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Just Atonement Inc.

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Just Atonement Inc. (JAI) is global community of lawyers who have joined forces to address imminent threats to democracy, human rights and a livable planet.

JAI was established in 2017 in the United States of America.

JAI invites and organizes legal professionals globally into a single order and aligns a vision of a peaceful, sustainable world, governed by the democratic rule of law; litigates in courts all over the world on cutting edge human rights cases to build peace and sustainability, and to defend democracy; and advocates for a vision of a true Golden Age for humanity: a world where countries settle their disputes peacefully, manage social and economic systems that are in harmony with the planet, and govern themselves through the principles of democracy, the rule of law, and human rights.

JAI submits this written submission with respect to the Universal Periodic Review of the State of Kuwait (Kuwait).

Analysis

Kuwait is a constitutional sovereign state with a semi-democratic political system grounded in Islamic law. Even with a democratically elected parliament, the Emir holds ultimate authority over the majority of government decisions. The Kuwaiti Constitution serves as a foundation for governing society and is used in parallel with traditional cultural norms and Islamic teachings.

This UPR highlights the main human rights concerns in Kuwait in 2019. These primarily include the ill-treatment of migrant workers; the continued marginalisation of the Bidoon people; the continued prosecution of journalists, politicians and activists who criticise the Emir; and the lack of progressive women's rights. The Kuwaiti authorities use the Constitution's provisions in tandem with the national security law and other legislation to justify the restriction of free speech, the prosecution of dissidents and the curtailment of the right of freedom of speech. Despite these observations, it must be noted that unlike many neighbouring Arab states, Kuwait



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does allow human rights organisations to access the country and engage in constructive dialogue about human rights issues.

Migrant workers' rights are still inadequate. With over 70% of its population comprising of expatriates, the majority are migrant workers. These migrant workers are particularly vulnerable to abuse as a result of the pervading kafala system. Mainly employed in the construction and domestic sectors, the kafala system requires these labourers to have an in-country sponsor which is usually their employer who undertakes all visa-related and legal responsibilities concerning the worker. Human rights organisations have long criticised this practise citing that this facilitates the widespread exploitation of workers with many having their passports taken away; having poor working conditions and suffering abuse from their employers - all without consequence for the employer on whom the labourer is entirely dependent.

The Kuwaiti government has attempted numerous reforms regarding their labour laws. These attempts have led to the International Labour Organisation removing the country from the list of countries violating human rights through employment laws. In 2015, Kuwait introduced a contract standard for migrant workers which included the right to a day off every week, 30 days of annual paid leave, a minimum wage and end-of-service benefit. Subsequent administrative decisions allowed for migrant workers to transfer their existing sponsorship to a new employer without their current employer's consent, after 3 years of work. It must be noted that the majority of these provisions only apply to migrant workers. Protections for domestic workers are still severely lacking.

Even with these developments, migrant workers continue to lack adequate legal protections with forced labour being a norm and them risking deportation for minor infractions. A lack of enforcement mechanisms to ensure that these basic labour law requirements are abided by means that there is still a long way to go for Kuwaiti authorities to reach standards deemed adequate by human rights organisation.

As recently as early 2018, the Philippines issued a temporary ban on its citizens migrating to Kuwait for work as a result of numerous deaths as a result of the abysmal working conditions. As a result, the two countries came to a legal agreement which provided legal protection for Filipino workers in Kuwait.

The Bidoon people continue to be marginalised by the Kuwaiti leadership. Kuwait continues to exclude the Bidoon people from gaining full citizenship despite their long-standing roots in the Kuwaiti territory. Around 100,000 Bidoon people remain stateless, many without even a birth certificate or driver's license. The Kuwaiti authorities claim that the Bidoon are predominantly illegal residents who had another nationality but destroyed this evidence in order to receive benefits from the government. This claim is common amongst several governments in the region. There is no evidence of this.



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To date, there are just over 110,000 Bidoon people officially registered in Kuwait, with only 34,000 of them being eligible for Kuwaiti citizenship according to the government. The Kuwaiti government claims that the remaining Bidoon people are from Iraq or Saudi Arabia. The Bidoon community have tried to protest for their right to citizenship in Kuwait but under Article 12 of the 1979 Public Gatherings Law, they are not allowed to participate in public gatherings as non-Kuwaitis. In doing so, they are subject to being arrested and prosecuted.

It is interesting to note that 40% of the Kuwaiti Army is comprised of Bidoon people.

There are no adequate provisions for freedom of expression. All forms of news and entertainment media are subject to government censorship. According to human rights organisations, Kuwaiti authorities readily prosecute anyone who criticises the Emir or any of his authorities. Many journalists, politicians and activists have been classified as dissidents arbitrarily and prosecuted. The government uses provisions enshrined in the constitution and penal code, as well as laws such as the Printing and Publication Law, Misuse of Telephone Communications and Bugging Devices Law, Public Gatherings Law, and National Unity Law to prosecute any critics of the regime.

In 2016, the government introduced a Cybercrime law which saw the implementation of far-reaching restrictions on internet-based speech. Anyone who would insult religion, religious figures or the Emir would be subject to prison sentences and fines. In the same year, the government amended its election laws to exclude anyone convicted for insulting religion or the Emir from running for office or from voting in elections.

Most recently, in July 2019, human rights organisations have condemned Kuwait for forcibly returning 8 Egyptians dissidents who were allegedly part of a 'terrorist cell' linked to the Muslim Brotherhood back to Egypt. This transfer has been regarded as unlawful in the context of the international legal framework since there is a serious risk that the men would face torture and persecution in Egypt.

Women's rights remain an issue of concern. It was as recent as 2005 when women in Kuwait won the right to vote and run in elections. Following progress through the enactment of several equality laws, the Global Gender Gap Report ranked Kuwait first in 2014 and 2015 in terms of its women's rights in the Arab world.

Perhaps the biggest impediment to the implementation of a progressive women's rights agenda is the existence of the 'personal status law' which continues to perpetuate a lack of rights for women. There is a presumption of necessary dependency on a guardian man which underpins this law. This law applies to the majority of Kuwaitis who are Sunni Muslims and encompasses the well-known guardianship rules. For example, women can only apply for a divorce on limited grounds compared to men who can divorce their wives without reason; and a man can restrict his wife from working if he claims that it negatively affects the family interests.



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Furthermore, Kuwait has no laws regarding the prohibition of domestic violence or marital rape despite designing family courts to be able to deal with such cases. However, rather than the focus being on the protection of abuse survivors, the reconciliation of the family is prioritised. The Kuwaiti penal code reinforces this status quo with laws such as Article 153 and Article 182. Article 153 states that a man who finds his mother, wife, sister or daughter in the act of adultery and kills them can receive anything from a small fine to a maximum sentence of three years in prison. Article 182 allows an abductor who uses force, threat or deception with the intention to kill, harm, rape, prostitute, or extort a victim to avoid punishment if he marries the victim with her guardian's permission.

The death penalty is still a sentencing option available to the courts. The death penalty remains a punishment in Kuwait for those found guilty of non-violent offences. Human rights organisations have long noted that there is no real judicial accountability or access to fair trials for defendants.

Homosexuality is illegal and punishable by up to 6 years in prison. Besides this, the 2007 penal code contains a provision against transsexuals which prohibits 'imitating the opposite sex in any way'. In 2017, King Luxy, a Saudi Instagram star was arrested in Kuwait for appearing too feminine. After spending 2 weeks in custody, he was finally released. Adultery is also still criminalised.

There have been efforts to tackle terrorism which have violated privacy rights. In 2015, in the wake of a suicide bombing at the Imam Sadiq Mosque, the government introduced a law which required all Kuwaiti citizens and residents to provide DNA samples to authorities. The UN Human Rights Committee declared that this law was an "unnecessary and disproportionate restriction on the right to privacy." Upon challenge, in 2017 the Constitutional Court declared that this was a violation of the right to privacy.

Respectfully submitted,

/s/ Inder Comar and Aqsa Hussain

of Just Atonement Inc.