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The Kuwaiti National Assembly: A De Facto Boys' Club

*Fatemah Albader**

I. INTRODUCTION

Kuwait's most recent elections for parliament – the Kuwaiti National Assembly – took place in December 2020. Twenty-nine of the 326 candidates were women, vying for seats in the 50-member legislature.¹ Yet not one woman was elected, which was viewed as a blow to the advancement of women in the Kuwaiti society.² In 2005, women obtained the right to vote in Kuwait. Still, the country lags behind in electing women to seats in government, stemming from conservative cultural beliefs that, *inter alia*, women are dependent on men.³ According to the United Nations Committee on the Elimination of Discrimination against Women, the most significant factors that inhibit the participation of women in public life include cultural values, religious beliefs, and stereotypes which have perpetuated the confinement of women to the private sphere thereby excluding them from the public sphere.⁴

Throughout Kuwait's history, only five women have been elected to parliament, including four in 2009,⁵ and one in both 2012 and 2016.⁶ Safa Al-Hashem, the only woman to be elected to parliament in 2012 and 2016,

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1. Jennifer Holleis, *Kuwait's New All-Male Parliament Is a Blow for Women's Rights*, DW (Dec. 10, 2020), <https://www.dw.com/en/kuwaits-new-all-male-parliament-is-a-blow-for-womens-rights/a-55897172>.

2. *Id.*

3. *Id.*

4. Rep. of the Committee on the Elimination of Violence Against Women on its Sixteenth Session, U.N. Doc. A/52/38/Rev.1 (1997) ([hereinafter General Recommendation No. 23].

5. Muhamad S. Olimat, *Women and the Kuwaiti National Assembly*, 12(3) J. INT'L WOMEN'S STUD. 76, 76 (2011); *Kuwait Votes for First Female MPs*, BBC, May 17, 2009, <http://news.bbc.co.uk/2/hi/8053088.stm>.

6. *Kuwait Elections: Only female MP Safa Al-Hashem Loses Seat*, BBC (Dec. 7, 2020), <https://www.bbc.com/news/world-middle-east-55212642>.

was among the twenty-nine women who lost the race in 2020.⁷ Since the unprecedented number of seats won by women in the 2009 election, representation of women in the National Assembly has dwindled. Thus, Kuwait ranked 176 out of 193 States for its low percentage of women in parliament based on recent statistics from the United Nations Entity for Gender Equality and the Empowerment of Women (UN Women). Given the lack of female representation in parliament, it is no surprise that Kuwait ranked at the lower end. The time is ripe for Kuwait to establish mechanisms for adequate representation of women in the National Assembly. One possible reform includes the adoption of a gender quota system, where women are guaranteed a certain number of seats. Another possible reform includes establishing a party system, which is not prohibited by the Kuwaiti Constitution but prohibited by Kuwait's Electoral Law.⁸

This article will advocate for the temporary adoption of a gender quota system because it is nationally and internationally lawful and is necessary to jumpstart the process for adequate representation of women in government. Thus, without establishing a quota system, this article argues that Kuwait would be in violation of its international law obligations under both the International Covenant on Civil and Political Rights (ICCPR) and the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), two international treaties to which Kuwait is a State Party. Moreover, should Kuwait continue on its current path, then the State would also be in violation of Article 29 of Kuwait's Constitution, which provides for equality and prohibits discrimination based on gender. While quotas are inherently discriminatory by nature, they are required to correct the unjust discrimination that flourished for so long in Kuwait. Quotas become necessary to empower women and to advance society as a whole, as explicitly recognized by international law treaties concerning discrimination against women. In arguing for the temporary adoption of a quota system, this article is divided into four parts. Part I provides an overview of the Kuwaiti National Assembly and the plight of women to obtain positions in all aspects of government. Part II discusses the legality of and need for gender quotas under international law. Part III discusses the legality of gender quotas under Kuwaiti law. Finally, the article explores the effectiveness of electoral gender quotas and concludes that Kuwait should adopt a gender quota to redress de facto discrimination of women in elections.

II. WOMEN AND THE KUWAITI NATIONAL ASSEMBLY

The Kuwaiti National Assembly makes up the legislative organ of the

7. *Id*; *Kuwait Delivers All-Male Parliament*, DW (Dec. 6, 2020), <https://www.dw.com/en/kuwait-election-delivers-all-male-parliament/a-55838213>.

8. MARWA SHALABY, WOMEN'S POLITICAL REPRESENTATION IN KUWAIT: AN UNTOLD STORY 18 (James A. Baker III Institute for Public Policy of Rice University 2015).

Kuwaiti government, tasked with enacting laws for the State.⁹ The National Assembly is made up of fifty directly elected members and up to fifteen appointed cabinet ministers, each serving four-year terms unless dissolved by the Ruler of Kuwait – the Amir.¹⁰ Cabinet ministers are appointed by the Amir and may consist of elected individuals serving in the National Assembly, with at least one cabinet minister appointed from the directly elected members.¹¹ No political parties are allowed in Kuwait.¹² Candidates vying for seats in the National Assembly run in their individual capacities although formations of unrecognized political groupings are somewhat prevalent.¹³

Women were granted the right to vote and run for office for the first time in 2005,¹⁴ forty- three years after Kuwait first gained independence. The bill that granted women these rights was a surprise since a similar bill was rejected by a twenty-nine to four vote with abstentions only a few weeks earlier.¹⁵ Both Tribal and Islamist parliament members opposed women's right to vote and run for office grounded on baseless religious justifications.¹⁶ Moreover, liberal members opposed these rights because they did not want to lose their seats to women.¹⁷ Nonetheless, the later bill granting women the right to vote and stand for elections passed, with the caveat that “[w]omen's political participation abide by Islamic law,” which was enough to satisfy Islamist MPs.¹⁸ Three years later in 2009, Kuwait witnessed unprecedented success when four women were elected to the National Assembly.¹⁹ Since then, there has been significantly low representation of female members in the National Assembly, most of whom reached the National Assembly through appointment as cabinet ministers, although in the most recent appointment in December 2020, only one female was appointed Cabinet

9. KUWAIT [CONSTITUTION] Nov. 11, 1962, arts. 51, 79.

10. KUWAIT [CONSTITUTION] Nov. 11, 1962, arts. 56, 80, 83, 107; ASSESSMENT OF THE ELECTORAL FRAMEWORK 18 (Democracy Reporting International and Kuwait Transparent Society, 2008); SHALABY, *supra* note 8, at 6.

11. KUWAIT [CONSTITUTION] Nov. 11, 1962, arts. 56, 80; ASSESSMENT OF THE ELECTORAL FRAMEWORK, *supra* note 10.

12. ASSESSMENT OF THE ELECTORAL FRAMEWORK, *supra* note 10, at 7.

13. *Id.* at 14.

14. SHALABY, *supra* note 8, at 3, 12; Amendment to Article I of Election Law No. 35/1962 (2005).

15. SHALABY, *supra* note 8, at 14.

16. SHALABY, *supra* note 8, at 14.

17. *Id.*

18. *Id.*

19. OLIMAT, *supra* note 5.

Minister.²⁰ In total, since 2006 only six women won seats in parliament.²¹ In the most recent election that took place in December 2020, twenty-nine female candidates ran for office, but not one succeeded.²² Thus, among sixty-five members of parliament, there is only one female. This is reflective of the cultural disparity that exists to this day in Kuwait.

Kuwait, being a conservative Arab society, adheres strongly to custom and tradition that is “mostly unsupportive of women’s active involvement in politics.”²³ Women are viewed as having a role only in the private household, and not the public sphere.²⁴ Thus, a saying in Arab countries: “Women belong to their homes and husbands only.”²⁵ Even in 2021, these gender stereotypes hold as much weight as they did centuries ago. Arab countries are male-oriented, and Kuwait is no exception.²⁶ Views that a woman’s role is strictly confined to the household, coupled with low levels of confidence in the ability of women to serve as political leaders has contributed to the low level of participation of women in government.²⁷ Women have been encouraged to vote by their male relatives because their male counterparts see it as a second vote for themselves.²⁸ These stereotypes have such a stronghold that women often continue to vote for men, rather than for other women.²⁹ This lack of solidarity and coordination among women has contributed even further to their negative participation in politics.³⁰ For this reason, the Committee on the Elimination of Discrimination against Women recommends the prevention of any practices that aim to discourage women from voting or that allow men to influence the votes of women.³¹

To remedy past and present discrimination against women in politics,

20. ASSESSMENT OF THE ELECTORAL FRAMEWORK, *supra* note 10, at 45; Yasmena Al Mulla, *First Cabinet of Ministers Appointed Under New Emir*, GULF NEWS (Dec. 14, 2020), <https://gulfnews.com/world/gulf/kuwait/first-cabinet-of-ministers-appointed-under-new-emir-1.75893361>; *Who is in Kuwait’s Post-Election Cabinet?*, NATIONAL NEWS (Dec. 14, 2020), <https://www.thenationalnews.com/world/gcc/who-is-in-kuwait-s-post-election-cabinet-1.1128374>.

21. *Kuwaitis Wonder Why Even the Women Voted for Men*, ARAB WEEKLY (Dec. 7, 2020), <https://theArabweekly.com/kuwaitis-wonder-why-even-women-voted-men>.

22. Holleis, *supra* note 1.

23. OLIMAT, *supra* note 5, at 91.

24. *Id.*

25. Bassam Sebti, *5 Arab Women Who Are Breaking Down Stereotypes and Building Their Countries*, WORLD BANK BLOGS (Feb. 29, 2016), <https://blogs.worldbank.org/voices/5-Arab-women-breaking-down-stereotypes-building-their-countries>.

26. OLIMAT, *supra* note 5, at 91.

27. SHALABY, *supra* note 8, at 16.

28. TOVA WANG, VOTER REGISTRATION IN THE MIDDLE EAST AND NORTH AFRICA: SELECT CASE STUDIES 47 (National Democratic Institute for International Affairs May 2015).

29. OLIMAT, *supra* note 5, at 92.

30. SHALABY, *supra* note 8, at 16; *Kuwaitis Wonder Why Even the Women Voted for Men*, *supra* note 21.

31. General Recommendation No. 23, *supra* note 4, at ¶ 20(c).

some have called for the implementation of a quota system, stating that such a system is necessary given the lack of female representation in the National Assembly.³² To defeat cultural stereotypes pertaining to women not only in Kuwait, but the entire Gulf region, the government must mandate a quota system and commit to increasing female representation in government.

In July 2020, Kuwait appointed its first cohort of female judges that consisted of eight Kuwaiti female judges.³³ The appointment was surprising given that judges in Kuwait have historically consisted of Kuwaiti and, uniquely, non-Kuwaiti males.³⁴ Thus, the time is ripe for Kuwait to commit to similar standards in the legislative function. One possible mechanism for Kuwait to prevail is through the establishment of a quota system, which is not only lawful under international law, but required for Kuwait to comply with its international law obligations.

III. THE LEGALITY OF AND NEED FOR GENDER QUOTAS UNDER INTERNATIONAL LAW

The right of women to participate in politics is governed by several international law treaties, including the International Covenant on Civil and Political Rights (ICCPR) and the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), both of which are binding on Kuwait as a State Party.³⁵ The ICCPR reflects the values enshrined in the Universal Declaration of Human Rights (UDHR), which is considered customary international law.³⁶ Article 25 of the ICCPR recognizes and protects, *inter alia*, the rights to take part in the conduct of public affairs, to vote, and to be elected.³⁷ This right may be derogated from,

32. *Kuwaitis Wonder Why Even the Women Voted for Men*, *supra* note 21.

33. *Kuwait Just Appointed 8 Female Judges in a Historic First*, SCENE ARABIA (July 5, 2020), <https://scenearabia.com/Life/Kuwait-Just-Appointed-8-Female-Judges-in-a-Historic-First>.

34. Ahmed A. Khedr, *UPDATE: Kuwait Legal System and Research*, NYU L. GLOB. (June 2019), <https://www.nyulawglobal.org/globalex/Kuwait1.html>.

35. International Covenant on Civil and Political Rights, Dec. 16, 1966, 999 U.N.T.S. 171 [hereinafter ICCPR]; Convention on the Elimination of All Forms of Discrimination Against Women, Dec. 18, 1979, 1249 U.N.T.S. 13 [hereinafter CEDAW]; *Status of International Covenant on Civil and Political Rights*, UNITED NATIONS TREATY COLLECTION, https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-4&chapter=4&clang=_en (last visited Dec. 19, 2020) [hereinafter *Status of ICCPR*]; *Status of Convention on the Elimination of All Forms of Discrimination Against Women*, UNITED NATIONS TREATY COLLECTION, https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg_no=IV-8&chapter=4&lang=en (last visited Dec. 19, 2020) [hereinafter *Status of CEDAW*].

36. DR. NILS MEYER-OHLENDORF & AVERY DAVIS-ROBERTS, *STRENGTHENING INTERNATIONAL LAW TO SUPPORT DEMOCRATIC GOVERNANCE AND GENUINE ELECTIONS* 28 (Democracy Reporting International and the Carter Center 2016).

37. ICCPR, *supra* note 35, art. 25; Human Rights Committee General Comment No. 25:

subject to certain criteria, only in times of public emergency threatening the life of the nation. Similarly, Article 7 of the CEDAW recognizes the equal right of women to participate in public life, including equal rights to vote and be elected.³⁸ Kuwait has not made any relevant reservations to the ICCPR or to the CEDAW concerning the right of women to participate in politics.³⁹ Thus, Article 25 of the ICCPR and Article 7 of the CEDAW apply in their entirety.

Turning first to the ICCPR, CCPR General Comment No. 25 of the Human Rights Committee interpreting Article 25 of the ICCPR urges States Parties to comply fully with the obligations outlined in Article 25.⁴⁰ The General Comment requires States Parties to the Covenant “to adopt such legislative and other measures as may be necessary to ensure that citizens have an effective opportunity to enjoy the rights it protects.”⁴¹ All citizens are protected under Article 2 of the ICCPR with no distinctions permitted based on, *inter alia*, sex.⁴² Moreover, Article 3 specifically prohibits discrimination based on sex, calling for “the equal right of men and women to the enjoyment of all civil and political rights set forth in the [ICCPR].”⁴³ While derogation from these provisions, in times of public emergency threatening the life of the nation, is permitted under the ICCPR, such derogation can never constitute discrimination.⁴⁴ This principle of non-discrimination must be respected at all times.⁴⁵ Thus, States Parties must ensure, at all times, the equal representation of women in politics.

Specific to public service, the ICCPR ensures equal rights in the appointment and promotion of citizens in public service positions.⁴⁶ In carrying out this right, the ICCPR permits, where appropriate, the implementation of affirmative measures to guarantee equal access to public service positions.⁴⁷ Affirmative measures include the use of quotas.⁴⁸ This is

The Right to Participate in Public Affairs, Voting Rights and the Right of Equal Access to Public Service (Art. 25), U.N. Doc. CCPR/C/21/Rev.1/Add.7 (1996) [hereinafter General Comment No. 25].

38. General Recommendation No. 23, *supra* note 4.

39. Before 2005, Kuwait had reservations in place denying women the right to vote. After women obtained the right to vote, Kuwait subsequently removed the related reservations. *See Status of ICCPR, supra* note 35; *Status of CEDAW, supra* note 35.

40. General Comment No. 25, *supra* note 37.

41. *Id.* at ¶ 1.

42. *Id.* at ¶ 2; ICCPR, *supra* note 35, art. 2(1).

43. ICCPR, *supra* note 35, art. 3.

44. *Id.* at art. 4.

45. Human Rights Committee General Comment No. 18: Non-Discrimination, U.N. Doc. CCPR/C/21/Rev.1/Add.1 (1989) [hereinafter General Comment No. 18].

46. General Comment No. 18, *supra* note 45, at ¶ 23; ICCPR, *supra* note 35, at Art. 25(c).

47. General Comment No. 25, *supra* note 37, at ¶ 23.

48. PASTOR ELIAS M. MARTÍNEZ, AFFIRMATIVE ACTION MEASURES OR SPECIAL MEASURES: FOR REDRESSING HISTORICAL INJUSTICES AND STRUCTURAL DISCRIMINATION AGAINST AFRO-DESCENDANTS 1 (Geneva, Mar. 2011).

expressly recognized by CCPR General Comment No. 18 of the Human Rights Committee, which states that the ICCPR “sometimes requires States Parties to take affirmative action in order to diminish or eliminate conditions which cause or help to perpetuate discrimination prohibited by the Covenant.”⁴⁹ Actions taken to correct the conditions that prevent or impair the equal enjoyment of human rights include the temporary grant of special treatment to remedy such discrimination.⁵⁰

By allowing such differentiation under the Covenant, the Human Rights Committee stated that “not every differentiation of treatment will constitute discrimination, if the criteria for such differentiation are reasonable and objective and if the aim is to achieve a purpose which is legitimate under the Covenant.”⁵¹ Thus, the ICCPR does not prohibit, and, sometimes necessitates, the use of quotas where appropriate to ensure equal access to the rights granted in the ICCPR. Therefore, under international law, Kuwait is obligated to ensure that women are equally represented in politics and, in current circumstances, to impose affirmative measures like the use of quotas to remedy the past and current discrimination that has flourished for so long.

In addition to the ICCPR, the CEDAW also necessitates the use of gender quotas, to an even further extent to ensure the rights guaranteed by the CEDAW.⁵² Article 4 of the CEDAW expressly permits the adoption of temporary special measures that are “aimed at accelerating de facto equality between men and women.”⁵³ Such measures will not constitute discrimination in violation of the CEDAW.⁵⁴ Moreover, Article 5 requires States Parties to take appropriate measures to eliminate any existing prejudices, customary practices, and all other practices that are based on the inferiority of either sex or on stereotypes.⁵⁵ Arguably, preexisting stereotypes and inferiority statuses benefitting men are why women have not succeeded in obtaining elected positions in Kuwait. Thus, Kuwait, as a State Party to the CEDAW, is obligated to take appropriate measures, such as the implementation of a quota system, to remedy such discrimination. Article 3 obliges Kuwait to take all appropriate measures required to ensure the full and equal development and advancement of women in the enjoyment of the rights under the Covenant.⁵⁶

General Recommendation No. 25 of the CEDAW on temporary special measures require States Parties to respect, protect, promote, and fulfil the right of non-discrimination outlined in the CEDAW and to eliminate all

49. General Comment No. 18, *supra* note 45, at ¶ 10.

50. *Id.*; PASTOR ELIAS M. MARTÍNEZ, *supra* note 48, at 5.

51. General Comment No. 18, *supra* note 45, at ¶ 10.

52. CEDAW, *supra* note 35, Art. 4.

53. *Id.*

54. *Id.*

55. *Id.* at art I, Art. 5(a).

56. *Id.* at Part I, Art. 3.

forms of discrimination that may exist, whether de jure or de facto.⁵⁷ States Parties must “improve the de facto position of women through concrete and effective policies and programmes.”⁵⁸ The General Recommendation describes an effective strategy as one that considers and aims to destroy prevailing stereotypes and overcome underrepresentation of women across all fields including politics.⁵⁹ Eliminating de jure discrimination is insufficient to achieve the full and equal participation of women in politics.⁶⁰

One established way to counter and eliminate de jure or de facto discrimination of women is through the adoption of a temporary special measure, taken to correct past and present discrimination against women.⁶¹ In the view of the CEDAW Committee, measures imposed by States Parties are necessary to accelerate the elimination of cultural practices and stereotypes that are disadvantageous to women so as to achieve the equal participation of women in all fields, including politics.⁶² The Committee has further expressed that while temporary special measures are often undertaken to correct past discrimination, this obligation exists irrespective of whether or not there has been past discrimination.⁶³ The only requirement is for a temporary measure to be undertaken, as the name suggests, for a limited duration of time in response to a concrete problem and must be discontinued when the desired goals have been met and sustained over time.⁶⁴ The CEDAW Committee expressly states that temporary measures may include, *inter alia*, preferential treatment and quota systems, taking into consideration, in the context of election or appointment to political office, factors such as qualification, merit, democratic fairness and electoral choice.⁶⁵

Thus, where necessary and appropriate for the achievement of the rights outlined in the CEDAW, States Parties are obligated to adopt special temporary measures to accelerate the achievement of equality for women.⁶⁶ Moreover, CEDAW expressly imposes accountability on States Parties for action by private actors, not just government actors. States Parties are therefore prohibited from justifying non-implementation of temporary measures on the basis that external forces, such as predominant political forces, are the reason for such discrimination.⁶⁷

57. CEDAW General Recommendation No. 25, U.N. Doc. HRI/GEN/1/Rev.7 (2004) [hereinafter General Recommendation No. 25].

58. *Id.* at ¶ 7.

59. *Id.* at ¶ 8, 9.

60. General Recommendation No. 23, *supra* note 4, at ¶ 15.

61. General Recommendation No. 25, *supra* note 57, at ¶ 14-15.

62. *Id.* at ¶ 18, 38.

63. *Id.*

64. *Id.* at ¶ 20.

65. *Id.* at ¶ 22-23; General Recommendation No. 23, *supra* note 4, at ¶ 15.

66. General Recommendation No. 25, *supra* note 57, at ¶ 24.

67. General Recommendation No. 25, *supra* note 57, at ¶ 29, 31; CEDAW, *supra* note 35,

Other international law instruments reflect the importance of equality among men and women. In addition to the ICCPR, the CEDAW, and the UDHR, the United Nations Charter, which is binding on Kuwait as a State Party, affirms the value of equal rights between the sexes.⁶⁸ The Beijing Declaration and Platform for Action, while not binding on Kuwait, stresses the importance of ensuring that de facto discrimination against women does not persevere in all aspects, including participation in decision-making and access to power.⁶⁹ As the Beijing Declaration identified, women make up a significantly low proportion of elected legislators.⁷⁰ Thus, the promotion of women in politics has been identified as a critical area of concern that States must address in their strategic action plans.⁷¹ As endorsed by the Beijing Platform, if women's participation in politics, instead, represented a critical mass of 30 to 35 percent, research shows there would be a positive impact on politics.⁷² Given that women's representation in Kuwait's National Assembly currently constitutes 1.5 percent (with one woman serving in the National Assembly through appointment), quotas are imperative to achieve a critical mass in Kuwait.

Moreover, the United Nations Convention on the Political Rights of Women, which preceded the CEDAW, expressly recognized women's right to participate in politics as equal to men.⁷³ The Convention has 123 States Parties; interestingly, none of the countries belonging to the Gulf Region,⁷⁴ including Kuwait, is a Party.⁷⁵ The rights outlined in the Convention were later incorporated into the CEDAW,⁷⁶ to which Kuwait is a State Party without any relevant reservations. Thus, nothing in the Convention prevents Kuwait from becoming a State Party.

The Convention consists of four substantive provisions. Article 1 grants women equal rights to vote.⁷⁷ Prior to 2005, Kuwait was unable to become a Party because women had not obtained the right to vote. Now, however, no conflict exists between national and international law in that regard. The

at art. 2.

68. U.N. Charter Preamble, art. 1 § 3.

69. Report of the World Conference on Human Rights, *Beijing Declaration and Platform for Action*, 3, 91, U.N. (Sept. 15, 1995) [hereinafter Beijing Declaration]; General Recommendation No. 23, *supra* note 4, at ¶ 16.

70. Beijing Declaration, *supra* note 69, at 12.

71. *Id.* at 16.

72. General Recommendation No. 23, *supra* note 4, at ¶ 16.

73. Convention on the Political Rights of Women, Mar. 31, 1953, 193 U.N.T.S. 135 (Mar. 31, 1953).

74. The Gulf Region Consists of the Following Persian Gulf States: Kuwait, Oman, Qatar, Iraq, Bahrain, Saudi Arabia, and the United Arab Emirates.

75. Status of Convention on the Political Rights of Women, U.N.T.S. (Mar. 31, 1953), https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg_no=XVI-1&chapter=16&lang=en (last visited Dec. 20, 2020).

76. Introduction to CEDAW, *supra* note **Error! Bookmark not defined.**

77. Convention on the Political Rights of Women, *supra* note 73, at art. 1.

same is true with the remaining provisions. Article 2 grants women the right to be elected on equal terms with men.⁷⁸ Likewise, Article 3 grants women the right to hold public office on equal terms with men.⁷⁹ In case there are any restrictions concerning specifically Article 3, Kuwait is free to make reservations under the Convention so long as they do not defeat the Convention's objective or purpose.⁸⁰ Denmark, for example, has made a reservation to Article 3, insofar that it does not apply to military appointments nor does it grant women the right to act as head of recruitment services or to serve on recruitment boards.⁸¹ Similarly, Germany has a similar reservation that Article 3 of the Convention does not apply to service in the armed forces.⁸² Fiji and the United Kingdom have a reservation prohibiting Article 3 from, *inter alia*, applying to succession to the Crown and to certain offices of a ceremonial nature.⁸³ None of these reservations have been disputed as incompatible with the treaty's objective and purpose.⁸⁴ Thus, where certain positions are constitutionally open only to men, such as the position of Heir Apparent to the Amir, Kuwait can make similar reservations to ensure that the Convention will not apply in these cases.⁸⁵ Overall, to show its commitment to equality, Kuwait should consider ratifying the Convention to further guarantee the protection of women in politics.

In addition to international law, the equal right of women in politics is governed by applicable regional instruments. The Arab Charter on Human Rights, which is binding on Kuwait as a State Party,⁸⁶ reinforces every citizen's right to political participation.⁸⁷ In addition to the general provision of equality among men and women, the Arab Charter guarantees equal rights in standing for election and serving in public office.⁸⁸ As with the ICCPR and the CEDAW, no restrictions are allowed except for "those which are provided by law and are necessary in a democratic society in the interests of national security or public safety, public health or morals or the protection

78. *Id.* at art. 2.

79. *Id.* at art. 3.

80. *Id.* at art. 7; Alain Pellet, *The ILC Guide to Practice on Reservations to Treaties: A General Presentation by the Special Rapporteur*, 24(4) EUROPEAN J. INT'L L. 1061, 1078 (2013).

81. *Status of Convention on the Political Rights of Women*, *supra* note 75.

82. *Id.*

83. *Status of Convention on the Political Rights of Women*, *supra* note 75.

84. *See id.*

85. KUWAIT [CONSTITUTION] Nov. 11, 1962, art. 4.

86. *Law No. 84 of 2013 approving the Arab Human Rights Charter*, INTERNATIONAL LABOUR ORGANIZATION [ILO] (June 25, 2013), https://www.ilo.org/dyn/natlex/natlex4.detail?p_lang=en&p_isn=97240&p_country=KWT&p_count=291&p_classification=01.05&p_classcount=1 (last visited Dec. 28, 2020).

87. Arab Charter on Human Rights, art. 24, *opened for signature* May 22, 2004, (entered into force March 16, 2008).

88. *Id.* at arts. 3(3), 11, 24(3)-(4).

of the rights and freedoms of others.”⁸⁹ To advance women right’s in politics in accordance with the Arab Charter, the use of a quota, as a special temporary measure, is lawful and necessary to rectify past and current discrimination against women. The CEDAW makes clear that the use of quotas should not be considered discriminatory when used to ensure greater equality for women.⁹⁰ After the situation is addressed, the quota may be removed.⁹¹ Thus, given current circumstances, the use of quotas to ensure Kuwaiti women seats in the National Assembly is lawful under international law.

IV. THE LEGALITY OF AND NEED FOR GENDER QUOTAS UNDER KUWAITI LAW

There is nothing in the Kuwaiti Constitution that prohibits the use of legislated electoral quotas. Yet, arguments are often made that quotas are inherently discriminatory and therefore unconstitutional. Article 29 of the Kuwaiti Constitution guarantees equality to all citizens, regardless of gender, origin, language, or religion.⁹² In one aspect, those who oppose quotas may rely on this provision to argue that quotas are inherently discriminatory.” However, as discussed in the previous section, binding international law instruments such as the CEDAW have settled this tension, stating that: “States parties have an obligation to ensure that temporary special measures are clearly designed to support the principle of equality and therefore comply with constitutional principles which guarantee equality to all citizens.”⁹³ Thus, temporary special measures that take the form of a quota and that comply with the CEDAW would not violate the Kuwaiti Constitution. Indeed, quotas may be required to rectify discrimination against a constitutionally protected class like women.

This is further supported by Article 8 of the Kuwaiti Constitution, which guarantees “equal opportunity to all citizens.”⁹⁴ Currently, while equal opportunity to participate in politics exists *de jure*, it does not exist *de facto*. In fact, in a survey undertaken in Kuwait discussing the implementation of a quota system, a study participant stated: “The only way women can make it here in Kuwait is through a list and a quota. Otherwise, they’ll never make it to the National Assembly.”⁹⁵ Thus far, this statement has proven true. The only current way to defeat barriers that prevent equal representation of

89. *Id.* at art. 24(7).

90. MEYER-OHLENDORF & DAVIS-ROBERTS, *supra* note 36, at 34.

91. *Id.*

92. KUWAIT Nov. 11, 1962, art. 29.

93. General Recommendation No. 23, *supra* note 4, at ¶ 15.

94. KUWAIT Nov. 11 1962, art. 8.

95. YASMINA SARHROUNY & DRISS CHOUKRI, KUWAIT: CITIZENS’ PERCEPTIONS OF WOMEN IN POLITICS 23 ((C. Camille Edmond & Leigh Catherine Miles eds., National Democratic Institute for International Affairs and People’s Mirror 2007).

women and safeguard the women's right to serve in government is to mandate a quota system. Of course, once that is achieved, the use of quotas will no longer be necessary and can therefore be removed.

V. CONCLUSION

Electoral gender quotas have been introduced in almost half of all States worldwide.⁹⁶ A further 40 to 50 States' political parties utilize voluntary party quotas.⁹⁷ European Countries such as Italy, France, and Portugal have passed gender quota laws to increase women's representation in politics.⁹⁸

Within the Gulf region, the United Arab Emirates recently introduced a mandatory quota system, requiring that 50 percent of its 40-member parliament constitute women.⁹⁹ After the mandated quota went into effect, the number of women in parliament increased from seven to 20.¹⁰⁰ To fulfil the quota requirement, seven of those women were elected, and 13 more were appointed.¹⁰¹ Similarly, the government of Saudi Arabia reserves 20 percent of seats on the Shura Council, formerly constituting an all-male consultative body, for women.¹⁰² Thus, women are now guaranteed at least 30 of the 150 available seats, paving the way for further reform in government.¹⁰³

While gender quotas have led to rapid increases in the representation of women to electoral bodies in some countries, gender quotas have been less successful in others.¹⁰⁴ To ensure its success, studies suggest that gender quotas must be compatible with the electoral system in use in each particular country.¹⁰⁵ Thus, a country implementing quota systems must ensure that the design of the quota system complies with the electoral framework of that country. In Kuwait, legislated quotas would prove more beneficial than voluntary party quotas, given that there are no official political parties in

96. DRUDE DAHLERUP & LENITA FREIDENVALL, ELECTORAL GENDER QUOTA SYSTEMS AND THEIR IMPLEMENTATION IN EUROPE 12 (European Parliament Directorate-General for Internal Policies 2011); Ana C. Weeks, *Why Are Gender Quota Laws Adopted by Men? The Role of Inter- and Intraparty Competition*, 51(14) COMPAR. POL. STUD. 1935, 1938 (2018); Anne Peters & Stefan Suter, *Representation, Discrimination, and Democracy: A Legal Assessment of Gender Quotas in Politics*, in GENDER EQUALITY: DIMENSIONS OF WOMEN'S EQUAL CITIZENSHIP 174, 176 (Linda C. McClain & Joanna L. Grossman, eds., 2009).

97. DAHLERUP & FREIDENVALL, *supra* note 96.

98. Weeks, *supra* note 96.

99. *Gender Quotas Database: United Arab Emirates*, IDEA, <https://www.idea.int/data-tools/data/gender-quotas/country-view/43/35> (last visited Dec. 28, 2020).

100. *Id.*

101. *Id.*

102. *Gender Quotas Database: Saudi Arabia*, IDEA, <https://www.idea.int/data-tools/data/gender-quotas/country-view/256/35> (last visited Dec. 28, 2020).

103. *Id.*

104. DAHLERUP & FREIDENVALL, *supra* note 96, at 10.

105. *Id.* at 11.

Kuwait. To ensure the success of a legislated quota, Kuwait must require institutional bodies to oversee the implementation and adoption of the quota.¹⁰⁶

In conclusion, to defeat prevailing norms that participation in political affairs is for men and not women, and to jumpstart the participation of women in public and political life, the government of Kuwait must consider the adoption of a quota system to ensure equal representation of women in politics. A quota system would comply with both national and international law, and, in certain circumstances, it is required by the various international law instruments protecting against discrimination of women. Under the CEDAW, Kuwait is obligated to impose special temporary measures to eliminate discrimination of women in politics and to accelerate the achievement of equality among women. The Beijing Platform recognized that “women in politics and decision-making positions in governments and legislative bodies contribute to redefining political priorities, placing new items on the political agenda that reflect and address women’s gender-specific concerns, values and experiences, and providing new perspectives on mainstream political issues.”¹⁰⁷ States cannot be considered democratic, without a government that proportionately represents the people. Thus, the time is ripe for Kuwait to consider the implementation of constitutionally- and internationally-compliant mechanisms, like quotas, to increase representation of women consistent with democratic standards.

106. *Id.* at 53.

107. Beijing Declaration, *supra* note 69, at 79.