



The Human Line Organization

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The Human Line Organization's Report on the List of Issues Pertaining to Kuwait's Implementation of the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

In reviewing the 3rd periodic report submitted by the state of Kuwait to the Committee Against Torture, the Human Line Organization hopes that its report would be beneficial in presenting helpful information and shedding light on some of the important issues concerning human rights in the country.

About the organization:

The Human Line Organization is a civil society organization founded by a group of volunteer activists in 2012, it aims to defend and advocate for human rights through awareness and training in the basic human rights concepts and mechanisms, as well as observing and documenting human right violations. The organization also produces objective reports on these violations and directly deals with all kinds of violations and works towards finding solutions and seeks to instill the culture of tolerance and peaceful coexistence.

Reservations on the Convention:

- Kuwait has made reservations on article 20 and the first paragraph of article 30 of the Convention Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment.
- Kuwait did not ratify the Optional Protocol to the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

Recommendations:

1. Removing Kuwait's reservation on article 20 and first paragraph of article 30 of the Convention Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment.
2. Kuwait ratifying the Optional Protocol to the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

Implementation of the Convention in Kuwaiti Laws:

- Although article 70 of the Kuwaiti constitution states that international treaties ratified by Kuwait have the force of law, however, unlike Kuwaiti national laws, international treaties lack sanctions and by laws, which has made it hard for the judicial and executive authorities to implement them. Moreover, the judicial and executive authorities have not taken enough measures to implement this article. After reviewing the schedule of training workshops organized by Kuwait Institute for Judicial and Legal Studies for judges and prosecutors, it was found that there wasn't any specific training on human rights conventions, except what relates to international human rights law. Members of the judiciary and lawyers have participated in workshops and training programs organized by civil society organizations on some of these conventions.

Recommendations:

1. Incorporating the key human rights conventions in the regular training offered to members of the judiciary and lawyers as a preliminary measure to ensure its use later on in the sentences issued by the Judicial Authority.
2. The government of Kuwait should align national legislations with the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

Kuwaiti Laws in Accordance with the Requirements of the Convention:

- Although article 31 of the Kuwaiti constitution stipulates that “No person shall be arrested, detained, searched or compelled to reside in a specified place, nor shall the residence of any person or his liberty to choose his place of residence or his liberty of movement be restricted, except in accordance with the provisions of law. No person shall be subjected to torture or to degrading treatment” and article 34 states that “An accused person is presumed innocent until proven guilty in a legal trial at which the necessary guarantees for the exercise of the right of defense are secured. The infliction of physical or moral injury on an accused person is prohibited,” however, these articles need supplementary laws in order to mandate sanctions since article 32 of the constitution states that “No crime and no penalty may be established except by virtue of law, and no penalty may be imposed except for offences committed after the relevant law has come into force.”
- Kuwaiti laws criminalizes torture imposed upon individuals held illegally only through article 184 of law 16/1960 of the penal code (16/1960).
- Although the word torture is mentioned in article 184 of law 16/1960 of the penal code, Kuwaiti laws lack a definition of torture, which makes the accusation process dependent on the broad evaluation of the judiciary. In terms of actual practice, psychological or sexual torture are not usually considered as reasons for accusation of torture.
- Any harm or torture that befalls an individual held legally is not accommodated by Kuwaiti law as a crime of torture, no matter how severe. It may be accommodated in accordance with article 56 of the law 31/1970 through amending some of the provisions of penal code 16/1960 (31/1970) as a misdemeanor crime of violence.¹ The act is only considered as torture when it is related to illegal detention of the victim.
- Torture, if committed between individuals, is not accommodated by Kuwaiti laws as a crime of torture unless it is related to illegal detention or

¹ Article 56 of National Security Law – Article 121 of Penal Code.

imprisonment; it is, however, considered an assault². This excludes those tortured while held legally or who are denied freedom of movement, such as children or immobile individuals like the handicapped.

- Kuwaiti laws consider degrading and cruel treatment as an assault, criminalized according to the type of act through article (120-121-163) of law 16/1960 of penal code and article 56 of law 31/1970 through amending some of the provisions of penal code 16/1960.

Recommendations:

1. Drafting legislation defining torture in accordance with the standards of the convention, which includes physical, psychological, and sexual torture.
2. Considering the act of torture within Kuwaiti laws as a crime of torture not as a crime of violence, if it is done by individuals with official authority in the case of the victim being held legally.
3. Considering the act of torture within Kuwaiti laws as a crime of torture not as a physical assault, if it is done by non-officials in the case where a victim is not being held by them.
4. Instituting harsher penalties on degrading and cruel treatment practiced on the detainee, and considering it a felony instead of an assault.

Statistics and Data:

- Official authorities do not provide a database or make detailed statistics available to the public through which it is possible to calculate sentences of torture and use of violence. Based on the available resources, no torture or use of violence convictions were found during the past four years, except for the famous Mohammad Al-Maimooni case.³

Recommendations:

1. Providing an official database of judicial decisions open to the public, and providing detailed statistics including the type of crime, individuals who committed the crime, and the nature of the sentencing.

² Articles 160-163 of law 16/1960 of Penal Code (16/1960).

³ Center for Classification of Judicial Ruling in Kuwait – Kuwait University.

Protection against Torture Procedures:

- The fieldwork that the organization performed did not indicate the existence of any mechanism or a specialized state agency in order to regularly review the procedures of detention and interrogation as a form of protecting from torture as stipulated in article 11 of the convention.
- Although some police cars are provided with a surveillance camera and vehicle tracking devices to locate the car at all times, this camera is pointed outwards instead of inwards which makes it impossible to document the violations that might be committed inside the vehicle.
- There is major concern about using the lockable rooms inside police stations, such as police officers' rooms, for fear of physical and sexual torture being practiced within them. The design of these rooms does not allow individuals to witness what goes on inside them. They are also not monitored with cameras.
- The headquarters of investigation centers – whether those adjacent to police stations or the general departments of investigations like the General Department of Criminal Investigations, the Drug Enforcement Administration, and Kuwait's State Security Agency - are considered places of major concern, where unauthorized persons cannot enter. The internal detention spaces in these headquarters are not monitored by an independent entity.
- Although there is a system of monitoring cells and wards inside Kuwaiti prisons, this monitoring does not include certain places such as security guards' rooms, which raises concern since it is a space that can be used to harm prisoners away from the surveillance of security cameras.

Recommendations:

1. For the state to fulfill its commitments within the framework of the convention through conducting regular organized reviews to the procedures of detention and investigation in an effort to protect against torture.
2. Providing police cars with internal surveillance cameras to document any possible violations.
3. Making the necessary amendments to the rooms and offices of police stations, in order to allow individuals outside the rooms to witness what goes on inside as protection for the accused persons inside.

4. Allowing independent entities with authority to conduct regular and unannounced check-ups on primary detention centers, including investigation centers adjacent to police stations and investigation departments.
5. Installing a security monitoring system that covers all prison facilities, corridors, rooms, and offices to which prisoners might be taken, and it has to be monitored by the General Administration of Supervision and Inspection of the Ministry of Interior.

Legal Awareness:

- The state did not exert enough effort to educate individuals about their rights; a knowledge that will help them protect themselves against torture or enhance ways of redress. Information like obligation of the victim to tell the investigator about being subject to torture or force the minute he/she arrives is not clear to many accused persons. And many of them do not know that they have the right to refuse to sign the police report in case it did not mention being subjected to torture and being denied examination by the investigator after asking for it. Many people are unaware of the procedures to follow in case the police station refuses to record a report for them.

Recommendations:

1. Taking the necessary steps and procedures to provide awareness to individuals on their right of protection against torture, and the rights granted to them by law and how they can attain these rights accordingly.

Confessions under Torture:

- Article 159 of the penal code stipulates that the court should nullify confessions proven to be given under torture. However, the Forensic Division, which is supposed to deliver a report to court, is part of the General Department of Criminal Evidence – one of the departments of the Ministry of Interior. There is no law to guarantee the independence of this department or that provides job protection and security to those who work in this department. Therefore, they might be subject to administrative pressures especially if the person accused of committing torture is a member of the police in the same Ministry.
- Many sentences follow the method of requiring the person asking for the nullification of his/her confession on the claim that he/she signed under

force, to provide solid and indisputable evidence of their torture. This is extremely hard for the accused especially if they were tortured in ways that do not leave visible marks. In order for the court to be convinced that an injury had occurred as a result of torture, there should not be any possibility of confusing it with other injuries that occur normally. It should moreover be possible to accurately determine the time during which the injury occurred. What makes it harder on the accused is the lack of transparency in the standards of quality followed by the Forensic Division. The court is also not obliged to comply to the request of the accused to be seen by another entity to get a report in case this person is uncertain of the report issued by the Forensic Division.

- There is serious concern that the difficulty of proving the forced confession to the court might encourage those responsible for questioning to pressure the accused in order to get confessions, knowing that it is hard to nullify these confessions, on the one hand, and it is difficult to prove their use of cruelty and force on the other hand.

Recommendations:

1. Separating the General Department of Criminal Evidence and the Forensic Division from the Ministry of Interior and placing them under the Ministry of Justice or Public Prosecution.
2. Obliging the Forensic Division to follow the necessary transparency in showing the standards of quality and surveillance that they practice. They should also aspire to enhance the examination tools to be able to discover traces of different injuries that do not leave visible marks.
3. Reducing the requirements on the accused who claims he/she was tortured to prove their claim especially taking into consideration the difficulty of providing evidence.

Reporting an Act of Torture:

- A victim of torture has a right to report his or her mistreatment according to the regular legal procedure available at a police station. A person subject to remand may also file a case of torture through a request to the investigator during the investigation period. As for the imprisoned individual, the law permits the prisoner to submit a report to the officer specialized in receiving such reports within the prison. Another person the prisoner can report his or her mistreatment to, is the chief of prisons.⁴

⁴ Articles 13 and 15 from law no. 26 of 1962 on the organizing of prisons.

- There is no specific law protecting the plaintiff in a torture case from retaliation by an accused security official. This may result in the victim of torture to reconsider reporting his or her mistreatment in fear of the state security official's response. This is especially the case if the victim is an expatriate, as state security officials have more power and discretion when dealing with expatriates. State security officials can administratively deport the expatriate, the expatriate's family, and even friends, without providing any legal justification for the deportation. The expatriate cannot take any legal action towards such a decision.
- An investigator does not usually file a case of torture if a defendant in some ongoing case has reported that he or she has been subject to torture. The abused defendant must report a separate case of torture to the prosecutor for any legal action.
- Kuwaiti law requires a witness to a crime, including torture, to report the crime to the specialized department. A person refraining from reporting a crime as per article 14 of the criminal procedure is liable and charged for refraining from testifying. Laws governing the practice of the medical profession, dentistry and paramedics, however, prohibit the medical professional from reporting crimes, except in limited cases, or with the consent of the patient for the purpose of doctor-patient confidentiality. Refraining to report a crime is proscribed by law, however not many people know this because there is a lack of public awareness. Other reasons why someone would refrain from reporting a crime include fear of problems with the state security officials. Due to there being no specific law protecting the witness and the person reporting the crime, the state security official might take retaliatory action such as administrative deportation of anyone reporting the official's perpetration of torture.

Recommendations:

1. Enact a law protecting the victim and the people close to him or her, and the witnesses of a crime and those close to them, from state security officials once a report takes place. Such protection must include protection from administrative deportation.
2. The investigation body should activate the section of *publici juris* "public right" by law, and emphasize the breach of rights more regularly in cases of torture and cruel treatment. This must be whether the defendant in a case claims to have been tortured, or even if the defendant did not request filing a case.
3. Amending the laws governing the practice of the medical profession. The amendment must require the medical professional to report to the

concerned department that the patient before him or her have been tortured during detention if any clear evidence presents itself during examination. In contrast, the current situation prohibits the medical professional from making such a report.

4. Spread awareness at the societal level about the importance of reporting torture, in addition to spreading awareness about the penalty for refraining from reporting the torture or testifying on it.

The Responsibility of State Security Officials:

- Kuwaiti law requires state security officials to obey the orders they receive from their commanders. Any act committed by the state security official based on an order of a superior, relieves the official from criminal responsibility.⁵ This would legally require the state security official to carry out the beating and torture of the defendant, if a superior orders the official to do so.

Recommendations

- 1- Amend existing legislation so to make it an obligation for the state security personnel to refuse an order to torture or illegally mistreat a defendant. The amendment must also remove the pardon of criminal responsibility state security officials receive when carrying out orders of torture and cruel treatment of the defendant.

Vulnerable Groups:

- The groups that are most vulnerable to acts of torture are the same groups that have a difficult time gaining access to redress after the act of torture. The groups include domestic workers, and expatriate labor – especially those with a low income. The state security personnel may use administrative deportation, without justification, as a way to get rid of the complaints of these groups before they are able to report anything. This is especially the case with the non-Arabic speakers in the group. The domestic workers and expatriate laborers are also vulnerable to threats of deportation if they submit the report of their mistreatment. The threats would apply to them, their family, and friends. Kuwaiti law also allows for charges against homosexuals just for the way they look, which may cause an inclination for them to give up submitting a report, in exchange for dropping any charges relating to their appearance against them. The defendants in cases involving drugs, theft, and murder, are also another group that do not get any sympathy from society if they have been tortured.

⁵ Article 37-38 from the penal code.

Recommendations:

- 1- Provide the required training to the individuals tasked with prosecuting and enforcing the law, to ensure the implementation of laws and guarantee the rights of everyone equally.
- 2- Set more accurate regulations dealing with administrative deportation. The individuals that are to be administratively deported must have the ability to contest this decision.
- 3- Revoke the law proscribing the imitation of the opposite sex, which criminalizes the appearance of an individual, their bodily structure, and their wardrobe. Revoking the law would protect the individual from the possibility of being tortured, and would enable the person to have recourse to the security departments for redress in cases where they are mistreated.
- 4- Spreading awareness on the societal level on how there should be no recourse to torture no matter what the charge against the defendant is.

Most Hazardous Locations

- The pre-trial investigation period is considered the most threatening to the safety of defendants from torture and abuse; therefore, secluded and clandestine locations may be most perilous. Criminal Investigation Departments are isolated not within visual and audible proximity of the public. Moreover, no entry is permitted without prior permission. These departments include investigation centers in various residential areas and the other general departments such as the General Department of Criminal Investigations, Kuwait's State Security Agency, the Drug Enforcement Administration, and the General Department of Immigration Affairs.

Recommendations:

1. Provide a surveillance system that covers all primary detainment centers on the condition that an external third party monitors the system and prepares copies of the footage in case it is requested by the investigation center.
2. Allowing entities independent from the Ministry of Interior to conduct regular and unannounced check-ups on primary detention centers and granting them necessary authority and capacity.

Torture Occurring between Individuals:

- Although the Kuwaiti National Parliament ratified a new Child Rights Law, which itself is a progress, still this law does not qualify to be a child protection law as it lacks effective protection mechanisms for abused and tortured children. Even with attempts to find adequate protection mechanisms by the government and civil society, the lack of child protection legislations led to numerous incidents of torture and violence against children by their parents, which could've been avoided had there been adequate protection mechanisms. As an example, in February 2015, the penal court sentenced a woman to 3 years and 6 months in prison for torturing her daughter in a continuous and violent manner, while the state did not succeed in providing early protection mechanisms for the child. Moreover, in May 2016, a father was accused of murdering his 3 year old daughter. The father confessed to the authorities that he and his wife were drug addicts and that their daughter was a nuisance and would keep the house messy and dirty, which led him to constantly beat her and whip her with wires until she lost her life. The existing protection mechanisms provided by the state failed to protect the child from torture at early stages.

Despite the efforts exerted by civil society organizations and the Ministry of Health to protect children who are hospitalized as a result of domestic abuse, these mechanisms are still ineffective. Furthermore, there aren't any clear and effective measures to protect the children who the school discovers are exposed to domestic abuse. Moreover, security entities and investigative authorities refuse to issue domestic abuse reports if children request them in the spirit of protecting familial ties, which deems child protection laws to be ineffective even if the abuse reaches the stage of torture.

- Despite the existence of women protection laws ensuring that women are granted equal protection from violence as men, there are still no effective mechanisms to protect women against domestic violence, which might sometimes reach the level of torture. Moreover, police officers tend to respond lightly to domestic violence reports in an attempt to protect familial ties. This may result in some women being subjected to severe and constant abuse. For example, a man was arrested for admitting to torturing his wife for

3 days until she lost her life. It was then discovered during the investigation that his father had witnessed the confinement and torture of his son's wife as it was happening and refrained from reporting the abuse to the concerned entities.

- Domestic and migrant workers are considered to be the weakest segments of society. Some workers have claimed that policemen have not taken all of their complaints with enough seriousness. There are also no effective protection mechanisms to protect migrant and domestic workers in case of an assault, especially in the case of domestic workers where their detainment is not uncommon. In most cases, domestic and migrant workers believe they are vulnerable groups and thus avoid going to the authorities with complaints fearing unknown consequences. As an example, a storeowner accused one of his workers of stealing, stripped him of his clothes, beat him with a thick cane, insulted him and threatened to turn him into the authorities while filming the entire process. The victim refrained from filing a complaint to the authorities despite the abuse he was subjected to, until the recording was leaked almost a year and a half after the incident, which then led the authorities to arrest the perpetrator. In another incident, a citizen working in the field of medicine was sentenced to 4 years of imprisonment for torturing her domestic worker for years, which resulted in numerous injuries including the popping of the domestic worker's left eye. The domestic worker was not able to reach the authorities to report the abuse practiced on her until her sponsor wanted to deport her and then a few citizens took her to the police and provided her with a lawyer.

Recommendations:

1. Passing a child protection law that guarantees effective protection mechanisms for abused children.
2. Creating effective mechanisms to protect women against violence, including the establishment of a shelter for battered women and hotline to receive complaints.
3. Creating effective mechanisms that would guarantee the freedom of domestic workers in terms of protecting them from detainment and allowing them to communicate with the outside world.

Cases that raise Concern:

- In 2012, the National Assembly amended the laws specific to remand and the guarantees of the defendant as a result of the death of a citizen due to torture being practiced on him by some policemen. Part of these amendments was decreasing the period of remand prior to investigation from 4 days to 48 hours. This helps to protect the right of the defendant from one side and from the other side will help protect the defendants from the possibility of being tortured due to the fact that this period is one of the most critical periods on the safety of the defendant, it being not under the supervision of the investigation bodies. On July 3rd 2016, however, the National Assembly passed a new amendment to the law, as based the request of the Minister of Interior, which has resulted in reinstating the previous period of remand before its last amendment that specifies 4 days of detainment preceding the investigation and 21 days of remand for the defendant.

Recommendations:

- 1- Decreasing the periods of detainment and remand prior to the defendant being presented before the investigation body to limit the possibility of torture being practiced against a defendant.

Main Cases that Raise Attention on Committing to the implementation of the articles of the Convention against Torture

- *The Case of 'Al-Abdali Cell'*

In August 2015, a number of people were convicted of possessing arms and communicating with Iran and Hezb Allah, in addition to joining Hezb Allah and receiving military training as was specified in (case no. 51 of the year 2015 Kuwait State Security recorded in no. 55 of year 2015 Criminal State Security). The confessions of the defendants played a significant role in the court's decision to condemn them. The defendants have claimed that their confessions were a result of them being subjected to torture and coercion and that they had been electrocuted, beaten and sleep deprived. However, when they were examined by medical forensics there did not appear any marks that could be definitely identified as resulting from torture. The lawyers had asked the court to have the defendants examined by another medical committee, since the current capabilities and examinations of medical forensics do not allow them to determine the certainty of the defendant's claims of being subjected to torture. The court, however, refused the request as based on the circumstantial evidence of their confessions.

- ***The Case of 'Imam Al-Sadeq Mosque Bombing'***

On June 16th 2015 a suicide bomber has bombed himself at the Imam Al-Sadeq Shiite Mosque during Friday prayers, which resulted in the death of tens and the injury of hundreds. 29 people were accused of participating in this crime as specified in (case no. 20 of year 2015 State Security recorded in no. 42 of year 2015 Criminal State Security). Some defendants have claimed that they were subjected to psychological and physical torture and were examined by medical forensics who stated that there were no signs of torture. The defendants then requested another examination by a medical committee from the College of Medicine, which was approved by the court. Once the results of the report were in, the court decided to accept the defendant's confessions and reject their claims of confessing under coercion.

- ***The Case of the 'Phone Chip'***

The defendants in the Phone Chip case attempted to purchase a phone chip by using false identification papers. The defendants claimed they were beaten by the police. The medical forensics report proved that injuries had befallen the defendants, although it was not ascertained whether these injuries had been caused by the defendants themselves as these injuries may have been the result of an accident. Moreover, the absence of witnesses in this case has led the court to acquit the policemen from the case of using cruelty.

- ***The Case of the 'Asian Immigrant'***

In 2014 a video of a policeman forcing an arrested Asian man to practice strenuous sport exercises while the policeman was kicking him, went viral on social media. Due to the widespread attention this video gained, the Ministry of Interior began an administrative investigation with the policeman and the man who recorded the video, although no criminal accusations were directed to them.