



Kuwait

**Report submitted to the Human Rights Committee in the
context of the third periodic review of Kuwait**

Alkarama Foundation – 27 May 2016

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2. Introduction

Kuwait presented its third periodic report to the Human Rights Committee (CCPR/C/KWT/3) in October 2014. Kuwait's report is due to be examined by the Committee during its 117th session, which will take place between 20 June and 15 July 2016.

This report is based on the documentation of the human rights situation over the past five years in the country with the cooperation and participation of local actors, including victims themselves, their families and lawyers as well as local non-governmental organisations (NGOs) working for the promotion and protection of human rights.

In order to review the human rights situation in a holistic manner, this report begins by providing an overview of the **current context of Kuwait** in particular with regards to the waning civil liberties since the onset of the Arab Spring. Thereafter, the **implementation of the Covenant** in Kuwait is evaluated, firstly examining the **scope of application of the Covenant** (Article 2), the **revocation of citizenship** (Articles 2, 12 & 24) to neutralise political opponents, the **persistent discrimination of Kuwait's stateless population** (Articles 2, 16, 24 & 26) and the **right to life, physical integrity and the prohibition of torture** (Articles 7 & 10). The report then focuses on Kuwait's implementation of the **prohibition of arbitrary detention** and the **right to a fair trial** (Articles 9 & 14). Subsequently, the **right to privacy**, the **right to freedom of opinion and expression** as well as the right to **peaceful assembly** (Articles 17, 19 & 21) will be assessed. For each of these subsections, recommendations to the State party are formulated. The report ends with a **conclusion** on the human rights situation in the country.

3. Context

In 2011, and with the beginnings of the Arab uprisings across the region, Kuwait entered a new and challenging era driven by regular demands by civil society for governmental reform, transparency and political participation. This reform is particularly concerned with a more representative electoral system, a law permitting the creation of political parties, and wider popular participation in the political sphere. State attempts to control freedom of expression, opinion and assembly have therefore increased exponentially.

Kuwaiti officials have repeatedly invoked vaguely worded provisions of the Penal Code and the national security law to suppress freedom of expression, since a political crisis triggered mass protests and ultimately led to the resignation of the government in 2011. Indeed, since then, Kuwait has witnessed political turmoil, largely stirred by a major corruption scandal that surfaced involving bribes and funds allegedly transferred to members of Parliament in return for voting along government lines. In that wake, the parliamentary elections of February 2012 produced a victory for the opposition. In June, the Constitutional Court exclusively composed of the Emir's appointees, annulled February's poll and dissolved the new Parliament. Again in October 2012, the Emir dissolved the Parliament and called for new elections to be held in December. He also issued a decree to change the electoral process¹ that caused opposition groups to boycott the following elections in protest. Opposition groups claimed that the new electoral law favoured pro-government majorities and that the decision itself was in violation of the Constitution since Kuwaiti constitutional law provides that such a change can only be taken by a legislative decision. In 2013, the Constitutional Court invalidated the elections held in December 2013, but confirmed the constitutionality of the amendment to the electoral law.² New elections led to a redistribution of seats in Parliament following a higher rate of participation by the opposition. The success of pro-government candidates in the following election in June 2014 strengthened the government's backing in Parliament, simultaneously signified a return to the

¹ European Parliament Policy Briefing, *Kuwait's Political Crisis deepens*, 2013, http://www.europarl.europa.eu/RegData/etudes/briefing_note/join/2013/491461/EXPO-AFET_SP%282013%29491461_EN.pdf (accessed on 20 April 2016).

² Nathalie Gillet, RFI, *La Cour constitutionnelle du Koweït invalide les dernières élections législatives*, <http://www.rfi.fr/moyen-orient/20130616-cour-constitutionnelle-koweit-invalidation-elections-legislatives> (accessed 27 April 2016).

polarisation of the political climate of 2012. The situation was further intensified by the arrest of opposition figurehead, Musallam Al Barrak on 2 July 2014. The following protests by thousands of supporters were violently dispersed by riot police with tear gas and stun grenades.³

In response to the various waves of protests since October 2012,⁴ the government started using disproportionate force, including excessive use of tear gas, sound bombs, beatings and arbitrary arrests, in order to disperse peaceful crowds on several occasions. The excessive use of force was commonly applied in an attempt to crackdown on peaceful assemblies and to silence dissenting opinions and critics. This crackdown has been fostered by new laws adopted in order to curb freedom of expression and to allow a stricter persecution via hefty prison sentences for both Kuwaiti citizens and the “Bidoon” (stateless people) for peacefully voicing critique. Whilst discrimination of the Bidoon persists, the Kuwaiti authorities have since 2014 also resorted to the revocation of citizenship as a means to stifle criticism.

While Kuwait is the first country in the Gulf which adopted a Parliament and a Constitution, its judiciary is only partially independent as judges are appointed by the Emir acting on the advice of the Supreme Judicial Council. Although Kuwaiti judges are nominated for life, foreign judges have fixed-term renewable contracts. This precariousness does not allow them to perform their duties independently, and is an obstacle to the principle of the irremovability and independence of judges. If the judges were long viewed as relatively independent, the overriding powers of the executive over the judiciary have strongly been felt in recent jurisprudence, which goes along with the dominant pursuit to silence political dissent since 2011.

The lack of independence of the judiciary is most clearly exemplified by the case of Dar Al Watan Publishing and Dar Al Watan TV channel, that had their license removed and premises shut down by administrative decision in early 2015 due to the liberal style of reporting of both entities. The executive dismissed two judicial rulings that declared the administrative decision invalid and neither reissued the company its licenses nor allowed it to resume its business.

4. Constitutional and Legal Framework for the Implementation of the Covenant (art. 2)

The State’s Constitution does not explicitly state that international treaties and conventions have primacy over domestic law. Article 177 of the Constitution only states that the application of the law does not prejudice international agreements and conventions, and Law No. 12 of 1996, passed on 3 April, provides that the Convention’s provisions were incorporated into domestic legislation.

While the Committee in its List of Issues (CCPR/C/KWT/Q/3) asked for further clarification on the status of the Covenant and whether and when it prevails over domestic law, the State party in its reply merely reiterated that, since the day of its ratification, the Covenant became an inseparable part of the Kuwaiti legislation and that the Kuwaiti judiciary respects and protects its provisions. Therefore, the State party did not answer the Committee’s question, neither did it give examples of cases in which national courts have referred to the provisions of the Covenant and in which measures were taken to raise awareness of its provisions among judges and judicial officers.

The documentation of cases and cooperation with Kuwaiti human rights activists and lawyers confirm that the Covenant’s provisions remain largely unknown or misunderstood by civil society, law enforcement and judicial entities. We know of no case in which lawyers directly invoked the Covenant’s provisions before a national court which illustrates both a lack of awareness of the Covenant as a legal tool *per se* as well as of its applicability before domestic courts. It appears the

³ BTI project, *Kuwait Country Report*, 2016, https://www.bti-project.org/fileadmin/files/BTI/Downloads/Reports/2016/pdf/BTI_2016_Kuwait.pdf (accessed on 5 May 2016).

⁴ Human Rights Watch, *Kuwait: Rights Setbacks Amid Political Crisis*, 2013, <https://www.hrw.org/news/2013/02/12/kuwait-rights-setbacks-amid-political-crisis> (accessed on 15 April 2016).

authorities are not making the necessary efforts to distribute and inform its citizens about the Covenant and train its law enforcement officers on its provisions.

We welcome the establishment of Kuwait's National Human Rights Institution (NHRI) "Diwan Huquq Al Insan" by Law No. 67 of 2015, complying with previous recommendation of the Committee,⁵ as well as several member states of the Human Rights Council during its last Universal Periodic Review.⁶ As per its founding text, the Diwan aims at strengthening and promoting human rights, and their respect in light of the Constitution and the international conventions ratified by Kuwait as long as it does not contravene article 8 of the Constitution stipulating that "[t]he State shall preserve the pillars of society and shall guarantee security, tranquillity and equal opportunity to all citizens". The founding law's article 4 provides that the NHRI be composed of 11 individuals appointed by Emiri decree for four years, renewable once. The nominations are made by the Council of Ministers. We are concerned that the appointment of members by the Emir as well as their nomination by government ministers will compromise the Diwan's independence. Article 6 of the law determines the activities of the Diwan, but as it has just recently been established, its members have not yet been appointed and no actual activity carried out.

Recommendations:

1. Ensure that national legislation is compatible with the State's obligations under the Covenant and raise awareness about the Covenant and its applicability under domestic law;
2. Request the Diwan Huquq Al Insan's accreditation by the Sub-Committee on Accreditation of the International Coordinating Committee of NHRIs and consider amending article 4 of its founding Law No. 67 to guarantee broader consultation and independence in the selection and appointment procedure of its members.

5. Persistent Discrimination against the Bidoon (art. 2, 16, 24 & 26)

Kuwait counts about 120,000 stateless persons, known as the "Bidoon" whose civil and political rights are being infringed on a multitude of levels, crosscutting several violations of the ICCPR. The State does not recognise the right of these long-time residents, some of whom have resided in Kuwait for many generations. "Bidoon" refers to a diverse group of people who at the time of independence were not given the Kuwaiti nationality. When the British ended the protectorate in 1961, about one-third of the population was given nationality on the basis of being "founding fathers" of the new nation State, another third were naturalised as citizens, and the rest were considered to be "*bidoon jinsiya*" or "without nationality" in Arabic. This situation has far-reaching consequences on entire families since children of the Bidoon are also stateless in violation of the Convention on the Rights of the Child, which Kuwait ratified in 1991. As a consequence of their statelessness, the Bidoon cannot freely travel in and out of Kuwait since the government issues one-time travel documents at its discretion. The Bidoon cannot participate in elections neither as candidates, nor as voters. As non-Kuwaitis, they also face restrictions in employment, health care, education, marriage and family law. Furthermore, the Bidoon have no right to residency in Kuwait, and may be subject to deportation or indefinite administrative detention if found guilty of committing certain crimes.

There are different categories of Bidoon who are treated differently by the government, such as tribesmen whose ancestors failed to apply for nationality or lacked necessary documentation at the time of Kuwait's independence; former citizens of neighbouring countries who abandoned their original nationality to join Kuwaiti armed forces and police in the 1960s and 1970s and children of Kuwaiti women married to Bidoon men. A certain category of Bidoon including those that were registered during the consensus of 1965 can acquire nationality by submitting a request to the Central

⁵ United Nations Human Rights Committee, *Concluding observations of the Human Rights Committee (CCPR/C/KWT/CO/2)*, 18 November 2011.

⁶ United Nations Human Rights Council, *Report of the Working Group on the Universal Periodic Review (A/HRC/29/17)*, 13 April 2015.

Agency for Remedying Illegal Residents' Status or "Committee for the Bidoon", established in 2010. The number granted nationality each year, however, is limited to 2,000. While the Kuwaiti authorities in their State Report claim that all illegal residents are issued with passports in accordance with article 17 of the Passport Act No. 11 of 1962, in practice many stateless remain without identity document or are arbitrarily deprived of it as shown in the case below.

Ahmad Ali Matar Jaber, a 32 year old stateless person, who was born in Kuwait, pursued a career as a linguist when he received proposals from renowned universities to continue his academic studies and teaching abroad in 2015. On 30 July 2015, after receiving confirmation from the competent authorities that he was allowed to renew his passport, Ahmad delivered his passport to the General Department of Citizenship and Travel Documents, waiting to obtain a new one shortly after. However, a few hours after, the same department informed him that for alleged security reasons that could not be disclosed, he would not receive a new passport. Ahmad turned to the General Department of Citizenship and Travel Documents to ask for a passport and sought help from UNDP and UNHCR in Kuwait, but despite all these efforts, he was not successful in obtaining a new passport.⁷

In 2011, the government granted the Bidoon some benefits and services such as free health care and education; however, the benefits differed from those granted to Kuwaitis, such as the registration of births, marriages and deaths. Yet, large segments of the Bidoon community have complained that they still face administrative obstacles to access these benefits effectively. In 2013, the Parliament passed a law granting 4000 "foreigners" citizenship, but Bidoon activists confirm that this did not benefit their community, but instead facilitated the naturalisation of children born to Kuwaiti mothers and foreign fathers. The Bidoon Committee, the administrative body responsible for reviewing Bidoon claims to nationality, substantiated that the Bidoon community did not benefit from the law that year.⁸

In November 2014, the Undersecretary of State for the Interior announced that all Bidoon would be given economic citizenship in the impoverished archipelago of Comoros⁹ as well as certain domestic benefits, notably a residence permit in Kuwait, which includes free education and healthcare, and the right to work if they took up the Comorian nationality. According to recent statements made by the Comorian Foreign Minister, Abdulkarim Mohamed, the African island nation was ready to receive Kuwait's stateless persons if officially requested by the Kuwaiti government.¹⁰

Furthermore, since early 2011, members of the Bidoon community have at times organised peaceful protests to ask for Kuwaiti citizenship and access to public services. In its State Report, Kuwait declares that: "since peaceful assembly is a form of expression of opinion, Kuwaiti law does not discriminate in this regard. Hence, illegal residents enjoy the right to peaceful assembly to express their views, provided that they observe the rule of law."¹¹ However, this statement is directly contradicted by Article 12 of the 1979 Kuwaiti Public Gatherings Law that bars non-Kuwaitis from participating in public gatherings.

However, on 11 January 2012, the Ministry of Interior put an abrupt ending to this relative freedom when it announced that 'illegal residents' were again forbidden from 'organising any rallies, gatherings, sit-ins or demonstrations regardless of their nature, objective, and mission' without further motivating the decision. This announcement constitutes a clear violation of article 19 and 21 of the ICCPR guaranteeing the rights to freedom of opinion, expression and peaceful assembly. This announcement was followed by the arrest of over 60 persons during demonstrations on 13 January 2012. Indeed, Alkarama has documented numerous cases of violent dispersal of Bidoon protests in

⁷ Alkarama, *Kuwait: Stateless person prevented from attending university abroad*, 19 April 2016, <http://en.alkarama.org/component/k2/2095-kuwait-a-stateless-person-prevented-from-attending-a-university-abroad?Itemid=> (accessed on 2 May 2016).

⁸ Human Rights Watch, *Kuwait: UPR Submission 2014*, 11 January 2015, <https://www.hrw.org/news/2015/01/11/kuwaituprsubmission-2014> (accessed on 15 April 2016).

⁹ BBC News, *Kuwait's stateless Bidun 'offered Comoros citizenship'*, 10 November 2014, <http://www.bbc.com/news/worldmiddle-east-29982964> (accessed on 24 April 2016).

¹⁰ Middle east Eye, *Comoros ready to take Kuwait's stateless: Minister*, 16 May 2016, <http://www.middleeasteye.net/news/comoros-ready-take-kuwait-s-stateless-minister-965939857> (accessed 17 May 2016).

¹¹ Kuwait, *Third Periodic Report of the State Party (CCPR/C/KWT/3)*, 8 December 2014, p. 22.

which several hundred members of the Bidoon community were arrested and detained. One example is that of Bidoon human rights defender Abdulhakim Al Fadhli.

Abdulhakim Al Fadhli was arrested several times because of his participation in peaceful protests over the last years. In May 2012, Alkarama submitted an urgent appeal to the Special Rapporteur on the Right to Peaceful Assembly and Association¹² on his case following his persecution for taking part in the protests. He has testified to being brutally tortured by the security services, but no investigation has been opened to follow up on these allegations. On 29 January 2015, the Criminal Court sentenced Mr Al Fadhli to one year in prison with hard labour on charges of "inciting Bedoon in Kuwait to protest and cause chaos". After appealing the sentence, the Court of Cassation pronounced its final judgement on 16 May 2016, sentencing Al Fadhli and five other human rights activists of the Bidoon community to one year in prison with hard labour, followed by deportation for charges of "illegal gathering" and "assault of security personnel".¹³

In the same vein, Alkarama is concerned over the indefinite administrative detention of Bidoon in retention centres for non-citizens. Kuwaiti law provides that non Kuwaiti citizens who commit a criminal offence and are charged and sentenced, can be expelled to their country of citizenship after serving their sentence. Since Bidoon are not considered as Kuwaiti citizens, the authorities have been using this provision against them, mainly as retaliation for actively claiming their rights. After serving their sentences, Bidoon are being kept in retention centres in order to be expelled as "foreigners". Either the individual has arbitrarily been given another citizenship by the authorities and risks being sent to the country of citizenship or the individual risks being detained indefinitely in a retention centre. Since foreign citizenships given to Bidoon are not effective but rather "fictional" or "economic", even individuals who have an attributed citizenship can be kept indefinitely since the country of their citizenship will not recognise the individual effectively as their national. This situation is a direct consequence of inequality deriving from the denial of Kuwaiti citizenship to individuals who have been in Kuwait for several generations and do not have any attachment to another country.

In its State Report and the Reply to the List of Issues, the State party emphasizes that there is no such group as "Bedoon" or stateless people, but refer to "illegal residents". This is due to the fact that the Kuwaiti government changed the Bidoon's status from that of legal residents without nationality to illegal residents in 1985.¹⁴ Moreover, the State party in its Reply to the List of Issues¹⁵ merely reiterates amendments to the Nationality Law No. 15 of 1959 outlining conditions for entitlement to nationality and the fact that over 16,000 illegal residents were naturalised in the last years. Yet, the State party failed to clarify what progress had been made recently in naturalising members of the Bidoon community and providing them with identity/travel documents as well as integrating them into society. Moreover, we regret to see that Kuwait rejected all recommendations made regarding the Bidoon community during the last Universal Periodic Review, such as the one put forth by Canada: "Accede to the 1961 Convention on the Reduction of Statelessness and uphold the rights of the Bidouns to nationality and access to social services".¹⁶ This, yet again, emphasises Kuwait's stance on matters of nationality as a question of "national sovereignty".

Recommendations:

1. Guarantee the right of every child to acquire nationality, in compliance with article 24 of the Covenant;

¹² Alkarama, *Kuwait: Arbitrary detention of Bidun rights activist Abdulhakim Al Fadhli*, 9 May 2013 (accessed on 26 May 2016).

¹³ OHCHR, *Communication from the Mandates of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; the Special Rapporteur on the rights to freedom of peaceful assembly and of association; the Special Rapporteur on the situation of human rights defenders; and the Special Rapporteur on the independence of judges and lawyers*, 25 February 2015, [AL Kuwait 25.02.15 %281.2015%29.pdf](http://www.refworld.org/pdfid/51f7b27b4.pdf) (accessed on 4 August 2015).

¹⁴ Government of the United Kingdom, 2013, <http://www.refworld.org/pdfid/51f7b27b4.pdf> (accessed on 5 May 2016)

¹⁵ Kuwait, *Reply to the List of Issues (CCPR/C/KWT/Q/3/Add.1)*, 23 February 2016, p. 5.

¹⁶ United Nations Human Rights Council, *Report of the Working Group on the Universal Periodic Review (A/HRC/29/17)*, 13 April 2015.

2. Extend the scope of the principle of equal treatment stipulated in article 29 of the Constitution in conformity with article 26 of the Covenant to all persons on their territory and take concrete measures to end the discrimination against the Bidoon;
3. Guarantee all members of the Bidoon community equal access to education, health care, political rights and legal recognition.

6. Revocation of Citizenship to Neutralise Political Opponents (art. 2, 12 & 24)

In 2014 alone, Alkarama has observed with concern that the Kuwaiti authorities have stripped at least 33 people of their citizenship for various reasons, including some government critics for “acts aiming to undermine the country’s security and stability, bringing harm to its institutions”. Indeed, this worrying phenomenon constitutes the latest form of reprisal against all forms of criticisms towards the government. The Human Rights Committee has interpreted its Article 12 ICCPR to mean that no state may ban or exile its citizens on the basis of repressive domestic law. The Kuwaiti law’s provisions conflict directly with the ICCPR, whose Article 12 states unequivocally that, “No one shall be arbitrarily deprived of the right to enter his own country.”

Article 13 of the Law No. 15 of 1959 on Nationality provides for the possibility of withdrawal of nationality by decree of the Interior Ministry if a person “has promoted principles that will undermine the social or economic system of the country” or “threatens the higher interests of the State or its security.” Additionally, decisions to revoke nationality cannot be appealed judicially or administratively because there is no competent body to hear appeals on nationality matters. This absence of the right to appeal a unilateral decision from the executive also constitutes a violation of article 2 paragraph 3 of the ICCPR. Lastly, it is important to highlight that revocation of citizenship has far reaching consequences since the children of the victims also have their citizenship revoked, which shows even more its pernicious and retaliatory character.

Jaber Al Shammari, owner of both opposition television channel Al-Youm and the daily Alam Al Youm, had his nationality revoked on 21 July 2014 by a Parliamentary Decree (No. 185/2014). His four children were thus also left without nationality. The next day, the two opposition media companies were closed by the authorities since, under the Law on Press and Audio-Visual Media, the owner of media channels must be of Kuwaiti nationality. Other prominent examples include **Abdullah Al Barghash**, a former opposition leader in parliament; **Nabil Al Awadhi**, a conservative cleric widely known for his TV talk shows; and **Saad Al Ajmi**, the spokes man for Musallam Al Barrak, a leading oppositional figure.

In its List of Issues,¹⁷ the Committee requested the State party to respond to reports of citizenship revocation without due process and for politically motivated reasons. In its Replies,¹⁸ the State party claims that citizenship is never stripped on political grounds, but for reasons of the State’s interest, e.g. if someone commits a crime of honour or trust within 10 years of being granted the Kuwaiti citizenship as stipulated in articles 13 and 21 of the Nationality Law No. 15 of 1959. The State reports the establishment of an *ad hoc* panel to re-evaluate the wrongful granting of nationalities, which led to the revocation of citizenships if candidates did not meet certain criteria, such as those set out in Decree No. 397 of 2007 regulating the granting of citizenship. However, the State failed to outline legal safeguards, including the possibility of judicial review in cases of citizenship revocation.

Recommendations:

1. Put an end the politically motivated practice of citizenship revocation and return the citizenship to all those stripped of it;

¹⁷ United Nations Human Rights Committee, *List of issues in relation to the third periodic report of Kuwait (CCPR/C/KWT/Q/3)*, 4 December 2015, p. 5.

¹⁸ Kuwait, *Reply to the List of Issues (CCPR/C/KWT/Q/3/Add.1)*, 23 February 2016, p. 26.

2. Guarantee adequate legal safeguards and the right to legal remedy to all individuals in the review process for having obtained nationality unlawfully or by fraud and afford them their rights as set out in article 12 of the Covenant.

7. The right to life, physical integrity and the prohibition of torture (art. 6, 7 & 10)

7.1 The Capital Punishment

If the death penalty is not expressly prohibited by international law, strict limitations are imposed on the sentence such as the right to a fair trial, the limitation that it is only to punish the most serious crimes,¹⁹ that it should not be imposed retroactively and that the condemned should have the right to seek for a pardon or a commutation of his sentence. Lastly, death penalty should not be pronounced against persons who were under the age of 18 at the time the commission of the offence or against pregnant women or anyone mentally ill at the time of the commission of the crime. Whereas Kuwaiti legislation provides for a pregnant woman's sentence to be commuted and for the prohibition of a death sentence in the case of persons who do not have full mental capacities – a category that does not include mental illness –²⁰; it also only prohibits death sentences against minors who have not yet reached the age of 16.²¹

In Kuwait, when a crime is punishable by death, the penalty is not mandatory and a sentence of life in prison can be pronounced. For instance, article 148 of the Kuwaiti Penal Code punishes intentional killing with the death penalty or life imprisonment. However, Kuwait's national security Law No. 31 of 1970²² does not explicitly provide for the possibility of life imprisonment for those crimes that touch upon the state sovereignty or the Emir. Indeed Article 1 of act 31 of the year 1970 states the following:

"Shall be punished by death penalty:

- Anyone who commits an intentional act which leads to compromising the independence of the country or its unity or territorial integrity.
- Every Kuwaiti who takes up arms against Kuwait or joins the armed forces of a country in a state of war with Kuwait.
- Anyone who seeks a foreign country or communicates with them or with one of those who are working to their advantage to execute a hostile act against Kuwait.
- Anyone who seeks a hostile state or communicates with them or with one of those who are working to their advantage to help them in their war or to harm the military operations of the State of Kuwait."²³

Certain provisions of the national security law differentiate between times of war and times of peace whereas a same act²⁴ is punished by life imprisonment during peace and by death in times of war,²⁵ which is in clear contravention to the non-derogability of the right to life. Moreover, death penalties can only be carried out with the approval of the Emir,²⁶ who can, without legal restrictions, issue a pardon or commute a sentence.

¹⁹ In 1984, the Economic and Social Council published the Safeguards Guaranteeing the Protection of the Rights of Those Facing the Death Penalty, which stipulated that the most serious crimes should not go beyond intentional crimes with lethal or other extremely grave consequences. While these Safeguards are not legally binding, they were endorsed by UN General Assembly, indicating strong international support. Similarly, the Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions has stated that the death penalty should be eliminated for economic crimes, drug-related offences, victimless offences, and actions relating to moral values including adultery, prostitution and sexual orientation

²⁰ Kuwait, *Reply to the List of Issues (CCPR/C/KWT/Q/3/Add.1)*, 23 February 2016

²¹ Kuwait, *Reply to the List of Issues (CCPR/C/KWT/Q/3/Add.1)*, 23 February 2016.

²² Kuwait, *National Security Law No. 31/1970 amending dispositions of the Penal Code (16/1960)*.

²³ *Ibid*, article 1.

²⁴ For instance, destroying or damaging weapons or ships or airplanes is punishable by life in prison during peace and by death during war as per article 8 of Act 31 of the year 1970.

²⁵ Kuwait, *National Security Law No. 31/1970 amending dispositions of the Penal Code (16/1960)*, articles 8, 18.

²⁶ Kuwait, *Criminal Code, Law No. 16/1960*, article 217.

We wish to highlight that the State party indicated in its Replies to the List of Issues that abolishing the death penalty is contrary to the principles of Sharia Law and that all national legislation regarding capital punishment in Kuwait are in conformity with paragraph 2 of article 6 of the Convention.²⁷

Recommendations:

1. Consider a public and permanent moratorium on the death penalty;
2. Prohibit death sentences against minors under the age of 18;
3. Ensure independent review of all death row candidates' files and immediately halt all executions that do not comply with international law standards and those following an unfair trial;
4. Commute death sentences to prison sentences where possible;

7.2 The Prohibition of Torture

The Kuwaiti Constitution protects in its article 31 all persons from "torture or ignominious treatment";²⁸ article 34 further provides that the accused "shall not be mentally or bodily injured."²⁹

However, Kuwaiti law does not clearly define torture. Indeed, in its Reply to the List of Issues, the State provides a number of articles supposedly punishing torture.³⁰ However these articles range from murder to assault and battery, to the killing of one's own child. The only article of the Penal Code explicitly referencing torture is article 70 which provides that any "official employee found guilty of a misdemeanour of bribery or torture of the accused in order to extract a confession [...] the employee is suspended from his position for no less than a year and no more than five years."³¹ Article 70 explicitly refers to torture as an offence as opposed to a crime. For its part, National Security Law No. 31/1970 states in its article 53:

"Is punished by a prison sentence no longer than five years and a fine of 500 dinars or one of these two sentences, any public official/employee that has himself or through another person, tortured the accused or a witness or an expert to get them to confess a crime or testify and express opinions about the crime. If the act of torture leads to a graver act or amounts to another crime punishable by a harsher sentence then that sentence is to be pronounced. If torture leads to death then the perpetrator is sentenced to death."³²

Article 56 of the same law provides that any public official that uses force against people and causes them dishonour or bodily harm is sentenced to a prison term no longer than three years and/or a fine of no more than 225 dinars.³³

The Penal Code provides that an offence or misdemeanour is punished by a prison sentence of less than three years and/or a fine.³⁴ Despite the fact that article 53 of Law No. 31/1970 prescribes a prison sentence that may be longer than three years, it also allows for the possible substitution of the prison sentence by a fine. In 2002, the Committee against Torture recommended that prison sentences for acts of torture be set between six and twenty years.³⁵ It appears that Kuwaiti law falls below this recommendation and does not provide sentences that are commensurate with the gravity of the act.

Recommendations:

1. Define and criminalise torture in the domestic legislation;
2. Provide prison sentences for the crime of torture that reflect the gravity of the act and that may not be substituted by a fine;
3. Provide adequate training and instructions on the prohibition of torture to all persons involved in the custody of an arrested or detained individual.

²⁷ Kuwait, *Reply to the List of Issues (CCPR/C/KWT/Q/3/Add.1)*, 23 February 2016.

²⁸ Kuwait, *Constitution of the State of Kuwait*, article 31, November 1962.

²⁹ Kuwait, *Constitution of the State of Kuwait*, article 31, November 1962.

³⁰ Kuwait, *Reply to the List of Issues (CCPR/C/KWT/Q/3/Add.1)*, 23 February 2016.

³¹ Kuwait, *Criminal Code, Law 16/1970*, article 70.

³² Kuwait, *National Security Law No. 31/1970 amending dispositions of the Penal Code (16/1960)*, article 53.

³³ Kuwait, *National Security Law No. 31/1970 amending dispositions of the Penal Code (16/1960)*, article 56.

³⁴ Kuwait, *Criminal Code, Law No.16/1970*, article 5.

³⁵ Committee Against Torture, *Summary Report of the 93rd Meeting of the Committee- CAT/C/SR.93*.

8. Legal safeguards related to the deprivation of liberty (art. 9)

Article 31 of the Constitution of Kuwait provides 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.” However, if the Law of Criminal Procedure provides some legal safeguards against arbitrary detention, other guarantees if existent are incomplete or contradictory.

The Code of Criminal Procedure states that a person arrested must be informed of the charges against him or her but will only be shown the warrant if he/she explicitly requests so.³⁶ Article 9 of the ICCPR provides that “[a]nyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power”. The Human Rights Committee has, in its General Comment No. 35, interpreted that “promptly” may vary depending on objective circumstances but that it should not surpass a few days from the time of arrest. Indeed, according to the Committee, 48 hours are “ordinarily sufficient to prepare for the judicial hearing; any delay longer than 48 hours must remain absolutely exceptional.”³⁷ In contrast, Article 69 of the Kuwaiti Criminal Procedure Code provides that a person held for the purposes of investigation must be brought before a magistrate within three weeks after their arrest. The magistrate can extend the detention to 15 days each time an extension is pronounced; and no limit to the number of extensions is specified in the text. In 2012, Kuwait amended its Code of Criminal procedure with Act No. 3/2012 which entered into force in July 2012.³⁸ The amended article 69 provides that if it is necessary for the purposes of the investigation, the investigator can order the detention of the suspect for a period of 10 days which can be challenged by the detainee. The detainee must be brought before the competent judge to decide on a possible extension of the term of detention for 10 additional days provided that these extensions do not surpass a total of 40 days.³⁹ While the reduction to these periods are a notable improvement to the unlimited number of extensions allowed for in the previous article 69, the amendments remain in clear contravention of the Committee’s interpretation of article 9 ICCPR.

Furthermore, article 70 of the Criminal Procedure Code as amended in 2012 provides that if the detention period should be extended beyond 40 days, a competent court must decide whether to grant the extension for a period of 30 days at a time; limiting the total duration of extensions to three months.⁴⁰ Before its amendment, article 70 provided that a person who has been held in pre-trial detention for a period of six months must be, upon request of the investigator, brought before the competent court that will hear the detainee before deciding whether to extend their detention for 30 days; the article set no limits to the number of extensions possible. We recall that Article 9 of the ICCPR provides that a person “arrested or detained on criminal charges [...] shall be entitled to a trial within reasonable time”.⁴¹ Although the Committee has not quantitatively defined the term “reasonable”, it has expressed the view that “extremely prolonged pre-trial detention may jeopardize the presumption of innocence under article 14, paragraph 2”.⁴² The Committee has advised that “persons who are not released pending trial must be tried as expeditiously as possible, to the extent consistent with their rights of defence”⁴³ and that when delays become necessary, alternatives to detention must be considered.

Another concerning aspect is that of the secrecy of the investigation. Whereas article 75 of the Kuwaiti Code of Criminal Procedure allows the lawyer to be present during the preliminary investigation, the lawyer may only speak if allowed to by the investigator. Before its amendment, the article further provided that if need be, for the success of the investigation, the investigation could be held in secret; the amendment clarified that the secrecy does not extend to the suspect and his lawyer. While Act (3) of the year 2012 integrates to the Criminal Procedure Code articles 60bis and 74bis that explicitly

³⁶ Kuwait, *Criminal Procedure Code, Law No. 17/1960*, article 63.

³⁷ United Nations Human Rights Committee. *General Comment No. 35*, 16 December 2014.

³⁸ Kuwait, *Act (3) of the year 2012*, Kuwait official Gazette 10 June 2016.

³⁹ *Ibid.*

⁴⁰ Kuwait, *Act (3) of the year 2012*, Kuwait official Gazette 10 June 2016

⁴¹ The United Nations General Assembly, *International Covenant on Civil and Political Rights*, article 9, 1966.

⁴² United Nations Human Rights Committee. *General Comment No. 35*, 16 December 2014.

⁴³ *Ibid.*

afford the detainee the right to meet his lawyer while in police custody, article 75 still submits the lawyers' interventions to the will of the investigator. Therefore, the right of individuals deprived of their liberty to legal counsel – not just from the onset of the detention but throughout the entire period of investigation – is still not fully guaranteed by Kuwaiti law.

Recommendations:

1. Ensure that every arrested person will be brought before a judge in no longer than 48 hours; the provision should further explicitly and exhaustively provide precise reasons for which this delay may be exceptionally prolonged;
2. Revise article 75 of the Criminal Procedure Code to have it afford all individuals deprived of their liberty the right to legal counsel throughout the entire process of investigation;
3. Ensure that all law enforcement officers are properly and adequately trained to abide by these new regulations.

9. The Independence of the Judiciary (art. 14)

The Constitution of Kuwait enshrines in its article 50 the separation of powers. Articles 51 and 52 put the Emir in control of the executive and legislative and article 53 states that justice is rendered by the courts in the name of the Emir.

Article 14 paragraph 1 of the ICCPR states that "all persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law." The Human Rights Committee has explained in General Comment No. 32 that an independent tribunal entails a body established by law that is independent of the legislative and the executive. The requirements for independence from the executive or legislative refer to, inter alia, to the procedure of appointing judges.⁴⁴

The Kuwaiti judiciary is organised by Decree No. 23 of the year 1990. Overseeing the judicial process is a Supreme Judiciary Council composed of 10 members including a representative from the Ministry of Justice, which the law states has no right to vote in decisions but is there in an advisory capacity. Nevertheless, seven of the members of the Supreme Judicial Council are, according to article 20 of the Decree, originally appointed as judges by an Emiri decree based on the Minister's suggestion after consulting the Council for its opinion.⁴⁵ These judges are the highest-ranking members of the judiciary, i.e. President and Deputy of Cassation Courts, President and Deputy of Appeals Courts and Attorney General among others. It is to be noted that the Supreme Judiciary Council is headed by the president of the Cassation Court. The appointment and promotion to all other judicial functions is made by Emiri Decree based on the suggestions of the Ministry of Justice for judges' nominations; the suggestions needs to be approved by the Supreme Judicial Council.

Kuwaiti judges are appointed for life but foreign judges are appointed on a contractual basis for a limited period of time.⁴⁶ For example, Egyptian judges – estimated to 300 in the Kuwaiti judicial system in 2011⁴⁷ – are appointed for four years.⁴⁸ According to the bilateral agreement of 1977 between Kuwait and Egypt regarding the foreign judges, requests for judges must come from the Ministry of Justice specifying the names of Egyptian judges it would like to integrate into the Kuwaiti courts. The Egyptian authorities can only accept or reject the proposal and may not suggest other candidates. Furthermore, it is the minister himself who can request the term of a judge to be extended for an additional two years.⁴⁹ In this sense, it appears that the independence of foreign

⁴⁴ United Nations Human Rights Committee, *General Comment No. 32*, July 2007.

⁴⁵ Kuwait, *Decree 23/1990, article 20*, 1990.

⁴⁶ United Nations press release, *Human rights committee continues review of Kuwait's report on status of civil and political rights*, 19 July 2000- HR/CT/578.

⁴⁷ Al Jarida, 17 April 2011, <http://bit.ly/245JrB3> (accessed on 19 May 2016).

⁴⁸ Kuwait-Egypt, *Agreement of Judicial Cooperation*, 1977.

⁴⁹ Kuwait-Egypt, *Agreement of Judicial Cooperation*, 1977.

judges is compromised by their dependence on the executive both for review and extension of their terms, as the bilateral agreement makes no mention of the Supreme Judicial Council, which is not involved in these nominations. As there are no explicit limits in the agreement to the number of mandates foreign judges can hold, the Ministry could possibly request the same judge for another four year term, thus reinforcing the issue of interference of the executive in the affairs of the judiciary. It is also worth noting that foreigners working in Kuwait are subject to the Kafala or sponsorship system which ties the workers' legal existence in the country directly to their employer; in this case the Ministry of Justice,⁵⁰ a branch of the executive. This creates a dependency of foreign judges on the judiciary.

Finally, the Human Rights Committee cites in its General Comment No. 32 conditions of suspension and cessation of judges' functions in the requirements for the independence of the judiciary.⁵¹ In Kuwait, administrative inspection is carried out at least once every two years by an administrative body from within the General Court (*Mahkama Al-Kulliyah*).⁵² The members of the inspection body are nominated by the Supreme Council. Judges are graded by the inspection for their work and the Minister of Justice can decide to refer those judges who received an under-average grade to the Council to decide on their dismissal.⁵³ Furthermore, the Minister can file a disciplinary motion to the disciplinary board against a judge. Indeed, article 35 of Decree No. 23 of 1990 provides the Minister of Justice with the right to supervise the judiciary.⁵⁴

Article 163 of the Constitution further states that "[n]o authority may wield any dominion over a judge in his rendering of justice and in no circumstance shall interference be permissible in its performance. The law shall guarantee the autonomy of the judiciary and define the judges' warranties, the provisions concerning them, and the conditions governing their immunity from dismissal."⁵⁵ However, the law allows the Minister and Ministry of Justice to play a big part in the affairs of the judiciary, therefore effectively compromising the independence of the judiciary by placing it under the control of the executive.

Recommendations:

1. Guarantee the independence of the Higher Judicial Council and make it responsible for appointing judges directly;
2. Ensure the tenure of foreign judges to secure their independence; Referral of cases to the disciplinary board should be solely and directly handled by the inspection body.

10. Right to Privacy and Compulsory Indiscriminate DNA Collection (art.17)

Alkarama is deeply concerned about the passing of the Law No. 78/2015 regarding DNA samples that consists of 13 articles and which provides for general and compulsory DNA collection.⁵⁶ The law came into force after its publication in the Official Gazette of 2 August 2015. Its Article 3 sets a deadline of one year to implement the dispositions of the new law from the date of its publication.

The Law is part of the counter-terrorism legal framework and constitutes, according to the authorities, a response to the deadly terrorist attack of 26 June 2015 against the Shia mosque of Imam Sadiq which killed 27 people and wounded 227 in Kuwait-city. Alkarama believes the law constitute a violation of the right to privacy enshrined in Article 17 of the ICCPR and should be promptly repealed.

⁵⁰ Nathan Brown, *Arab Judicial Structures*, <ftp://undp-pogar.org/LocalUser/pogarp/judiciary/nbrown/kuwait.html>

⁵¹ United Nations Human Rights Committee. *General Comment No. 32*, July 2007.

⁵² Kuwait, *Decree 23/1990, article 31*, 1990.

⁵³ Kuwait, *Decree 23/1990, article 32*, 1990.

⁵⁴ Kuwait, *Decree 23/1990, article 35*, 1990.

⁵⁵ Kuwait, *Constitution of the State of Kuwait*, article 163, November 1962.

⁵⁶ Original text of the law in Arabic available at: <http://bit.ly/1SKT8Ep> (accessed on 26 March 2016).

To date, Kuwait is the only country in the world to require nationwide compulsory DNA testing setting therefore a dangerous precedent in international law.

According to this new law, all Kuwaiti citizens and residents indiscriminately, are under the obligation to provide DNA samples to the authorities. The Law provides in its article 8 for "one year in prison and 10 thousand dinars fine for anyone who deliberately and without any excuse refrains from giving a sample of his DNA". Article 4 recalls the compulsory nature of the measure by stating that individuals subjected to this law are not allowed to refuse to give a sample, within the given deadline when requested to do so by the authorities.

Moreover, the individuals subjected to this law include all Kuwaiti citizens, residents and visitors in Kuwait. This expands the scope of the law even to non-Kuwaiti individuals who are under Kuwaiti jurisdiction for a short period of time.

Furthermore, Alkarama also believes the way in which the samples can be used by the Ministry of Interior to be concerning. Indeed, Article 5 of the Law gives to the "competent authorities" the capacity to investigate and use the DNA database in the following matters:

- To identify the perpetrator of a crime and his relation to the crime;
- To identify suspects and their families;
- To identify unidentified bodies;
- For any other cases required by the supreme interest of the country or required by the courts or the competent investigating authorities.

Lastly, the DNA collecting program and the database will be under direct control of the Ministry of Interior, which can collaborate with the Ministry of Health; the Law does not provide for any independent control of the collecting process of the database management. Local centres for collection will be set up to facilitate the collection of samples throughout the country.

Alkarama believes that the compulsory, indiscriminate and general elements of the DNA collection set in the law are making it contrary to Article 17 since it does not respect the necessary,⁵⁷ proportional and reasonable criteria⁵⁸ of restriction to the right to privacy. This is exacerbated by the unlimited capacity given to the Ministry of Interior in the use of these samples and the complete absence of independent control and the impossibility to challenge the law before an independent Court. We thus consider that the law constitutes and unlawful⁵⁹ and arbitrary interference with individuals' privacies and families.

To the Committee's request to explain the compliance of Law No. 78 of 2015 with its obligations under the Covenant, the State party in its Reply to the List of Issues gives the following simplified and insufficient answer: "The importance of the DNA samples is to determine the identity of a person, his/her involvement in a crime as well as unidentified bodies and those disfigured by heavy burns and explosions".⁶⁰ We highly regret that the State party refused to clarify how the law's provisions do not

⁵⁷ We recall that in assessing the necessity of a measure, the Human Rights Committee, in its general comment No. 27, on article 12 of the International Covenant on Civil and Political Rights, stressed that "the restrictions must not impair the essence of the right [...]; the relation between right and restriction, between norm and exception, must not be reversed." See: Human Rights Committee, General Comment 12, Article 1 (Twenty-first session, 1984), Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies, U.N. Doc. CCPR/C/21/Rev.1/Add.9, paras. 11 to 16.

⁵⁸ We recall that the concept of reasonableness is interpreted as "any interference with privacy must be proportional to the end sought and be necessary in the circumstances of any given case". See: Human Rights Committee, Communication No. 488/1992, *Toonan v Australia*, para. 8.3; see also communications Nos. 903/1999, para 7.3, and 1482/2006, paras. 10.1 and 10.2.

⁵⁹ Even if the dispositions are based on a law, this law must however comply with the provisions, aims and objectives of the Covenant, which we consider is not the case here. See: Human Rights Committee, General Comment 16 (Twenty-third session, 1988), Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies, U.N. Doc. HRI/GEN/1/Rev.1 at 21 (1994), para 3.

⁶⁰ Kuwait, *Reply to the List of Issues (CCPR/C/KWT/Q/3/Add.1)*, 23 February 2016, p. 12.

unlawfully interfere with the individual's right to privacy. Moreover, we continue to be alarmed about the administration/confidentiality of the DNA database, the lack of independent oversight and the new possibilities it creates for the prosecution of peaceful opponents.

In his recent report, the Special Rapporteur on the right to privacy emphasised that: "Forensic DNA databases can play an important role in solving crimes but they also raise human rights concerns. Issues include potential misuse for government surveillance, including identification of relatives, and the risk of miscarriages of justice".⁶¹

Recommendations:

1. Amend Law No. 78 of 2015 as to limit DNA collection to individuals indicted of serious crimes and only allow for DNA collection on an order of an independent and competent judicial authority;
2. Grant the possibility to challenge the lawfulness of the DNA collection and set a time limit after which DNA samples will indefinitely be removed from the database;
3. Instate an independent authority to supervise and administer the DNA database as to avoid the inadequate use of data by the Ministry of Interior.

11. The Right to Freedom of Opinion and Expression (art. 19)

While article 36 of the Kuwaiti Constitution provides for the right to freedom of expression, over the past years, the right to freedom of expression and opinion has been curbed significantly in Kuwait. Anyone voicing critical opinions about the authorities, whether human rights defenders, journalists or ordinary citizens, has been prosecuted and new legislation has been passed or existing legal provisions amended to further curtail the right to free speech.

Alkarama has witnessed an alarming trend of judicial prosecution for criticising the State or its institutions and offending the Emir allowed by article 25 of the Law No. 31 of 1971 on State Security which provides the following:

"Shall be punished by imprisonment for a term not exceeding five years, anyone who publicly or in a public place, or in a place where he can be heard or seen, while being in a public place through speech or shouts or writing or drawings, or pictures, or any other means of expression of thought, challenges the rights or the authority of the Emir, commits lèse majesty, or disrespects the Emir."

The ICCPR states in its article 19 that any restrictions on speech can only be for legitimate reasons and only to the extent strictly necessary. Alkarama believes that this provision does not only directly violate article 19 of the ICCPR, but the principle of legality by failing to specify in a clear and predictable manner the acts that may fall under the definition of this article. According to the Human Rights Committee, "the principle of legality is violated if an individual is arrested or detained on grounds which are not clearly established in domestic legislation."⁶² The following case documented by Alkarama illustrates this alarming trend.

Musallam Al Barrak,⁶³ former member of the Kuwaiti Parliament and human rights defender, gave a speech at a conference in October 2012 criticising the arbitrariness of the Emir's policies and the subsequent restrictions of political and civil rights, and denounced the effects of the electoral law reform. This resulted in Al Barrak being sentenced to five years in prison by the Court of First Instance on 15 April 2013. Al Barrak appealed the decision before the Appeal Court, which issued its decision on 15 April 2014 reducing the sentence to

⁶¹ United Nations Human Rights Committee, *Report of the Special Rapporteur on the right to privacy, Joseph A. Cannataci (A/HRC/31/64)*, 8 March 2016, p. 7.

⁶² United Nations, *Communication No. 702/1996, C. McLawrence v. Jamaica (Views adopted on 18 July 1997)*, GAOR, A/52/40(vol. II), pp. 230-231, para. 5.5.

⁶³ Alkarama, *Kuwait: Former MP Gets 2 Years Prison Sentence for Denouncing the Emir's Arbitrary Politics*, 9 July 2015, <http://en.alkarama.org/kuwait/1775-kuwait-former-mp-gets-2-year-prison-sentence-for-denouncing-the-emirsarbitrary-policies> (accessed on 7 May 2016).

two years of imprisonment. On 18 May 2015, the Kuwaiti Court of Cassation confirmed the decision, sentencing Al Barrak on charges of "insult to the Emir" under article 25 of the Law n. 31 of 1971 on State Security.

Kuwait's crime of offending the Emir, which has become a regular pretext to convict any person who criticises the government's policy, is essentially a defamation charge. Former Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Mr Abid Hussain, has clearly stated that imprisonment is no legitimate sanction for defamation.⁶⁴ These words were reiterated and supported by the General Comment No. 34 of the Human Rights Committee, according to which "States parties should consider the decriminalization of defamation and, in any case, the application of the criminal law should only be countenanced in the most serious of cases and imprisonment is never an appropriate penalty."⁶⁵

Furthermore, on 16 June 2015, the National Assembly passed the new Cybercrime Law No. 63, which contains several dispositions that reinforce the ongoing crackdown on peaceful criticism. Article 6 extends article 25 of the Kuwait Criminal Code by providing prison sentences for "criticising the Emir on the Internet". Article 4 paragraph 4 of the abovementioned law punishes with imprisonment "whoever establishes a website or publishes or produces or prepares or creates or sends or stores information or data with a view to use, distribute or display to others via the Internet or an information technology device that would prejudice public morality or manages a place for this purpose." It is even more alarming that article 7 punishes with up to ten years imprisonment "any person who commits one of the acts set forth in article 28," which consist of any instigation to "overthrow the ruling regime in the country when this instigation included an enticement to change the system by force or through illegal means, or by urging to the use of force to change the social and economic system that exists in the country, or to adopt creeds that aim at destroying the basic statutes of Kuwait through illegal means."

Furthermore, Kuwait's new Communication Law No. 37 of 2014 immensely curtails the freedom of the press. Article 15, for instance, provides a sentence of three years imprisonment for "intentionally broadcasting news, statements, or false or malicious rumours [...] that harm the national interest of the State". The Commission for Mass Communications and Information Technology established by this law, is mandated with supervising technical issues, but also with controlling the content of the information and can grant or refuse licenses without giving any reason and without the possibility to appeal the decision. An example of the enlargement of executive power over the control of press and publications is the following case:

On 4 June 2015, **Dar Al Watan TV Channel**⁶⁶ was shut down by the authorities after the **Dar Al Watan Journalism Printing and Publishing Company** had its license revoked and premises closed in January 2015. Al Watan TV Channel and Dar Al Watan Journalism Printing and Publishing Company are two different legal entities but belonging to the same media holding. The decisions to close the TV channel followed the same process as the newspaper, which had its licence revoked by an administrative decision, following which authorities closed the premises of the newspaper despite ongoing judicial procedures challenging the decision. The same "official" reason was given by the authorities in both the Dar Al Watan and the Al Watan TV cases – that is, that the companies "did not meet their financial and commercial requirements to keep their licence to publish and broadcast." Alkarama believes, however, the proceedings carried out against the newspaper and TV channel are purely of political nature and constitute an abuse of power from the executive. Alkarama referred the case to the Special Rapporteur on Freedom of Expression arguing that the executive decision not only violated domestic provisions but also Kuwait's conventional obligations under article 19 and 21 of the ICCPR.

⁶⁴ United Nations, *Promotion and protection of the right to freedom of opinion and expression*, UN Doc. E/CN.4/1999/64, 29 January 1999, para. 28.

⁶⁵ United Nations Human Rights Committee, *General Comment No. 34 (CCPR/C/GC/34)*, para. 47.

⁶⁶ Alkarama, *Kuwait: Al Watan TV Closed for Liberal Editorial Line Just Months after Closure of Dar Al Watan Newspaper*, 28 August 2015, <http://bit.ly/1TCnQuR> (accessed on 18 May 2016).

Politically motivated censorship of freedom of expression is a severe violation of article 19 of the Covenant, which states that: "Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice." This article imposes on States parties an obligation to guarantee the independence and editorial freedom of news agencies as reiterated once more in the General Comment No. 34 of the Human Rights Committee:

"A free, uncensored and unhindered press or other media is essential in any society to ensure freedom of opinion and expression and the enjoyment of other Covenant rights [...] the free communication of information and ideas about public and political issues between citizens, candidates and elected representatives is essential. This implies a free press and other media able to comment on public issues without censorship or restraint and to inform public opinion."⁶⁷

In its List of Issues, the Committee requested the State party to respond to reports of arbitrary restrictions of freedom of expression in law and practice as well as to comment on the compatibility of ICCPR article 19 with a) the application of restrictive, vague and broadly worded provisions in the Constitution, the National Unity Law, the Penal Code, The Press and Publications Law, and other legislation b) alleged termination of licences for audio-visual and print media entities critical of the government d) restrictions on Internet-based expression introduced by the Cybercrime Law, including prison sentences for criticizing the Emir on the internet. We regret to see that in its Replies to the List of Issues,⁶⁸ the State party provides no reasoning or analysis but merely cites existing legislation. Moreover, the State party claims that licences of newspapers are only revoked following final judgement, which we would like to contradict citing the case of Al Watan. Additionally, the State party maintains that Cybercrime Law No. 36 of 2015 does only provide for monetary fines, which a thorough analysis of the law refutes. Indeed, Article 7 of Law No. 63/201 refers to article 28 of the Press and Publication Law of 2006 to set the punishment of up to 10 years imprisonment for using the Internet to attempt to "overthrow the ruling regime or incite the change of the system".

In November 2012, all countries of the Gulf Cooperation Council (GCC) have signed a joint security agreement, except for Kuwait. Yet, ever since then, the accession of the agreement has been widely discussed within society and is on the Parliament's agenda, which has so far voted against its adoption. The joint security agreement contains vague provisions and gives way to suppress free expression, undermines privacy rights of citizens and residents and criminalises criticism of Gulf countries or rulers.

While Kuwait is no signatory to the security agreement yet, its government officials strongly endorse joint security cooperation as is illustrated by a quote of Minister of Foreign Affairs, Sheikh Sabah Al-Khaled Al-Sabah:

"We in Kuwait are very keen on utilizing cooperation in the region, particularly in the area of security cooperation. This was affirmed in the recent 36th GCC Summit held in Riyadh on December 2015. Leaders of the GCC states have all agreed on the importance of fortifying joint military action, as well as activating a unified military command in addition to a comprehensive security strategy between member states."⁶⁹

We are concerned that if Kuwait joins the GCC security agreement, it will have further legal tools to repress freedom of expression nationally as well as regionally which has already become a pattern as shown by the following prominent case.

The arrest on 6 January of a former lawmaker, **Saleh Al Mulla**, accused of insulting Kuwait's Emir and Egyptian President Abdel Fattah al-Sisi in tweets; the issuance of a warrant on 27 January against human rights activist **Nawaf Al Hindal**, while he was out of the country,

⁶⁷ United Nations Human Rights Committee, *General Comment No. 34(CCPR/C/GC/34)*, para. 13.

⁶⁸ Kuwait, *Reply to the List of Issues (CCPR/C/KWT/Q/3/Add.1)*, 23 February 2016, pp. 22.

⁶⁹ University of Oxford, *GCC Security Amid Regional Crisis*, Spring 2016, http://www.oxgaps.org/files/gulf_affairs_spring_2016_full_issue.pdf (accessed on 7 May 2016).

over tweets about Saudi Arabia's late King Abdullah; and the arrest on 28 January of another activist, **Mohammed Al Ajmi**, accused of insulting King Abdullah on Twitter.⁷⁰

Recommendations:

1. Revise the Press and Publication Law No. 3/2006 in accordance with the Committee's General Comment No. 34 in order to guarantee all persons the full exercise of their freedoms of opinion and expression;
2. Repeal article 25 of the Law No. 31/1971 and decriminalise defamation;
3. Amend the Cybercrime Law No. 63/2015 and Communications Law No. 37/2014 to guarantee the fundamental right to freedom of expression online and to protect media pluralism;
4. Abstain from joining the GCC Security agreement, while simultaneously ensuring that no other local legislation will be used to prosecute individuals openly critical of neighbouring states.

12. The Right to Freedom of Peaceful Assembly (art. 21)

Although the right to peaceful assembly is enshrined in Kuwait's Legislative Decree No. 65/1979 of its Public Gathering Law,⁷¹ throughout the last years, Alkarama has witnessed the violent crackdown of numerous demonstrations and the increase of excessive use of force against peaceful protesters.

The first large wave of demonstrations hit the country in 2012, when Kuwaitis demonstrated against the dissolution of Parliament, the corruption scandal and to boycott the amendments to the parliamentary election law. General demands were voiced for judicial reform and to demand a more rigorous government response to allegations of corruption, mismanagement and an unrepresentative parliament. Amongst other means, Kuwaiti security forces used stun grenades and tear gas to disperse the protesters. In fear of greater demonstrations to follow, the government even banned public gatherings of more than 20 people in October 2012 and given the security forces authority to disperse any protests.⁷²

Moreover, protesting against the multiple discriminations they are subjected to, the Bidoon have been demonstrating regularly for the last three years to ask for Kuwaiti citizenship and access to public services. Whereas peaceful assemblies are systematically dispersed with excessive force, since 2011, several hundreds of peaceful protesters have been injured and arrested, some of whom remain imprisoned today, many of whom are typically charged with the offence of "inciting rebellion" and "calling for illegal assemblies."

Finally, in July 2014, Alkarama documented⁷³ the mass arrest and arbitrary detention of 45 demonstrators, who protested between 2 and 7 July against the arrest of leading oppositional figure and former MP Musallam Al Barrak. During these demonstrations, police forces fired rubber bullets aiming at the chest and upper part of demonstrators bodies while legal standards operating procedures limits the use of this weapon to the legs of the demonstrators. The security services employed excessive use of force and utilised sound bombs and tear gas as well as nitrous oxide gas. They also severely beat up several demonstrators causing them severe injuries as the following cases, documented by Alkarama illustrate.

Amongst the 7 July demonstrators was **Fawaz Sahoud Hilal Al Anzi**, Secretary General of the International Association of Rights and Freedoms (IARF), a network coordinating collective action to promote social justice and human rights. Mr Al Anzi was severely beaten and his

⁷⁰ Human Rights Watch, *Kuwait: Crackdown on Free Speech*, 3 February 2015, <https://www.hrw.org/news/2015/02/03/kuwait-crackdown-free-speech> (accessed on 27 April 2016).

⁷¹ Cf. Section 4 of this contribution "Persistent Discrimination against the Bidoon" citing article Article 12 of the 1979 Kuwaiti Public Gatherings Law that bars non-Kuwaitis from participating in public gatherings.

⁷² Aljazeera, *Kuwait warns of harsher crackdown on protests*, 1 November 2012, <http://www.aljazeera.com/news/middleeast/2012/11/201211114229930360.html> (accessed on 27 April 2016).

⁷³ Alkarama, *Kuwait: Intensification of the repression against peaceful demonstrations*, 16 July 2014, <http://en.alkarama.org/kuwait/1458-kuwait-intensification-of-the-repression-against-peaceful-demonstrations> (accessed on 7 May 2016).

medical record showing the proof of multiple head injuries, including a fractured nose, was confiscated by the police. Several other peaceful demonstrators – including human rights activist, **Mohamed Ajami** and Journalist at Derwaza Newspaper, **Abdurazak Boursili** – suffered multiple injuries by the police or Special Forces through excessive beating and the use of rubber bullets to the head and upper parts of the body, in violation of the legal standards of use.

Article 16 of Kuwait's Law No. 65 of 1979 prohibits public gatherings without a prior license and provides for punishments of up to two years imprisonment. This is in contradiction with the Kuwaiti Constitution that under article 44 stipulates that: "Individuals shall have the right of assembly without permission or prior notification, and security forces may not attend such private meetings. Public meetings, processions and gatherings shall be permitted in accordance with the conditions and manner specified by law, provided that their purpose and means are peaceful and not contrary to morals."⁷⁴

In its Replies to the List of Issues,⁷⁵ the State party justified the decision of prohibiting public gatherings without prior permission by the Ministry of Interior by arguing that as protests are held in public places, they require a minimum level of supervision and security and that individuals could appeal the Ministry's decision to refuse a permit. Moreover, it stated that a draft law is pending with the Parliament to revise the provision in order to put it back into conformity with article 44 of the Constitution. We regret to see that the State party refuses to repeal article 12 of the Public Gatherings Law prohibiting non-nationals from participating in public gatherings and merely states that there are no criminal punishments for doing so. With regards to the question of violations of freedom of assembly in the waves of protests in 2012 and 2014, the state denies any use of force to disperse the demonstrations, but claims that it would have been permissible as the protestors violently attacked the police and vandalised public property.

Recommendations:

1. Repeal article 12 of Public Gatherings Law of 1979 to allow non-Kuwaiti nationals to join public gatherings;
2. Repeal article 16 of Law No. 65 of 1979 and pass the draft law in conformity with article 44 of the Constitution to allow public gatherings without prior permission of the Ministry of Interior;
3. Allow for peaceful protests and refrain from any excessive use of force against peaceful protestors.

13. Conclusion

This report has demonstrated the flaws in the implementation of the Covenant in Kuwait. We remain seriously concerned about the deterioration of fundamental liberties, in particular the revocation of citizenship on political grounds and new legislation criminalising freedom of expression and peaceful assembly as well as the immense intrusion to the right to privacy by the compulsory DNA testing.

Moreover, serious human rights violations continue to occur such as the marginalisation and discrimination of the Bidoon community and the violent crackdown of peaceful protestors calling for more transparency, reform and political participation.

The issues of judicial independence as well as political participation and representation also remain decisive for the improvement of the human rights situation as a whole. Legal safeguards have to be strengthened, the right to life and freedom from torture and other cruel, inhuman or degrading treatment or punishment guaranteed and legislation revised in order to ensure the rights stipulated in the Covenant.

Alkarama hopes that the review of Kuwait before the Human Rights Committee will represent a real chance for promoting the implementation of the Covenant and set a course for a more positive future.

⁷⁴ Kuwait, *Constitution of the State of Kuwait*, article 44, November 1962.

⁷⁵ Kuwait, *Reply to the List of Issues (CCPR/C/KWT/Q/3/Add.1)*, 23 February 2016, pp. 24.