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Kuwait Transparency Society



Assessment of the Electoral Framework

Final Report

Kuwait

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Kuwait's framework for parliamentary elections is largely in line with international standards, although a few shortcomings should be addressed.

Even though Kuwait does not permit the formation of political parties, and women received the right to vote and to stand in elections only in 2005, the country has a long-standing history of pluralistic and genuine elections. Generally, there is confidence in the work of the electoral administration. However, the equality of the vote is not respected because the size of the electorate in the five electoral districts, each of which is represented by 10 MPs, varies significantly.

After the May 2008 elections, the election authorities experienced significant difficulties with the counting and aggregation of the votes, resulting in controversy and court appeals. Certainly, there is scope to introduce measures to enhance transparency, improve the counting and aggregation of votes (e.g. by requiring a prompt and detailed publication of election results at all levels) and reforming procedures for adjudicating election related complaints and appeals.

Currently, the elections are managed jointly by the Ministry of the Interior, the Ministry of Justice and the judiciary. Representatives of the candidates also have a role in administering the election during polling. There may be value in establishing an independent election commission, with responsibility for managing the entire electoral process.

The legislation imposes some limitations on the right to vote – notably for naturalised citizens, the police and the military. These may not be in line with international standards. Given the significant role of financial resources in election campaigning, regulation of campaign financing would be appropriate.

The political-constitutional system is characterised by the dominant role of the Amir. He appoints the government without the need for parliament's approval. Because all ministers are ex-officio members of parliament, the significance of parliamentary elections is diminished. Nevertheless, parliament does play an important role in holding the executive accountable, in particular through the questioning of ministers.

There is a lack of legal clarity regarding respect for the right of citizens to establish political parties. There is no system for formally registering parties and consequently political groups tend to operate as loose factions of individuals. The right to establish political associations is recognised in international treaties to which Kuwait has acceded.

1. Not a Full Democracy, but the most Participatory Gulf State

Many Kuwaitis have a high respect for the constitution and consider it to be of key importance in maintaining the country's political stability.

Kuwait's constitutional system is marked by the strong role of the Amir, who, nevertheless, has to contend with a partly elected parliament. The Amir appoints the government, which needs no approval by parliament. Government ministers are *ex-officio* Members of parliament (MPs). This significantly lessens the separation between the legislative and the executive branches of power and dilutes powers of directly elected MPs. However, at times the parliamentary votes of ministers have been instrumental in enacting reforms, which were in the interest of democracy, such as the introduction of women's suffrage.

The constitutional arrangements may not be in line with the spirit of article 25 of the International Covenant for Civil and Political Rights (ICCPR)¹ which implies that "where citizens participate in the conduct of public affairs through freely chosen representatives, [...] those representatives do in fact exercise governmental power and that they are accountable through the electoral process for their exercise of that power."²

Nevertheless, the legal framework contains significant mechanisms for making government accountable to parliament, in particular by allowing MPs to question and interpellate ministers and to hold votes of no-confidence. Indeed, in the absence of the need of the government to be supported by a majority of the assembly, questioning/interpellation has taken a far bigger importance in Kuwait than in other democracies. In recent years, parliament has increasingly challenged government on policy issues and flexed its constitutional muscle by using these tools. The executive has responded strongly to the parliamentary challenge, for example by dissolving the assembly and calling for fresh elections.

¹ *Inter alia*, article 25 deals with the right to elect and be elected

² UN Human Rights Committee, General Comment on Art 25 ICCPR (1996), paragraph 7

As a result, the relationship between the government and parliament has been increasingly tense. Nevertheless, Kuwait's democratic governance has improved over recent years. It is noteworthy that, in contrast to the 1970's and 80's, when the Assembly has been dissolved, fresh elections have been held in line with constitutional provisions. Furthermore, since 2003 the Crown Prince does not automatically hold the Office of Prime Minister, making it less controversial for parliament to debate his record in office. Since 2005, women have the right to vote and to stand in elections. In 2006, parliament introduced a new electoral system despite resistance by the executive.

2. A Complex Society without Political Parties

Kuwait's society is complex, with multiple lines of distinction such as urban/tribal, Islamist/'secular', pro-government/opposition³ and Sunni/Shi'a. Family affiliations are also relevant.

However, Kuwaiti legislation does not recognise the existence of political parties,⁴ therefore societal distinctions are not translated into a political party spectrum. Elections are contested by 'independent' non-party candidates, although the political views of candidates are generally well-known to voters. While ostensibly, political discourse is between individuals, MPs co-ordinate their election and policy objectives in informal parliamentary blocs. Nevertheless, as the political arena is not clearly demarcated the relative importance of citizens' socio-religious-political identities in political life is less easy to quantify than in other countries.

The concept of political parties has a negative connotation in the eyes of many Kuwaitis, because of one-party regimes in Syria and, in the past, in Iraq or the role of political parties in Lebanon's civil war. They have yet to be convinced of the beneficial role political parties can play in a democracy. It is difficult to envisage Kuwait's continued democratic evolution without permitting political parties to form.

3. History of Competitive Elections

Kuwait has a long-standing history of competitive elections. There is widespread confidence in the honesty of the electoral process, to the degree that the 1967 elections - considered to have been fraudulent – are well remembered. Nevertheless, concerns exist that vote-buying has not yet been eradicated.

³ Given that the government does not need to be approved by parliament, opposition does not necessarily indicate a minority of MPs.

⁴ The legislation does not clearly establish the right to form political parties, nor does it contain a clear prohibition. In any event there is no mechanism to register political parties.

The vote counting process during the May 2008 elections was flawed. Indeed, in September 2008, the Constitutional Court annulled the election of two MPs on the grounds that the official results were wrongly aggregated. The Court awarded the mandates to two other candidates.

The May 2008 elections were held under a new electoral system whereby 25 election districts used in previous elections were amalgamated into five larger districts, with each voter entitled to cast four votes. It was thought that the new system would make it easier for women to be elected, to make 'vote buying' harder and to facilitate co-ordinated election strategies between like-minded candidates. However, the new system had some unanticipated 'side effects' e.g. because each voter has four votes some political blocs 'traded' votes with each other, a practice that is facilitated by the existence of close social networks (families, clans and tribes). This allows candidates to have a good idea of their core support, enabling them to 'trade' one or two votes of the four available to voters with other candidates in exchange for the votes from the other candidate's core support.

Elections are managed by the Ministries of the Interior and Justice and the judiciary with a role for candidate representatives during polling and counting. The exact responsibilities of the ministries are not clearly set out in law. An additional potential problem with the arrangements is that the judiciary has a role in *administering* the Election Laws as well dealing with any legal appeals against the process.

Priorities for Strengthening the Electoral Framework

While the electoral framework is largely in line with international standards a number of issues should be addressed, taking also into account the shortcomings of the May 2008 elections. The most important recommendations are:

- The procedures for the counting and aggregation of votes should be more transparent. Suggested legislative improvements include granting candidates and their representatives the right to receive an authorised copy of the official minutes of all election committees, publicly displaying one copy of the election results for each polling station at a voting centre immediately after the signing of the minutes by the sub-committee, requiring the election administration to publish the election results for all polling stations e.g. on their website, no later than the time at which official results are announced. The Election Law should include provisions regulating the recounting of ballots and it should establish a legal deadline by which final official election results must be announced.
- The deadlines for filing appeals against election results and for decisions on such appeals should be shortened. Ideally all appeals should be completed before a new parliament is constituted.
- When delimiting electoral districts, care should be taken that each MP represents a similar number of voters.

Further detailed recommendations are presented at the end of this report.

Introduction and Acknowledgements

This report was prepared by Paul O'Grady and Michael Meyer-Resende of Democracy Reporting International (DRI) following a mission to Kuwait in May 2008 and by Dr. Ibrahim Hadban, Kuwait University, and Homoud Alenezi from the Kuwait Transparency Society. The report reflects the findings and conclusions of the authors.

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Constitutional and Political Context

1. Socio-Political Context

1.1 Introduction

Kuwait, a British protectorate from 1899, gained full independence on 19 June 1961. The Constitution, adopted in 1962, was drafted by a Constituent Assembly elected the previous year. It sets out the wide-ranging powers of the hereditary Amir, who is the Head of State and appoints the government. At the same time the constitution stresses the concept of the separation of powers and affords considerable authority to an elected National Assembly (*Majlis al Umma*) in legislating and acting as a check on the government executive. Since 1963 parliamentary elections have mostly been competitive.⁵ Although not a full democracy, Kuwait's constitution establishes a polity, which is more democratic than any other state in the Gulf region. This has been attributed to three factors: the need for consent-based exercise of political power during one of the periods in which Iraq claimed Kuwait as an integral part of its own territory; the 'liberal instincts' of the Amir at the time and a strong demand for political representation by the urban elite.⁶ The constitutional arrangements continue to enjoy strong public support.

There is no legal framework for establishing political parties and the Cabinet of Ministers does not need the backing or approval of its programme by parliament. This means that while Kuwait possesses a significant democratic institution i.e. the Assembly, its system of government is not democratic *per se*. These factors have created longstanding tensions between the executive and legislative branches of government, which has negatively affected the effective functioning and stability of both.

1.2 The Ruling Family

1.2.1 Origins of the Ruling Family's Authority

In the mid-eighteenth century the area that is now Kuwait City was settled by three branches of the Anizzah tribal confederation. Local political lore holds that Kuwait's ruling family, the al-Sabah, was chosen by its peers to give leadership on administrative-political issues. During the nineteenth century the relationship between the al Sabah family and the other notable families was one of *primus inter pares* (first among equals).⁷ However, profound changes occurred during the period of the British

⁵ The 1967 elections are widely regarded as having been rigged and the 1971 elections were largely boycotted by nationalists and liberals.

⁶ See Michael Herb: "The Transition from Liberalized Autocracy? New Options for Promoting Democracy in the Arab World"; Prepared for: the USIP-Muslim World Initiative Working Group and Study Project, (Georgia State University, October 26, 2005). This paper offers an excellent overview and analysis of many of the issues raised in this section of the report.

⁷ See: *Stories in Democracy: Politics and Society in Contemporary Kuwait*, Mary Ann Tétreault, Columbia University Press, 2000 (Chapter 4).

protectorate which strengthened the position of the al Sabah family, particularly after the discovery of huge oil reserves.⁸

After the reign of Sheikh Mubarak al-Sabah (1896-1915), the title of Sheikh of the Al-Sabah (after 1962 'Amir') switched between the lineages of two of Sheikh Mubarak's sons: the al-Jabir and al-Salim lines.⁹ With the adoption of the Constitution in 1962, certain aspects of the royal succession have become legally regulated e.g. limiting eligibility within the al-Sabah family to descendants of Sheikh Mubarak al Sabah. The Constitution grants the Amir one year from the date of his accession to nominate a successor (the Crown Prince). The Amir's selection is ratified by the National Assembly. With the exception of the 2006 crisis that emerged following the death Amir Jabir III Al-Ahmad Al-Jabir Al-Sabah and the ill-health of his successor, Crown Prince Sa'ad I Al-Abdullah Al-Salim Al-Sabah, royal successions have passed smoothly.

1.2.2 The Political Role of the Ruling Family

The Amir, as head of State and the ruling family, is the central figure in Kuwaiti political life.¹⁰ The Cabinet of Ministers is accountable to the Amir and ministers must have his confidence.

The ruling family is composed of several hundred members. Lineages other than the al-Salim and al-Jabir lines retain influence with the Amir. Prominent members of the ruling family have frequently been appointed ministers in the key 'power ministries': Interior, Foreign Affairs, Defence and sometimes Finance and Oil. This enables the ruling family to retain a strong direct involvement in government.

The members of the ruling family do not always hold politically homogeneous views and prominent members are close to different political blocs. While the family ostensibly has maintained its unity, in recent years, the al-Jabir lineage has gained a degree of primacy over the Al Salim line and it has been claimed that rivalry between the royal lines constitutes a major cleavage within the ruling family.¹¹ Other branches of the Al-Sabah family may play political roles as ministers, under-secretaries, etc. The Amir must balance diverse interests and seek to satisfy the political demands of a frequently disunited parliament. Ultimately, he must also take account of prevailing public opinion.

⁸ Mary Ann Tétreault, *op cit.*

⁹ However, there has not been a strict alternation of royal succession between the two royal lines.

¹⁰ Although this is not necessarily seen on a day-to-day basis as the government acts as 'a buffer' between his 'diwan' (office) and parliament.

¹¹ Helem Chapin Metz, ed. *Persian Gulf States: A Country Study*. Washington: GPO for the Library of Congress, 1993, Chapter Kuwait, Government and Politics, the Ruling Family. See: <http://countrystudies.us/persian-gulf-states/26.htm>

1.3 Society

Kuwait's resident population is estimated at 3.4 million, of which 69% are non-Kuwaitis.¹² They do not feature as significant political actors, except as objects of State policy. Approximately 1.05 million persons are Kuwaiti citizens – some of whom obtained citizenship through naturalisation.

The question of Kuwaiti citizenship and naturalisation is contentious. Some 'immigrants' have not been naturalised despite having resided in Kuwait for three or four generations. The 1959 Nationality Law grants citizenship to those who descend, in the male line, from persons who could prove permanent residence in Kuwait since 1920.

As in most other jurisdictions, non-citizens do not participate in national elections.

1.3.1 Sunni and Shi'a

Kuwaiti citizens are religiously and socially heterogeneous. The majority are Sunni Muslims, but there is a significant Shi'a population. However, there are no reliable statistics on the size of the Shi'a minority.¹³ The two communities have peacefully coexisted although heightened sectarian identification and inter-communal tensions have occurred at various points in recent history.¹⁴ Controversially, on occasions some Sunnis have questioned Shi'a loyalty to the State; a charge most Shi'a resent deeply. At times some Shi'a groups have complained of discrimination within Kuwait,¹⁵ including in the size of parliamentary representation under the current election system.

1.3.2 'Hadhar' and Tribe

While Kuwait is *de facto* a 'city state', distinctions are often made between the 'urban' population (the '*hadhar*') and those that live in the outlying city districts (the '*badu*'). In general, the former group include long-established sedentary groups including the merchant families. The latter mostly consist of Bedouin tribes with strong tribal identities who settled in Kuwait in different waves, mostly during the twentieth century.¹⁶

Taken together, the tribal groups constitute approximately half of all Kuwaiti citizens.¹⁷ Citizenship and naturalisation was granted to some members of the Bedouin tribes without rigidly enforcing the strictures of the 1959 Naturalisation Act. In the early years after independence, the tribal groups tended to be more pro-government than the Sunni hadhar.

¹² Estimates of a study of March 2008, based on data from the Public Authority for Civil Information, see Weekly Economic Report, Volume 18, Issue 13, 30 March 2008.

¹³ Estimates vary between 15-30% of the population - depending on which source is referenced.

¹⁴ Inter-communal tensions when they have arisen usually stem from major events in the wider Gulf region e.g. the 1979 Iranian revolution and subsequent Iraq wars or in 2005 when Shi'a assumed the largest share of government power in Iraq

¹⁵ For example, Shi'a tribespersons' difficulties in receiving citizenship compared to the Sunni tribes.

¹⁶ The large majority of the indigenous Kuwaiti society has 'tribal roots'. However, this group retains a much stronger sense of the tribe as a political and cultural identity, than the hadhar.

¹⁷ This naturally makes them politically significant entities. The larger tribes include: the Awazem, Mutairi, Ajmans, Rashaydi. Middle-sized tribes include: the Enezi, Otaibi, Thafeiri and Shimmari. Smaller tribes include the Hajri, Dawsari, Harbi, Subai'e, Marri, Fadhli, Hershani, Adwani, Khaldi, Qahtani and Al-Sehali. They represent small percentages around the five electoral districts.

1.4 Political Currents

Kuwaiti legislation does not provide for the formation of political parties and there is no mechanism for their registration as legal entities (see below). Persons standing for election to the National Assembly do so as individuals. However, unrecognised political groupings (blocs) have existed – some for many years.

Some political blocs resemble quasi-parties and have organisational structures. Others are more loosely based parliamentary groupings of independents. It is difficult to gauge the parliamentary strength of the various groups as all MPs are elected as individuals. Additional difficulty arises because some MPs have dual 'identities' (e.g. 'tribal' + 'Islamist').

In recent years, the main political distinctions exist between 'Islamists' and 'non-Islamists/secularists' and between pro-government and 'opposition'. Political distinctions can also be made between urban and tribe and, to an extent, between Sunni and Shi'a.

The distinction between government and opposition is unusual in the Kuwaiti context, because since 1992 'opposition' deputies have usually been a majority in parliament.¹⁸ This is possible because the government is appointed by the Amir and does not need parliamentary backing. On a day-to-day basis parliamentary majorities are only formed on specific issues and it has been noted that "the incessant battles between Islamists and non-Islamists and between bedouin and hadar, contribute more than patronage to the domination of Kuwaiti politics by the ruling family"¹⁹

While there is significant turn-out for parliamentary elections, it appears that there is very limited public support for political movements as such²⁰ and the majority of citizens are unable to name a single political bloc.²¹

1.4.1 Sunni 'Islamists'

The Islamic *Salafi* Alliance (ISA) is closely aligned with the conservative Wahabi school of Islam and is affiliated to the Heritage Revival Society (*Jamiat Ihya at-Turath*). Among its policy priorities the enforcement of Sharia law is the most important. It was also opposed to any political role for women. Some *salafi* splinter movements have been formed e.g. the *Salafi* Movement (also known as '*scientific salafis*') and the *Ummah* Party. The ISA fielded four candidates who were elected. It also backed the campaigns of

¹⁸ The term 'opposition' should be used with care. It does not imply opposition to the Amir or the constitutional arrangements, but rather opposition to the ruling-family led government's policies. The term 'the opposition' is misleading, because opposition groups have markedly different ideologies.

¹⁹ Michael Herb, *op cit*.

²⁰ See KES 2006 and 2007 opinion surveys. The 2006 survey found that only 27% of respondents believed Kuwait needed political parties and the 2007 survey found strong support for the contention that there is no need for political parties.

²¹ In a 2007 survey by the Kuwait Economic Society (KES), 61% of respondents could not name a single existing political bloc.

other 'religiously conservative' candidates, in particular in the two tribe-dominated election districts – some of whom were elected. Altogether ten MPs are thus considered to be part of the ISA or affiliated to it. At times it has co-operated with the Islamic Constitutional Movement (ICM), although recently there is some rivalry between these two main Sunni Islamic groups, with the *salafis* now apparently in ascendancy.

The Islamic Constitutional Movement (also known by its Arabic acronym, *Hadas*) was formed in 1991 and is affiliated to the Kuwaiti Muslim Brothers, but distinguishes itself from the international branch of the Muslim Brothers ('*Ikhwan*'). According to its version of 'political Islam', the Constitution should be modified to fit prevailing conservative social attitudes and in particular should not go beyond Islamic teachings. It has not supported the election of women, but accepts their role as voters. The ICM has been represented in all parliaments since the 1992 elections but its electoral fortunes have fluctuated. Currently it has three MPs, its lowest total since 2003. At times the ICM has joined 'broad-based' opposition blocs e.g. in 2006 to push for a change to the election system.

Other 'independent' Islamists are represented in parliament. Some of them associate with or are members of Islamist parliamentary groupings (factions).

1.4.2 Shi'a Political Groups

The National Islamic Alliance (NIA) / al-Meetaq (the Charter) is the largest political grouping representing the Shi'a community. Ostensibly it is composed of Shi'a Islamists. Electorally, it co-operates with al-Meetaq (al-Meethaq/the Charter). Claims are sometimes made by Sunnis that the group has links to Iran, something the group denies.²² Currently there are two NIA deputies while a third is affiliated to the group.

The Justice and Peace Alliance (JPA) is a group of moderate Islamists. The JPA has had at least one MP in the last two parliaments. In general, it is more pragmatic and less opposition-minded than the NIA.

One other Shi'a MP, an independent Islamist, was elected in the May 2008 elections.

1.4.3 Non-Islamists/'Secularists'

The National Democratic Alliance (NDA) is a grouping of mostly 'secular' liberals.²³ The NDA supports the constitutional arrangements but generally advocates further democratisation e.g. through establishing political parties. In 2005, it firmly supported granting women their full political rights and in 2006 was

22 In February 2008, its two deputies in the 2006-8 parliament were expelled from the broad-based oppositionist 'Popular Action Bloc' because of their participation in a rally mourning Imad Mughniyah, a Lebanese Hezbollah commander.

23 'Liberal' is not to be understood in all aspects like Western liberal parties. E.g. Kuwaiti liberals do not question the constitutional provision that Sharia should be a basis for legislation.

one of the main blocs calling for reforming the election system. The NDA is often criticised by Islamists, but continues to enjoy some public support – particularly in central urban areas. Three NDA candidates gained seats in the May 2008 elections. Other ‘liberal’ MPs were elected although they are not formally affiliated to the NDA.

The Kuwait Democratic Forum (KDF) is a nationalist-liberal grouping pre-dating the NDA. It had a strong presence in the 1985 parliament but little thereafter. To all intents and purposes it now operates within the NDA. One ‘independent’ MP elected in 2008 was endorsed by the KDF.

1.4.4 Other Political Groupings

The Popular Action Bloc (PAB) defines itself more by its political approach to the government than any specific group/ideological interest. It is more of a parliamentary faction than a unified political group. Its members are strongly ‘oppositionist’ and rally around a ‘populist’ agenda. It includes nationalists (such as the veteran MP Ahmad Al-Saadoun), tribal deputies, Islamists and, on occasions, Shi’a MPs. The group is thought to have a current parliamentary strength of between 3 and 6 MPs.

The Justice and Development Movement (JDM) was established in 2004-5. It includes progressive Islamists and liberals and rejects the articulation of politics in terms of liberals vs. Islamists.²⁴ It does not appear to have any affiliated MPs.

The Ummah ‘Party’ was formed in 2005, by a salafi splinter group. However, it is not recognised as a party by the State authorities. It fielded eleven candidates in the 2008 elections, none of which was elected.

The Bedouin Tribes are highly influential in Kuwaiti political life and there is a strong tradition of tribal communities voting for MPs from their own group. To avoid splitting the vote, tribes often hold ‘primary’ elections. After the 2008 elections, twenty six MPs have to varying degrees a tribal identity.²⁵ Their ranks include Islamists (including those backed by the ISA), members of the Popular Action Bloc, pro-government and non-affiliated MPs.

Pro-government deputies are elected, although they do not form a bloc as such. Some are urban ‘businessmen’ others are from the tribal groups. Some MPs are referred to as ‘service deputies’. Their election campaigns promise a beneficial allocation of State resources to the constituency. Their loyalty to government is in general conditional on securing these resources. Other deputies may also support the government in key votes for similar tangible benefits.

24 MERIP: Women’s Rights and the Meaning of Citizenship in Kuwait, Mary Ann Tétreault, February 10, 2005 (<http://www.merip.org/mero/mero021005.html>)

25 For a few, tribal identity is of secondary importance, while the majority rely on tribal links for their election. After the May 2008 elections seven MPs are ‘Mutairi’, six are Awazem, four are Rashaydi, three are Ajmi, two are Enezi, one is Otaibi and three represent tribal alliances.

1.5 Elections to the National Assembly

Since the adoption of the Constitution, twelve elections to the National Assembly have been held.²⁶ Significantly, there is a high degree of public confidence in the integrity of recent electoral processes. Many Kuwaiti citizens readily recall manipulation of the 1967 elections, but most believe a repetition is unlikely because it would not be accepted by what is a generally well-informed electorate. Nevertheless there has been concern over 'vote-buying', which, according to some analysts, influenced a few results in the 2003 and 2006 elections.²⁷ In addition, a parliamentary committee report on the June 2006 elections expressed suspicions about government interference by giving undue favours to candidates who were considered to be close to the government.²⁸ Following the enfranchisement of women in 2005, the last two elections (2006 and 2008) have been conducted on the basis of universal suffrage.

2. Constitutional Context

2.1 The Executive Branch: the Amir and the Cabinet of Ministers

According to article 4 of the 1962 constitution Kuwait is a hereditary Amirate, which is ruled by the Al-Sabah family. In contrast, article 6 of the constitution states that the system of governance shall be democratic with sovereignty residing in the people who are "the basis of all power".

The Constitution stipulates that the system of Government is based on the principle of the separation of powers and that no power may relinquish all or part of its constitutional competence (article 51). Legislative power is vested in the Amir and the National Assembly, while the executive power lies with the Amir, the cabinet and the ministers. The Courts exercise judicial power.

As the Head of State, the Amir exercises his powers through his ministers. He appoints and dismisses the Prime Minister, who chairs the Council of Ministers, who are appointed and dismissed by the Amir upon recommendation of the Prime Minister. Under article 58 of the Constitution, the Prime Minister and the Ministers are collectively responsible to the Amir for the general State policy. Every Minister is also individually responsible to the Amir and the National Assembly for the affairs of his ministry. Ministers are automatically (*ex-officio*) part of the National Assembly, but their number should not exceed one third of the number of MPs.²⁹

²⁶ The Assembly was suspended from 1976-1981 and from 1986-1992. In 1990 elections were held to a 'National Council' (majlis al-watani), the purpose of which was to define relations between the government and parliament. The elections are regarded as being 'unconstitutional' and were largely boycotted by members of the parliament elected in 1985.

²⁷ Michael Herb, *op cit.* referring to the 2003 elections and The Human Rights Index for Arab Countries (<http://www.arabhumanrights.org/en/countries/humanrights.asp?cid=8>) referring to the 2006 elections.

²⁸ For details see Al-Reyad Saudi Newspaper, 29 September 2006

²⁹ The parliament has fifty elected deputies. Hence the cabinet cannot exceed sixteen members.

The Amir, after 'traditional consultations', appoints the Prime Minister. He may also remove the Prime Minister from office. Until 2003, by tradition, the Crown Prince was appointed Prime Minister.³⁰ However, the last two Prime Ministers have not held the title of Crown Prince.

As noted previously, the ruling family is traditionally well-represented in the Cabinet of Ministers. Other cabinet members are appointed either on the basis of their experience or to help the government secure political support among the disparate parliamentary blocs. Notwithstanding the Constitution's specific reference to appointing members of the National Assembly as ministers, in practice recent cabinets have contained few MPs in their ranks. The key role of members of the ruling family in government affords the Al-Sabah considerable influence and can cause a blurring of any distinction between government and the ruling family. Moreover, the right of ministers - some of whom are of the ruling family - to sit as MPs gives the Al Sabah an additional share of legislative power.

2.2 The Legislative Branch: the National Assembly (Parliament)

The Constitution provides that the National Assembly is composed of 50 directly elected members and the ministers. MPs are elected for a four-year term. Currently, only one member of the 16-member government is an elected MP. Thus, the parliament comprises 65 members.

The Assembly shall have an annual session of at least eight months. The Amir (article 65) as well as each MP (article 109) has the right to initiate legislation. Laws are passed by the Assembly by an absolute majority of members present. For a quorum, at least half of the members must be present (art 97). Legislation must then be approved and promulgated by the Amir. If the Amir does not sanction legislation within thirty days (or seven days in case of urgency), it is considered promulgated automatically. The Amir can ask for reconsideration of a bill in which case the assembly must affirm it by a 2/3 majority of its members for it to be promulgated. Given that up to 23% of the assembly can be Amir-appointed ministers, it may be difficult to find a majority to over-rule a request for reconsideration.

There is no clear-cut parliamentary majority. Instead, parliamentary deputies coalesce in informal factions (political blocs) and issue-specific majorities are formed to adopt legislation, pass motions etc.

The inclusion of appointed cabinet ministers to the parliamentary body can have the effect of blocking initiatives by the political 'opposition' e.g. if government ministers were not permitted to sit in parliament, in most cases the votes of 26 deputies would be sufficient to pass a motion or to adopt a bill.

30 In 2003 Sabah IV Al-Ahmad Al-Jabir Al-Sabah was appointed Prime Minister even though he was not the Crown Prince. After the 2006 succession crisis, Sheikh Sabah IV Al-Ahmad became Amir and appointed Nasser Mohammed Al-Ahmed Al-Sabah (his nephew) as Prime Minister while Sheikh Nawaf Al-Ahmad Al-Jabir Al-Sabah (his half-brother) was chosen as Crown Prince.

With the addition of 15 other members, who are likely to be supportive of the government, potentially 33 deputies (67% of the number of elected deputies) are required to pass the same motion or to adopt the same bill.

2.3 Ministerial Accountability to parliament

The parliament does not have the right to pass a confidence motion in the government. However, MPs are entitled to question or to 'interpellate'³¹ ministers (known colloquially as 'grilling') including the Prime Minister. Furthermore, with the exception of the Prime Minister, it can adopt a motion of no-confidence in individual ministers, which if adopted, means that the Minister concerned is considered as having resigned (article 101). Ministers may not participate in votes of confidence.

While the Constitution does not provide for a motion of no confidence in the Prime Minister, the Assembly may decide that it 'cannot cooperate with the Prime Minister' whereupon the matter is referred to the Amir, who may either relieve the Prime Minister of office and appoint a new Cabinet or dissolve the National Assembly. In the event of dissolution, if the new Assembly decides that it still cannot co-operate with the Prime Minister, "he shall be considered to have resigned and a new Cabinet shall be formed." To date, the parliament has never used this right.

2.4 Constitutional Context and Article 25 ICCPR

The UN Human Rights Committee noted that "Where citizens participate in the conduct of public affairs through freely chosen representatives, it is implicit in article 25 that those representatives do in fact exercise governmental power and that they are accountable through the electoral process for their exercise of that power"³²

In the case of Kuwait, democratic representation and the separation of powers is weakened because Ministers are part of the National Assembly. Furthermore, the government is appointed by the Amir and does not need the direct support of a majority of the assembly. Also, in absence of political parties, accountability is more difficult, because voters may not know what individual candidates stand for.

31 Only the MP questioning is entitled to comment on the answers given, while interpellation is a more formal approach which leads to a debate with all MPs and can pave the way for a no-confidence vote (see articles 99 and 100 of the Constitution)

32 UN Human Rights Committee, General Comment on Art 25 ICCPR (1996), paragraph 7

There are nevertheless significant mechanisms of accountability, in particular the questioning and interpellation of ministers and no-confidence votes. In recent years, parliament has increasingly challenged government on policy issues and flexed its constitutional muscle by using the right of interpellating ministers. At the same time the government responses have become harsher, with the assembly being dissolved in response to the interpellation of the Prime Minister. Some ministers have chosen to resign rather than face a no-confidence motion and replacement by the Amir while others have successfully defended their record in office and survived their parliamentary grilling and even won confidence motions. The assembly may also decide by majority that it cannot work with the Prime Minister, though this is an extreme option which can result in the dissolution of the assembly.

This constitutional set-up has often led to a 'co-habitation' situation, where the majority of parliament tends to be opposed to government policies. A 'destructive' attitude of parliament may result from the fact that no MP necessarily has a stake in the success of the government, in contrast to parliamentary democracies. Instead MPs have an incentive to increase their public profile, e.g. by confronting the government. In the absence of direct accountability of the government through elections, the main mechanism of accountability lies in the right of questioning and interpellation of ministers by MPs. Thus questioning/interpellation have become unusually prominent in the executive-legislative relationship. Nevertheless there has been some progress in democratic governance over the last decades:

- While from 1976 to 1981 and between 1986 and 1992 the National Assembly was unconstitutionally suspended by the respective Amirs, in the last decade, the Assembly was always dissolved in line with constitutional provisions (in 1999, 2006 and 2008) in the sense that new elections were called in line with the specified timeframe;
- Until 2003, by tradition, the Crown Prince served as Prime Minister, making any accountability difficult, because any criticism of the future Amir would be sensitive, if not penalised. Since 2003, the Prime Minister is a political figure whose performance can be debated and he can be called for questioning.
- Since 2005 women have the right to vote and to stand in elections.
- The National Assembly was ultimately successful in introducing a new election system in 2006.

3. Human Rights and Fundamental Freedoms

Kuwaiti citizens enjoy the highest degree of respect for fundamental freedoms among the Gulf States particularly regarding freedom of expression and more recently freedom of the media and freedom of assembly. The Constitution guarantees most human rights, although freedom of association is not guaranteed as far as the operation of political parties is concerned (see below). The right to stand for elections and to vote is generally guaranteed but there could be improvements as is shown in Part B of this report. The most serious human rights issues are reported in relation to Biduns³³ and the non-Kuwaiti population. Equality of women is not always guaranteed.

3.1 Freedom of Assembly

The years 2005 and 2006 saw an increase in public demonstrations. Many concerned women's rights, corruption and election reform.

In May 2006 the Constitutional Court declared parts of the law on public gatherings (Law 65 of 1979) un-constitutional. Now the Ministry of the Interior only needs to be notified about public gatherings, but there is no requirement to ask for permission to hold such meetings as required under the 1979 law. Government attempts to introduce a new freedom of assembly law have been rejected by parliament.

3.2 Freedom of Association/Political Parties

The Constitution guarantees the freedom to form associations (article 43). It is often asserted that the establishment of political parties is forbidden, but this appears to be a legal grey-zone. While there is no law regulating the establishment of political parties, there is no clear prohibition on doing so either.³⁴

The law on associations and clubs of public interest (Law 24/1962) prohibits associations from engaging in 'politics' or 'political disputes' (article 6). However, it is doubtful whether this law is at all applicable to political parties, given that its article 1 indicates that the law covers associations with social, sportive, religious or cultural purposes. The law has never been subjected to a constitutional court appeal in relation to political parties.

³³ The term Bidun is used in Kuwait to refer to long-time residents of Kuwait who should be eligible for Kuwaiti nationality by naturalisation but who have not been granted it. See 3.6 below.

³⁴ It appears that the Kuwaiti delegation which reported in 2000 to the UN Human Rights Committee acknowledged as much. Mr Al-Saleh noted: „Political parties were not authorized under the Constitution; however, the Constitution did not ban them altogether, so parties might exist in the future.“ See Human Rights Committee, Summary Record of the 1852 meeting. Some argue that art.45 of the Constitution contains an implicit prohibition to form political parties, but the article is concerned with petitions to public authorities; a systematic interpretation therefore suggests that it is not aimed at freedom of association, which is regulated in art. 43.

In 2005 Islamist political activists declared the establishment of the Umma party. They were subsequently interrogated by the police, but no charges were brought against them under the law on associations. They were charged for breaching other laws (press law and law on public gatherings) but acquitted in May 2007.³⁵

Article 22 of the ICCPR guarantees the freedom of association, including political parties. Therefore the UN Human Rights Committee stated: "The Committee is concerned about the absence of political parties in Kuwait. Bearing in mind that political parties constitute an important component of democracy, the State party should take appropriate measures so as to ensure the right of Kuwaitis to establish such parties, in conformity with articles 22 and 25 of the Covenant".

It appears many Kuwaitis are not in favour of allowing the establishment of political parties,³⁶ fearing that they could result in a one-party state or that they could lead to violent divisions as in the Lebanese civil war. This is linked to a concern that political parties would merely exacerbate tribal or sectarian affiliations. Although this is possible, a political party law could try to hinder such developments, e.g. by prohibiting parties from being based on any form of discrimination, be they religious or tribal affiliation. Furthermore a political party law could make political activities more accountable, e.g. by introducing rules on party financing and primaries.

3.3 Freedom of the Expression/Media

Kuwaitis enjoy more freedom of expression and media freedoms since 2006 when a new media law was introduced.³⁷ The constitution guarantees these rights (articles 36, 37). There are 11 Arabic and three English language daily newspapers.

There is also a new law for audio-visual media (Law 61 of 2007), which eases licensing of TV and radio stations. It contains a similar list of restrictions as the press and publications law. Licenses and broadcasts can therefore be prohibited in cases where Islam is insulted, where the overthrow of the government is advocated or where the Amir is criticised etc. In these cases journalists can also be penalised as happened occasionally in the past.³⁸

³⁵ Amnesty International 2007 Report, Kuwait Chapter

³⁶ See KES 2006 and 2007 surveys. The 2006 survey found that only 27% of respondents believed Kuwait needed political parties and the 2007 survey found strong support for the contention that there is no need for political parties.

³⁷ Kuwait has the best regional score on the index by Reporters without Borders, where it is listed on 63rd with 169 being the lowest, Worldwide Press Freedom Index 2007.

³⁸ See for details: US State Department, Human Rights Report Kuwait 2007

If no license is granted within 90 days of an application, it is to be considered rejected and the applicant can appeal the rejection to court.

There are eight terrestrial and satellite TV stations (including the State run 'Kuwait TV' KTV) and private satellite broadcasters (*Al Rai*, *Al Watan* and Scope).³⁹ Foreign media are also widely viewed including *Al Jazeera* (Qatar) and *Al Arabiya* (Dubai).

Generally public debate in Kuwait is lively and open with only a few taboos, which may occasionally also lead to self-censorship. There is a lively blogger scene which also addresses political issues.

3.4 Other Human Rights

Violations of other human rights are reported in particular in relation to migrant workers in Kuwait. This can include wage exploitation, physical and psychological abuse, forced labour or confiscation of passports.⁴⁰ Non-Kuwaitis may also suffer from restrictions to freedom of association, e.g. in trade unions, although this should be guaranteed to them equally.⁴¹

The constitution (article 163) provides for the independence of the judiciary, but according to some reports the judiciary's independence is not always respected.⁴² There can be a structural problem in that "many judges are non citizens who hold one to three year renewable contracts"⁴³

3.5 Women's Participation in Public Life

The Constitution guarantees equality and Kuwait acceded to the UN Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW). In 2005 the right to vote was extended to women. At the same time the UN Committee on the Elimination of Discrimination against Women expressed its concern "at the continuing existence of *de jure* discrimination against women in various laws, including the Nationality Act, the Personal Status Act, the Civil Code and the Private Sector Employment Act. In particular, the Committee is concerned that the Nationality Act allows Kuwaiti women to transfer their nationality to their children only in specific circumstances, such as when the nationality of the father is unknown or if he is stateless or deceased or after an irrevocable divorce."⁴⁴

39 The KES survey 2007 indicates that KTS is watched most for political information (35%) followed by *Al Rai* (26%). *Al Watan* is the most read daily newspaper (63%).

40 "Exported and Exposed Abuses against Sri Lankan Domestic Workers in Saudi Arabia, Kuwait, Lebanon and the United Arab Emirates," Human Rights Watch, November 2007

41 "Aliens receive the benefit of the right of peaceful assembly and of freedom of association," para.7, UN Human Rights Committee, General Comment No.15

42 Bertelsmann Transformation Index 2008, Kuwait Country Report,

43 US State Department, Kuwait Human Rights Report 2007

44 point 66, concluding comments/Kuwait, CEDAW Committee, 18 March 2004

3.6 Biduns

'Bidun' is a short form of the Arabic term "without nationality." It is used in Kuwait to refer to long-time residents of Kuwait who should be eligible for Kuwaiti nationality by naturalisation but who have not been granted it and subsequently do not enjoy the rights associated with citizenship, including the right to vote. There are different estimates as to their numbers, with the government indicating that there were some 104,000 at the end of 2006.⁴⁵

The issue of Biduns is sensitive for political reasons, as they would change the composition of the electorate. The UN Human Rights Committee (HRC) expressed its concern about the treatment of Biduns and noted: "The State party should confer its nationality on a non-discriminatory basis (...)"⁴⁶

⁴⁵ This figure was given in a report released in June 2007 by the Ministry of Planning. Quoted in the U.S. State Department's Report on Human Rights Practices in Kuwait 2007, issued 11 March 2008.

⁴⁶ Point 29, UN HRC Concluding Observations, Kuwait, 27 July 2000

Analysis of the Legal-Administrative Framework for Holding Elections

1. Relevant International Standards

Kuwait ratified the International Covenant on Civil and Political Rights (ICCPR) in 1996. The Covenant sets out basic international standards for genuine democratic elections, notably Article 25 which includes the right “to vote and to be elected at genuine periodic elections”. The UN’s Human Rights Committee (HCR) issued in 1996 ‘General Comments on article 25’ which provide an authoritative interpretation of all aspects of that article.

However, the ICCPR was ratified by Kuwait with the reservation that the right to vote would not extend to women and members of the armed forces and police. Kuwait also added an ‘interpretative declaration’ to its ICCPR ratification to the effect that the provisions of article 2 (non-discrimination) and 3 (gender equality) would be subject to the limits of Kuwaiti laws. The UN HRC declared that the ‘interpretative declarations’ made by Kuwait when acceding to the ICCPR are not in line with the Covenant.⁴⁷ According to the UN HRC this means that they are invalid.⁴⁸ Kuwait enfranchised women in 2005, thus respecting their fundamental right to participate in political life and simultaneously achieving universal suffrage.

In 1994 Kuwait also acceded to the Convention on the Elimination of all Forms of Discrimination against Women (CEDAW). CEDAW reiterates the obligations of states to ensure the right to vote for women on an equal basis (article 7).

2. Applicable Kuwaiti Legislation

The legal framework for elections is defined by the 1962 Constitution and the Election Law of the same year (Law 35/1962), amended *inter alia* by Laws 17/2005 (introduction of women’s vote), 1/2006, 41/2006 (adjustments of procedures in view of women’s vote), 42/2006 (new electoral system), 4/2008 (amendments to campaign regulations), and 25/2008 (counting of votes in election committees, limit of 15 candidate representatives in election committees, withdrawal of candidacy seven days before election day).

The Constitution does not list the right to vote as a human right, but stipulates that the members of the National Assembly be elected directly by universal suffrage and secret ballot (article 80).

⁴⁷ See para 5 of the UN HRC’s concluding observations, Kuwait, UN Doc. A/55/40 (2000). Kuwait has not reported to the UN Human Rights Committee since 2000. Finland, Sweden and Norway objected to Kuwait’s reservations and ‘interpretative declaration’.

⁴⁸ See General Comment on art.24, para. 18

3. Electoral System

The Constitution (article 80) provides that the National Assembly is composed of fifty members elected directly by universal suffrage and secret ballot. This provision has not changed since 1962. The election system is set by election legislation, not the Constitution. Parliament has a four year term.

3.1 The Context of the Current Electoral System

From 1963 until 1975, elections were held in ten election districts, with each returning five deputies.⁴⁹ In 1980, the government agreed to reconstitute parliament and hold elections. However, prior to the 1981 elections it changed the election system, whereby 25 election districts were established, with the top two scoring candidates in each being elected. Some analysts consider that this change was disadvantageous to the Shi'a electorate. This election system was more open to vote-buying during elections (as there are fewer electors per constituency) and localised, patronage-based politics in non-election periods. This election system was used in all general elections between 1981 and 2006. During the 2003 and 2006 elections, allegations of vote buying were frequently made.

After the 2003 elections the government seemed open to the idea of electoral reform, specifically reducing the number of electoral districts. After the formation of a new government in early 2006, a committee was formed to study the issue. It concluded that five election districts would be optimal. This was supported by a majority of MPs including liberals, populists and some Islamist MPs. When in early 2006, the government proposed a return to a system with 10 electoral districts instead of introducing five districts, a political crisis followed.⁵⁰ When three MPs called for the interpellation of the Prime Minister, the Amir dissolved parliament and called early elections. The elections were held in June 2006 using the existing system. Reformists performed well and in July the incoming parliament adopted a bill amending the electoral system to five districts.⁵¹

3.2 The Current Electoral System

Law 42 (2006) provides that Kuwait is divided in five electoral districts, each of which elects ten deputies. Each voter may vote for up to four candidates. The first elections to be held using the new system were the early elections of May 2008.

The ICCPR does not prescribe or proscribe any particular election system *per se*. However, point 21 of

49 Elections under this system were held in 1963, 1967, 1971 and 1975.

50 On 15 May, the minority of elected MPs supported by most ex-officio 'government' MPs began a vote to refer the government's bill to the Constitutional Court (for a review on the question of the district sizes – which did contain equal numbers of electors and thus did not ensure equal voting weight), prompting a walkout of parliament by the reformist MPs, who regarded the move as a delaying tactic.

51 Law 42 (2006) regarding 'Delimitation of Constituencies' amends Law 35 (1962) on Elections of National Assembly Members as well as Decree Law 99 (1980) and Law 5 (1996); which deal with constituency delimitation and its redefinition.

General Comment 25 (1996) states: “Although the Covenant does not impose any particular electoral system, any system operating in a State party must be compatible with the rights protected by article 25 [...]”

3.3 Districting

Law 42 (2006) provides a schedule for allocating territory to the five new districts. Reportedly no boundary changes were made to the previous election districts – these were simply amalgamated (see a Map in Arabic in Annex 1).

The districts have different socio-economic/religious compositions. The Shi’a constitute about 50% of the electorate in district 1. The Awazem tribe has about 15% of the electorate in district 1. The remainder are Sunni *hadhar* ‘urbanites’. This group also constitutes the majority in districts 2 and 3, although there is a Shi’a minority in district 3. Tribal groups predominate in districts 4 and 5.

All districts are contiguous and there is no evidence of any gerrymandering *per se*, although, of course, important decisions had to be taken regarding where to allocate each populated area.⁵²

Distribution of Voters per District⁵³

| District | Voters Women* | % of total | Voters Men | % of total | Total |
|----------|---------------|------------|------------|------------|---------|
| 1 | 36,571 | 54.88% | 30,070 | 45.12% | 66,641 |
| 2 | 22,103 | 53.43% | 19,262 | 46.57% | 41,365 |
| 3 | 33,056 | 56.34% | 25,618 | 43.66% | 58,674 |
| 4 | 54,351 | 58.00% | 39,360 | 42.00% | 93,711 |
| 5 | 54,418 | 53.72% | 46,876 | 46.28% | 101,294 |
| Total | 200,499 | 55.43% | 161,186 | 44.57% | 361,685 |

* The reasons for the higher registration figures for women are explained below (chapter on voter registration)

Election districts have a fixed number of allocated mandates – ten to each, rather than a variable number. This, together with decisions about the allocation of residential districts to election districts, has created a situation where some districts (e.g. 4 and 5) have many more electors than others (e.g. 2 and 3).

52 However, one DRI interlocutor complained of attributing El Jabria to district 3 rather than district 1 as this has split Shi’a voters between the two districts.

53 Figures published in the KuwaitTimes 12-16 May 2008 under article titled ‘The Road to the Assembly’

This creates inequalities in the ‘weight’ of each vote. Although these inequalities are smaller than those under the previous system with 25 electoral districts, they still appear incompatible with point 21 of General Comment 25, which states: “The principle of one person, one vote, must apply and within the framework of each State’s electoral system, the vote of one elector should be equal to the vote of another. The drawing of electoral boundaries and the method of allocating votes should not distort the distribution of voters or discriminate against any group [...]”

(In-)Equality of the Vote

| District | Total Voters | % of total | % of mean number of voters (72,337) | seat allocation based on an equal voting weight | Currently ‘Over / Under’ Represented |
|----------|--------------|------------|-------------------------------------|---|--------------------------------------|
| 1 | 66,641 | 18.43% | 92.13% | 9 | +1 |
| 2 | 41,365 | 11.44% | 57.18% | 6 | +4 |
| 3 | 58,674 | 16.22% | 81.11% | 8 | +2 |
| 4 | 93,711 | 25.91% | 129.55% | 13 | -3 |
| 5 | 101,294 | 28.01% | 140.03% | 14 | -4 |
| Total | 361,685 | 100.00% | | 50 | |

The table above shows the number of mandates that a constituency would be ‘entitled’ to if there was a broadly equal allocation based on the number of electors in each.

3.4 Voter Choice

The motivation for granting four votes is not entirely clear, although it was thought to favour the informal political blocs by enabling them to campaign within election districts on ‘joint-tickets’. However, at present, electors still appear to identify with individuals rather than political groups.

Allowing voters to cast up to four votes has created a complex system in which they have an extraordinary amount of choice; many thousands of vote combinations are possible. It is certainly difficult to predict election results and requires political blocs to make sure they get their electoral strategy right (i.e. not registering too many candidates⁵⁴ and possible strategic alliances).

54 Any bloc having more than four candidates risks splitting its vote, unless it is in a dominant position. If it has four candidates, there is no possibility of strategic alliances with other candidates. These factors are important as a voter cannot cast all four votes for a single candidate.

Results of the 2008 Elections

| | District 1 | District 2 | District 3 | District 4 | District 5 | Total |
|---|------------|------------|------------|------------|------------|-------|
| Sunni Islamists | | | | | | |
| Islamic Salafi Alliance (ISA) | 1 | 2 | 1 | | | 4 |
| ISA Backed / Independent Salafis | 1 | 1 | 2 | 1 | 1 | 6 |
| Independent Islamists (mostly Tribal) | 1 | | | 4 | 3 | 8 |
| Islamic Constitutional Movement | | 1 | 2 | | | 3 |
| Shi'a Groups | | | | | | |
| National Islamic Alliance (Shi'a) | 2 | | | | | 2 |
| Justice And Peace Alliance (Shi'a) | 1 | | | | | 1 |
| Independent Shi'a Islamists | 2 | | | | | 2 |
| 'Populists' | | | | | | |
| Nationalist (PAB) | | | 1 | | | 1 |
| Other PAB Backed | | | 1 | 1 | 1 | 3 |
| Non-Islamists / Secularists | | | | | | |
| National Democratic Alliance | | 3 | | | | 3 |
| 'Liberal' Independent | 1 | 1 | 2 | | | 4 |
| Independents | | | | | | |
| Pro-Government Independents | | 2 | | | 3 | 5 |
| Independent - unclear affiliation (mostly tribal) | 1 | | 1 | 4 | 2 | 9 |

Complex election strategies were used in order to maximise votes. In some cases, this included 'vote trading', e.g. if a bloc has two candidates, they encourage their supporters to vote for other candidates on the understanding that the other candidates urge their supporters to reciprocate. In this way they can bring in 'new voters', who might otherwise not have voted for them.⁵⁵ Some blocs admit openly to this strategy. Where successful it can facilitate the election of candidates in both camps, though of course it raises issues regarding the freedom of voters' choice. These arrangements are thought to exist more among tribal communities and Islamist groups than others.

⁵⁵ This is important as an individual voter cannot cast more than one vote for a candidate.

It appears that many voters have to learn the intricacies of this new electoral system e.g. no MPs with roots in Jahra (a settlement comprising about 30,000 electors in a district with some 93,000 electors) were elected, because their votes were split among different candidates, whereas the other electors in the district (largely tribal groups) rallied behind specific candidates.

3.5 Tribal 'Primaries'

The election system also potentially favours other groups with a common 'non-political' identity, such as the Bedouin tribes, particularly where they live in concentrated communities and attempt to organise their electors and avoid splitting their 'collective vote'.

Article 45 of the Election Law provides that "everyone who organises or participates in the preparation and arrangements of 'auxiliary' elections" can be imprisoned for up to five years. The law defines these as "elections managed and performed in an unofficial manner before the time determined for the [official] elections in order to select one or more from among persons that belong to a certain group or sect."⁵⁶ This provision appears draconian, as there is nothing inherently problematical about any group expressing its opinion in this manner. Aspiring candidates from these groups who do not participate in such 'primaries' are still free to register and voters from the group still have a free choice on election day. Indeed, the prohibition on primaries appears to run counter to the fundamental rights of freedom of expression and assembly and association.

Nevertheless, there exists relatively popular sentiment outside the tribal groups against the holding of tribal primaries. This stems from the sense that strong tribal identities are anathema to a national identity. There are also concerns about the 'exclusivity' of such primaries (only members of the tribes may contest the primary) and their effect: in areas with a strong tribal presence the primaries could effectively pre-empt the official election process when voters follow the results of the primaries in the general election. The tribes would thus be able to effectively define the rules of the electoral game (e.g. often only men participate in the primaries, smaller tribes or non-tribal persons have no role, tribes determine requirements for standing in a primary, e.g. paying a fee). However, on a few occasions candidates with a tribal identity have been elected in 'tribal areas' even where they did not compete in a primary election.

In 2008, the government attempted to crackdown on tribal primaries, partly because they ran counter to the objectives of the new election system, although others claimed the action was aimed at "thwarting

56 This provision was adopted in a reform bill in 1998.

certain figures that the government regards as influential from reaching parliament.⁵⁷ Attempts to prevent the holding of some tribes' primaries resulted in clashes between police and tribespersons and the arrest of scores of tribespersons (organisers and participants). If anything, the government action strengthened tribal identities and of the candidates elected at primaries virtually all won in the 17 May election. Some interlocutors pointed out that government action was only taken against some tribes' primaries and not others.

When delimiting electoral districts, care should be taken that each MP represents a similar number of voters.

4. Right to Vote (ineligibilities, process of voter registration)

4.1 Eligibility/Restrictions to Vote

Every Kuwaiti citizen who reaches the age of 21 has the right to vote, except for those who have been naturalised in the 20 years preceding the elections. Other exclusions from the right to vote include the armed forces, the police and persons who have been convicted with the penalty of felony or offence. The age of 21 is relatively high as voting age by international comparison. It is not clear if there are objective reasons for this voting age, because Kuwaitis can marry, drive cars and are criminally liable at the age of 18.

The exclusion of citizens from voting, who have been naturalised 20 years before election day violates article 25; the UN HRC concluded: "The State party should confer its nationality on a non-discriminatory basis and ensure that those who are granted Kuwaiti nationality are treated equally with other Kuwaiti citizens with regard to voting rights (arts 25 and 26)".⁵⁸

Under article 25 of the ICCPR, the notion of 'reasonable restrictions' to the right to vote is understood narrowly, thus the exclusion of the police or the military from voting appears to be unreasonable.⁵⁹ Ensuring that police and the military can freely and secretly exercise their right to vote should be regarded as a matter of proper procedures rather than a question of principle. Consideration should be given to withdrawing the reservation on article 25 of the ICCPR regarding this point.

⁵⁷ Kuwait: A Tribal or Democratic State?, 19/04/2008, Ahmed Eissa, Arshaq Alawsat (<http://www.asharq-e.com/news.asp?section=3&id=12475>)

⁵⁸ Paragraph 29, Concluding Observations by the UN HRC on Kuwait's State Report, 27 July 2000

⁵⁹ The leading commentary on the ICCPR considers the exclusion of the military from the vote as unreasonable. See M. Nowak, ICCPR, Second Edition 2005, Art.25, point 27

There may be a *de facto* restriction to vote for Kuwaitis who live outside the five electoral districts of the city of Kuwait.⁶⁰

The voting age of 21 or older does not appear to correspond to other provisions, e.g. that Kuwaitis can marry and drive a car already with 18 years of age.

The exclusion of naturalised Kuwaitis from the right to vote for 20 years after naturalisation and the exclusion of police and army personnel from voting appear to be unreasonable restrictions to the right to vote.

4.2 Voter Registration

The voter registers are permanent. There have been discussions to use the civil registry as a basis of for registering voters but until now the voter registers are compiled independently from the civil register data. They are divided according to electoral districts and are updated by Registration Committees composed of a president and two members. There is an updating period each February, when citizens can apply to be registered as voters, e.g. when they become 21 years old. Those who are 20 years old can also register; the date until when they are not eligible to vote yet (until their 21st birthday) is indicated on the voter list. Voter lists are displayed in public places and published in the official gazette. Citizens may ask for corrections of the list, e.g. because they are not included or because ineligible persons are listed. Decisions on changes of the voter list can be appealed to the Supreme Court. The final voter lists for a given year are determined in light of decisions by the Supreme Court, which has to decide by the end of June.

According to the Ministry of the Interior, double entries of voters would be detected, because the registers are linked with numbers of citizen's certificates. For the 2008 elections, 361,685 persons were on the voter list, of which 55% were women and 45% men. The higher registration of women results from the fact that military and police are excluded. Furthermore, when the women's right to vote was introduced in 2005 women were automatically registered on the basis of civil registration data, while men who become eligible to vote have to register themselves. If they are not interested in voting they may not make the effort of registering. Overall the registration number appears to be low in a country of more than a million citizens, even if those under 21, as well as army and police personnel, have to be deducted.

⁶⁰ According to the US State Department's 2007 Country Report on Human Rights (section 3) approximately 30,000 citizens live outside the boundaries of the five electoral districts.

5. Right to Stand for Elections: Registration of Candidates

Registered voters have the right to run for elections, if they are at least 30 years old. This is very high by international comparison. Naturalised persons, who do not have the right to vote for 20 years after naturalisation, likewise cannot stand for election during that period. Ministers, judges and public prosecutors have to resign from their offices to be allowed as candidates. Candidates deposit nomination papers with the Police in the ten days following the announcement of elections. They have to pay a deposit of 50 KD.⁶¹ After the closing of candidate registration deadlines the names of candidates are posted publicly and published in the official gazette.

Article 1 of the Election Law stipulates that “compliance with the rules and regulations of Islamic Shari’a” is a condition for the nomination of women for elections. Such a provision raises concerns, because it creates different conditions for the nomination of men and women. Furthermore, the Shari’a is not codified, leaving significant margins for discretion when applying the provision. This is at odds with the requirement that any restrictions to the right to vote and to stand for elections be narrow and clearly defined in law. It appears, however, that the provision is of declaratory nature with no concrete implications on candidate registrations in the past elections.

The 50 KD (180\$/120€) deposit appears to be very low in a context where campaigning is believed to cost hundreds of thousands of Dinars. Fifty KD may therefore not be an effective obstacle against frivolous candidatures. Given that it is in the interest of effective election administration to avoid excessively large and complex ballot papers, it may be useful to increase the deposit moderately.

For the March 2008 elections 380 candidates were initially registered,⁶² compared to 402 in 2006.

There are no specific provisions in the Election Law on the verification of applications to be registered as a candidate. This has led to problems, e.g. before the 2008 elections a number of candidates were not registered for different reasons. Two of them successfully appealed to the Constitutional Court and were eventually registered as candidates shortly before the elections. In the interest of equal opportunity to campaign for elections, transparency and the rule of law, it would be advisable that the Election Law provided rules and deadlines on how the Ministry of the Interior manages candidate registrations and how such decisions can be appealed to courts well in time before a given election. Such provisions

⁶¹ The deposit is returned if a candidate wins at least 10% of valid votes. It is not clear how this is calculated under the new election system where each voter has four votes.

⁶² There were however many withdrawals. In the event only 275 candidates run in the elections.

would also help the election administration, which should not find itself in a situation to have to re-print ballot papers at short notice.

The provisions for candidate registration are largely adequate, but the law should provide detailed procedures and deadlines for the management of candidate applications, i.e. when and how they can be rejected, when appeals must be lodged, etc. Such provisions would prevent appeals shortly before elections as occurred during the May 2008 elections.

Naturalised persons should be able to stand for elections immediately, rather than 20 years after naturalisation.

Consideration should be given to increasing the deposit for candidate registration, which is very low and may not be an effective obstacle to frivolous candidatures.

6. Election Administration

6.1 Structure and Composition of Election Administration Bodies

Kuwait does not have a single, independent, election management body such as an Election Commission. The Department of Elections in the Ministry of Interior is a permanent body with a primary responsibility for organisational aspects of election processes e.g. providing election equipment and arranging for the printing of ballots. The Ministry of Justice and the judiciary are involved on an ad-hoc basis, specifically during election periods.

Two types of electoral committee are formed: Registration Committees and Election Committees. Registration Committees are formed every year and function during the period in which voters can register or amend their registration entries. These committees are composed of a president and two members. The Minister of Interior decides on the number of committees to be formed, their composition and the territorial areas in which they have jurisdiction.⁶³

During election periods, election committees are formed. They should be composed of one member of the judiciary (or public prosecution) appointed by the Minister of Justice, one member appointed by the Minister of Interior and up to 15 candidate representatives. The law stipulates that the persons appointed by the Ministry of Justice serve as presidents of the committees.

⁶³ DRI was informed that in 2008, fifty registration committees were formed. Members included persons seconded from judicial bodies. A representative from the Ministry of Interior commented that in general it was difficult to find 50 persons from judicial bodies available for this task.

The Election Committees have a three-tier hierarchical structure. In each of the five election districts an 'original committee' is formed. Below this a variable number of sub-committees are formed. There are two types of sub-committee. The '*primary*' sub-committee has overall responsibility for a voting centre (usually a school building), which contains a number of polling stations. Each polling station within the voting centre has a '*secondary*' level sub-committee. In 2008, 94 *primary* sub-committees and 413 *secondary* sub-committees were formed.⁶⁴ It appears that the number of secondary sub-committees is limited by the number of judges (or public prosecution staff) available.

There exists a High Consultative Committee, which appears *de facto* to provide oversight and co-ordination functions.⁶⁵ However, the Election Law does not specifically provide for its establishment.⁶⁶ Hence its composition, competences and authority over the election committees are unclear. In 2008 this body was headed by a senior judge.

By law, all persons appointed to Polling Committees by the Ministry of Justice must be male whereas persons appointed by the Ministry of Interior may be male or female – as may candidate representatives. However, as there exist separate Voting Centres for men and women, men appointed as committee members by the Ministry of Interior and candidate representatives serve in male Voting Centres and women serve in female Voting Centres. The Committees choose from among their members a Secretary, who is responsible for compiling the official committee minutes (which include protocols of the election results at the various levels).

In some countries, the involvement of Ministry of Interior competences in the administration of elections can be problematic e.g. raising issues about interference by government in what should be a body capable of independent decision-making.⁶⁷ However, in Kuwait it appears that there is a high degree of confidence in the impartiality of the election administration bodies.

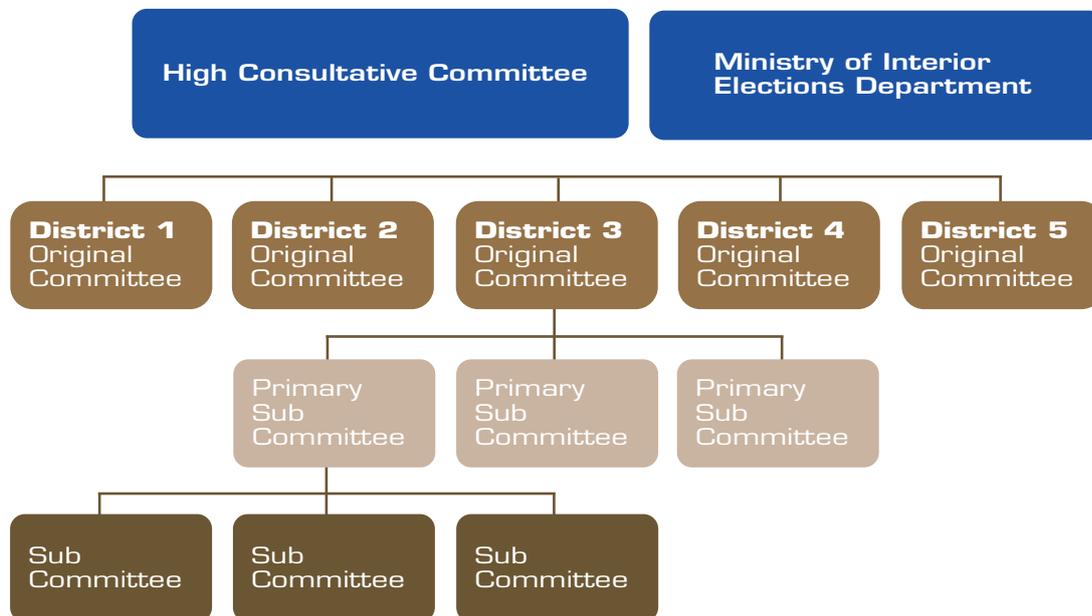
64 Information provided at a meeting between DRI and the Director of the Elections Department at the Ministry of Interior.

65 One article on the official state news agency (KUNA) suggests that this body interprets election legislation ("Use of court employees does not contradict with electoral regulations"; 17 May 2008).

66 DRI could find no basis in any other primary legislation for the formation of this body.

67 General Comment 25 (point 20) provides that "an independent electoral authority should be established to supervise the electoral process and to ensure that it is conducted fairly, impartially and in accordance with established laws [...]"

Structure of Election Committees



6.2 Regulation of Elections and Competences of Election Administration Bodies

The Election Law gives the Ministry of Interior a significant role in the registration of electors (see above) and, in conjunction with the municipal authority and the public prosecutor, in monitoring the lawfulness of candidates' campaigning. Neither ministry has a role in ensuring compliance with media-related regulations. The committees have no role in receiving or ruling upon election related complaints or appeals although the judiciary, which contributes personnel to election committees, does. On Election Day, formal complaints regarding the conduct of polling can be filed with the courts. This grants the judiciary a 'dual role': election administrators and election adjudicators.

Article 53 of the Election Law provides that the Ministry of Interior issues decisions necessary to execute the law. The Election Law does not specifically require the publication of these decisions⁶⁸ and it is not clear if the substance of these decisions can be challenged e.g. in a court. Potentially these factors lessen transparency and accountability.

According to the Department of Elections, persons appointed by the Ministry of Interior to serve on election committees have a subordinate position vis-à-vis the member appointed by the judiciary. Each judge (or member of the public prosecution) appears to enjoy considerable discretion in decision making

⁶⁸ Although this may be required under legislation dealing with public administration

in each polling station. This, together with the apparent absence of detailed sub-legal regulation⁶⁹, can lead to different approaches being taken by different committees and possibly a lack of uniformity in the administration of elections at polling level. This raises the potential for successful post-election legal challenges.

While the presence of candidate representatives in polling stations enhances transparency, they are also involved in administering the process, albeit in a secondary role. Many parties make use of this possibility. Nevertheless, they are not required to have undergone any formal training and it is probable that some are not familiar with their rights and duties or polling procedures.

Each candidate may appoint a representative to each polling station in the district where he/she is competing. However, not more than 15 candidate representatives may be appointed to an election committee, in order to avoid overcrowding. In cases where more candidate representatives present themselves, a lottery is held to select the 15 permitted to supervise polling. While this provision may well be required from a practical perspective, it means that candidates will, likely as not, have representatives only in certain polling stations and not others. This lessens transparency and could diminish candidates' confidence in the process.

The shared responsibility for election management by the Ministry of the Interior and the judiciary can result in an uneven application of the law in different polling stations. The role of the judiciary in election management may be sensitive when it has to decide on appeals against election management decisions.

There is little regulation of election management decision-making and publication of such decisions. The role of the High Consultative Committee on elections is not clearly regulated.

Given these shortcomings, it may be worthwhile discussing other forms of election management, such as the establishment of an independent election commission.

⁶⁹ In part controversies over the use of electronic vote counting machines arose because of the lack of clear written regulations on the issue or instructions on their use. The decision to use the machines was taken by the High Consultative Committee, not the Ministry of Interior.

7. Election Campaigning

7.1 Restrictions for Campaigning

The Election Law does not deal in detail with the issue of campaigning by candidates. However, tentative steps to regulate the issue have been made with the adoption of Law 4/2008, which contains two amendments to the Election Law. These require the government (in conjunction with the municipal authority) to allow all candidates to establish two campaign headquarters; one for men and one for women. In practice, candidates are also permitted to erect temporary campaign venues (usually in the form of very large tents) on open public spaces. Most of the other amendments contain restrictions on the form of campaigning which candidates can undertake e.g. any headquarters or other campaigning space that is not approved by the competent authorities is considered to be illegal; transportation (cars, busses, etc.) may not be used for campaigning and the use of billboards or similar advertising by candidates is not permitted (except at their headquarters/campaign venues).⁷⁰

Candidates can only campaign after their registration. They can only file nomination papers after the elections are called. Elections are called at the latest one month before polling day. Those candidates that register earlier i.e. immediately after filing their papers will have more time to campaign than candidates that file nominations at a later date.

For the May 2008 elections the responsibility for enforcing the new campaign provisions was given to a joint Ministry of Interior-Municipal elections committee. In that case the Kuwait Municipality licensed 457 advertisements and 278 campaign headquarters.⁷¹ Reportedly, close to election day, this authority had removed some 30,000 illegally placed campaign posters,⁷² more than 50 fines were levied for carrying campaign material on public transportation and on four advertising companies for violating Law 4/2008. The Election Law sets out various election offences and crimes⁷³ including vote buying.⁷⁴

In 2006, the Law on Public Gatherings, which required official approval to hold public events, was suspended by the Constitutional Court. In practice, even before its suspension candidates did not appear

⁷⁰ Fines of between KD 1,000- 3,000 can be imposed for non-compliance with these provisions.

⁷¹ See: Kuwaiti authorities remove 26,000 illegal electoral advertisements (KUNA, 11 May 2008)

⁷² See: Kuwait joint electoral committee ready for polls (KUNA, 16 May 2008)

⁷³ See articles 43-45: some of these offences and crimes which relate to campaigning e.g. it is an election crime to distribute printed campaign material which does not include the name of the publisher; to use force or menace to influence a voter's choice; to seek to purchase electors' votes, to publish or spread incorrect information about one of the candidates or his morals; to canvass for votes in a place of worship or an educational establishment and to use money from 'societies' or unions to campaign for or against a candidate.

⁷⁴ Vote buying has been a recurrent problem in Kuwaiti elections. In the run up to the 2008 election, the authorities appeared to mount a crackdown against perpetrators and public a statement was made by the Minister of Interior reiterating the illegality of such action and vowing to hold offenders liable for criminal investigation

to encounter undue obstacles in holding campaign rallies or public meetings. In previous elections, where constituencies were much smaller, candidates often attended private discussion groups (diwanias). With the advent of the larger constituencies, diwanias provide a less efficient means for candidates and electors to meet. While candidates still attend diwanias, particularly those held by influential persons, mostly campaigning takes place through 'open events' and increasingly through the media.

General Comment 25 provides that "voter education [...] campaigns are necessary to ensure the effective exercise of article 25 rights by an informed community." During the May 2008 elections the Kuwaiti authorities took some steps in this regard, e.g. the state news agency produced a book with CVs of all candidates, the Ministry of Interior set up a hotline on election day to deal with voters' queries as well as preparing a brochure for voters on voting procedures, the Ministry of Justice placed paid advertisements in newspapers detailing how to mark the ballot correctly to lessen the number of invalid ballots cast and the Ministry of Information provided continual elections coverage on KTV and Kuwait radio throughout election day and the day thereafter.

7.2 Campaigning in the Media

According to surveys, most citizens receive political information from newspapers (72%), television (59%) and by word of mouth (family/friends/diwanias).⁷⁵ The 2007 survey indicated that newspapers remained the most used media (56%) compared to TV (29%) and radio and web-based news (2% each).

Partly because of the new election system, the media is increasingly an important means of election campaigning.⁷⁶ The Election Law makes no provision for candidates to receive free airtime in state run or private media to present their political views and qualifications for election.

For the May 2008 elections, the Ministry of Interior adopted regulations for campaigning in the media. These required private TV and radio stations to treat candidates equally, to clearly distinguish between advertisements and candidates' campaigns and to cover rallies in an unbiased manner. The regulation banned TV and radio from releasing results of exit polls or declaring results before the official announcement is made. The regulation also provided for monitoring the private media by the Ministry of information to assess compliance. However, it is not clear if the Ministry actually conducted media monitoring or accepted or ruled any complaints in this regard.⁷⁷

⁷⁵ KES, op cit.

⁷⁶ Larger election districts offer less scope for personal contact between candidates and electors.

⁷⁷ One interlocutor informed DRI that the bloc had received more advertising for its candidates than it had paid for. This was partly because the satellite TV station was sympathetic towards the bloc, but it was also regarded as a means of getting more advertising revenue through encouraging rival blocs and candidates also to purchase more campaign advertising.

The 2008 elections saw a much more intensive use of electronic media by candidates when compared to previous elections. After the elections were called, a number of blocs and individual candidates rapidly established satellite TV stations to conduct campaigning. One media report suggested this was a response to the provisions of Law 4/2008, which curtailed candidates' scope to reach voters through displaying printed materials.⁷⁸

7.4 Campaign Financing

While there are no international standards *per se* on election campaign financing, the UN's Human Rights Committee noted: "Reasonable limitations on campaign expenditure may be justifiable where this is necessary to ensure that the free choice of voters is not undermined or the democratic process distorted by the disproportionate expenditure on behalf of any candidate or party" (General Comment article 25, paragraph 19).

Campaigning has become more expensive, because the electoral districts are larger. According to some media reports, candidates spend huge amounts on their campaigns: estimates for the May 2008 elections claim candidates spent some KD 50,000 (almost 200,000\$/120,000€) to 500,000 KD (2,000,000\$/1,200,000€) on a campaign with some candidates spending considerably more.⁷⁹ However, in Kuwait, there are no legal provisions on campaign financing (e.g. setting expenditure limits or requiring disclose of sources of campaign financing or expenditures) and it is thus impossible to know how much was spend by candidates on their campaigns. The absence of any campaign spending regulation creates a widely different campaign environment for candidates and undermines the transparency of the process.

The election legislation provides only limited regulation of campaigning. It would be useful if candidate rights and duties and prohibitions for campaigning were regulated in the Election Law. At the same time candidates should be allowed to have more campaign headquarters and to have access to a higher number of officially approved sites for poster campaigns.

In order to create more equal conditions for campaigning, consideration should be given to establishing campaign expenditure ceilings and to require disclosure of sources of campaign income and expenditure.

The law should clarify which institution is responsible for ensuring adherence to campaign regulations and to which institution candidates can complain or appeal.

78 "Information ministry lays out rules for media coverage" (Kuwait Times, 4 April 2008)

79 "Candidates Ad cost at least KD half million"; KUNA, 20 April 2008,

8. Voting

The Election Law provides for voting by secret ballot. Article 34 of the Law provides that in the event that any voter is unable to mark their ballot personally he/she shall inform the president of the voting sub-committee, who will mark the ballot on their behalf.⁸⁰ There appears to be no provision for voting by those physically unable to attend voting centres in person e.g. the aged or infirm, hospitalised persons, those in detention that have not yet been convicted,⁸¹ or for those temporarily or permanently resident abroad. This causes the *de facto* disenfranchisement of persons unable to attend polling stations.

The Election Law sets out various election crimes. Voting in the name of another person; casting more than one ballot (multiple voting); divulging for whom one has voted; entry into the polling station without right and not leaving when asked to do so and ‘humiliating’ any member of an election committee are prohibited by law and could result in a fine or up to six-month prison sentence. The use of force or menace to prevent an elector using his franchise or to vote in a certain way; entering the voting centre bearing arms or with a camera (or similar); stealing or destroying the voter list or any other election document; changing the election results in any manner; violating the freedom to vote or the order at voting centres and stealing or destroying the ballot box are also prohibited and can result in a fine or up to five years in prison. These prohibitions appear largely consistent with the spirit of General Comment 25.



The voting booths used in the May 2008 elections are well designed and enable the voting committee a sufficient view of voters’ actions without compromising their privacy. Kuwait uses transparent ballot boxes. These enable the committee to see that only genuine ballot papers have been deposited in the box and can serve as a safeguard against fraudulent activity (e.g. photographing or filming ballots).

Ballots are printed by the Ministry of Interior. They contain names of candidates in alphabetical order. Ballots are validated with a stamp when they are handed to voters. Each voter may vote for up to four candidates. There are 413 polling stations for some 361,000 electors – a ratio of about 1:870, which should allow for orderly processing of voters.⁸² Men and women have separate voting facilities. Polling takes place over 12 hours; from 08.00 to 20.00.

⁸⁰ General Comment 25 (point 20) provides that “Assistance provided to the disabled, blind or illiterate should be independent” (emphasis added) and (point 12) provides that “Specific methods, such as photographs and symbols, should be adopted to ensure illiterate voters have adequate information on which to base their choice”

⁸¹ General Comment 25 (point 14) provides that: “Persons who are deprived of their liberty but who have not been convicted should not be excluded from exercising the right to vote.”

⁸² Nevertheless, Kuwait Transparency Society in its Report No. 9 commented that overcrowding was noted at some voting centres. It would be difficult to increase the number of polling stations as the number of judges available to serve as presidents of the election committees is limited.

Voter lists are displayed at polling stations. The president of the election sub-committee verifies the identity of each voter. While the law provides for the use of individual voter cards, in cases where these were not issued, voters are required to produce their citizenship certificates.

The president of the sub-committee is responsible for maintaining order and may call for police (or military) intervention. However, security personnel may only enter the voting room at his behest.

In the case of the May 2008 elections, the areas around voting centres were frequently crowded with persons actively campaigning on behalf of candidates.

The provisions for voting are generally adequate, but consideration should be given to providing those citizens unable to attend polling stations in person a viable means of exercising their right to vote. There may be value in allocating each candidate an ordinal number on the ballot paper to reduce errors in vote counting, e.g. where two candidates have very similar or even identical names. The law should be strengthened to prevent active campaigning in the vicinity of voting centres as such activity could unduly influence voters and tends to lead to overcrowding at entrances.

9. Vote Counting, Aggregation and Announcement of Results

Article 37 of the Election Law provides that “The Election Committees determines *all matters* concerning the election process and in the validity or invalidity of ballots” (emphasis added).⁸³

Under the provisions of the Election Law, voting ceases at 20.00 (unless there are voters present who have yet to vote). A minute (protocol) of the voting phase is compiled and signed by all sub-committee members. Then begins the process of counting (canvassing) the votes.

The committee is required to continue counting votes until the process is completed. With the new election system, the counting of votes has become more complicated, because each ballot contains votes for up to four candidates. Thus, potentially the vote count could take four times as long to complete as previously.

The Election Law provides that after the counting of votes has been completed a minute of the vote counting process is compiled in two copies (an ‘original’ and a second copy). All material (marked ballots, minutes, etc.) are placed in the ballot box and sealed and transferred to the primary sub-committee and then to the ‘Original Committee’. The material is accompanied by the president of the primary sub-

⁸³ By law, invalid ballots include: ‘conditional’ votes; votes on ballots that do not conform to the specimen and votes which reveal the identity of the voter.

committee, a representative from the Ministry of Interior and up to five representatives of candidates (based on an election or lottery).

The Original Committee aggregates all polling results to determine the final district-level election results. The presidents and members of all sub-committees and representatives of three candidates may be present during the aggregation phase. Minutes of the aggregation are prepared by the Original Committee. Copies of all sub-committee minutes are attached to the Original Committee's minutes and sent to the Ministry of Interior. The original election material is sent to the National Assembly until the resolution of all legal appeals. The Original Committee declares which candidates have been elected. The persons receive certification from the secretariat general of the National Assembly.

The Election Law makes no provision for the issue of recounting votes prior to the declaration of results. Candidate representatives have no legal right to receive a copy of any official minutes and there is no legal requirement to publicly display polling results outside polling places or any other public venue. According to the Ministry of Interior, in recent elections it posted all polling station results on its website, although there is no specific legal requirement to do so. There is no deadline by which final official election results must be announced.

Vote Counting and Aggregation Procedures in the 2008 Elections

There is general agreement that the counting and aggregation of votes was the most problematic aspect of the 2008 election process. Shortcomings and inconsistent approaches by the election committees lessened confidence in the competency of the bodies involved in the administration of elections and gave rise to many post-election legal appeals.⁸⁴

It appears that when the new electoral system was established, insufficient attention was given to how the votes were to be counted when each ballot contains votes for up to four candidates. This was compounded by a controversial decision⁸⁵ by the High Consultative Committee before the election to use an electronic system to facilitate the counting of votes,⁸⁶ apparently without conducting feasibility studies or equipment trials. Importantly, the use of electronic devices to support the vote count was not foreseen in law. The decision was also controversial because it required the admission of data clerks from a private company to administer the system when the law does not grant anyone other than committee members, candidate representatives, voters and candidates access to polling stations

⁸⁴ See KTS Report No. 9

⁸⁵ There is, however, no formal written decision in this regard. This raises serious questions over insufficient legal regulation concerning the functioning of this body and the sufficiency of its rules of procedure (if they exist).

⁸⁶ The system was linked to a computerised database, which displayed candidates' vote totals.

or to be involved in the counting of votes. It appears that many candidates, including some MPs of long standing, were unaware of the details regarding the new system.⁸⁷ This raises serious questions regarding the transparency of decision-making by the election administration bodies.

While the Ministry of Interior offered verbal assurances to KTS (KTV) that the official results would be based on a manual count of votes, there appears to be no written instruction on this matter and it appears that sub-committees adopted different approaches with some recording as official polling results vote totals based on the electronic system and some using manual vote counts. Thus, some aggregated district results may well be based on a combination of the two different methods used at polling station level.

The variety of reported problems raise serious concerns over the organisation of the vote count e.g. attributing votes to the wrong candidate e.g. due to similar sounding names; premature declaration of results based on the electronic aggregation, etc.⁸⁸ In apparent contravention of the Election Law, some election committee presidents permitted only five candidate representatives to be present during the vote count. KTS (KTV) also reported a number of serious shortcomings in the aggregation process.

The procedures for counting votes should be reviewed as an urgent priority of the new parliament. All important aspects of the vote count and aggregations should be set out in the Election Law, which should have primacy over decisions of election administration bodies.

The transparency of the vote count and aggregation should be enhanced and organised in a manner that permits all candidates or their representatives to be present, as required under the provisions of General Comment 25. Candidates or their representatives should have a right to receive an authorised copy or photocopy of the official minutes of all election committees. The Election Law should include provisions regulating the recounting of ballots.

One copy of the election results for each polling station with a voting centre should be displayed publicly immediately after the signing of the minutes by the sub-committee.

The election administration body should be required to publish the election results of all polling stations e.g. on their website, no later than the time at which official results are announced.

The Election Law should establish a legal deadline by which final official election results must be announced.

⁸⁷ This was objected to strenuously by some candidates once they had learned of it.

⁸⁸ See KTS, 9th Report on the May 2008 elections for details.

10. Women

Women have only been able to exercise their right to vote and to stand for elections since 2005.⁸⁹ They have participated in two parliamentary elections since, where a little under 10% of the candidates were female. No women were elected to parliament in either elections, although in 2008 one woman came very close to being elected. Since 2006, there have been three female MPs by virtue of being Ministers. Kuwait, therefore, ranks very low in international comparisons on the percentage of women in parliament.⁹⁰

The electoral system of Kuwait is not conducive to women being elected to parliament, because it is based on individual candidatures. Generally female candidates fare better in proportional list-based electoral systems, where they can win seats even if they are not on top of the party list. However, the reduction in the number of electoral districts from 25 to five should have favoured the opportunities for women to be elected: While it tends to be difficult for women to win elections in small districts where they may face candidates with established local support, in larger districts there can be more variations in the voting patterns. Furthermore, the large districts facilitate campaigning by political groups, which can make it easier for women candidates to become known.

The high costs of election campaigning in Kuwaiti elections likely present a liability for female candidates, because women tend to have lesser financial means than men.

11. System for Complaints and Appeals

Complaints against voter registration decisions can be brought to the election committees. Appeals against their decisions can be lodged with the Supreme Court (see above). As far as candidate registration is concerned, refusals by the Ministry of the Interior to register a candidature can be appealed to the Supreme Court. Ahead of the May 2008 elections, the Supreme Court reinstated some candidates that had been disqualified by the Ministry of the Interior.

⁸⁹ There had been earlier initiatives (in 1999 and 2003) to grant the right to vote for women, but there were unsuccessful. In 2005 the women's vote was adopted against resistance by conservative and Islamist MPs. It only received a majority, because of the support by MPs who were ministers.

⁹⁰ Place 131 with 137 being the lowest in the table by the Inter-parliamentary Union, see: <http://www.ipu.org/wmn-e/classif.htm> The global average is 17% women in parliament.

As far as election results are concerned, any voter and candidate can request the annulment of elections in his/her electoral district. Such requests are forwarded to the parliament's secretariat within 15 days from the declaration of election results. The Constitutional Court decides on such appeals.

After the May 2008 elections 31 candidates appealed against the election results with the Constitutional Court.⁹¹ In September the Constitutional Court annulled the election of two MPs and declared two other candidates as winners, based on a review of the official documentation of tallies from the May elections.⁹²

There are no deadlines in the Election Law for appealing against election results and for the Constitutional Court to decide on such cases. This is problematic, because a new parliament may start its work on the basis of a composition of MPs that is later found not to reflect election results. Even worse, if repeat elections are required they would have significant political-constitutional implications, because they would need to be held in the entire election district of the candidate concerned, i.e. affecting 20% of the MPs. Therefore it would be advisable to establish reasonably short deadlines for election appeals, so that they could be completed by the court before a new parliament is constituted.

Such an arrangement would safeguard candidates rights to an 'effective remedy' (article 2 of the ICCPR) against possible violations of article 25 of the ICCPR and safeguard the tenure of MPs.

There should be short but reasonable deadlines for appealing against election results and for the Constitutional Court to decide on those results. Ideally all appeals should be completed before a new parliament is constituted.

91 See Arab Times Kuwait, 28 June 2008, <http://www.arabtimesonline.com/client/pagesdetails.asp?nid=17772&ccid=9>

92 See for details Kuwait Times, "Kuwait Court Replaces 2 MPs", 18 September 2008

12. Election Observation by Non-Partisan Groups

There is no provision for non-partisan election observation. The role of independent election observation has been widely recognised by many states as essential to ensuring transparency and thus enhancing the integrity of an electoral process and the confidence of voters. Established democracies such as the UK, France and the U.S. have received international election observation missions in recent years. The UN has sponsored a “Declaration of Principles of International Election Observation”⁹³ that identifies the benefits, as well as the obligations, of responsible and professional election observation, including a detailed code of conduct. The UN Human Rights Committee noted “There should be independent scrutiny of the voting and counting process (...) so that electors have confidence in the security of the ballot and the counting of the votes.”⁹⁴

It would be useful to consider amending the law to clearly provide for election observation. It is important to note, however, that journalists are accredited without problems to follow the elections; in the 2008 elections 1,517 local and foreign journalists were accredited by the government.

13. Municipal Elections

The municipal council of Kuwait is in charge of a number of public services, such as roads, urban planning, garbage collection and sanitation. The Municipal Council is composed of 16 counsellors, ten of whom are directly elected, while six are appointed by the Amir. The direct elections take place in ten electoral districts. The term of the municipal council is four years. Candidates must be at least 30 years old.

⁹³ It can be downloaded on: http://ec.europa.eu/europeaid/observer/declaration_of_principles_code_of_conduct_en.pdf

⁹⁴ UN HRC General Comment on art.25, para. 20

List of Recommendations

1. The procedures for counting votes should be reviewed: All important aspects of the vote count and aggregation should be set out in the Election Law. The transparency of the vote count and aggregation should be enhanced and organised in a manner that permits all candidates or their representatives to be present. Candidates or their representatives should have a right to receive an authorised copy of the official minutes of all election committees. The Election Law should include provisions regulating the recounting of ballots. One copy of the election results for each polling station within a voting centre should be displayed publicly immediately after the signing of the minutes by the sub-committee. The election administration body should be required to publish the election results of all polling stations e.g. on their website, no later than the time at which official results are announced. The Election Law should establish a legal deadline by which final official election results must be announced.
2. There should be short but reasonable deadlines for appealing against election results and for the Constitutional Court to decide on those results. Ideally all appeals should be completed before a new parliament is constituted.
3. When delimiting electoral districts care should be taken that each MP represents a similar number of voters.
4. The voting age of 21 or older does not appear to correspond to other provisions, e.g. that Kuwaitis can marry and drive a car already with 18 years of age. A lowering of the voting age to 18 could be considered.
5. Consideration should be given to grant naturalised Kuwaitis the right to vote immediately after naturalisation.
6. Consideration should be given to giving police and army personnel the right to vote.
7. The law should provide detailed procedures and deadlines for the management of candidate applications, i.e. when and how they can be accepted/rejected, when appeals must be lodged, etc. Such provisions would prevent appeals shortly before elections as occurred during the May 2008 elections. Naturalised persons should be able to stand for elections immediately, rather than 20 years after naturalisation. Increasing the deposit for candidate registration, which is very low and may not be an effective obstacle to frivolous candidatures, could be considered.

8. There may be a need to re-consider the shared responsibility for election management of the Ministry of the Interior, the Ministry of Justice and the Judiciary, which can result in an uneven application of the law in different polling stations. The role of the High Consultative Committee on elections is not clearly regulated. Given these shortcomings, it may be worthwhile discussing other forms of election management, such as the establishment of an independent election commission.
9. Whatever the administrative structure, there should be more regulation of election management decision-making and publication of such decisions.
10. The rights and duties of candidates during the election campaign could be better regulated. Given the significant role that money plays in elections in Kuwait, it may be useful to consider introducing campaign financing rules. It should be clarified which body is responsible for ensuring that campaign provisions are respected and where appeals on decision related can be lodged.
11. Consideration should be given to enabling those citizens unable to attend polling stations in person a viable means of exercising their right to vote. There may be value in allocating each candidate an ordinal number on the ballot paper to reduce errors in vote counting, e.g. where two candidates have very similar or even identical names.

Democracy Reporting International

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Kuwait Transparency Society (KTS)

was established in January 2005. KTS promotes Kuwait locally and internationally as a modern country that fights corruption, promotes transparency and supports reform. KTS carries out studies on cases of corruption, makes recommendations on how to it, supports constitutional reform and limits on the personal use of power. KTS' contribution to this project has been carried out through the Anti-Corruption Education Center (ACEC) which raises awareness of electoral reform efforts.

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