



# The State of Kuwait

## Submission to the UN Universal Periodic Review 21<sup>st</sup> Session of the UPR Working Group

Submitted 15 June 2014

Submission by CIVICUS: World Alliance for Citizen Participation, NGO in  
General Consultative Status with ECOSOC

And

Gulf Center for Human Rights (GCHR)

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## **1. (A) Introduction**

- 1.1** CIVICUS: World Alliance for Citizen Participation is an international movement with members in more than 100 countries worldwide. Established in 1993, CIVICUS nurtures the foundation, growth and protection of citizen action throughout the world, especially in areas where participatory democracy and citizen's freedom of association are threatened.
- 1.2** The Gulf Center for Human Rights (GCHR) is an independent, non-profit, NGO that works to strengthen support for human rights defenders in Bahrain, Iraq, Iran, Kuwait, Oman, Qatar, Saudi Arabia, United Arab Emirates and Yemen. The GCHR was founded in 2011 by a group of human rights defenders, registered in Ireland and has offices in Denmark and Lebanon. In the second half of 2012, GCHR began providing support to human rights defenders in Syria, which although not technically a Gulf country, shares borders with the Gulf region and strongly impacts the political discourse in the region.
- 1.3** In this document, CIVICUS and GCHR outline urgent concerns related to the environment in which civil society activists and human rights defenders operate in the State of Kuwait, and discuss threats faced in the exercise of the freedoms of expression, association and assembly.
- 1.4** CIVICUS and GCHR are concerned by legislative and extra-legal measures taken by the Kuwaiti government to curtail the legitimate work of civil society organizations (CSOs), in an apparent attempt to suppress criticism and pluralistic debate of government policy.
- 1.5** CIVICUS and GCHR are deeply alarmed by undue and arbitrary restrictions on freedom expression, including the escalating use of vague and over-broad legislation to persecute independent dissent on the internet.
- 1.6** CIVICUS and GCHR are also greatly concerned by ongoing legal and policy restrictions on the free exercise of the right to freedom of assembly as well as unwarranted use of excessive force and arbitrary arrest to disperse and discourage nonviolent demonstrations.
  - In Section B, CIVICUS and GCHR highlight concerns related to the freedom of association and restrictions on civil society activities.
  - In Section C, CIVICUS and GCHR express concerns involving harassment and arbitrary detention of human rights defenders.
  - In Section D, CIVICUS and GCHR highlight concerns relating to the freedom of expression, independence of the media, restrictions on access to information and intimidation, harassment and attacks on journalists.

- In Section E, CIVICUS and GCHR highlight concerns regarding the freedom of assembly.
- In Section F, CIVICUS and GCHR makes a number of recommendations to address the concerns listed.

## **2. (B) Restrictions on freedom of association and impediments to civil society activities**

- 2.1** Article 43 of the Kuwaiti constitution guarantees the right to establish associations and trade unions. Moreover, article 22 of the International Covenant on Civil and Political Rights (ICCPR), to which Kuwait is a state party, also guarantees freedom of association. However, this right is severely constrained in practice by the government’s continued discriminatory invocation of restrictive legislation to suppress independent assessments of its human rights record.
- 2.2** Law 24 of 1962 is the primary legal instrument regulating the operations of civil society in Kuwait. Under the law, the government is endowed with excessive discretion to limit the legitimate work of CSOs. In contravention of international best practice which requires simple notification, articles 2 and 3 of the law provide that all CSOs must register with the Ministry of Social Affairs and Labour. However, the process is reportedly severely politicized, with the government frequently denying registration permits to independent organizations it deems critical of government policy. The Ministry of Social Affairs and Labor can also reject a CSO’s application if it determines that it does not provide a public service. In addition, a number of CSOs were reportedly denied registration permits on spurious grounds that their proposed activities were already undertaken by existing organizations.<sup>1</sup>
- 2.3** Under the law, registered CSOs must comply with a series of arbitrary and debilitating requirements which drastically undermine the free exercise of the right to association. Article 5 of the law prohibits CSOs from “interfering with politics and religious conflicts”. Such limitations prevent CSOs from effectively engaging in a wide range of crucial rights-based areas.
- 2.4** Moreover, representatives of registered CSOs are required to secure official permission to participate in foreign conferences. In addition, under article 62, associations are only permitted to collect funds once each year after first receiving a license from the government. Collectively, these provisions have led to a severe reduction in the permissible activities of CSOs and prevent the full realization of the right to freedom of association.

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<sup>1</sup> Law 24 of 1962 <http://www.icnl.org/research/trends/trends1-4.pdf>

### **3. (C) Concerns involving harassment, intimidation and attacks against human rights defenders and civil society activists**

- 3.1** Article 12 of the UN Declaration on Human Rights Defenders mandates states to take necessary measures to ensure protection to human rights defenders. The ICCPR further guarantees the freedoms of expression, association and assembly. However, it is a matter of deep concern that human rights defenders (HRDs) engaged in legitimate activities continue to face judicial harassment, intimidation, and threats. In particular, HRDs advocating for greater protections of the rights of Bedoun community have been disproportionately targeted.
- 3.2** Serious concerns persist about ongoing political interference in Kuwait's judiciary as well as judicial abuse to silence government critics. While the Constitution of Kuwait safeguards the right to a fair trial, the emir is endowed with the explicit power to appoint all judges. In addition, under the penal code, police may detain a suspect without charge or access to legal counsel or family for up to four days. A number of human rights defenders have also reported being subjected to torture and other inhuman or degrading treatment while in custody.
- 3.3** Members of Kuwait's leading Bedoun human rights groups, the Kuwaiti Bedoun Gathering and the Kuwaiti Bedoun Committee, are regularly subjected to unwarranted harassment and intimidation. On 29 January 2012, 15 leading Bedoun activists, including Ahmed Habib Al-Tamimi, Director of the Kuwaiti Bedoun Committee, and Mosaed Nazal Radam Al-Shemary, Secretary of Kuwaiti Bedoun Gathering, were summoned to and detained at the Criminal Investigation Department of the Ministry of the Interior in Al-Salmiya. Six charges were brought against the activists including incitement to protest, incitement to destabilize security, causing damage to public property, non co-operation with security men, attacking security men, forming a secret organization, and communicating with the enemy. The activists were kept in detention for four days before they were brought before the Public Prosecution at the Palace of Justice where an order was made to remand them in custody for 21 days. On 7 March, all 15 Bedoun human rights defenders were released on bail.<sup>2</sup>
- 3.4** On 25 September 2013, the authorities placed an international travel ban on Rana Al-Saadoun, a member of the National Committee to Monitor Violations (NCV), an organisation which documents violations of freedom of expression in Kuwait. Later on 10 November 2013, Ms Al-Saadoun, together with two other members of NCV, Abdullah Al-Rafdi and Munther Al-Habeeb, were charged at the Kuwaiti

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<sup>2</sup> Gulf Center for Human Rights, 13 February 2012, <http://gc4hr.org/news/view/68>

Criminal Court with 'insulting the Emir' for a speech they delivered in April 2013 which called for democratic reform and end to corruption in Kuwait.<sup>3</sup>

**3.5** Prominent Bedoun activist Mr Abdulhakim Al Fadhli was arrested on 24 February 2014 on charges of "inciting Bedouns in Kuwait to protest and cause chaos," for his alleged role in legitimate Bedoun protests demanding greater citizenship rights. On 10 April 2014, Mr Abdulhakim was released on bail from security headquarters in Kuwait city. Mr Abdulhakim reported being subjected to torture and threats of rape while in detention. The February arrest of Mr Abdulhakim marks just the latest attempt by the government to silence his independent work. In January 2013 he was arrested and sentenced to two years imprisonment for confronting a police officer. He was later acquitted in March 2013.<sup>4</sup>

#### **4. (D) Concerns regarding freedom of expression, independence of the media, restrictions on access to information and intimidation, harassment and attacks on journalists**

**4.1** Article 19 of the ICCPR guarantees the freedom of expression and opinion. Moreover, Article 36 of Constitution of Kuwait provides for the right to hold opinions and free expression. However, in practice, a number of worrying qualifications to these provisions undermine the right to freedom of expression. Moreover, since Kuwait's previous examination during the 8<sup>th</sup> Session of the UPR, the government has drastically escalated its use of judicial persecution to silence persons who use the internet to express dissenting views.

**4.2** In 2013, cases were brought against nearly 30 individuals who utilized online platforms, including Twitter and Facebook. The vast majority of these cases were brought under the broad and ill-defined article 25 of Kuwait's 1970 penal code, which provides for up to five years in prison for persons who publicly "object to the rights and authorities of the emir or faults him" and article 111 of law, which includes sentences of up to one year for anyone who "mocks God, the prophets and messengers, or the honor of his messengers and their wives."<sup>5</sup>

**4.3** On 29 May 2013, the Kuwaiti Criminal Court sentenced blogger Sara Al Driss to 20 months in jail as a result of four posts she made on her personal Twitter account. Ms Al Driss was found guilty of charges of undermining the status of the emir and tarnishing the authority of the royal family. The court however held that the

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<sup>3</sup> Gulf Center for Human Rights, 6 December 2013 <http://gc4hr.org/news/view/551>

<sup>4</sup> Gulf Center for Human Rights, 5 March 2014, <http://gc4hr.org/news/view/599>

<sup>5</sup> Globalex, <http://www.nyulawglobal.org/globalex/Kuwait.htm>

sentence could be suspended if she paid 200 Kuwaiti dinars (approximately €540).<sup>6</sup>

- 4.4** In June 2013, Huda al Ajmi, a teacher, was sentenced to 11 years in prison for comments she made on twitter calling for the removal of the emir. Ms al Ajmi, was sentenced under three separate charges including to five years for “offending the emir,” five for “publicly instigating a coup,” and a year for insulting the Shia Muslim faith. Her 11-year sentenced represents the longest sentence for online dissent since the government escalated its systematic crackdown on freedom of expression in 2011.<sup>7</sup>
- 4.5** Several individuals have also been subjected to arbitrary and unjustifiable detention under article 15 of the National Security Law, which provides for minimum sentence of at least 3 years for “intentionally broadcasting news, statements, or false or malicious rumours...that harm the national interests of the state.” On 28 October 2012, the Kuwaiti Supreme Court upheld the 10-year prison sentence of Blogger Hamad al-Naqi for comments he made on Twitter. Mr al-Naqi was sentenced for reportedly criticizing the rulers of several Gulf States and for insulting the Prophet Mohammed under article 15 of the National Security Law and article 111 of the Penal Code.<sup>8</sup>
- 4.6** In an apparent attempt to censure independent media groups, the government continues to invoke vague legislation to subvert freedom of expression for print newspapers and television broadcasters. The Ministry of Commerce and Industry is authorized to ban any media outlet at the request of the Ministry of Information. Moreover, the Press and Publications Law, revised in 2006, criminalizes the publication of information deemed offensive to God or Islam, criticism of the emir, calling for the overthrow of the regime, and the release of secret material.<sup>9</sup>
- 4.7** In February and March 2012, Pro-Shite newspaper, *Al-Dar*, was suspended on a number of occasions for reportedly violating the Press and Publications Law by "undermining national unity" and "creating sectarian strife". The decision to suspend the paper is thought to stem in part from the government's attempts to prevent independent reporting surrounding the February 2012 parliamentary elections. On March 12, editor-in-chief of *Al-Dar*, Abdul Hussein al-Sultan, was sentenced to a six-month prison term by a Kuwait City Court for publishing articles to incite violence.

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<sup>6</sup> Gulf Center for Human Rights, 1 June 2013, <http://gc4hr.org/news/view/425>

<sup>7</sup> Reuters, 11 June 2013, <http://rt.com/news/kuwait-twitter-teacher-arrest-499/>

<sup>8</sup> BBC, 4 June 2012, <http://www.bbc.com/news/world-middle-east-18322418>

<sup>9</sup> Press and Publications Law, [http://www.dc4mf.org/sites/default/files/press\\_law\\_kuwait.pdf](http://www.dc4mf.org/sites/default/files/press_law_kuwait.pdf)

**4.8** In addition, in September 2012, the Ministry of Information closed pro-opposition television station, El-Nahg, 24 hours after its launch. In December, the government shut down al-Youm, a private television station, for “failing to meet administrative conditions.”

## **5 (E) Concerns regarding freedom of assembly**

**5.1** Article 21 of the International Covenant on Civil and Political Rights (ICCPR), guarantees the freedom of peaceful assembly. In addition, article 44 Kuwait Constitution provides for the right to assembly “without permission or prior notification.” However, despite these protections, the government routinely invoked domestic legislation to undermine this right. In addition, security officials, operating under the purview of the Minister of Interior regularly subjected peaceful demonstrators and organizers to harassment and judicial persecution subverting the right to freedom of assembly.

**5.2** In 2011, the failure of the government to introduce substantive democratic reforms in the wake of a deepening political crisis precipitated the largest public protests in Kuwait’s history. In response to the ongoing protests, in October 2012, the government invoked the 1979 Public Gatherings Law (No. 65 of 1979) banning all public assemblies of more than 20 people. However, protestors routinely defied the ban leading to the use of mass arrests and excessive force by security forces to subdue and disperse demonstrations. Members of Kuwait’s stateless Bedoun community also staged wide-scale protests from 2011-2014 calling for equal protections under Kuwaiti law.<sup>10</sup>

**5.3** Article 12 of the 1979 Public Gatherings Law prohibits non-Kuwaitis from taking part in public demonstrations. However, in 2013, Bedouns staged a number of public rallies and demonstrations calling for citizenship rights. Security Forces routinely responded by pre-emptively detaining individuals identified as organizers of the protests and violently dispersing and arresting peaceful protestors.

**5.4** On 6 July 2012, members of the Bedoun community held a peaceful protest in Taimaa square near Kuwait City. Police used excessive force to disperse the protest and detained twelve demonstrators who were participating in the demonstration. Directly preceding the protest, Jidaan Al-Hathal, Bedoun rights advocate and leader of the Eniza tribe, was detained by the authorities in the airport upon his arrival in Kuwait City for over twenty-four hours.

**5.5** On 30 August 2012, after evening prayer, a peaceful Bedoun demonstration began in Taima demanding the return 14 Bedoun who has been forced into exiled in Iraq. In an apparent attempt to prevent the peaceful protest, state security police arrested four human rights defenders before the start of the demonstration

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<sup>10</sup> Globalex, 1979 Public Gatherings Law, <http://www.nyulawglobal.org/globalex/Kuwait.htm>

including Abdullah Attallah, Fahad Humood and brothers Ahmed Al-Aythy and Yousef Al-Aythy.<sup>11</sup>

- 5.6** On 15 December 2013, one day before the contested and controversial inauguration of the newly elected parliament, security forces prevented a peaceful demonstration from proceeding at Al-Irada Square. Days later, a group of approximately 100 gathered outside the Qasr al-Adil courthouse. Police arrested at least three prominent opposition party members and a leading blogger during the protest and held them on five charges, including “participating in an illegal gathering,” “refusing to obey police orders,” and “offending the emir.” On December 19, all three were released on 2,000 Kuwaiti dinars bail (US\$7,000) in advance of their trial.
- 5.7** On 20 October 2012, the Interior Ministry issued a proclamation stating that it would “absolutely not allow any protests rallies, marches, meetings, and sit-ins regardless of the reasons and motives.” In defiance of the decree, opposition-party members held a protest at Al-Irada Square condemning the emir’s recent decision to reduce the number of votes each voter could cast in parliamentary elections. Police proceeded to fire tear gas and sound bombs without forewarning and arrested dozens of others when the number of protesters began to grow.

## **6. (F) Recommendations to the Government of the State of Kuwait**

CIVICUS and the Gulf Center for Human Rights call on the Government of the State of Kuwait to create an enabling environment for civil society to operate, in accordance with the rights ensured by the ICCPR and the UN Declaration on Human Rights Defenders. At a minimum, the following conditions should be guaranteed: freedom of association, freedom of expression, the right to operate free from unwarranted state interference, the right to communicate and cooperate, the right to seek and secure funding and the state’s duty to protect. In light of this, the following specific recommendations are made:

### **6.1 Regarding restrictions on the freedom of association**

- Law 24 of 1962 should be suitably amended to guarantee that undue restrictions on freedom of association are removed;
- Article 2 and 3 of Law 24 of 1962 should be removed to ensure that CSOs are permitted to operate without obtaining explicit authorization from the authorities;
- Article 5 of the Law 24 of 1962 prohibiting CSOs from “interfering with politics

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<sup>11</sup> Gulf Center for Human Rights, 8 August 2012, <http://gc4hr.org/news/view/230>



and religious conflicts” must immediately removed to allow CSOs to work without undue interference on a wide range of civil, political, economic, social and cultural rights;

- Article 62 of Law 24 of 1962, which only permits CSOs to collect funds once each year after first receiving a license from the government, must be removed to ensure unfettered access to foreign and domestic funds.

## **6.2 Regarding the arbitrary detention and harassment of civil society activists**

- Civil society members and human rights defenders should be provide a safe and secure environment to carry out their work. All instances of violations of their rights should be independently investigated;
- The State of Kuwait should investigate and bring to justice perpetrators of violence against human rights defenders in the country;
- Investigations currently suspended into attacks, harassment and intimidation of activists should be re-launched.

## **6.3 Regarding restrictions on freedom of expression and access to information, and intimidation, harassment and attacks on journalists**

- Senior government officials should condemn the persecution of journalists, including attacks, harassment, intimidation and slander;
- Every case of injury caused to journalists should be subjected to a mandatory and transparent investigation;
- Efforts should be made to promote the adoption of a law to grant greater access to information;
- Article 25 of Kuwait’s 1970 penal code, which provides for up to five years in prison for persons who publicly “objects to the rights and authorities of the emir or faults him” and article 111 of law, should be reviewed in order to prevent its broad invocation to stifle independent media;
- Revise the National Security Law, including article 15, which provides for minimum sentence of 3 years for “intentionally broadcasting news, statements, or false or malicious rumours...that harm the national interests of the state.”

- Repeal the Press and Publications Law which criminalizes the publication of information deemed offensive to God or Islam.

#### **6.4 Regarding restrictions on freedom of assembly**

- Repeal the Public Gatherings Law (No. 65 of 1979) to ensure that freedom of assembly is respected without undue interference,
- Recourse for judicial review and effective remedy should be provided, including compensation, in cases of unlawful denial of the right to freedom of assembly by state authorities;
- Security forces in charge of crowd control should be equipped with non-lethal weapons and provided training across the board on humane means of crowd control as well as on the UN Basic Principles on the Use of Force and Firearms;
- The use of excessive force in the dispersal of protests should be publically condemned and a formal investigation into such instances should be launched.