens are only eligible to register if they have been naturalized for at least 20 years (Article 1). A Kuwaiti citizen who has been convicted of a felony or crime of "moral turpitude" may not register to vote until having been rehabilitated (Article 2). Members of the armed forces and the police are not eligible to register to vote (Article 3).

Under the law, two types of committees are formed: Registration Committees and Election Committees. The Registration Committee is composed of a president and two members. According to the law,

The Minister of Interior decides on the number of committees to be formed, their composition and the territorial areas in which they have jurisdiction. . . . The Election Committees are composed of one member of the judiciary (or public prosecution) appointed by the Minister of Justice, one member appointed by the Minister of Interior and up to 15 candidate representatives. The law stipulates that the persons appointed by the Ministry of Justice serve as presidents of the committees.¹¹³

Kuwaiti citizens must register to vote in the place where they permanently reside. In February of every year, the Registration Committees update the voter registration list. It is during this February period—and only this period—that one may also apply to be on the voter registration list for the first time. In order to be added to the list, one must present two documents, the nationality certificate and civil ID. Some civil society organizations have advocated for more time for registration or, ideally, that citizens should be added to the voters registry automatically upon eligibility.¹¹⁴

It should be noted that when the women's right to vote was introduced in 2005, women were automatically registered on the basis of civil registration data, while men continued to have to register themselves. As a result women had a higher voter registration rate than men in the years immediately

112 "Concluding Observations of the Committee on the Elimination of Discrimination against Women," United Nations Committee on the Elimination of Discrimination against Women, October 21, 2011, <http://www2.ohchr.org/english/bodies/cedaw/docs/co/CEDAW-C-KWT-CO-3-4.pdf>.

113 *Final Report: Assessment of the Electoral Framework – Kuwait*, Democracy Reporting International and Kuwait Transparency Society, November 2008, http://www.democracy-reporting.org/files/dri_kuwait_report_08.pdf, 34.

114 Author interview with Ghada Alghanim, board member of the Women's Cultural and Social Society and founding member of Sout Al Kuwait, October 5, 2013.

following their enfranchisement.¹¹⁵ Since 2005, women have been required to actively register to vote according to the same rules as men. Some election observers report that, in some cases, women have been encouraged to register to vote by their husbands and fathers because they see it as a second vote for themselves.¹¹⁶

The list is then publicly displayed from March 1 to 15, during which time a citizen may advise the Registration Committee that he or she has been wrongfully omitted or incorrectly listed. Complaints against voter registration decisions can be brought to the Election Committees mentioned above. Appeals against their decisions can be lodged with the Supreme Court.¹¹⁷

ADMINISTRATION OF VOTER REGISTRATION IN 2012 AND 2013

In 2012, by the same decree of the emir that led to the controversial change in the electoral system, an independent election committee composed primarily of judges was instituted to administer the election. This nominal step forward, however, was jettisoned in the July 2013 election because the Supreme Court ruled the establishment of such a commission unconstitutional.¹¹⁸ According to press reports, in the same ruling that upheld the contested changes to the system, the Court ruled that “the state’s interest is ‘much greater than that of a committee,’ an argument based on which the emergency decree was issued.”¹¹⁹

Administrative implementation reverted once again to the Ministry of Interior. In accordance with the law, an update period was conducted by the Ministry in February 2013. In each election, as per the election law, voters were assigned polling locations according to residence, and voters lists were posted outside polling sites in alphabetical order.¹²⁰ It is unclear whether the government established registration and election committees as is described by the law.

In Kuwait, when the parliament is dissolved, a new election must be held within 60 days (although as with many other matters, the ultimate time frame is determined by the emir). While this short time frame can be problematic for some candidates, it does not appear to be a problem for the Ministry of Interior in terms of organizing the voters lists or other aspects of the voting process.¹²¹

115 Democracy Reporting International and Kuwait Transparency Society, *Final Report*, 32.

116 Author interview with Ghada Alghanim.

117 Democracy Reporting International and Kuwait Transparency Society, *Final Report*, 45.

118 Omar Hassan Abdulla, “Kuwait Scraps Parliamentary Poll with Final Court Decision,” *Middle East Online*, June 16, 2013, <http://www.middle-east-online.com/english/?id=59490>.

119 “Opinions Vary Amid Turmoil Over Landmark Court Ruling,” *Kuwait Times*, June 17, 2013, <http://news.kuwaittimes.net/opinions-vary-amid-turmoil-over-landmark-court-ruling-govt-advisors-blamed-tribes-return-to-polls/>.

120 Author interviews with Asma Ben Yahia, Resident Program Officer, National Democratic Institute, September 30, 2013, and Ghada Alghanim.

121 Author interview with Asma Ben Yahia.

ELIGIBILITY

Naturalization/Citizenship Status

There has been active discussion in the country about the citizenship status of the Bedoon community (see below). There has not been serious discussion of making the naturalization process easier for any of the millions of foreign residents of Kuwait, who are presumed to be in the country temporarily.

Kuwait is unique in that the great majority of people who live there are not citizens and are therefore not allowed to register to vote. Indeed, foreign nationals outnumber Kuwaiti citizens by at least a 2:1 ratio. It is not clearly discernible how many of these non-citizens are migrant workers who are truly temporarily in the country, Arabs from nearby states who have resettled in Kuwait, or people who have been living in Kuwait for many years, in some cases for generations, but have been unable to gain citizenship and hence voting rights. Even when one is able to naturalize in Kuwait, under the election law, he or she is not able to vote for another 20 years. Moreover, the number of foreigners living in Kuwait has increased in recent years.

According to press reports on Kuwaiti official statistics, “The total number of the Indian subcontinent’s nationals in Kuwait amount to 1.066 million people, which is almost equivalent to the number of Kuwaitis. Indians constitute the largest community, with 647,000 people who play a vital role in the labor market in industrial, service and business fields.” Hundreds of thousands more Pakistanis, Filipinos and Sri Lankans work in the country. Furthermore, “According to official figures, Egyptians are the largest Arab community in Kuwait, amounting to 453,000 people. They work in governmental departments, education and public services, medicine and other fields. An additional large segment of the Egyptian community are construction and maintenance workers.”¹²²

The Nationality Act was amended several times between 1960 and 1985, making access to nationality increasingly difficult.¹²³ Kuwait does not allow any non-Muslims to naturalize as citizens.¹²⁴

Bedoon

The term “Bedoon” (also spelled “bidoon” or “bidoun”) is a term used for stateless people in Kuwait as well as Bahrain, Iraq and the United Arab Emirates. Bedoon do not come from a particular ethnic group. There are some 100,000 Bedoon in Kuwait as a result of its particular citizenship policies. Although most of these people have been in Kuwait for many years, even generations, sometimes going back further than some Kuwaiti citizens, their lack of citizenship rights also means they cannot register to vote. According to Refugees International,

Over the last 12 years more than 80,000 applications for nationality have sat before the Kuwait government’s “Bedoon Committee.” Bedoon with Kuwaiti mothers are included in this queue because, as is the case in a number of countries in the region, Kuwait’s nationality law does not

122 Hamad al-Jasser, “2/3 Kuwait Population Foreign, Half from Indian Subcontinent,” *Al Hayat*, March 30, 2012.

123 *Without Citizenship: Statelessness, Discrimination and Repression in Kuwait*, Open Society Institute, May 2011, <http://www.opensocietyfoundations.org/reports/without-citizenship-statelessness-discrimination-and-repression-kuwait>, 5.

124 Open Society Institute, *Without Citizenship*, 10.

permit a woman to confer nationality on her children or spouse. On rare occasions, the committee has conferred nationality on some Bedoon, a few hundred in 2006, 2007 and 2008, and 1,800 in 2005. Since 2009 the Bedoon Committee has not conferred nationality on any bedoon.¹²⁵

Nevertheless, the government frequently makes promises to increase naturalizations. For almost three years, members of the Bedoon community have been publicly protesting their inability to acquire citizenship, most recently conducting a public march of 3,000 people in October 2013.¹²⁶

Under a 1962 law dating from Kuwaiti independence, acquisition of Kuwaiti nationality “is based on a number of criteria, most significantly residential ties to the country prior to 1920—the year of the Battle of Jahra, a victory over Saudi expansion, a very significant event in Kuwaiti history.”¹²⁷ For a variety of reasons, the people now considered Bedoon failed to register as citizens at the time of independence more than 50 years ago, and they and their descendants are now stateless. As a result of the 1962 law, there are actually classes of citizens in Kuwait and only the first two of five can register to vote—original Kuwaitis who were settled in the country before 1920 and descendants of these original Kuwaitis, if that descent is through the father. One can naturalize with some difficulty, but even then cannot register to vote until 20 years after naturalization. Naturalization decisions are entirely up to the Minister of Interior.¹²⁸ Moreover, in 1986, the government began to apply the Alien Residence Act to Bedoon, re-classifying them as “illegal residents.”¹²⁹

DOCUMENTATION

A national civil identity card and nationality certificate are required to register to vote. On election day, voters are required by law to present a voter card or, if one was not issued, a citizenship certificate.¹³⁰

Obtaining such identification seems not to be a problem for the few hundred thousand Kuwaiti-born citizens. Interestingly, for the municipal elections held on September 28, 2013, the Ministry of Interior issued temporary nationality documents, valid for one day only, for citizens who lost theirs so they could cast a ballot.¹³¹ It is unclear why this measure was implemented for this particular election.

Although most citizens in Kuwait evidently have documents, obtaining the documentation could be a challenge if one was not registered at birth. According to the Ministry of Interior, a person who was not registered at birth must personally apply to register and obtain a civil identity card by providing the

125 “Kuwait: Bidoon Nationality Demands Can’t Be Silenced,” Refugees International, March 5, 2012, <http://refugeesinternational.org/policy/field-report/kuwait-bidoun-nationality-demands-cant-be-silenced>.

126 “3,000 Bedoon Protest for Citizenship Rights,” Bedoon Rights, October 7, 2013, <http://www.bedoonrights.org/2013/10/07/3000-bedoon-protest-for-citizenship-rights/>.

127 Open Society Institute, *Without Citizenship*, 2.

128 Open Society Institute, *Without Citizenship*, 3-4.

129 Open Society Institute, *Without Citizenship*, 5.

130 Democracy Reporting International and Kuwait Transparency Society, *Final Report*, 42.

131 “MoI Completes Preparations for Municipal Elections,” *Kuwait Times*, September 25, 2013, http://news.kuwaittimes.net/moi-completes-preparations-municipal-elections/?cat=3&output=html&androidapp=1&webapp=1&cap=1&wizi_ver=2.0.9.

following documentation:¹³² a birth certificate or, if there is none, a special record from the Ministry of Interior; two photographs; fingerprints; proof of residence; a nationality certificate if the person was born outside of Kuwait or is over eighteen years old; and a letter of no objection from the Ministry of Interior if the applicant is an adult. A fee must be paid of two Kuwaiti Dinars (KD, approximately US\$9), plus 0.250 KD for the envelope.¹³³

To receive a birth certificate as an adult, the applicant must come in person to provide a civil ID, nationality certificate or passport. As a result, someone without a birth certificate could be caught in a loop in which he or she cannot obtain one because he or she does not have a civil ID, and cannot get a civil ID because there is no birth certificate. A fee of two KD is also required. Notably, to get a birth certificate for a newborn baby, the father or the grandfather must attend the issuance, and the parents must present a nationality certificate and their marriage contract. Similarly, one needs a civil ID to obtain a nationality certificate, potentially creating a similarly endless cycle for the few people for whom this might be an issue.

ISSUES UNDER INTERNATIONAL LAW

Eligibility

The deprivation of rights among the Bedoon in Kuwait is the most glaring transgression of international obligations and good practices. Though the issue of the Bedoon is far broader than voting, the ability to participate in public life is important. The problems start with the Nationality Law, which discriminates on the basis of religion, gender and ethnicity and defines citizenship to exclude many Kuwaitis. This makes it particularly difficult, if not impossible, for Bedoon to become citizens and attain the right to register and vote. More importantly, the ICCPR, by which Kuwait has agreed to abide, specifically says that a state cannot discriminate on the basis of social status, birth or other status when it comes to voting and participation. The treatment of the Bedoon would certainly give rise to questions as to whether it is violating the treaty. Because the Bedoon are not of a common ethnic or racial origin, other treaties, such as ICERD, do not apply, but its policies would certainly call into question Kuwait's compliance with the spirit of their ideals.

The other conspicuous transgression is the provision in the law that requires naturalized citizens to wait 20 years before they can register to vote. This too is contrary to ICCPR Article 25, which explicitly says, "Distinctions between those who are entitled to citizenship by birth and those who acquire it by naturalization may raise questions of compatibility with Article 25." A 20-year waiting period is a significant distinction.

Moreover, the ICCPR says, "any conditions which apply to the exercise of the rights protected by Article 25 should be based on objective and reasonable criteria." It is difficult to surmise the justification for a 20-year waiting period after naturalization, making its reasonableness questionable. It is particularly conspicuous given that the large majority of people in Kuwait are not citizens and this has been the case

132 "First Time Registration of Kuwaiti Individuals," Kuwait Government Online, accessed May 8, 2015, http://www.e.gov.kw/PACI_en/Pages/ServiceContent/521KuRegistrationForTheFirstTime.aspx#.

133 Kuwait Government Online, "First Time Registration."

for some time. The norm across the world is to grant citizens voting rights at the time of naturalization. This provision also raises questions under ICERD, as naturalized citizens are likely to be of a different ethnic origin than “original Kuwaitis.”

Apropos of the situation of the Bedoon and naturalized citizens, the UN Human Rights Commission has stated quite definitively with reference to Kuwait, “The State party should confer its nationality on a non-discriminatory basis and ensure that those who are granted Kuwaiti nationality are treated equally with other Kuwaiti citizens with regard to voting rights (Articles 25 and 26).”¹³⁴

Although it is not unheard of, it is also very unusual for the age of registration eligibility to be 21. The norm internationally is for the age of eligibility to be 18.¹³⁵ It has been noted that, “It is not clear if there are objective reasons for this voting age, because Kuwaitis can marry, drive cars and are criminally liable at the age of 18.”¹³⁶ The policy of excluding members of the military and police from eligibility is also increasingly considered in contradiction to Article 25’s mandate for universal suffrage and good international practice.¹³⁷

Election Management

General Comment 25 of the ICCPR specifically states in paragraph 20 that “An independent electoral authority should be established to supervise the electoral process and to ensure that it is conducted fairly, impartially and in accordance with established laws which are compatible with the Covenant.” Most of the time, Kuwait’s elections have been run directly by the government through the Ministry of Interior. Even in 2012, the independent election committee may not have been fully independent. Elections run by the persons in power with an interest in the outcome are not in keeping with international obligations.

Lack of Transparency

The voter registration process in Kuwait is opaque even to Kuwaitis. There is a lack of clarity around how the voter registration list is compiled and maintained.

Under Article 19 of the ICCPR and numerous other international and regional agreements, citizens have the right to seek, receive and impart information. UNHCR’s General Comment 34 regarding Article 19 is quite explicit about the responsibility of government agencies in this regard: “To give effect to the right of access to information, States parties should proactively put in the public domain Government information of public interest.” In conjunction with Article 25, citizens clearly have a right to know how the registration system works so that they can ensure they are able to fully and effectively exercise their right to vote and participate in public life.

In order to comply more fully with its international obligations, Kuwait officials need to do more to educate the public about the voters list and how it is compiled and maintained.

¹³⁴ Democracy Reporting International and Kuwait Transparency Society, *Final Report*, 31.

¹³⁵ See “What Is the Legal Voting Age in the National Elections?” The ACE Project, accessed May 8, 2015, <http://aceproject.org/epic-en/CDMap?question=VR>.

¹³⁶ Democracy Reporting International and Kuwait Transparency Society, *Final Report*, 31.

¹³⁷ *Final Report: General National Congress Elections in Libya*, The Carter Center, May 6, 2014, 27; *Free and Fair Elections: International Law and Practice*, Inter-Parliamentary Union, 2006, 128.