

# *The Journal of* Law, Social Justice & Global Development

## The Relationship between Development and Gender Equality: in search of new perspectives on sustainable development through the lens of the 1959 Kuwaiti Nationality Law

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### Article Information

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**Issue 21: 2018:** *Special Issue* Gender and Development, ed. Ann Stewart.

**This article was published on:** 6<sup>th</sup> June 2018.

**Keywords:** Kuwait, nationality, citizenship, gender equality, sustainable development goals.

**Journal ISSN:** 1467-0437

### Abstract

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The Kuwait Nationality Law 1959 denies women the same rights as men to pass on their Kuwaiti citizenship to their husbands and children. This article draws on empirical research carried out in Kuwait. It seeks to explain Kuwaitis' attitudes towards their Nationality Law within the context of feminist literature. The main argument put forward is that, not only is the Nationality Law unconstitutional, but if the Kuwaiti Government is serious about attaining the UN's Sustainable Development Goals—especially Goal 5—then it ought to immediately consider addressing the issue of gender inequality in the Nationality Law. Gender equality is a prerequisite for achieving all the other SDGs, thus, achieving equality in the nationality law is a necessary step.

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*The Kuwaiti Government has honoured all international obligations toward women.*  
Sheikha Latifa Al-Fahad Al-Salem Al-Sabah<sup>1</sup>

## Introduction

This article addresses several overlapping issues: sustainable development, gender justice, human rights, nationality and the links between these concepts (Kuwait Times, 2017).<sup>2</sup> The article begins by considering whether Kuwait is a 'developed' or 'developing' state and then it provides a brief overview of gender and development in Kuwait. Next, it examines the Kuwait Nationality Law 1959 to ascertain the connection between gender equality and sustainable development. The central argument is that equal rights to citizenship between male and female citizens is the most fundamental human right which should be prioritised to achieve all other sustainable development goals. Gender equality in citizenship laws will not guarantee the realisation of all development goals, but it is a necessary step. The article draws on empirical research conducted by the author. This research revealed that when asked about their citizenship rights, many educated Kuwaiti women do not feel entitled to, and do not even seek to aspire to, traditional notions of gender equality. This article tries to articulate the survey respondents' perspectives and explain this phenomenon. However, the article does not attempt to address other areas concerning women's rights and development, such as domestic workers' rights. It does not go so far as to argue that foreign domestic workers in Kuwait should be granted citizenship as a means of protecting their human rights, an argument made elsewhere.<sup>3</sup> Recently, laws have been passed which are aimed at improving the lot of

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<sup>1</sup> Kuwaiti Woman Affairs Committee Chairperson Sheikha Latifa Al-Fahad Al-Salem Al-Sabah, making a statement on her departure to New York to take part in the 61<sup>st</sup> Session of the UN's Commission on the Status of Women, 13-24 March 2017 (Kuwait Times, 2017).

<sup>2</sup> The research for this paper was originally conducted for the purposes of a paper presentation at the University of Warwick in a symposium entitled 'Beyond Development? New Imagineries of Law and Social Justice', held at Warwick University from 21-23 April 2016.

<sup>3</sup> For example, see Rafael (no date) who argues that foreign domestic workers' rights would be better protected if they were granted Kuwaiti citizenship. This is arguably a step too far; change will need to be more incremental to succeed. For other perspectives on the experiences of foreign domestic workers in Kuwait see Ahmad (2017).

foreign domestic workers but the effectiveness (or otherwise) of those laws is beyond the scope of this article.<sup>4</sup>

## Kuwait: developing or developed?

Law and development has traditionally been concerned with the relationship between legal systems and 'development' (the social, political and economic changes) in Third World countries. The term 'Third World' has fallen out of favour and has been replaced with 'developing countries', 'developing economies' and the 'global South'. The exact meaning of these terms is somewhat unclear. The group of countries that fit the usual description of 'Third World', 'developing' or 'Global South' include the low per-capita income countries of Africa, Asia, Latin America and the South Pacific. Kuwait is not part of the 'First World', since it was not a capitalist, developed, industrialised country aligned with the US either during or after World War II.<sup>5</sup> It was not part of the Eastern Bloc and therefore it does not fit into the 'Second World'.<sup>6</sup> Therefore, Kuwait must have been part of the Third World. Third World countries are now usually referred to as 'developing countries' but Kuwait is not always included in lists of them (IUGG, 2016). According to the World Bank, Kuwait is a 'high-income' country (World Bank, 2017) and the Human Development Index (HDI) classifies Kuwait as one of the 49 countries that enjoy very high human development.<sup>7</sup> Therefore, the data confirms Kuwait is a high-income developing country (UN Department of Economic and Social Affairs, 2018). This seems reasonable if we include *social, political and economic development*. Kuwait is obviously doing very well on the *economic*

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<sup>4</sup> For an overview of the 2015 legislative changes, see Human Rights Watch (2015).

<sup>5</sup> For a brief definition of 'First World' and a list of 'First World countries' see Nations Online (2017) The First World includes NATO countries and outliers such as Japan, Israel, New Zealand and Australia.

<sup>6</sup> The 'Second World' consisted of the former communist-socialist industrialist states, those within the sphere of influence of the former USSR: see Nations Online (2017).

<sup>7</sup> Note that Kuwait is ranked 48<sup>th</sup> out of 49 countries on that list: see UNDP (2015). Of the 49 countries, Kuwait has the second-highest GNI per capita (\$83,961), second only to Qatar (\$123,124), whereas Montenegro (the only country ranked lower than Kuwait) has the lowest GNI of all 49 countries (\$14,558).

measure.<sup>8</sup> It is somewhat less ‘developed’ in terms of *social* and *political* measures, as will be discussed below.

### Gender equality and development in Kuwait: an overview

Kuwait is the oldest democracy of the six Gulf Cooperation Council (GCC) states. It became independent from the United Kingdom in 1961 and promulgated its constitution in 1962. However, Kuwaiti women only obtained the right to vote and stand for election in 2005.<sup>9</sup> The first four women to be elected to the National Assembly took office in 2009 (Worth, 2009). Women still have a very limited political role. In the 2016 general elections, only one woman was elected to the 50-member National Assembly.<sup>10</sup> Only two women serve in the fifteen-member Executive.<sup>11</sup> Even countries that have low levels of economic development gave women basic political rights much earlier than Kuwait. The United Nation’s list of ‘Least Developed Countries’ (See UNCTD, 2016) shows that economic and political development do not necessarily correlate: performing well on the former does not necessarily mean performing well on the latter. Most of the ‘Least Developed Countries’ easily out-perform Kuwait in terms of women’s political empowerment. Rwanda, for example, is one of the Least Developed Countries, but women make up 64 percent of its parliament compared with two percent of Kuwait’s National Assembly (World Bank, 2018). Zambia is also on the list of Least Developed Countries but Zambian women got the

right to vote in 1962.<sup>12</sup> Out of the 48 Least Developed Countries only two of them perform worse than Kuwait regarding women’s representation in parliament.<sup>13</sup> Thus, when *political* and *social* (and not just *economic*) measures are taken into account, Kuwait fits into the ‘developing’ category. In 2003, Kuwait’s Ministry of Planning stated: ‘[d]espite its affluence, Kuwait is also classified as a developing country. As such it is expected to report on progress achieved in realizing the Millennium Development Goals (MDGs)’ (Ministry of Planning, 2003). Kuwait reportedly achieved most of the MDGs by 2003. That year, Kuwait stated that it had already achieved goal 1 (eradicating extreme poverty and hunger for all its citizens)<sup>14</sup> and it had achieved goal 2 (achieving universal primary education) 13 years ahead of target.<sup>15</sup> Achieving goal 3, promoting gender equality and empowerment of women, proved to be more difficult. Target 3.3 (which called on states to increase the proportion of seats in parliament held by women) was especially problematic, given that Kuwaiti women were not allowed to vote or stand for election to the legislature at that time.<sup>16</sup> Yet even in 2018—thirteen years after the right to vote and stand for public office was granted—there is only one woman in the National Assembly and two women in the Cabinet. Achieving gender equality remains a challenge. To meet the SDGs’ gender equality targets new solutions will need to be explored, and there will need to be an acknowledgement that the government has not already achieved all of its goals for women (See Kuwait Times, 2017).

<sup>8</sup> As confirmed by the World Bank’s classification, the HDI’s measurement of its GNI per capita, and the fact that its currency is the most valuable in the world. The Kuwaiti Dinar is the most valuable currency in the world and has held that rank since 2013 (Volsky, 2016). One Kuwaiti Dinar is currently worth approximately \$3.33 US dollars.

<sup>9</sup> An amendment to the Electoral Act No 35 1962 was made by Act No 17 of 2005, which granted Kuwaiti women full and equal rights with Kuwaiti men to vote for, and to stand for, Parliament. The first four women were elected to the Kuwaiti Parliament in 2009.

<sup>10</sup> Safaa Al-Hashem was elected to the Kuwaiti National Assembly in the 2016 elections. She is currently the only female Member of Parliament.

<sup>11</sup> Currently, Hind Sabeeh Barrak Al-Sabeeh is the Minister of Social Affairs and Labour and the Minister of State for Economic Affairs (since 2014); Dr Jenan Mohsen Hassan Ramadan is the Minister for Housing Affairs and the Minister of Services Affairs since 12 December 2017 (Kuwait News Agency, 2017). Every member of the Executive is appointed personally by the Amir, the hereditary head of state.

<sup>12</sup> All the countries on the Least Developed Countries list gave women the right to vote before Kuwait.

<sup>13</sup> Vanuatu and Yemen (See World Bank, 2018). The figures will change frequently, from election to election.

<sup>14</sup> In 2003 when Kuwait reported on its progress towards achieving the MDGs, Kuwait stated that: ‘the average expenditure of the Kuwaiti poor is about ten times higher than the international poverty line of \$US1.08 per day. *On the basis of the above it is perhaps reasonable to conclude that as far as income poverty is concerned Kuwait has already eliminated extreme poverty for its citizens*’ (State of Kuwait Ministry of Planning, 2003: 5).

<sup>15</sup> ‘*It seems fair to conclude that the MDG indicator on literacy has already been achieved by Kuwait nearly 13 years ahead of time*’ (emphasis in the original) (State of Kuwait Ministry of Planning, 2003: 7).

<sup>16</sup> The Kuwaiti legislature is known as the Majlis Al Umma, which is usually translated as the National Assembly.

## The SDGs, gender equality and citizenship

The MDGs 'expired' in 2015 and were immediately replaced by the SDGs. The 17 SDGs, and their 169 targets, are supposed to 'build on' the MDGs and 'complete what [the MDGs] did not achieve' (UN General Assembly, 2015). Gender equality is even more prominent in the SDGs so for the next 15 years, gender equality should be front-and-centre of the UN's development agenda.<sup>17</sup>

The SDG goals are 'indivisible and integrated'.<sup>18</sup> The word 'integrated' is used repeatedly (UN General Assembly, 2015).<sup>19</sup> Thus, failing to achieve goal 5 (gender equality) will impact a state's ability to achieve the other SDGs. Gender equality is a theme that is prominent throughout the whole General Assembly resolution that adopted the SDGs.<sup>20</sup> Achieving gender equality and empowering women and girls is a fundamental part of achieving the SDGs *in their entirety*.<sup>21</sup> Goal 5 states that:

The achievement of full human potential and of sustainable development is not possible if one half of humanity continues to be denied its full human rights and opportunities (...) *All forms of discrimination and violence against women and girls will be eliminated, including through the engagement of men and boys.* The systematic mainstreaming of a gender perspective in the implementation of

<sup>17</sup> The preambular paragraph 3 of the UNGA Doc A/RES/70/1 states: 'The 17 Sustainable Development Goals and the 169 targets...seek to realize the human rights of all and to achieve gender equality and the empowerment of all women and girls. They are integrated and indivisible and balance the three dimensions of sustainable development: the economic, social and environmental.' (UN General Assembly, 2015).

<sup>18</sup> This phrase occurs in numerous parts of the UN General Assembly resolution that adopted the 17 SDGs.

<sup>19</sup> The word 'integrated' is used seventeen times in that resolution and the word 'indivisible' five times. There is a clear emphasis on the idea that the goals cannot be separated from one another.

<sup>20</sup> The word 'gender' is mentioned 16 times in UNGA Doc A/Res/70/1; 'gender equality' is mentioned 9 times, 'women' is mentioned 30 times and 'girls' is mentioned 15 times. As a point of comparison, 'poverty' is mentioned 28 times, 'disease' is mentioned 8 times and 'HIV/Aids' is mentioned twice. When reading the resolution as a whole, it is clear that gender equality looms large as a priority.

<sup>21</sup> 'Realizing gender equality and the empowerment of women and girls will make a crucial contribution to progress across all the Goals and targets' (UN General Assembly, 2015: 20).

the Agenda is crucial (UN General Assembly, 2015: 20, emphasis added).

Unlike the gender equality goal in the MDGs, which had just one target,<sup>22</sup> goal 5 in the SDGs has nine targets (UN General Assembly, 2015). Each country must objectively assess how well it is performing in relation to those nine targets. Kuwait is generally performing well, but it is argued here that the current nationality laws will cause Kuwait to fall short of attaining the SDG targets 5.1 and 5.c.<sup>23</sup> The following two sections respectively set out Kuwait's limitations on women in terms of transmitting their citizenship, followed by a summary of the author's research into student attitudes towards the law and a theoretical analysis of those responses.

## Nationality law and gender in Kuwait

Men around the world experience few limitations on their ability to pass their nationality/citizenship to their non-citizen wife and children.<sup>24</sup> Kuwait is one of twenty-seven countries that currently place limits on a woman's ability to transmit her citizenship. The Pew Research Center suggests that historically (around 60 years ago) many countries had laws that restricted women's ability to transmit their citizenship. Those laws have been gradually phased out with much progress occurring in the past five years, especially in relation to nations' obligations under the UN Convention for the Elimination of Discrimination Against Women (CEDAW). Nevertheless, one in seven countries still has gender discrimination incorporated into its citizenship laws:

<sup>22</sup> See the MDGs, Goal 3, target 3.1 whereby states were to 'eliminate gender disparity in primary and secondary education, preferably by 2005, and in all levels of education no later than 2015'. Thus, the only target related to education for girls. There were three 'indicators of progress': '3.1 Ratios of girls to boys in primary, secondary and tertiary education; 3.2 Share of women in wage employment in the non-agricultural sector; 3.3 Proportion of seats held by women in national parliament' (UNICEF, 2008).

<sup>23</sup> SDG target 5.1 calls to 'End all forms of discrimination against all women and girls everywhere'; target 5.c calls on states to 'Adopt and strengthen sound policies and enforceable legislation for the promotion of gender equality and the empowerment of all women and girls at all levels' (UNICEF, 2008).

<sup>24</sup> Citizenship and nationality are two slightly different concepts but they are used interchangeably here because the Kuwaiti law that determines citizenship rights is translated in English as '...The Law of Kuwaiti *Nationality*'. It seems logical, then, to use them as synonymous in this context.

These restrictions are most prevalent in the Middle East and North Africa, where 12 out of 20 countries have such laws (...) Eight countries in Sub-Saharan Africa include nationality laws or policies that limit women's ability to pass citizenship to their children (...) Five countries in the Asia-Pacific region and two in the Americas also have [such] laws or policies... (Theodorou, 2014).

Kuwait's citizenship criteria is set out in the law which may be referred to in English as Amiri Decree No 15 for the year 1959 Regarding the Law of Kuwaiti Nationality ('the Nationality Law'). It predates the Kuwaiti Constitution of 1962 and thus is one of the earliest and most important laws in Kuwait. The English translation of the Nationality Law defines a Kuwaiti: 'Kuwaitis are basically the natives of Kuwait since 1920, and who have maintained their normal residence in it until the day of publishing this law (...)' (UNHCR translation, 2017). Article 3 provides that a person shall be deemed a Kuwaiti if he is born in or outside Kuwait and 'be of a Kuwaiti parent' (UNHCR translation, 2017: Article 2) or 'whose father is a Kuwaiti national' (UNHCR translation, 2017: Article 2) (those are alternatives, depending on the translation). Apparently, the correct translation is that a child born in or outside of Kuwait to a Kuwaiti *father* is a Kuwaiti citizen.<sup>25</sup> Thus, the law is quite explicit in setting up a clear gender inequality in favour of men.

The limitations on passing nationality to children can be a major cause of statelessness. In this regard, the Kuwaiti Nationality Law attempts to counteract this to some extent by providing that children who are born to a Kuwaiti mother, whose father is unknown or whose kinship to his father is not proven, shall be Kuwaiti; the same will apply to an orphan born in Kuwait whose parents are both unknown (UNHCR translation, 2017: Article 3). However, as the following two sections outline,

<sup>25</sup> According to the English-speaking librarian at the Kuwait International Law School, Mr Khalid Al Mutairi, the grammar used in the original Arabic version of Article 2 refers to the child of a Kuwaiti *man*, not a Kuwaiti *parent*. Thus, it is observed that the Salah Al Jassim translation of this article is incorrect because it conveys the false impression that a child of a Kuwaiti *parent* is also a Kuwaiti.

a Kuwaiti woman's ability to pass her nationality to her spouse and her children are very limited.

#### *The ability to pass nationality to children*

A Kuwaiti man's nationality is automatically transmitted to his children. He can also transmit his nationality to a foreign-born wife in some circumstances. For women, the situation is far more complex. Article 5 delineates how a Kuwaiti mother married to a non-Kuwaiti husband might transmit her citizenship to her children. Article 5 does not provide any rights *per se*. It states that it *may be permissible*, by virtue of a decree, upon application to the Minister of the Interior, to grant nationality to a child who is born to a Kuwaiti mother. There are stringent conditions that must be satisfied: the child must have maintained his residence in Kuwait until he has reached legal age (in Kuwait the age of majority is 21); and his foreign father must be either a prisoner of war or have irrevocably divorced his mother or have died.<sup>26</sup> These conditions are difficult to satisfy, and even if they are met, the discretion to grant the child nationality ultimately rests with the Minister - there is no automatic right for a child of a Kuwaiti mother to gain nationality. By comparison, none of these hurdles applies to the child of a Kuwaiti father.

#### *The ability to pass nationality to the spouse*

In terms of passing nationality from one spouse to the other, Articles 7, 8, 9 and 10 of the Nationality Law are most relevant. Article 7 covers the (rare) situation where a foreign man acquires Kuwaiti citizenship and it provides for the possibility of such men transmitting their acquired Kuwaiti citizenship to their foreign wives.<sup>27</sup> Article 8 relates to a Kuwaiti man marrying a foreign woman. If a Kuwaiti man marries a foreigner she can, after five years of marriage, request that she be granted Kuwaiti nationality. This decision is at the discretion of the Minister of the Interior. Anecdotal evidence suggests that wives who are

<sup>26</sup> This is the author's paraphrasing of Article 5 of the Nationality Law since the two translations used here (Salah Al Jassim and Refworld) differ slightly.

<sup>27</sup> Article 7 states that the foreign wife who marries a Kuwaiti man (who has acquired citizenship) would have to declare her desire to have Kuwaiti nationality within a year of her husband having acquired nationality. This scenario would be rare since there are few situations where foreign men are able to acquire Kuwaiti citizenship.



originally from GCC states are often granted citizenship before the five year period has elapsed.<sup>28</sup> If a foreign woman acquires nationality from her Kuwaiti husband in accordance with Article 8, she will not lose that nationality when the marriage ends unless she regains her original nationality (UNHCR translation, 2017: Article 9).<sup>29</sup> Note that neither Kuwaiti men nor women are permitted to hold dual nationality.<sup>30</sup>

There are other articles in the Nationality Law that contain quite restrictive elements especially regarding the rights that flow from acquiring Kuwaiti nationality. For example, a woman who acquires nationality from her Kuwaiti husband must wait 20 years before she can vote in a national election and she will never have the right to stand for elected office (UNHCR translation, 2017: article 6).<sup>31</sup>

It is clear that a Kuwaiti woman does not have the same rights as a Kuwaiti man to confer her nationality on either her husband (completely impossible) or her children (possible, at the Minister's discretion, if strict conditions are met such as death or divorce). Kuwait's Nationality Law is a textbook example of gender inequality: limitations are placed on Kuwaiti women which are not placed on Kuwaiti men (or, to put it another way, rights are conferred on men which are not conferred on women, merely because they are women). Legally, it is a violation of the Constitution.<sup>32</sup> Practically, this law may severely curtail a Kuwaiti woman's choice of husband. Although a Kuwaiti man may choose to marry any woman and his children will be automatically

deemed Kuwaiti, a Kuwaiti woman must choose only a Kuwaiti man if she wishes her children to be considered Kuwaiti. The Kuwaiti woman who is (un)lucky enough to fall in love with a foreigner takes a great risk in marrying him because, if they settle in Kuwait, their children will most likely grow up as foreigners in their 'own' country. The only way out of that situation is for her husband to die, to be taken as a prisoner of war or for him to irrevocably divorce her. The latter seems to be an increasingly practiced option as women seek rather desperate solutions to avoid the harsh outcomes of the Nationality Law.

### Kuwaiti perceptions towards the Nationality Law 1959

Any law needs to be understood within its social, cultural and religious context. All law is a reflection of power but also a reflection of the society from which it emanates. This raises the question of how Kuwaitis themselves feel about their Nationality Law. A delicate balancing act is needed: one must avoid criticizing the law as an outsider yet simultaneously one needs to be open to the idea of defending it, if the law is culturally/religiously appropriate to its society. Cyra Akila Choudhury's observations on the tensions between and within feminism and religion/culture in India, are relevant:

It is an uncomfortable position to defend one's 'cultural' group from denigration from outsiders on one hand while critiquing the very same use of culture from within...the best way to effect change is through a politics of solidarity - one in which feminists come together to engage in unflinching critique from positions of equality rather than civilizational superiority... (Choudhury, 2015).

That approach seems appropriate: unflinching critique from positions of equality rather than civilizational superiority. With that in mind, the author conducted a small survey of third year LLB students and LLM students at the Kuwait International Law School. The author asked male and female students to complete a brief questionnaire in English on their perceptions

<sup>28</sup> In private conversations, students have told the author that this practice is well-known – that Gulf women are given preferential treatment and do not have to wait for five years as the law provides. One student, from Saudi Arabia, mentioned two cases directly connected to her family, wherein citizenship was granted 1 or 2 years after the Saudi wife married her Kuwaiti husband.

<sup>29</sup> Note that Article 10 provides: '[a] Kuwaiti woman, who is married to a foreigner, shall not lose her Kuwaiti nationality, unless she acquires the nationality of her husband upon her request'.

<sup>30</sup> See UNHCR (2017: Articles 11, 11 bis).

<sup>31</sup> The original Article 6 provided for a period of 30 years before the naturalized Kuwaiti could vote but it appears that this was changed to 20 years by Law no 44 of the year 1994.

<sup>32</sup> This has been noted by others, for example, see Olimat (2013) wherein he observes that 'the current Kuwaiti law and government policies are clearly in violation of the Constitution because they treat Kuwaiti men differently than Kuwaiti women married to non-nationals.' This issue is discussed in depth below, in section 6.

towards Kuwait's Nationality Law 1959 (Williamson, 2016). An Arabic translation of the law and the questions was provided, but students were asked to write their responses in English. Out of 36 students who were handed the questionnaire, 20 responded. Those 20 respondents were unintentionally gender imbalanced: there were 17 female and 3 male respondents.<sup>33</sup>

The findings may be summarised as follows. When asked whether Kuwaiti women should be able to *pass on their nationality to their husbands*, five respondents said 'yes' and fifteen said 'no' (Williamson, 2016). Within the group that answered 'no' were all three of the men and twelve out of the seventeen women. On the other hand, when asked if Kuwaiti women should be able to *pass on their nationality to their children*, sixteen respondents said 'yes' (including all of the three men and thirteen of the seventeen women) and one was unsure (Williamson, 2016). The sample was extremely small, just the size of a regular law class, and it would have to be carried out on a much larger scale to be persuasive, but the findings of this small survey showed that these men and women were overwhelmingly opposed to women having the right to pass on their nationality to their spouse. On the other hand, the majority thought that women should be able to pass on their nationality to their children.

#### *The student perceptions survey - unpacking the results*

The results of this survey, albeit based on a small sample, were emphatic. It is not altogether surprising that many Kuwaiti women do not want the right to pass on their citizenship to their husband or children. Past surveys have shown that many Kuwaiti women did not want the right to vote before it was granted to them in 2005.<sup>34</sup>

<sup>33</sup> As to why the respondents were so far skewed in favour of women there are two explanations. First, the classes themselves had far more women than men students as law is increasingly favoured by women. Secondly, the women who received the questionnaire felt more personally connected to it whereas the men did not seem as interested, perhaps because the issues did not really affect them as much.

<sup>34</sup> For instance, see the surveys discussed in Al Moqatei (1987: 140). The surveys and fieldwork discussed in that thesis show that a majority of men and a majority of *women* did not support giving women the right to vote. Interestingly, Al Moqatei noted that a

To a Western woman it might seem strange that Kuwaiti women do not overwhelmingly desire the same freedom to choose their spouse and pass on their nationality as men enjoy. Kuwaiti men do not ever need to consider the effect of marriage on the nationality of their children; Kuwaiti women must seriously consider it when choosing their husband. This lack of enthusiasm for the right to freely choose their life partner without fear of the repercussions for their children's nationality could be explained by a lack of political awareness and organisation by women or it could be explained by the 'convenience of subservience' as described by Ayesha Jalal (1991: 79). In the context of Pakistan, Jalal argued that economically privileged and educated women played an active role in 'the reproduction of the gender biases underpinning their subservience' (Jalal, 1991: 79). Jalal argued that educated elite women enjoy some benefits in:

(...) preserving the existing structure of authority, and with it the convenience of a subservience that denies them equality in the public realm but also affords privileges not available to women lower down the rungs of the social hierarchy (1991: 79).

That explanation is plausible in the context of Pakistan where there is a marked urban/rural divide. It has some persuasiveness when applied to the Kuwaiti context because women have only recently been granted the right to vote and stand for election – seeking gender equality in other areas (e.g. an amendment to the Nationality Law) might be seen as a lack of appreciation for the rights so recently granted. However, Jalal's theory is not an entirely convincing explanation for Kuwait, for three reasons. First, the Kuwaiti elite (the survey respondents could all be classified as educated and economically privileged) in this research were not only female, they were also male. All of the men and most of the women

petition signed by 1,000 women was presented to the National Assembly when it was debating the women's right to vote. The women's petition asked the legislature *not* to give them the right to vote and asked the National Assembly to '...close the discussion of this issue for good' because '[w]e believe that our husbands (men) in this country are representing our interest' (Al Moqatei, 1987: 141, footnote 202).

agreed that women *should* be able to pass on their nationality to their children: they agreed the law should be changed and they were not seeking to uphold it. There was no subservience in that regard. Secondly, Jalal's argument is built on the basis of the significant rural/urban divide in Pakistan and a clash between the interests of the educated elite and the majority of women who struggle at the lower strata of society.<sup>35</sup> That division is much less noticeable in Kuwait, which, as mentioned above, has the second-highest per-capita income in the world; most Kuwaiti women do not struggle in poverty and do have education in doctrinal Islam. Although Kuwaiti women from the urban areas experience superior economic and political opportunities, the 'class' difference is much less significant than in Pakistan.<sup>36</sup> Third, an equal right to pass on nationality to foreign spouses and their children would more likely benefit the educated elite rather than the less educated/poorer Kuwaiti women. That is because the educated elite are more likely to travel abroad to study/work and to work in Kuwait in mixed-gender workplaces, thus they are more likely to consider marrying foreign spouses, whereas the less educated women of Kuwait are more likely to stay in Kuwait and marry within their tribe. For the 'elite' to deny themselves the right to freely choose their husband would only harm their own interests. That is not to dismiss outright Jalal's analysis as having any application to the Kuwaiti context, her analysis is relevant and deserves closer examination for its application to Kuwait, but it does not seem likely that her theory would completely explain Kuwaiti women's reluctance to demand full gender equality with regard to nationality rights.

A more plausible explanation is that Kuwaiti women do not want 'rights' if they genuinely sense that those rights are in conflict with their religion or their culture. Feminism exists in Kuwait, but it is a distinctly *Islamic strain of*

*feminism* (Western feminism is often treated with suspicion or outright hostility), whereby women seek rights only so long as they perceive that the rights are consistent with *legitimate authority*. Legitimate authority has three main sources in an Islamic context: religion, community and political authority. The first concerns primarily the Qur'an and Sunnah as well as the Islamic traditions and fatwas of religious scholars; the second concerns the family and the morals of the Muslim community including the ethnic and tribal affiliations; whereas the third source of authority, the political, is the constitution, the laws and the government.<sup>37</sup> If a Kuwaiti woman perceives that her desires for equality would be in conflict with the sources of legitimate authority, especially the religious sources, she is not likely to see them as 'rights' and will likely not want to pursue them. This is quite understandable when viewed from a devout Muslim woman's point of view but it may seem somewhat strange to a Western liberal feminist who fails to take the specific religious context into account (See Gonzalez, 2013).<sup>38</sup>

What is especially revealing to this author about the results of the above survey is the range of *reasons* that were provided in the open-ended questions as to *why* the law should/should not be changed. Firstly, when asked why they do not think women should be able to pass on their nationality to their husbands, the most common response was, 'to protect women from exploitation by men'. The idea expressed in numerous responses was that if women could transmit nationality to their non-Kuwaiti spouses, then women would be at risk of being exploited by foreign men. Their concern was that non-Kuwaiti men would supposedly marry Kuwaiti women as a mere ruse to obtain nationality. Another common reason (and one that all three men put forward) was that Kuwaiti nationality provides many economic advantages – they felt that these benefits should not be shared with foreign males.

<sup>35</sup> Jalal observed that in Pakistan in 1991 'over 75 percent [of women] live in the rural areas, not infrequently in conditions of abject poverty; an overwhelming majority have little knowledge of doctrinal Islam...' (1991: 71).

<sup>36</sup> On this point see Rizzo (2005) where she noted that '[u]rban residence indicates status because citizens living in Kuwait City are advantaged both economically and politically relative to those living outside of the city' (2005: 44).

<sup>37</sup> See the discussion of legitimate authority in an Islamic context in González (2013: 16-17). González carried out an 'Islamic Social Attitudes Survey' based on data collected from 1,139 undergraduate students at Kuwait University in 2007. The findings are described in her book.

<sup>38</sup> See Introduction and Chapter 3 where she summarises how Islam and feminism can be reconciled.



Both reasons expose an interesting dynamic. The first reason—protecting women from exploitation—is rooted in a deeply held belief that women should be protected by men and this is based on the Qur’an.<sup>39</sup> However, the sentiment expressed in the survey belies the fact that men can pass on their nationality to non-Kuwaiti women. When asked specifically, the survey respondents did not seem convinced that men could potentially be taken advantage of by foreign women who might only marry a man for his nationality and associated economic benefits. The respondents felt that women could be exploited for their nationality but men could not.

Secondly, the survey responses do not appear to give much credence to the fact that non-Kuwaiti females must (according to the law) wait five years to be able to obtain nationality from their husbands: a similar rule could apply to protect women from non-genuine suitors.

Thirdly, the ‘economic advantage’ reason seems to expose a different line of thinking. All three male respondents plus several female respondents noted that Kuwaiti nationality carries with it such great economic benefits that these should not be shared with non-Kuwaiti males. Again, this response belies the fact that men can pass on their nationality to their non-Kuwaiti wives who will in turn get some access to said economic benefits – so it appears that for many of the respondents, the problem is with foreign men gaining nationality and therefore gaining economic benefits to which they are not seen to be entitled. This thinking touches on the in-group/out-group dynamic: genuine Kuwaitis are ‘in’ and foreign men are definitely ‘out’ but the students were more willing to see foreign women as being able to join the society as citizens, or at least linger a little closer to the margins.<sup>40</sup>

As for passing on nationality to children, the majority of survey respondents wanted women to

be able to pass on their nationality to their children. Those who opposed it gave the following three reasons. First, they said that because ‘the child is an extension of the father – he will have his name so he should have the father’s nationality’.<sup>41</sup> Secondly, they said that it must be this way because ‘all countries have this rule – children always take their father’s name and his nationality’.<sup>42</sup> Thirdly, they said that if the Kuwaiti woman chooses a foreigner then that is her free choice and she will have to live with the fact that her children will be foreigners.<sup>43</sup>

On the other hand, the respondents who thought women *should* be able to pass nationality to their children cited one main reason: it is a straightforward matter of having equal rights. These respondents all stated that if men can pass their nationality to their children, then so should women. A number of respondents thought that it violated the Kuwaiti Constitution to deny women this right when it has been granted to men.

The responses exposed a number of highly interesting, genuinely held and deeply entrenched ideas. The following paragraphs seek to explain some of them. First, the idea that children ‘belong’ to the father seems to be widely adopted within the survey group. In both Kuwaiti culture and in the Islamic religion, children take the surname of their father; wives do not change their name on marriage. As an aside, this Islamic practice of women retaining their maiden names post-marriage is rather well-aligned with Western feminist thinking on female identity. The practice of a woman changing her name to her husband’s name upon marriage is prohibited in Islam.

<sup>41</sup> This is a quote from a male student’s survey. He used the male pronoun to describe the child.

<sup>42</sup> For example, a female respondent wrote that she agreed that women should not pass Kuwaiti nationality to their children because, ‘...in all countries, not just in Kuwait, when the child is birth [sic] he/she take his father name and his nationality’. Another female respondent wrote, ‘...because all over the world the child take [sic] his father nationality.’ Another female respondent wrote ‘the children always follow the father and they will take his name so how come they become Kuwaiti if their father are not’ (sic).

<sup>43</sup> This idea was expressed by two female respondents who seemed to place the ‘blame’ squarely on the Kuwaiti woman – if she chooses a foreigner she should live with the consequences (her children will be considered foreigners). This idea—that women can choose a Kuwaiti or a non-Kuwaiti husband and they know the consequences—has been expressed to the author several times by other female students who were not participants in the study.

<sup>39</sup> For example, see The Qur’an, chapter 4 verse 34: ‘Men are the protectors and maintainers of women because Allah has given the one (men) more strength than the other’.

<sup>40</sup> It should be noted that three students remarked that they did not support men passing their nationality to their wives, nor women to their husbands. They wrote in their comments that Kuwaiti nationality has such benefits that it should not be passed on via marriage at all (ie from men or women to any foreigners).

Nevertheless, concerning the conflation of surnames with nationality, there is a point to be made here regarding nationality, naming and religion. There is evidence in the Qur'an and Sunnah as to how children should be named.<sup>44</sup> The Qur'an and Sunnah suggest that it is quite natural and religiously acceptable for children to adopt the surname of their father.

However, a number of the respondents in the survey purported to connect the father's surname with nationality. They made what they considered to be a logical leap: since the child receives the father's surname, the child must necessarily also receive his nationality. In this author's opinion, this is not logical; it mixes together Islamic traditions on naming children with something quite separate and not connected - nationality. Although both the State of Kuwait and the religion of Islam are patriarchal, it is contended here that the concept of nationality has no necessary connection with Islam. To the author's knowledge, there is no evidence in the Qur'an or Sunnah to indicate that the concept of 'nationality' (as we know it today) even exists in Islam. Historically, Islam only knew two spheres: *dar al Islam* and *dar al harb*. There was no notion in Islam of 'states' or 'nationality'.<sup>45</sup> The notion of nationality is intrinsically linked to nation states, and those are most likely a Western invention, probably best dated to the Peace of Westphalia in 1648. As has been explored in other writing on the diffusion of Western concepts in Kuwait (Williamson, 2015), nationality and statehood 'appear historically as creations of the Western enlightenment' (Glenn, 2010: 38).<sup>46</sup> Thus, there can be no basis in Islam

<sup>44</sup> The Qur'an, chapter 33 verse 5: 'Call [or ascribe] them after their fathers. That is most just in the sight of Allah'. That verse deals with establishing the paternity of a newborn. Even an illegitimate child born to a mother by a man who is not her husband will bear the name of the mother's legitimate husband. This is sometimes referred to rather crudely as the notion that the illegitimate child belongs to the owner of the mattress on which it was conceived. The verse is not about surnames *per se*. Surnames are a rather recent invention, to keep track of the family line, but there is evidence that Muslims should continue with the Arab tradition of adopting the father's surname, for instance, Mohammad ibn Abdullah (Ibn Abdullah, 2017).

<sup>45</sup> Members of the Islamic community or *ummah* were members by virtue of their submission to Islam, not by virtue of their 'nationality'. Note that the author is not an Islamic scholar and stands to be corrected on this point.

<sup>46</sup> For a definition of a 'state' see for example the Montevideo Convention on the Rights and Duties of States (UNTC, 1933).

for denying women the right to pass *nationality* to their children since *nations and nationality* post-date Islam by around 1000 years.

The views expressed by the students who opposed gender equality in nationality rights may also be explained by reference to the literature on feminism and nationalism. Nationalist sentiment is very strong in Kuwait and this arguably has a direct bearing on the masculine-centered attitudes towards nationality. A Pakistani feminist writer, Aisha Anees Malik, has observed that, 'women have contributed significantly in defining, establishing and maintaining the structures of nations throughout the world' (Malik, 2017: 5). Yet studies on nationalism often lack any gender perspective (Malik, 2017: 3). The observations of Enloe are particularly interesting when applied to the Kuwaiti students' responses. Enloe argues that 'women and nationalism are completely antithetical to one another' (Enloe, 2000: 4). She says that nationalism has always sprung out of a 'masculinised memory, masculinised humiliation and masculinised hope' (Enloe, 2000: 45). According to Enloe, nationalist men see their women only as 'a) the community's or the nation's most valuable possessions; b) the principal vehicles for transmitting the whole nation's values from one generation to the next c) bearers of the nation's future generations (...) e) most susceptible to assimilation and co-option by insidious outsiders' (Enloe, 2000: 54). This theory helps to explain the lack of enthusiasm by men and women elites for gender equality in Kuwait's nationality laws. Interestingly, the students' reasons for opposing gender equality in the Nationality Law echo Enloe's conception of nationality being male-centered.

In conclusion, there is no clear cultural or religious basis for claiming that children must take the nationality of their father - it is an invention (arguably, a *masculine* invention), merely an established cultural norm. That being the case, it can be changed. Culture is fluid - it can and should change according to the needs of the society. As Choudhury argues, those who justify doing nothing by way of gender reform often take culture as something that is 'bounded, unchanging and settled' (Choudhury, 2015: 213, 234) and at

the same time they ignore the contestations within cultural groups. She argues, and we agree, that culture should be viewed as more fluid. There are plenty of examples of how women were once treated and how culture has changed. In 1872, a woman was denied admittance to the bar in the US because of her delicate nature.<sup>47</sup> Happily, that cultural view of women no longer exists in the US – although of course there are still issues there (and everywhere) concerning gender inequality. The point is that cultural attitudes towards women can change substantially over time: they are not set in stone. The same might be said about nationality, women and Kuwaiti law: the mindset that women cannot pass nationality to their children because children take their father's name and his nationality, and that she might be taken advantage of by foreign men, is a cultural bias, not a religious rule, and therefore it can be changed.

The students' responses in the survey, particularly the ones that supported a change in the law because of its inequality, leads us into a legal analysis of the extent to which the current Nationality Law complies with domestic and international law. Both are discussed briefly in the next section.

### Gender equality in national and international law

Kuwait's Nationality Law predates the Kuwait Constitution. However, it should nevertheless be consistent with the Constitution. There are several relevant articles in the Kuwait Constitution. In Part II, entitled 'Fundamental Constituents of the Kuwaiti Society' are some important provisions. Article 7 provides in the English translation that 'Justice, Liberty and *Equality* are the pillars of Society...' Article 8 provides that '[t]he State safeguards the pillars of Society and ensures security, tranquillity and *equal opportunity* for

citizens.' Article 9 provides that '[t]he family is the cornerstone of Society. It is founded on religion, morality and patriotism. Law shall preserve the integrity of the family, strengthen its ties and protect under its auspices motherhood and childhood'. Last but not least, is Part III, entitled 'Public Rights and Duties'. Within it, Article 27 provides that 'Kuwait nationality shall be defined by law' and Article 29 intriguingly provides that 'All people are equal in human dignity, and in public rights and duties before the law, *without distinction as to race, origin, language or religion*' (emphasis added).<sup>48</sup>

#### *Lost in translation: is gender discrimination prohibited by the Kuwaiti Constitution?*

There are some problems with interpreting the above constitutional provisions. It is clear from Article 29 of the English translation that gender is *not* one of the specified grounds upon which discrimination is prohibited. In fact, 'gender' is not specifically mentioned in any English translation (official or otherwise) of Article 29. Gender is usually specifically mentioned as a prohibited basis for discrimination in most constitutions and international human rights documents. At first glance, that appears to be a deliberate omission from Article 29, given that the Kuwait Constitution was drafted in 1962 and there were several examples to hand, which *do* specifically include gender.<sup>49</sup> However, Article 29 begins by stating that all people are equal in human rights and duties. In addition, equality is one of the 'pillars of Society', which is supposedly safeguarded by the State. Therefore, it is difficult to see how, constitutionally speaking, women could be given fewer nationality rights than men.

Furthermore, in the process of carrying out this research a serious translation inconsistency was discovered. The author noticed that the Arabic

<sup>47</sup> The US Supreme Court held that '[T]he civil law as well as nature herself, has always recognized a wide difference in the respective spheres and destinies of man and woman. Man is, and should be, woman's protector and defender. The natural and proper timidity and delicacy which belongs to the female sex evidently unfits it for many of the occupations of civil life...The harmony, not to say identity, of interest and views which belong, or should belong, to the family institution, is repugnant to the idea of a woman adopting a distinct and independent career from that of her husband' (U.S. Supreme Court, 1987).

<sup>48</sup> Note that this is the official translation of Article 29 but, as discussed below, it is posited here that this is an incorrect translation. '*Jins*' (in Arabic), which means 'gender' or 'sex' in English, is specifically mentioned in the Arabic version but not in any of the English translations.

<sup>49</sup> For example, the Universal Declaration of Human Rights (UDHR) provides in article 1 that all human beings are born free and equal and in article 2 that 'Everyone is entitled to all the rights and freedoms set forth in this Declaration without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status' (UN General Assembly, 1948).

version of the Kuwait Constitution does not match any official English translation. Article 29 in the Arabic text states that there may be no discrimination on the grounds of something called '*jins*', which translates in English as 'gender' or 'sex'.<sup>50</sup> However, it seems that the concept and word 'gender' may have been quite literally 'lost in translation' between the original Arabic (where it is present as '*jins*') and all English translations (where it is conspicuously absent).<sup>51</sup> In the English version of Article 29, 'gender' is definitely missing but 'race' has mysteriously been inserted. If *jins* is indeed in the original Arabic version then an argument cannot be sustained that Kuwait permits discrimination based on gender, despite the fact that 'gender' is missing from all English translations of Article 29.<sup>52</sup> To summarise, the word 'race' is in the English version of Article 29, but not in the Arabic; conversely the Arabic word for 'gender' (*jins*) is in the Arabic version but not in the English.

If this is a mistake in translation—as it certainly appears to be—then it is a significant error that has persisted unnoticed for decades and it should be rectified. The author's inquiries into this matter

<sup>50</sup> According to the translation provided to the author by the Kuwait International Law School's Law Librarian Khalid Al Mutairi on 29 March 2016, confirmed in personal correspondence on file with the author. Furthermore, Dr Mohammad Al Moqatei and Dr Yusri Al Assar, both constitutional law professors at Kuwait International Law School, have personally confirmed with the author that the word '*jins*' in the Arabic version of Article 29 means 'gender'. It is worth noting that in Al Moqatei (1987: 54) Al Moqatei states in footnote 234 that Article 29 of the Constitution includes 'sex' as a grounds upon which discrimination will not be permitted. However, that observation must have been based on his own—correct—translation of the Kuwaiti Constitution. He does not appear to have been relying on any official English translation, which omits reference to gender in Article 29.

<sup>51</sup> The English translation that is used here was accessed from HeinOnline and it states on the bottom of the first page that it was 'Published in English by Kuwait Government Press. Supplied by the Foreign Ministry in May 1965'. Thus, the author assumes it to be an official translation and the most reliable translation available.

<sup>52</sup> The author has found at least six versions online and they all use the same formula, without reference to 'gender' or 'sex' in Article 29. Other seemingly reputable translations are available in various places such as at the 'Constitute Project' (Constitute, 2018). The Constitute Project.org translation also uses 'race, origin, language or religion' and does not include gender or sex. It appears to be up-to-date because the PDF online was dated 18 February 2016. Similarly, see also Kuwait Constitution (no date) where the same formulation is used. See also the World Intellectual Property Organization (2017) translation of the Kuwait Constitution. The WIPO translation is also used by the Library of Congress (U.S.).

suggest that ever since its translation by the Kuwait Government Press in May 1965, the same errors have been repeated in all subsequent English translations of Article 29. This mistake should be brought to the attention of Kuwait's National Assembly so that it can be corrected in the official English translation as well as in all other copies disseminated on the internet. International human rights bodies inevitably rely on the English translations and it may be observed they are all currently misleading. This may not have been noticed because when Kuwait makes representations to the international bodies, it would be basing its submissions on the Arabic version, which does appear to prohibit discrimination on the basis of gender.

#### *CEDAW and Kuwaiti nationality issues*

Kuwait has been criticised by international human rights bodies for its laws relating to women's rights. A comprehensive analysis of that criticism and the rebuttal to it is beyond the scope of this article. However, it should be noted that Kuwait ratified CEDAW on 2 September 1994. Article 9 of CEDAW requires States Parties to provide equal rights for both men and women to pass on their nationality. Kuwait made three key reservations to CEDAW and one of them concerns Article 9 paragraph 2. Kuwait stated that '[it] reserves its right not to implement the provision contained in Article 9 paragraph 2, of the Convention, inasmuch as it runs counter to the Kuwait Nationality Act, which stipulates that a child's nationality shall be determined by that of his father' (CEDAW, 2007). The Government's intention in 1959, which was reiterated in 1994 when it ratified CEDAW, is that only men can pass on their nationality to their children. Two observations are offered: first, Kuwait's reservation did not mention the basis for denying women's rights to pass on nationality to their *spouses*, thus, that denial of women's rights is not part of the reservation, and secondly, the reservation is not made on the basis of a real or perceived conflict with Islam or Shari'a.<sup>53</sup> The

<sup>53</sup> Kuwait made two other reservations to the CEDAW, one of which was made on the basis that there is a conflict with Shari'a. Kuwait declared that it 'does not consider itself bound by Article 16(f) of CEDAW inasmuch as it conflicts with the *Islamic Shari'a*'. Article 16(f) deals with rights of guardianship, wardship, trusteeship and adoption



reservation is simply made on the basis that CEDAW Article 9(2) conflicts with the Nationality Law. That should give rise to some hope: domestic laws can be changed whereas Shari'a (arguably) cannot.

Kuwait has been frequently criticized for making this reservation, since it appears to defeat the objects and purpose of CEDAW. Kuwait is potentially breaching the Vienna Convention on the Law of Treaties.<sup>54</sup> Pursuant to Article 18 of the Vienna Convention, States are obliged to refrain from acts that would defeat the object and purpose of a treaty when it has signed or ratified it or it has expressed its consent to be bound by it. In 2011, the CEDAW Committee (again) called upon Kuwait to remove its reservation to Article 9(2) and urged Kuwait to fully implement CEDAW (CEDAW, 2011).<sup>55</sup> In its 2011 report, the CEDAW Committee stated that it had 'serious concern' about the Nationality Law and it explicitly called for its review:

[T]o ensure equality between women and men with regard to the acquisition, change and retention of nationality and to enable Kuwaiti women to pass their nationality to their children and to their foreign spouses... (UNHCR translation, 2017: 37a).

The CEDAW Committee called for that change to take place before the next report in October 2015. The call was not heeded.

External pressure from other states, academics and international human rights bodies is likely to be perceived within Kuwait as external interference and easily dismissed as another example of Western human rights' universalism or cultural imperialism.<sup>56</sup> Thus, Kuwaiti reformists

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of children. Adoption is not recognized in Islam. Thus, if Kuwait thought that its reservation to Article 9(2) was also based on Shari'a it presumably would have also stated that. By omitting such a reference, it may be assumed that the reservation was not based on any perceived conflict with Shari'a.

<sup>54</sup> Kuwait acceded to the Vienna Convention on 11 November 1975.

<sup>55</sup> These observations were made in response to Kuwait's combined third and fourth periodic reports.

<sup>56</sup> Kandiyoti discussed this problem in the context of Muslim societies in general when she observed that: 'Both colonial administrators and Christian missionaries attempted to reform the sexual mores and

should be careful not to frame their case as an effort to modernize along the lines of Western models of citizenship. If the external calls for reform are the only calls for reform, it is possible that conservative elements will simply dismiss them as 'a wholesale attack on the integrity of the Islamic polity and a capitulation to Western cultural imperialism' (Kandiyoti, 1991: 3). To be effective, change must be instigated from within.

## Solutions

The problems exposed by the Kuwait Nationality Law 1959 require solutions. Set forth below is a four-point approach, no element of which is new *per se*, but perhaps taken together might create a new outcome.

### *L is for Law*

There is a clear need to revise the law not only on nationality issues but in other areas concerning gender equality, as well. This needs to be done to achieve the SDGs, discussed above and to ensure that all Kuwaitis can share equally in the benefits of development. That needs effort from those who work with the law. For example, civil society needs to be part of the discussion.<sup>57</sup> The legal community - including lawyers, judges, academics and students - need to examine the law closely, and push for law reform. Put simply, the law should be widely analysed from a gender perspective and, when found from within to be defective, changed. The Nationality Law is inconsistent with CEDAW, the Vienna Convention, as well as the Kuwait Constitution.

### *A is for Attitudes and Values*

Law reform cannot occur in a vacuum: it must not get too far out of step with attitudes and values. The resistance to women's equality in terms of nationality rights is embedded in culture, not necessarily in religion. Culture is fluid, it can and will change. Just as the West has gone through many stages of recognizing women's rights, so will the developing countries. There is no shame in that - development can and should be a positive thing.

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family traditions of Muslims as part of their "civilising" mission' (Kandiyoti, 1991: 7).

<sup>57</sup> The Kuwait Society for Human Rights wrote a report in 2015 calling on the government to change, *inter alia*, the Nationality Law because it does not treat women equally. See (CEDAW, 2015).



Kuwait is an Islamic country and Muslims are proud of their religion and cultural heritage in promoting women's rights in an era, and in a region, where they were once (pre-Islam) woefully inadequate.

Current attitudes and values need to be ascertained. The Nationality Law was written in 1959. The attitudes it represented may have changed since then. Kuwait should adopt a large-scale project to survey the current attitudes and values of its society. It should consider a referendum on the Nationality Law. If there has been a change in attitudes, that should be reflected in a change in the law. If there is no groundswell of public opinion for change, then the law might best be left alone, but at least some data on public attitudes and values would help determine the direction. Public awareness needs to be raised about the effects of gender inequality on women, children and development.

#### *T is for Theory*

Law, education and a public awareness campaign should be backed up by theory. There is plenty to call-upon in this area: feminist legal theory, critical legal studies theory, natural law, legal positivism, universalism versus cultural relativism, human rights and sovereignty (see Adelman, 2008) and gender perspectives on nationalism (see Enloe, 2000: 72 and Malik, 2017: 70). There is a place for theory in the struggle to realize development and gender equality goals. It is contended that theories of justice, rather than feminist legal thought, might provide an alternative angle. To utilize John Rawls' theory of justice, and in particular his writing on the 'original position', it could be argued that if humans were behind a 'veil of ignorance' and did not know whether they would be born as a male or a female in Kuwait, would they choose to have the present nationality law?<sup>58</sup> Or would they choose a more gender-neutral one? Rawls' theory of justice as fairness would lead one to question the fairness of a law that gives tangible advantages to men over women. Being a female Kuwaiti means that marriage choices are severely limited (to Kuwaiti men), if they want their children to grow up as Kuwaiti citizens. If placed behind Rawls' famous

<sup>58</sup> John Rawls *A Theory of Justice* (Belknap Press 1999).

'veil of ignorance' all Kuwaitis would surely prefer to know that they can marry whoever they choose, and no matter what gender they are, they would be able to share their nationality freely with their spouse and children. That would also be good for family solidarity: there would be no need for sham (or real) divorces to take advantage of the loophole in the current nationality law that allows nationality to be passed to children over 21 when the Kuwait mother gets divorced from the foreign father. Theoretical discussions also must take into account the Shari'a perspective. Shari'a is a source, but not *the* source, of law in Kuwait.<sup>59</sup>

#### *E is for Education*

The responses to the student perceptions survey showed that students lack education and awareness about nationality laws in general. Some of them think that 'all countries' have laws that only allow men to pass nationality to their children. That is not the case. Only twenty-seven countries restrict a woman's right to pass on nationality to her children and/or her spouse. Many Arab countries have already reformed their laws in this area. Iraq<sup>60</sup> and the UAE<sup>61</sup> are relevant examples: men and women in those Islamic, Arab countries have equal rights to pass on nationality. In addition, all of the North African countries (Morocco, Tunisia, Algeria, Libya and Egypt) plus Yemen allow women to pass on their nationality to their children regardless of their father's nationality (Sajwani, 2011). Kuwaiti law students and the wider Kuwaiti society cannot be blamed if they do not know that their country's nationality laws are quite rare and out of step with other countries' nationality laws. Educators and civil society should work together to open a discussion and better inform Kuwaiti citizens of what they are entitled to, in terms of nationality rights and in relation to Islamic Shari'a. There is cause for hope in this regard. In February 2017, a forum was held in Kuwait to discuss the reasons why the current

<sup>59</sup> Kuwait Constitution, Article 2.

<sup>60</sup> The Iraqi Constitution provides in Article 18, Second, that 'anyone who is born to an Iraqi father or to an Iraqi mother shall be considered an Iraqi' (Government of Iraq, no date).

<sup>61</sup> The UAE changed its nationality laws by presidential decree in 2011 to give men and women an equal right to pass on their nationality to their spouses and their children. This was the first such law change within the UAE and within the GCC. It was speculated at the time that it might have a 'domino' effect in the region (Sajwani, 2011).

citizenship laws are unconstitutional and unfair to women (Al Seyassah, 2017). Speakers from the Women's Cultural Social Society, lawyers and law professors all spoke out publicly about the unfairness of the Nationality Law both to Kuwaiti women, and to children of Kuwaiti women. Change is coming and it will come from within Kuwait, but education and awareness-raising will be an integral part of that reform process.

## Conclusion

This paper puts forward the argument that if states are serious about sustainable development, they will need to give serious consideration to each and every one of the SDGs. This paper has sought to draw out the need to achieve gender equality in nationality laws to assist realisation of all the SDGs. Development is multi-faceted by nature and the problems and solutions will be multi-faceted, too. The suggestion above of pursuing a four-pronged approach (Law, Attitudes, Theory and Education, or 'LATE') is just a very simple way of stating that development—in all its shapes and forms—will take time to achieve and it will take simultaneous efforts on different fronts from various groups and individuals *within* Kuwaiti society.

Defining out and deliberately excluding some individuals, simply because they happen to be born to a Kuwaiti mother and not a Kuwaiti father, means excluding all those children, and subsequently their descendants, from the benefits of development. It means that a child born to a Kuwaiti mother and foreign father will have less access to education, employment, social benefits and health care – all of which are pre-requisites for development. It is contended here that the Nationality Law 1959 should be changed. Article 2 ought to simply state that *any person born in or outside Kuwait, to a Kuwaiti father or a Kuwaiti mother, is a Kuwaiti*. To achieve gender equality, social justice and sustainable development, it is submitted that Kuwaiti women ought to be allowed to pass their nationality to both their husbands and their children, but at the very least, the latter. If that happens, then perhaps *all* Kuwaiti citizens would be welcome to join in and reap the benefits of development in their country.

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