



**INTERNATIONAL COUNCIL SUPPORTING
FAIR TRIAL & HUMAN RIGHTS**
Registration No. 2795/2012
OFFICIAL LETTER HEAD OF THE ORGANIZATION

3RD CYCLE UPR SUBMISSION

KUWAIT

JANUARY 2020

Following Parliamentarians and civil society appeal to establish an independent human rights body in Kuwait, Law No. 67 of 2015 established the National Bureau for Human Rights in Kuwait. This law was amended by Law No. 15 of 2018, article 4 of this law gives the role of appointing the president and vice-president of the Bureau with a four year term to the National Assembly which was later scraped. By revoking the power of the National Assembly the government once again hijacked an institution that was supposed to be impartial and independent with the view of promoting and protecting human rights. As of now the Bureau is used as a tool by the government to promote its interest not the real human rights concerns of Kuwaitis. Hence a report from this body cannot be credible and accepted as the reality on the ground.

Thus, the report presented today in the context of UPR is flawed and unreliable, and it is not informed by civil society and other stakeholder's perspectives in contravention with the Paris Principles.

General Context and Background

Since 2011 the Kuwaiti authorities have carried out a campaign of repression and have arrested and prosecuted protestors and human rights activists en masse for challenging the status quo and asking for political and human rights reform.

Activists and oppositions turned to social media such as Twitter to express its dissatisfaction and human rights violations including arbitrary arrests, unfair and biased trials followed by convictions. Members of the Bidoon minority continue to face discrimination and are denied the right to a nationality. Migrant workers remain inadequately protected against exploitation and abuse by employers.

Scope of international obligations:

Kuwait is party of several international human rights instruments, amongst them, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights and the Convention against Torture, However, the State has not ratified the Additional Protocols, and has not made declarations under articles 21 and 22 of the Convention against Torture.

As such, we recommend that Kuwait ratify the above-mentioned, protocols and issue declarations under articles 21 and 22 of the Convention against Torture. In view of the difficulties faced by stateless persons in the country, the ratification of the 1954 Convention relating to the Status of Stateless Persons.



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1. Freedom of expression, association and peaceful assembly

Kuwait aggressively cracks down on free speech, using provisions in the constitution, the national security law, and other legislation to stifle political dissent. The Kuwaiti authorities have invoked several provisions in the constitution, penal code, Public Gatherings Law and National Unity Law to prosecute over hundreds of people over the last few years.

Those accused faced charges such as insulting the emir or other public figures or the judiciary; insulting religion; planning or participating in illegal gatherings; and misusing telephone communications. Other charges included harming state security, inciting the government's overthrow, and harming Kuwait's relations with other states in blogs or on Twitter, Facebook, or other social media.

The government took sweeping new powers to block content, deny access to the Internet, and revoke service providers' licenses without giving reasons under a new telecommunications law adopted in May 2015. The law imposes severe penalties on people who create or send "immoral" messages, and gives unspecified authorities the power to suspend communication services on national security grounds. Any communication service provider that "contributes" to the dissemination of messages that violate these vague standards can be punished. Most importantly the law provides no opportunity for judicial review. The government further represses freedom of expression through its Kuwaiti Electronic Media Law that aims to crackdown dissent. The government adopted a new method to penalize critics- revoking citizenship.

The Law of Nationality, 15/1959, allows the authorities to revoke the citizenship of any Kuwaiti, and their dependents, and deport them under certain circumstances. For example, the authorities can revoke a person's citizenship if they consider it in the "best interest" of the state or its external security, or if they have evidence that the person concerned has promoted principles that undermine the country's wellbeing. Arrests due to peaceful protests have multiplied during the last few years, in particular among the Bidoons who are systematically the objects of violent interventions on the part of the security services. Although freedom of association is established by Article 43 of the Kuwaiti Constitution, which guarantees to all the right to form an association "on a national basis and by peaceful means under the conditions provided for by law", Kuwait has several political groups and parliamentary blocs that act as de facto political parties, which are formally banned despite the guarantees of Article 43 of the Constitution.

To illustrate, Dr Abdulhameed Dashti, ICSFT president and former MP in Kuwait, chair of the Human Rights Commission of the Kuwaiti Parliament from June 2014 until October 2015, as MP and as President of a human rights NGO, Dr Dashti took a clear position on the peaceful peoples' protest in Bahrain and the military intervention by Saudi Arabia against this movement. He advocates a peaceful solution for the situation in Yemen and opposes the foreign intervention in that country, especially the Saudi led military operation and the massive violations of human rights resulting from it. He criticizes the regional role of Saudi Arabia and especially the responsibility of Saudi Arabia in spreading extremist ideologies distorting Islam, promoting sectarianism and supporting the destabilization of neighboring countries. His positions



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and statements have always been strictly within the limits of the freedom of expression as guaranteed by both the Constitution and the law of Kuwait and international instruments such as the International Covenant on Civil and Political Rights ratified by Kuwait in 1996. As a result of his stance Dr Dashti is subject to a gradually escalating campaign of judicial harassment with the clear aim to exert pressure on him to force him to restrain from expressing freely his critical opinion on regional matters. This campaign is triggered and instigated by the authorities of the Kingdom of Bahrain and the Kingdom of Saudi Arabia. Unfortunately, some forces in Kuwait yielded to this pressure and relayed it through the Kuwaiti judicial institutions, ignoring thereby the constitutional and legal traditions of Kuwait. The parliamentary immunity of Dr. Dashti was lifted in several cases and he is criminally prosecuted before Kuwaiti and Bahraini Courts in more than 10 instances and his sentence in absentia has reached more than 66 years.

Additionally Al-Watan, Al-Youm, Alam Alyawm newspaper and its owner Ahmad Al-Jabr fell victim to these repressive laws.

Recommendations:

- End to the repression of peaceful demonstrations and respect its obligations under international and national instruments for the protection of human rights;
- Take necessary measures to address the violation of freedom of expression and ensure that the freedom of the press and media are regulated by applying exceptions restrictively and respecting the principle of proportionality in conformity of Article 19 of ICCPR;
- Pressure Kuwait to implement these recommendations without any reservation and delay. The government is also urgently called upon to immediately release all persons presently imprisoned for having met their information-providing responsibilities and for expressing personal opinions.

2. The Stateless “Bidoons”

The government has yet to address the citizenship concerns of over 120,000 Bidoon, who are stateless in Kuwait – Bidoon refers to a diverse group of people who at the time of independence were not given Kuwaiti nationality. Since 1986, the government has stripped the stateless of the right to all public services, including free education, housing, and health care, restricting it to Kuwaiti citizens.

The government does not recognize the right of these residents to Kuwaiti nationality, claiming they lack the proper documents proving their rights. Kuwait’s stateless live under poor conditions in neglected neighborhoods on the outskirts of Kuwait City. Without the right to legal employment, the Bidoon depend on informal employment which is undervalued and under paid, or on income from relatives who are Kuwaiti citizens.

Members of the Bidoon community frequently take to the streets to protest the government’s failure to address their citizenship claims. Article 12 of the 1979 Public Gatherings Law bars non-Kuwaitis from participating in public gatherings. The Bidoon depend on informal employment which is undervalued and



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under paid. Regardless of their level of education, Bidoon face discrimination in employment as a result of their illegal status.

Following repeated call by activists the government introduced a law that permitted the naturalization of Bidoon and their descendants based on a yearly quota; however only a small number of Bidoon were able to acquire nationality through this process. As is the case in many marginalized communities, Bidoon women are disproportionately affected by this institutionalized marginalization.

Committee on the Elimination of Racial Discrimination stated in its 2017 report urged the Kuwaiti government to find a durable solution to the problems faced by Bidoon including citizenship applications for Kuwait nationality to be addressed in a transparent manner as per international standards.

Recommendations:

- Extend the scope of the principle of equal treatment instituted by Article 29 of the Constitution in conformity with Article 26 of the Covenant, and take concrete measures to end the discrimination against the Bidoons;
- Establish an independent tribunal to access naturalization claims by Bidoons and ensure its effective implementation;
- Take steps to ensure that the basic rights of its stateless population are respected, including their inalienable right to access education, employment, health care, housing and other basic social services as enshrined in the Universal Declaration for Human Rights.

3. Women's Rights

Women continue to face discrimination in many aspects of their lives, and large legal gaps remain in protections for women. Kuwait has no laws prohibiting domestic violence and sexual harassment. Legislation proposed in 2014 to penalize sexual harassment has yet to become effective. Kuwaiti women married to non-Kuwaitis, unlike Kuwaiti men, cannot pass on their citizenship to their children or spouses. A Kuwaiti woman married to a Bidoon man gives birth to stateless children.

Foreign husbands of Kuwaiti women have no legal right to remain in the country without a residency permit. Such permits are granted only to non-Kuwaiti men who are employed. In contrast, foreign women married to Kuwaiti men are granted residency automatically and qualify for citizenship after ten years of marriage.

Among the most discriminatory provisions in the Personal Status Law No.51 of 1984 are those regarding contracting marriage. A woman is not free to conclude her marriage contract, she must have a male guardian (wali) to act on her behalf regardless of her age. A woman between 15 and 25 years of age may be prohibited by her guardian from marrying.



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Recommendations:

- Amend Kuwait's Nationality Law to recognize Kuwaiti women's right to confer nationality on spouses and children;
- Revise Personal Status Law No.51 of 1984 and the application of uncodified personal status laws in line with international human rights standards. In particular, revoke those provisions which assign lesser weight to women's testimony, give lesser rights in inheritance, and assign spouses unequal rights as to entering marriage, during marriage, and at its dissolution;
- Raise awareness about gender-based violence, create accessible complaints mechanisms for reporting sexual and domestic violence, and ensure that complaints are investigated, prosecuted when warranted, and that judgments are enforced.

4. Migrant Workers

Migrant workers do not have adequate legal protections, and remain vulnerable to abuse, forced labor, and deportation for minor infractions.

The migrant workers make up two-third of Kuwait's population, they remain vulnerable to abuse due to discriminatory laws and administrative procedures. Some countries have banned their citizens from migrating to Kuwait as a result of harsh treatment and lack of proper labor rights. To illustrate, Philippines temporarily banned Filipinos from migrating to Kuwait for work, pending an investigation into the deaths of seven domestic workers.

In 2015, Kuwait issued a new standard contract for migrant workers, and a 2016 administrative decision allowed some migrant workers to transfer their sponsorship to a new employer after three years of work, without their employer's consent. However, these reforms do not include migrant domestic workers, who are the most vulnerable to abuse and exploitation. Migrant domestic workers remain vulnerable and can be arrested for escaping from an employer largely because of the kafala system, which ties their visas to their employers.

The domestic worker law does not set out punitive measures against employers who violate the domestic workers law including, confiscate passports or fail to provide adequate housing, food, and medical expenses, work breaks, or weekly rest days.

Recommendations:

- Ratify the International Labor Organization's Convention on Decent Work for Domestic Workers;
- Amend Kuwait's labor law in order to include coverage of domestic workers and ensure comprehensive protections including effective follow up mechanisms to ensure implementation,



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periodic rest days, standard working hours, and timely payment of wages in full, and the right to keep possession of one's passport;

- Repeal the kafala system with domestic worker residency permits regulated by the government as per international Labour Law, introduce a work permit quota that gives workers' proper rights and ownership including, freedom to change employers and to exit Kuwait without obtaining consent from employers;
- Request the relevant authorities to cancel administrative deportation and urge the Government to activate the role of judiciary through making it the sole authority to consider the issue of administrative deportation. Providing all necessary guarantees including the right to appeal and explaining the reasons behind deportation;
- Bring employers who violate these laws to justice; decriminalize the law against domestic workers fleeing situations of abuse;

5- Independence of the Judiciary

Kuwait lacks an independent judiciary. The emir appoints all judges, and the executive branch approves judicial promotions. Authorities may detain suspects for without charge. Detainees, especially bidoon, have been subjected to torture. As well Minister of Justice (who belongs to the administrative branch) is lawfully vested with the power to supervise the judiciary system. The 1990s saw a decree limiting the independence of the judiciary, it prevented the Courts from considering acts of sovereignty. The decree is not repealed to this day.

In particular the procedures that are related to the appointments of judges imply a lack of judiciary independence from the executive power, and judges are expected to perform their duties in the name of the emir.

The judiciary system is used as a tool to silence dissent where activists who criticize the emir and allied neighboring countries are sentenced following coerced admission of guilt and unfair trials- the Abdali cell case is a clear illustration of such injustice. The lack of judicial independence from the executive is part of a wider array of problems which have a negative impact on human rights and political stability, not to mention the rule of law.

Recommendations:

- Repeal legislative limitations that compromise the independence of the judiciary
- Amend legislation to ensure the absolute financial and administrative independence of the judiciary
- Amend legislation to increase the efficiency of supervisory mechanisms over the judiciary

6- Death Penalty



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Kuwait maintains the death penalty for non-violent offenses. It resumed death penalty in 2017 by executing 7 people in one day which is a clear display of disregard for the right to life and willingness to weaken human rights standards.

Recommendation:

- Reinstatement of a de facto moratorium of the death penalty and move towards complete abolition

7-GCC Security cooperation

The GCC Security Cooperation is used as another tool to double down repression against criticism, including restriction on movement, illegal extradition, and invasion of privacy through digital intelligence. Kuwait is not alone in the region in arresting or harassing activists over free expression, all of the GCC frequently arrest or threaten outspoken advocates under the guise of “insults—either against rulers or public officials, threatening security and interference in internal affairs”.

Recommendation:

- Refrain from using the GCC to further entrench judicial harassment and repression

8- Constitutional Court

In 2013 the National Assembly amended the Constitutional Court Law granting the right to appeal – constitutional appeal, electoral appeal, and interpretation of constitutional text- however article 173 of the Constitution entrusted "the Constitutional Court" to the judicial body which is run by the executive authorities. Also Constitutional Court members are elected by a judicial council; however this council's members are all senior judges appointed by the executive. Absence of parliamentary oversight in the appointment process impeded judges' independence.

Recommendations:

- Instill a transparent and independent constitutional court as a means of preventing arbitrariness and strengthening the rule of law
- Ensure constitutional transition as a key step towards the establishment of a solid judicial system with checks on the executive, and not the contrary

9. The Rights of the Shiite Minority

Despite general respect and protection of Shia rights, Kuwaiti Shias are faced with legal and administrative restrictions, including permit restriction to build mosques, celebrate Ashura, negative portrayal of Shia doctrine in curriculums.



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The National Assembly passed the Jaafari Personal Status Law that infringes the rights Shias, especially women and children

Recommendations:

- End systemic discrimination against the Shiite community
- rejected this law given its infringement on human rights