



Kuwait

Universal Periodic Review

Report submitted to the United Nations Human Rights Council in the context of the third periodic review of Kuwait

July 2019

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1 Scope of international obligations and cooperation with international human rights mechanisms and bodies

1.1 Scope of international obligations

Kuwait has not ratified the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT), the First and Second Optional Protocols to the International Covenant on Civil and Political Rights (ICCPR-OP1 and ICCPR-OP2), the Convention for the Protection of All Persons from Enforced Disappearance (ICPPED), the Rome Statute of the International Criminal Court (ICC), the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families or the International Labour Organization's (ILO) Domestic Workers Convention (No. 189). Moreover, it has not accepted the competence of the Committee against Torture (CAT) to conduct inquiries under article 20 of the Convention against Torture (UNCAT), nor the individual communication procedure under article 22.

During its last Universal Periodic Review (UPR), Kuwait did not accept any recommendations on accepting and complying with international norms.¹ Furthermore, in 2016, the Human Rights Committee (HRCttee) expressed concern over Kuwait's interpretative declarations on and reservations to the ICCPR, as well as over "the primacy of sharia law over conflicting or contradictory provisions of the Covenant."²

Recommendations:

- Ratify the OPCAT, ICCPR-OP1 and ICCPR-OP2, ICPPED and the Rome Statute of the ICC, the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families and the International Labour Organization's (ILO) Domestic Workers Convention (No. 189);
- Accept the CAT's competence under UNCAT article 20 and article 22;
- Remove all reservations to ratified treaties, and ensure that international human rights standards take precedent in the event of any conflict with domestic legislation.

¹ Not supported: 157.1 (Lesotho); 157.2 (Slovenia); 157.3 (Australia); 157.4 (Portugal, Spain); 157.5 (Namibia); 157.6 (Spain); 157.7 (Greece); 157.8 (Austria); 157.9 (Costa Rica, Denmark, Honduras); 157.10 (Brazil); 157.11 (Estonia); 157.12 (Ghana, Honduras, Sierra Leone); 157.13 (Niger, Timor-Leste); 157.14 (Benin); 157.15 (Indonesia); 157.16 (Philippines); 157.17 (Chile); 157.18 (Costa Rica, Ghana, Honduras, Latvia, Montenegro, Poland, Portugal, Sweden, Timor-Leste); 157.19 (Slovakia); 157.20 (Botswana); 157.21 (Bulgaria); 157.22 (Croatia); 157.23 (Estonia, Hungary); 157.24 (Germany); 157.25 (France); 157.26 (Sierra Leone); 157.27 (Switzerland); 157.28 (Iceland); 157.29 (Kazakhstan); 157.30 (Honduras); 157.31 (Slovakia); 157.32 (Australia); 157.33 (Canada); 157.34 (Germany).

² HRCttee, *Concluding observations on the third periodic report of Kuwait*, CCPR/C/KWT/CO/3, 11 August 2016, para.6.

1.2 Cooperation with international human rights mechanisms and bodies

On 13 September 2010, Kuwait issued a standing invitation to all special procedures mandate holders. In addition, during the second cycle of its UPR, it supported a number of recommendations which called for the state to cooperate fully with treaty bodies, special procedures, and other international mechanisms and institutions.³

Despite making the aforementioned commitments, Kuwait has failed to respond to visit requests from the Special Rapporteur on minority issues (requested in 2013), the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression (requested in 2014), and the Special Rapporteur on the situation of human rights defenders (reminder sent in 2015). Furthermore, it has postponed visit requests from the Special Rapporteur on contemporary forms of slavery, including its causes and consequences until the fourth quarter of 2020, and the Special Rapporteur on the human rights of migrants until 2021.

Recommendations:

- Fully cooperate with UN human rights mechanisms, including by accepting pending visit requests from Special Procedures mandate holders in line with its 2010 standing invitation;
- Ensure full cooperation with Special Procedures mandate holders during upcoming visits and ensure there are no further undue delays.

2 National human rights framework

Kuwait supported 15 recommendations on establishing a National Human Rights Institution (NHRI) during its previous UPR.⁴ In July 2015, Kuwait adopted Law No. 67 on the National Office for Human Rights,⁵ providing for the establishment of an NHRI.

However, Law No. 67 of 2015 does not allow for the establishment of an NHRI in compliance with the Paris Principles, since article 4 provides that the NHRI will be composed of 11 individuals, to be nominated by the Council of Ministers and appointed by emiri decree. As such, the NHRI is insufficiently independent from the executive.

Moreover, the NHRI remains non-operational to date, with no internal charter, designated budget, office space or website.⁶

³ Supported: 157.79 (Morocco); 157.80 (Niger); 157.82 (Latvia); 157.83 (United States of America).

⁴ Supported: 157.56 (Rwanda); 157.57 (Timor-Leste); 157.58 (Ireland); 157.59 (Portugal); 157.60 (Poland); 157.61 (Hungary); 157.62 (Togo); 157.63 (Zimbabwe); 157.64 (Afghanistan); 157.65 (Benin); 157.66 (Greece); 157.67 (India); 157.68 (Indonesia); 157.69 (Nepal); 157.70 (Russian Federation).

⁵ Available at: https://menarights.org/sites/default/files/2016-12/KWT_NHRILaw_67-2015_AR.pdf (accessed 3 June 2019).

⁶ F. Al Turki, *The National Office for Human Rights...On Paper Only*, Al Jarida, 11 March 2019, available at: <http://www.aljarida.com/articles/1552235703194750400/> (accessed 3 June 2019).

Recommendations:

- Amend Law No. 67 of 2015 to allow for the creation of an NHRI that is in full compliance with the Paris Principles.

3 Implementation of international human rights obligations

3.1 Fundamental freedoms

3.1.1 Right to freedom of opinion and expression

During its last UPR, Kuwait supported a number of recommendations related to the right to freedom of opinion and expression.⁷ However, while the right to freedom of expression is protected under articles 36 and 37 of Kuwait's Constitution, the right is restricted by other pieces of legislation. In 2016, the HRCtee expressed concern “about reports of arbitrary arrest, detention, trial, withdrawal of citizenship and deportation of persons who exercise their freedom of opinion and expression,”⁸ noting in particular Kuwait's criminalisation of defamation and blasphemy,⁹ as well as “the application of restrictive, vague and broadly worded provisions” to target individuals who express critical views, including journalists and bloggers.

Under the Press and Publications Law,¹⁰ freedom of the press is severely restricted, and the government is granted broad powers to decide who can own a newspaper and who can be in the position of editor.¹¹ Furthermore, newspapers are prohibited from publishing on a number of topics in violation of the right to freedom of expression and the right to information.¹² A further set of vaguely-worded provisions prohibit the publication of anything that might, *inter alia*, “disdain or contempt the Constitution of the State”, insult “public morals”, or cause “harm to the relationships between Kuwait and other Arab or

⁷ Supported: 157.174 (Italy); 157.177 (United States of America); 157.178 (United Kingdom).

⁸ HRCtee, *Concluding observations on the third periodic report of Kuwait*, CCPR/C/KWT/CO/3, 11 August 2016, para. 40.

⁹ The HRCtee has affirmed that “imprisonment is never an appropriate penalty” for acts of defamation, and that “[p]rohibitions of displays of lack of respect for a religion or other belief system, including blasphemy laws, are incompatible with the [ICCPR]”, except under the conditions set out in article 20. For more, see: HRCtee, *General comment No. 34 – Article 19: Freedoms of opinion and expression*, CCPR/C/GC/34, 12 September 2011, para. 47, 48.

¹⁰ Available at: https://menarights.org/sites/default/files/2019-01/KWT_PressAndPublicationsLaw_EN.pdf (accessed 8 July 2019).

¹¹ Newspapers are required to obtain a licence from the authorities before commencing publication, but only the owner of an establishment or a company may be issued such a licence. For a daily newspaper, this establishment or company must have a capital of at least 250,000 Kuwaiti Dinars (822,000 USD). In addition, a vaguely-worded provision states that the editor of the newspaper must “have good conduct and reputation”, granting the authorities the discretion to decide who can hold this position.

¹² Prohibited topics include: “matters related to God or the Quran, Prophets or their relatives” as well as any criticism of the State of Kuwait or the emir.

friendly countries”. Journalists and media workers can face fines if they fail to abide by these provisions, while newspapers may be closed, have their licences suspended or issues confiscated, and print shops can be closed down. Under this law, several media outlets have been targeted for their criticism of the government,¹³ including the newspaper Al-Watan.¹⁴

Peaceful criticism of the state or its representatives is further criminalised by Cybercrime Law No. 63, under which individuals may be sentenced to prison terms for “criticising the emir on the Internet” and for establishing a website or publishing material online “that would prejudice public morality”.

Furthermore, the Commission for Mass Communications and Information Technology was established under Communication Law No. 37 of 2014 in order to control publicly available content. The Commission was given broad powers to block content, grant or refuse licences to Internet service providers, and suspend Internet services without any judicial oversight.¹⁵

Recommendations:

- Amend the Press and Publications Law, Cybercrime Law and Communication Law to bring them into line with international standards on the right to freedom of expression;
- Repeal any laws or provisions that criminalise defamation or blasphemy;
- Guarantee freedom of the press and ensure journalists and media workers are free to practice in a safe and enabling environment without undue interference or restrictions.

3.1.2 Right to peaceful assembly and association

Despite the recommendations it accepted during the last UPR¹⁶ and the fact that these rights are enshrined in the Constitution,¹⁷ Kuwait continued to restrict, during the reporting period, freedom of peaceful assembly and association both in law and practice.

Decree Law No. 65 of 1979 on Public Meetings and Gatherings prohibits gatherings without prior licence and punishes anyone who participates in, calls for, or organises such gatherings with up to six years of imprisonment and a fine.¹⁸ The law further prohibits the participation of non-nationals in public gatherings.¹⁹

¹³ “The penalization of a media outlet, publishers or journalist solely for being critical of the government or the political social system espoused by the government can never be considered to be a necessary restriction of freedom of expression.” For more, see: HRCtee, *General comment No. 34 – Article 19: Freedoms of opinion and expression*, CCPR/C/GC/34, 12 September 2011, para. 42.

¹⁴ Kuwaiti authorities revoked the newspaper’s business and publishing licenses, forcing it to discontinue its print edition, however its online edition remains operational. For more, see: Committee to Protect Journalists, *Kuwaiti court upholds government shutdown of Al-Watan newspaper*, 19 February 2015, <https://cpj.org/2015/02/kuwaiti-court-upholds-government-shutdown-of-al-wa.php> (accessed 11 July 2019).

¹⁵ Human Rights Watch, *Kuwait: Telecom Law Violates Free Speech*, 20 August 2014, <https://www.hrw.org/news/2014/08/20/kuwait-telecom-law-violates-free-speech> (accessed 11 July 2019).

¹⁶ Supported: 157.173 (Australia); 157.182 (France); 157.183 (Uruguay).

¹⁷ Articles 43 and 44 of the Constitution.

¹⁸ Articles 16-20 of the Decree Law No. 65 of 1979 on Public Meetings and Gatherings.

¹⁹ Article 12 of the Decree Law No. 65 of 1979 on Public Meetings and Gatherings.

During the reporting period, the Court of Appeals convicted more than 60 people for their participation in the 2011 demonstrations at the Kuwaiti parliament.²⁰ Furthermore, the authorities have failed to investigate the excessive use of force by police and security forces in the dispersal of past peaceful protests and prosecute the perpetrators, despite the recommendations made by the HRCttee in 2016.²¹

With regard to freedom of association, Law No. 24 of 1962 on Clubs and Public Welfare Societies continues to provide the Kuwaiti authorities with broad powers to unduly restrict the work of civil society in the country.²² The law requires any newly established civil society organisation to register with the Ministry of Social Affairs and Labour, and it also strictly regulates their fundraising activities and bars them from any political or religious engagement.

Recommendations:

- Amend Decree Law No. 65 of 1979 on Public Meetings and Gatherings and Law No. 24 of 1962 on the Clubs and Public Welfare Societies to ensure they respect and protect freedom of peaceful assembly and association in line with international standards;
- Investigate excessive use of force in the dispersal of past peaceful protests, prosecute and punish the perpetrators;
- Release and drop all charges against those convicted as a direct result of their participation in peaceful gatherings;
- Enable Kuwaiti civil society to work freely without reprisals or any arbitrary interference from the executive.

3.2 Citizenship

During its previous UPR, Kuwait noted a number of recommendations on nationality legislation as it pertains to the situation of stateless individuals.²³ It also failed to support a number of recommendations directly addressing discrimination in nationality laws and the arbitrary deprivation of citizenship.²⁴

While Kuwait has not ratified the 1954 Convention Relating to the Status of Stateless Persons or the 1961 Convention on the Reduction of Statelessness, it still has international obligations to protect the

²⁰ In November 2017, the Court of Appeals sentenced 67 people to prison terms ranging between one and nine years for their participation in the 2011 demonstrations at the Kuwaiti parliament. 65 of those convicted were sentenced for charges of participating in an unlicensed public assembly or gathering. See: Human Rights Watch, *Kuwait: Mass Convictions for 2011 Protest*, 18 December 2017 <https://www.hrw.org/news/2017/12/18/kuwait-mass-convictions-2011-protest> (accessed 10 July 2019). Only 44 of them were released on bail in February 2018. See: Human Rights Watch, *Kuwait Releases Protesters on Bail*, 21 February 2018, <https://www.hrw.org/news/2018/02/21/kuwait-releases-protesters-bail> (accessed 10 July 2019). In July 2018, the Court of Cassation upheld the convictions of 16 members of the opposition, human rights defenders and peaceful demonstrators for their participation in the 2011 protests. See: Human Rights Watch, *World Report 2019 - Kuwait*, <https://www.hrw.org/world-report/2019/country-chapters/kuwait> (accessed 11 July 2019).

²¹ Above note 59, para. 43.

²² Available at: <http://www.icnl.org/research/library/files/Kuwait/24-62-en.pdf> (accessed 23 August 2019).

²³ Noted: 157.30 (Honduras); 157.31 (Slovakia); 157.32 (Australia); 157.34 (Germany); 157.33 (Canada); 157.246 (Slovakia); 157.247 (Czech Republic); 157.249 (United Kingdom); 157.250 (Argentina); 157.254 (Switzerland); 157.248 (Spain); 157.241 (Netherlands)

²⁴ Noted: 157.252. (Republic of Korea); 157.113. (Canada); 157.114. (Togo); 157.115 (Austria); 157.117. (Germany); 157.118. (Norway); 157.119. (Poland). Noted/supported: 157.116. (Czech Republic).

right to a nationality and the rights of stateless persons on the basis of other UN and regional treaties to which it is a party. These include, among others, the ICCPR,²⁵ the International Convention on the Elimination of All Forms of Racial Discrimination (CERD),²⁶ and the Cairo Declaration on Human Rights in Islam (Cairo Declaration).²⁷ Moreover, the right to a nationality is protected under article 15 of the Universal Declaration on Human Rights (UDHR). Finally, the prohibition of arbitrary deprivation of nationality has become a principle of customary international law along with the obligation to avoid statelessness.²⁸

Kuwait has ratified other relevant core instruments, with reservations to essential provisions. They include the Convention of the Rights of the Child (CRC), in which Kuwait has limited the application of the right to acquire a nationality under article 7 to foundlings only – children born in Kuwait to unknown parents; the Convention on the Rights of Persons with Disabilities (CRPD) with a reservation to article 18 on the right to acquire a nationality, and the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) with a reservation to article 9, which grants women equal rights with men to acquire, change or retain their nationality and equal rights with respect to the nationality of their children.

Kuwait's nationality law is primarily based on the principle of *jus sanguinis*, according to which nationality is based on a patrilineal descent system and with an additional provision based on the principle of *jus soli*, according to which nationality is based on birth on the territory. However, the additional *jus soli* provision grants Kuwaiti nationality only to foundlings.²⁹

Several amendments to the Kuwaiti Nationality Act since it came to force in 1959 “have made the regulation of nationality progressively more restrictive – such as by adding a prohibition for non-Muslims to apply for naturalisation and restricting the circumstances in which women can transfer their nationality to their children”.³⁰

The Kuwaiti Nationality Act does not allow Kuwaiti women who marry foreigners to pass on their nationality to their children and spouses on an equal footing with Kuwaiti men and in fact only under rare circumstances.³¹

²⁵ Article 24(3).

²⁶ Article 5(d)(iii).

²⁷ Articles 5 and 19.

²⁸ Human Rights Council, *Human Rights and Arbitrary Deprivation of Nationality: Report of the Secretary-General*, A/HRC/13/34, 14 December 2009, paras. 19–22.

²⁹ Article 3 of the Kuwaiti Nationality Act provides: “Kuwaiti nationality is acquired by any person born in Kuwait whose parents are unknown. A foundling is deemed to have been born in Kuwait unless the contrary is proved”. Available at: <https://www.refworld.org/docid/3ae6b4ef1c.html> (accessed 16 July 2019).

³⁰ Z. Albarazi, *Regional Report on Citizenship: The Middle East and North Africa (MENA)*, RSCAS/GLOBALCIT-Comp. 2017/3, November 2017, http://cadmus.eui.eu/bitstream/handle/1814/50046/RSCAS_GLOBALCIT_Comp_2017_03.pdf (accessed 11 July 2019), pg.7.

³¹ Article 2 of the Kuwaiti Nationality Act provides: “Any person born in, or outside, Kuwait whose father is a Kuwaiti national shall be a Kuwaiti national himself.” In addition, article 5 states: “Any person upon his attaining his majority who was born to a Kuwaiti mother and who has maintained his residence in Kuwait until reaching the age of majority and whose foreign father has irrevocably divorced his mother or has died. The Minister of the Interior may afford to such children, being minors, the same treatment as that afforded to Kuwaiti nationals in all respects until they reach the age of majority.”

3.2.1 Gender discrimination

Kuwaiti women are not entitled to pass on their nationality to their children, except in cases of divorce from or the death of the father of their children, and even in such instances the decision to grant nationality to the child is not automatic. Kuwaiti women cannot pass their nationality to a foreign spouse, a right reserved for Kuwaiti men. As such, the spouse is precluded from political participation and has limited access to employment and public housing provisions.

In addition, foreign husbands of Kuwaiti women have no legal right to remain in the country without a residency permit. In contrast, foreign women married to Kuwaiti men are granted residency automatically and qualify for citizenship after 15 years of marriage. This discrimination in Kuwait nationality laws impedes women's ability, in practice, to freely choose a spouse, in violation of CEDAW Article 16, further entrenching traditional stereotypes regarding the primacy of male legal identity, and contributing to women's inequality within the family and society at large.³² Further entrenchment of such stereotypes is in breach of Kuwait's obligations under CEDAW Article 5(a).

Gender discrimination in the nationality law results in a range of other human rights violations, impacting children, women and their foreign male spouses.³³ This discrimination also exacerbates the issue of statelessness over generations.

In 2017, the Committee on the CERD recommended that Kuwait "modify the Nationality Act to allow Kuwaiti women married to foreigners to pass on their nationality to their children and spouses on an equal footing with Kuwaiti men."³⁴ In the same year, the CEDAW recommended that Kuwait "amend the Nationality Act to recognise the right of Kuwaiti women to transmit their nationality to non-Kuwaiti spouses and children on equal terms with Kuwaiti men, and to eliminate barriers faced by Kuwaiti women married to non-Kuwaiti men in gaining access to public housing."³⁵

3.2.2 Arbitrary deprivation of nationality

Revocation of nationality has increasingly been used on politically motivated grounds against human rights defenders and dissidents, without any consideration for the risk of statelessness. This is enabled by article 13 of the Kuwaiti Nationality Act, which provides overly broad and vague grounds for the

³² Global Campaign for Equal Nationality Rights – UNHCR, "CEDAW Quick Reference Guide: Statelessness and Human Rights Treaties," 2017, available at: <http://equalnationalityrights.org/images/zdocs/CEDAW-Quick-Reference-Guide.pdf> (accessed 18 July 2019).

³³ These include the denial of the right to a nationality and resultant statelessness; lack of access to public education, healthcare and other services; increased risk of gender-based violence and impeded family reunification in violation of article 9 of the Kuwaiti constitution. For example, when foreign men are denied access to their Kuwaiti spouses' nationality, they may be forced to live away from their children due to challenges in acquiring residency permits and obstacles to employment, or they may try to take the children away from the mother and back to their own country. For more, see: Equality Now, *Campaign to End Sex Discrimination in Nationality and Citizenship Laws*, 2013 (updated May 2014, February 2015), http://www.equalitynow.org/sites/default/files/NationalityReport_EN.pdf (accessed 11 July 2019).

³⁴ CERD, *Concluding observations on the combined twenty-first to twenty-fourth periodic reports of Kuwait*, CERD/C/KWT/CO/21-24, 19 September 2017, para. 32.

³⁵ CEDAW, *Concluding observations on the fifth periodic report of Kuwait*, CEDAW/C/KWT/CO/5, 22 November 2017, para. 33.

revocation of nationality, allowing for arbitrary interpretation and abuse.³⁶ In addition, it grants the government arbitrary power to strip individuals and their dependents of their Kuwaiti citizenship on several grounds, many of which may fall within their right to freedom of expression or constitute a legitimate exercise of their human rights. They include acts which are deemed to “involve the higher interests of the State or its foreign security”, or if the authorities consider that the individual has “promoted principles that will undermine the social or economic system of the country”. Such decisions are made with no regard for due process, and are not subject to any judicial or administrative appeals process.

It has been reported that between 2014 and 2016, at least 120 people, including a newspaper publisher, were arbitrarily deprived of their nationality.³⁷ It remains unclear today how many individuals remain without nationality and how many additional persons have been denationalised since 2016.

Recommendations:

- Ensure international obligations are upheld with regards to the right to a nationality and the rights of stateless persons;
- Ensure that all necessary steps are taken to amend the Kuwaiti Nationality Act to enable Kuwaiti women to transfer nationality to their children and spouses without restriction, on an equal basis with men, in accordance with international standards;
- Amend the Kuwaiti Nationality Act to ensure the prohibition and prevention of arbitrary deprivation of nationality and reinstate the nationality of all persons who may have been arbitrarily stripped of their nationality;
- Ratify the 1954 Convention Relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness;
- Remove reservations to and ensure full compliance with the entirety of CEDAW article 9 on equal nationality laws, as well as to CRC article 7 and CRPD article 18 on the right to acquire a nationality.

³⁶ Accordingly, nationality might be revoked “where naturalization has been acquired by virtue of fraud or on the basis of a false declaration; where within 15 years of the grant of naturalization, a person is convicted of any honour related crime or honesty-related crime; where, within 10 years, a person is dismissed from public office on disciplinary grounds for reasons relating to honour or honesty; and where the competent authorities have evidence that a naturalized person has disseminated opinions which may tend seriously to undermine the economic or social structure of the State or that he is a member of a political association of a foreign State”.

³⁷ The Economist, *To silence dissidents, Gulf states are revoking their citizenship*, 26 November 2016, <https://www.economist.com/middle-east-and-africa/2016/11/26/to-silence-dissidents-gulf-states-are-revoking-their-citizenship> (accessed 11 July 2019).

3.3 Right to life, liberty and security of person

3.3.1 Arbitrary deprivation of liberty

Arbitrary detention is prohibited under article 31 of the Constitution.³⁸ However, in practice, lengthy pre-trial detention remains a problem with detainees being held beyond the maximum detention period of six months. This situation is partly due to an insufficient number of judges and prosecutors working at the Ministry of Justice in a country where pre-trial detention is ordered quasi-systematically.³⁹

Furthermore, two-thirds of Kuwait's population is comprised of migrant workers who are exposed to arbitrary arrests for deportation purposes.⁴⁰ There have been numerous reliable reports that police carried out arbitrary arrests of foreigners as part of a sustained action against individuals without legal status.⁴¹ In particular, in January 2015, the government launched a crackdown on "illegal residents," with more than 100,000 people reportedly arrested.⁴²

Administrative deportation is increasingly used to deport non-nationals for minor offences, including minor traffic violations.⁴³ Domestic workers who leave an abusive employment relationship are considered by the authorities and employers as "runaway" or "escaped" workers and are liable to imprisonment and deportation. In this regard, the 2013 anti-trafficking legislation does not provide protection from prosecution for victims who flee an abusive employer's residence without permission.⁴⁴

The HRCtee noted with concern that Kuwait's lacks "a maximum period of detention for persons awaiting administrative deportation and the unavailability of judicial remedies enabling such persons to seek review of the lawfulness of their detention."⁴⁵

Recommendations:

- Abolish the *Kafala* system in employment and replace it with a system of residency permits for all foreign workers;

³⁸ Article 31 of the Constitution states that "No person may be arrested, imprisoned, searched, have his residence restricted or be restrained in liberty of residence or of movement save in conformity with the provisions of the Law."

³⁹ US department of State, *2018 Country Reports on Human Rights Practices: Kuwait*, 13 March 2019, <https://www.state.gov/reports/2018-country-reports-on-human-rights-practices/kuwait/> (accessed 10 July 2019).

⁴⁰ Human Rights Watch, *Kuwait Event of 2018*, World Report 2019, <https://www.hrw.org/world-report/2019/country-chapters/kuwait> (accessed 10 July 2019).

⁴¹ US department of State, *2018 Country Reports on Human Rights Practices: Kuwait*, 13 March 2019, <https://www.state.gov/reports/2018-country-reports-on-human-rights-practices/kuwait/> (accessed 10 July 2019).

⁴² M. Sophia, *Kuwait to Arrest 100,000 Illegal Expats*, Gulf Business, 22 January 2015, <http://gulfbusiness.com/2015/01/kuwait-arrest-100000-illegal-expats/#.Vi-F0xCrRTY> (accessed 10 July 2019).

⁴³ Global Detention Project, *Kuwait Immigration Detention*, last updated: January 2016, <https://www.globaldetentionproject.org/countries/middle-east/kuwait> (accessed 10 July 2019).

⁴⁴ Human Rights Council, *Report of the Special Rapporteur on trafficking in persons, especially women and children, on her mission to Kuwait*, 21 April 2018, A/HRC/35/37/Add.1, para 15.

⁴⁵ HRCtee, *Concluding observations on the third periodic report of Kuwait*, 11 August 2016, CCPR/C/KWT/CO/3, para. 28.

- Ensure that administrative detention for deportation purposes is a measure of last resort and that judicial remedies are in place to review its lawfulness.

3.3.2 Torture and ill-treatment

The constitution prohibits torture and other cruel, inhuman, or degrading treatment or punishment.⁴⁶ However, Kuwait's Criminal Procedure Code does not define torture in accordance with article 1 of the UNCAT.⁴⁷ Moreover, torture is considered a misdemeanour and the maximum prescribed penalty of five years is not commensurate with the gravity of the crime.⁴⁸

During the reporting period, there continued to be reports of torture and mistreatment by police and security forces against detained members of minority groups and non-citizens.⁴⁹ The CAT expressed concern in 2016 about "reports of torture and ill-treatment, in particular during prolonged detention of persons by the police and security forces, in response to terrorist activities, as well as in relation to peaceful protests by human rights defenders".⁵⁰ This is aggravated by the fact that detained persons do not enjoy, in practice, all the fundamental legal safeguards from the very outset of their deprivation of liberty.⁵¹

Furthermore, during its last UPR, Kuwait supported a number of recommendations related to the prohibition of slavery and trafficking.⁵² Despite this, there have been consistent reports of the exploitation, ill-treatment and torture of foreign workers, in particular female domestic workers, who work under the sponsorship system. This was noted by the CAT, when it expressed concern about the low number of prosecutions of abusive employers as well as the lack of redress and compensation provided to workers who have suffered abuse.⁵³

Finally, Kuwait has extradited individuals to countries in which they ran the risk of being tortured in violation of its obligations in regard to *non-refoulement* under article 3 of the UNCAT. On 2 November 2015, Omar Abdulrahman Ahmed Youssef Mabrouk was extradited to Egypt despite well-founded risks of torture.⁵⁴ Furthermore, on 12 July 2019, the Ministry of Interior declared having arrested alleged members of Egypt's Muslim Brotherhood political party, which is listed as a terrorist entity in Egypt

⁴⁶ Article 31 of the Constitution of Kuwait states: [n]o person may be arrested, imprisoned, searched, have his residence restricted or be restrained in liberty of residence or of movement save in conformity with the provisions of the Law."

⁴⁷ Committee against Torture, *Concluding observations on the third periodic report of Kuwait*, 5 September 2016, CAT/C/KWT/CO/3, para. 7.

⁴⁸ *Ibidem*.

⁴⁹ US department of State, *2018 Country Reports on Human Rights Practices: Kuwait*, 13 March 2019, <https://www.state.gov/reports/2018-country-reports-on-human-rights-practices/kuwait/> (accessed 10 July 2019).

⁵⁰ CAT, *Concluding observations on the third periodic report of Kuwait*, 5 September 2016, CAT/C/KWT/CO/3, para. 13.

⁵¹ *Ibid*, para. 10.

⁵² Supported: 157.153 (Djibouti); 157.155 (Iraq); 157.151 (South Sudan); 157.152 (Turkey); 157.154 (Iran); 157.156 (Russian Federation).

⁵³ CAT, *Concluding observations on the third periodic report of Kuwait*, 5 September 2016, CAT/C/KWT/CO/3, para. 30.

⁵⁴ See Working Group on Arbitrary Detention, *Opinion No. 60/2016 concerning Omar Abdulrahman Ahmed Youssef Mabrouk (Egypt and Kuwait)*, 25 November 2016, A/HRC/WGAD/2016/60.

but not in Kuwait. The eight men were sentenced *in absentia* to prison terms ranging from five to 15 years, and were later extradited to Egypt.⁵⁵ The defendants were not allowed to challenge the legality of their extradition, nor were they presented with any recourse to an independent judiciary in order to raise the risks of torture and claim their rights under the *non-refoulement* principle.

Recommendations:

- Ensure that the definition of torture is in full compliance with the UNCAT and provide for adequate sanctions against perpetrators;
- Provide legal protection to foreign workers, including female domestic workers, against exploitation, ill-treatment and abuse;
- Ensure that no person is expelled, returned or extradited to a country where there is a risk of torture in accordance with the *non-refoulement* obligation.

3.3.3 Death penalty and summary executions

Kuwait rejected all recommendations on establishing a moratorium on executions and abolishing the death penalty during the last UPR cycle.⁵⁶

In fact, the implementation of the death penalty was resumed in Kuwait during the reporting period, with seven individuals executed by hanging in January 2017.⁵⁷ Furthermore, the number of death sentences issued by courts saw an alarming increase.⁵⁸

In its 2016 Concluding Observations, the HRCttee highlighted that domestic laws continue to impose “the death penalty for offences that do not meet the threshold of the “most serious crimes” [...], including drug-related offences”.⁵⁹ Moreover, Law No. 31 of 1970 continues to impose a mandatory death penalty for vaguely defined state security crimes.⁶⁰

Recommendations

⁵⁵ This is despite the CAT’s findings in 2017, following the conclusion of its investigation under article 20 of the convention, that the practice of torture in Egypt is “widespread and habitual” particularly against political opponents.

⁵⁶ Not supported: 157.2 (Slovenia); 157.4 (Portugal, Spain); 157.10 (Brazil); 157.3 (Australia); 157.5 (Namibia); 157.121 (Slovenia); 157.122 (Spain); 157.123 (Rwanda); 157.124 (Italy); 157.125. (Uruguay); 157.126 (Togo); 157.127 executions (Belgium); 157.128 (France); 157.129 (Sweden); 157.130 (Greece); 157.131 (Montenegro); 157.132 (Bulgaria); 157.133 (Namibia); 157.134 (Portugal); 157.135 (Chile); 157.136 (Germany); 157.137 (Switzerland); 157.138 (Ukraine).

⁵⁷ Human Rights Watch, *Kuwait: First Executions in 4 Years*, 26 January 2017, <https://www.hrw.org/news/2017/01/26/kuwait-first-executions-4-years>, (accessed 8 July 2019).

⁵⁸ Number of death sentences issued: 14 in 2015, 49 in 2016, more than 15 in 2017, and 34 in 2018. See: Amnesty International, *Amnesty International Global Report – Death Sentences And Executions 2015*, pg. 7; *Amnesty International Global Report – Death Sentences And Executions 2016*, pg. 5; *Amnesty International Global Report – Death Sentences And Executions 2017*, pg. 7; *Amnesty International Global Report – Death Sentences And Executions 2018*, pg. 11.

⁵⁹ HRCttee, *Concluding observations on the third periodic report of Kuwait*, CCPR/C/KWT/CO/3, 11 August 2016, para. 22(b).

⁶⁰ Available at: see: <http://www.gcc-legal.org/LawAsPDF.aspx?country=1&LawID=1065>, (accessed 11 July 2019), article 1.

- Establish *a minima* a moratorium on executions with the aim of abolishing the death penalty.

3.4 Independence of the judiciary

Kuwait accepted several recommendations on consolidating the rule of law during its last UPR.⁶¹ However, its judicial system lacks independence from the executive.

While the Constitution prescribes the principles of separation of powers and independence of the judiciary,⁶² it also provides the emir with control over the executive and legislative branches and affirms that judicial powers are exercised by courts “in the name of the emir”.⁶³

Furthermore, the executive exercises effective control over the judicial system through the power to appoint its members.⁶⁴ Domestic laws also provide the Ministry of Justice with the authority to supervise the work of the judiciary and influence the promotion and dismissal of judges.⁶⁵ Moreover, non-national judges – which make up more than half of the judges working in Kuwait – are employed on the basis of short-term, renewable contracts concluded and extended by the Ministry of Justice, leaving them vulnerable to undue influence and arbitrary dismissal.⁶⁶

Recommendation:

- Guarantee the independence of the judiciary, including by amending Decree No.23 of 1990 to ensure that the executive does not exercise effective control over the appointment and dismissal of judges, and ensuring the tenure of foreign judges.

3.5 Statelessness

3.5.1 The situation of the Bidoon

A number of recommendations⁶⁷ were made during Kuwait’s previous UPR aimed at putting an end to the discrimination faced by Kuwait’s stateless population and affording the Bidoon community their right to nationality and all other rights and freedoms associated therewith.

⁶¹ Supported: 157.160 (Nicaragua); 157.161 (Cuba); 157.162 (Côte d’Ivoire); 157.163 (Bosnia and Herzegovina); 157.159 (Senegal).

⁶² Articles 50,162 and 163.

⁶³ Article 53.

⁶⁴ Seven out of ten members of the Supreme Judicial Council - the body responsible for supervising the judicial process in the country, and whose members hold the highest ranking positions in domestic courts - are appointed by an emiri decree based on suggestions made by the Ministry of Justice. For more, see: The Law Regulating the Judiciary Decree No. 23 of 1990, available at: <http://www.gcc-legal.org/BrowseLawOption.aspx?country=1&LawID=1015>, (accessed 16 July), article 20.

⁶⁵ *Ibid*, articles 31, 32 and 35

⁶⁶ A. Alhajri, *Separation of Powers in the Kuwaiti Criminal Justice System: A Case Study*, European Journal of Interdisciplinary Studies, Volume 4 Issue 2, May-August 2018, pg. 73.

⁶⁷ Noted: 157.120. (France); 157.243. (Belgium); (United States of America); 157.246. (Slovakia); 157.247. (Czech Republic); 157.249. (United Kingdom of Great Britain and Northern Ireland); 157.250. (Argentina);

Statelessness status is not legally recognised in Kuwaiti law, neither are there any regulations specifically aimed at preventing or reducing statelessness or protecting stateless persons.

According to UNHCR statistics, Kuwait was home to a stateless population of 92,000 persons in 2018, compared to 93,000 a year earlier.⁶⁸ However, civil society estimates are much higher, with some placing the figure at 130,000.⁶⁹

The vast majority of this group belong to the Bidoon.⁷⁰ The group falls into three broad categories: “(a) those whose ancestors failed to apply for nationality or lacked the necessary documentation when Kuwait gained independence in 1961; (b) those recruited from abroad to work in the Kuwaiti army or police force during the 1960s, who settled permanently in Kuwait, along with their families; and (c) children of Kuwaiti mothers and stateless or foreign fathers.”⁷¹ Until 1986, the Bidoon were provided with a “civil status” that gave them access to basic services without providing them with equal rights compared to Kuwaiti citizens. However, in 1986, the Kuwaiti authorities stripped the Bidoon of the civil status card that entitled their holders to basic civil rights. This paved the way for growing human rights violations to be committed against the Bidoon, as they were stripped of their rights and social security, further marginalising them.⁷²

Bidoons in Kuwait do not have legal status and are not able to work legally. The Kuwaiti government excludes Bidoon children from state education and has banned all donations that contribute to their education. Bidoon children enrolled in schools that charge tuition receive an inferior education to children with Kuwaiti nationality, and Bidoon children are often required to pay additional fees.⁷³ Moreover, limited access to “Article 17 passports”,⁷⁴ which permit the Bidoons to travel for religious, medical or educational purposes under specific conditions, leaves them reliant on traffickers and smugglers for travel and work abroad.

Bidoon women suffer from multiple forms of discrimination and abuse, and find themselves in a

157.254. (Switzerland); 157.236. (Mexico); 157.240. (Ukraine); 157.242. (Norway); 157.244. (Italy); 157.248. (Spain); 157.241. (Netherlands); 157.253. (Republic of Korea); 157.251. (Austria).

⁶⁸ Annex Table 1. UNHCR Global Trends, Forced Displacement in 2018, available at: <https://www.unhcr.org/5d08d7ee7.pdf> (accessed July 12, 2019).

⁶⁹ Human Rights Council, *Written statement submitted by Conseil International pour le soutien à des procès équitables et aux Droits de l'Homme*, February 19, 2019, A/HRC/40/NGO/132, available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G19/044/06/PDF/G1904406.pdf?OpenElement>, (accessed 16 July 2019).

⁷⁰ Bidoon, short for *bidoon jinsiya*, can be translated to ‘without nationality’ from Arabic. For more, see: Minority Rights Group, *Kuwait, Bidoon*, Updated December 2017, <https://minorityrights.org/minorities/bidoon/> (accessed July 12, 2019).

⁷¹ Human Rights Watch, *Prisoners of the Past*, June 13, 2011, www.hrw.org/report/2011/06/13/prisoners-past/kuwaiti-bidun-and-burden-statelessness (accessed July 12, 2019).

⁷² *Ibidem*.

⁷³ *Ibidem*.

⁷⁴ Temporary travel documents issued to Bidoons, valid for specific journeys pursuant to Art. 17 of Law No. 11/1962. Available at: <https://gulfmigration.org/kuwait-law-no-11-of-1962-regarding-passports/>, (accessed 16 July 2019).

particularly vulnerable position.⁷⁵ It has been reported that Bidoon women and girls have faced sexual harassment from government officials while applying for documentation, and that Bidoon women cannot claim their legally enshrined rights upon divorce since their marriages remain unregistered by the authorities.⁷⁶

Moreover, members of the Bidoon population are considered as “illegal third country nationals”, and are exposed to arbitrary arrest and detention for extradition purposes.⁷⁷ There have been reports of Bidoon human rights defenders, such as Abdulhakim Al-Fadhli, being harassed and arbitrarily detained in connection with their advocacy activities.⁷⁸ In 2019, MENA Rights Group received numerous allegations of judicial harassment and the arbitrary arrest and detention of Bidoon activists by the authorities in Kuwait. Similarly, according to Amnesty International there has been a recent crackdown by the authorities. On 17 July 2019, it reported that there has been a recent rise in the amount of arrests of human rights defenders. At the same time, the amount of suicides among the Bidoon has gone up as a result.⁷⁹

In 2017, the Committee on the CERD called on Kuwait to “investigate allegations of excessive use of force, arbitrary detention, deterrence of lawful protests, ill-treatment and torture of human rights defenders, including stateless individuals”.⁸⁰

The CERD also made broader recommendations in relation to the Bidoon, calling on Kuwait to find a durable solution to the problems faced by the population, including by (a) considering naturalising those who have lived in Kuwait for long periods and have a genuine and effective link to the State; (b) putting into place immediate administrative procedures to allow all Bidoon to obtain official documents, including birth registration documents; (c) providing residence permits and temporary legal status to all non-citizens as appropriate; (d) guaranteeing access for all to adequate social services and education on an equal footing with nationals of Kuwait; (e) ensuring that applications for Kuwaiti nationality are assessed through written, reasoned decisions that may be appealed; and (f) acceding to the Convention relating to the Status of Stateless Persons and the Convention on the Reduction of Statelessness.⁸¹

⁷⁵ Human Rights Watch, *Prisoners of the Past*, June 13, 2011, www.hrw.org/report/2011/06/13/prisoners-past/kuwaiti-bidun-and-burden-statelessness (accessed July 12, 2019).

⁷⁶ *Ibidem*.

⁷⁷ Home Office, *Country Information and Guidance Kuwait: Bidoons*, July 2016, <https://www.refworld.org/pdfid/5853da784.pdf> (accessed 9 July 2019).

⁷⁸ On 18 April 2016, prominent Kuwaiti human rights defender Mr Abdulhakim Al Fadhli was arrested by Kuwaiti authorities while participating in a peaceful gathering, in solidarity with imprisoned pro-democracy activist Musallam Al Barrak. He was released from the Central Prison in Kuwait on 1 August 2017. For more information, see: Front Line Defenders, *Detention of Abdulhakim Al-Fadhli*, <https://www.frontlinedefenders.org/en/case/detention-abdulkhakim-al-fadhli#case-update-id-6344> (accessed 10 July 2019).

⁷⁹ Amnesty International, *Kuwait: Authorities crackdown on protesters demanding citizenship rights*, 17 July 2019, available at: <https://www.amnesty.org/en/latest/news/2019/07/kuwait-authorities-crackdown-on-protesters-demanding-citizenship-rights/> (accessed 18 July 2019).

⁸⁰ CERD, *Concluding observations on the combined twenty-first to twenty-fourth periodic reports of Kuwait*, CERD/C/KWT/CO/21-24, 19 September 2017, para. 30.

⁸¹ *Ibid*, para. 28.

Furthermore, the CEDAW recommended in 2017 that Kuwait accede to the 1954 Convention relating to the Status of Stateless Persons and the 1961 Convention on the Reduction for Statelessness and continue to look into the possibility of regularising the situation of more members of the Bidoon community.⁸² In addition, the Committee recommended that Kuwait ensure that birth certificates and other documents are issued to Bidoon women, men and children as a means of preventing statelessness.

Recommendations:

- Respect, protect and fulfil the right to nationality of the Bidoon population by granting them citizenship and taking further measures to ensure appropriate protections of their rights;
- Put an end to discriminatory laws and policies against members of the Bidoon community particularly women and children;
- Ensure that Bidoon exercising their rights to freedom of movement, peaceful assembly, opinion and expression are not subjected to arbitrary deprivation of liberty;
- Facilitate independent research into, and then initiate clear procedures to identify and determine the number and profiles of all individuals who have been denied their right to nationality in Kuwait and are therefore stateless, particularly the Bidoon communities.

⁸² CEDAW, *Concluding observations on the fifth periodic report of Kuwait*, 22 November 2017, CEDAW/C/KWT/CO/5, para 33.

MENA Rights Group is a Geneva-based legal advocacy NGO, focusing on the protection and promotion of fundamental rights and freedoms in the Middle East and North Africa. Adopting a holistic approach, we work at both the individual and structural level. We provide legal counselling to victims of human rights violations through recourse to international law mechanisms. In addition, we assess the human rights situation on the ground and bring key issues to the attention of relevant stakeholders to call for legal and policy reform.

The **Institute on Statelessness and Inclusion (ISI)** is an independent non-profit organisation dedicated to promoting an integrated, human rights-based response to the injustice of statelessness and exclusion. Established in August 2014, it is the first and only global centre committed to promoting the human rights of stateless persons and ending statelessness. The Institute has made over 40 country specific UPR submissions on the human rights of stateless persons, and also compiled summaries of the key human rights challenges related to statelessness in all countries under review under the 23rd to the 34th UPR Sessions.