



Kuwait Watch Organization for Human Rights
منظمة كويت ووتش لحقوق الإنسان

Americans for Democracy



& Human Rights in Bahrain

Shadow Report ahead of the Human Rights Committee's Adoption of a List of Issues on Kuwait in its 115th Session

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Information on the Preparers of this Report

Kuwait Watch Organization for Human Rights (KWO) is a non-profit organization registered in the UK in 2014. KWO is centered on the promotion of human rights and democracy in Kuwait and the wider Gulf Region, in line with internationally acceptable standards. Our mission is to encourage individuals and groups to be proactive in protecting their human rights and the rights of others.

Americans for Democracy & Human Rights in Bahrain (ADHRB) is a non-profit, 501(c)(3) organization based in Washington, D.C. Through engagement with U.S. government officials, the United Nations, intergovernmental actors, activists, and the public, we seek to foster awareness of and support for democracy and human rights in Bahrain and the wider Middle East.

Methodology

The majority of the information presented in this report is the product of primary research and documentation by Kuwait Watch Organization for Human Rights. It is presented with consideration of Kuwait's international legal obligations to the International Covenant on Civil and Political Rights as well as with consideration to Kuwait's existing legislation as of August 2015. It is also supplemented by secondary resources including official statements by the Kuwait government portal and statements by other rights organizations. Americans for Democracy & Human Rights has assisted in the preparation of the report.

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Introduction

1. Kuwait acceded to the UN International Covenant on Civil and Political Rights (ICCPR) on August 21, 1996.
2. On 28 October 2014, the State of Kuwait submitted its Third Periodic Report to the Human Rights Committee regarding the measures adopted by the State to give effect to the rights underlined in the ICCPR.
3. This shadow report observes the State of Kuwait's submission of its Third Periodic Report and serves as an alternative report for the Human Rights Committee's adoption of a List of Issues on Kuwait in its upcoming 115th session.
4. This submission highlights the State of Kuwait's failures to meet its obligations to protect the rights outlined in the ICCPR, in particular: the right to freedom of expression, the right to recognition as a person before the law, and the right to freedom of assembly and association.
5. This report outlines the legal framework that enables the aforementioned violations to occur. The report highlights Kuwaiti laws such as the DNA law, Cybercrime law, and the Telecommunications Law, as well as the law regulating the creation of civil society organizations. It also details some of the recent legislation passed by the Parliament of Kuwait which would violate the State of Kuwait's obligations under the present Convention.
6. This report further details the practical failures of the State of Kuwait to promote and protect the rights guaranteed by the ICCPR. It includes information on general trends and specific cases of individuals, whose rights have been violated, with a particular focus on imprisoned online activists and the stateless Bidoon.
7. The authors of this report express concern over the State's recent restrictions on freedom of expression and association; denaturalization actions and their effect on the Bidoon's access to education and employment; torture and ill treatment of accused individuals during periods of investigation or imprisonment; and lack of differentiation in the treatment of accused and convicted individuals under the law.

Legal Framework

Law on Public Gatherings (2015)

1. In 2015, the Kuwait Constitutional Court ratified a law prohibiting public gatherings without a license granted ahead of time from the Ministry of Interior.
 - a. Article 44 of the Kuwaiti Constitution states, “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.”¹
 - b. Similarly, Article 21 of the ICCPR states, “The right of peaceful assembly shall be recognized.”²

Telecommunications Law (37/2014)

2. In 2014, the Kuwaiti National Assembly enacted Law No. 37. This law established a Commission for Mass Communications and Information Technology and contains articles which clearly violate individuals’ right to privacy, as illustrated in Article 59: “The employees of the committee have authority which enables them to examine the execution of this law, systems, decisions, and orders to apply it. They have the right to enter places suspected of housing electronics, networks, or other forms of information technology; they may inspect them, and/or confiscate any unlawful devices used in illegal activities with the intention of affecting standing networks.”³ The law also imposes penalties on persons who create or send ‘immoral messages’.
 - a. This is in clear violation of Article 38 of the Kuwaiti Constitution, “Places of residence shall be inviolable. They may not be entered without the permission of their occupants except in the circumstances and manners specified by the law,” and Article 30, “Personal liberty is guaranteed.”⁴

DNA Law (2015)

3. In July 2015, the Kuwaiti National Assembly passed a new Counterterrorism Law obligating all of its citizens and residents to provide DNA samples with a view towards creating a State Database. The law will impose a penalty of up to one year in prison and \$33,000 fines for anyone refusing to provide their DNA sample.⁵

¹ The Constitution of the State of Kuwait. November 1962.

² UN General Assembly. International Covenant on Civil and Political Rights. 16 December 1966.

³ State of Kuwait. Law No. 20 / 2014. Retrieved from:

<http://www.e.gov.kw/sites/KGOEnglish/Portal/Pages/Business/LawsAndRegulations_Information.aspx>

⁴ The Constitution of the State of Kuwait. November 1962.

⁵ Kuwait Times. “MPs approve DNA testing for citizens, Expats – Assembly passes KD 7 billion deficit budget”. July 2015. Retrieved from: <<http://news.kuwaittimes.net/mps-approve-dna-testing-for-citizens-expats-assembly-passes-kd-7-billion-deficit-budget/>>

- a. This new law violates individuals' right to privacy.

Cybercrime Law (2015)

4. In 2015, the Kuwaiti Parliament passed the Cybercrime Law, which states in Article 6, "A penalty of prison and an imposed fine will be the punishment for insulting religion and its symbols, and for critiquing the Amir on social media." Article 6 also forbids making statements on social media that critique the judiciary and or harm/threaten Kuwait's relations with foreign countries, or release secret information, or anything that may otherwise threaten the general wellbeing of society." Article 7 imposes a prison penalty of up to ten years for using the Internet in "inciting an overthrow of the ruling family, and any incitement which calls for a change in system whether by force or other illegitimate ways, or a call to use force to change the standing social and economic system, or a call to embrace sects which aim to destroy the basic pillars of Kuwait in illegitimate methods."⁶
 - a. These accusations, already criminalized by the 2006 law of Press and Publication, violate international law.
 - b. These Articles are in violation of the ICCPR's Article 19, "Everyone shall have the right to hold opinions without interference."⁷

Regulations on the creation of Civil Society Organizations

5. According to Kuwait's law on the regulation of the creation of Civil Society Organizations, "the Ministry of Social Affairs will receive applications from those wishing to form civil society organizations, within thirty days of its foundation, requiring the following documents: ... a statement from Ministry of Interior confirming no objection to any of the aforementioned founders."
 - a. This contradicts Article 22 of the ICCPR, "Everyone shall have the right to freedom of association with others, including the right to form and join trade unions for the protection of his interests."⁸
 - b. Article 43 of the Kuwaiti constitution states, "Freedom to form associations and unions on a national basis and by peaceful means shall be guaranteed in accordance with the conditions and manner specified by law."⁹

Nationality Law (1959)

6. According to Article 2 of Kuwait's nationality law: "Each individual shall have the right to possess a Kuwaiti nationality if they are born in Kuwait or to a Kuwaiti father."

⁶ Kuwait News Agency (KUNA). "Cybercrime law guarantees privacy of individuals". 22 June 2015. Retrieved from: <<https://www.kuna.net.kw/ArticleDetails.aspx?id=2447909&Language=en>>.

⁷ UN General Assembly. International Covenant on Civil and Political Rights. 16 December 1966.

⁸ Ibid.

⁹ The Constitution of the State of Kuwait. November 1962.

- a. This is a clear discrimination against women, depriving them of the right to pass on nationality to their children in the case of her marrying a non-Kuwaiti man.
- b. This law violates Article 16 and 26 of the ICCPR.¹⁰

7. According to Article 13 of Kuwait's Nationality Law: "It is possibly by decree or upon request of the interior minister – to revoke the Kuwaiti citizenship from Kuwaitis".

- a. Kuwait's nationality laws do not comply with Article 16 of the ICCPR.

Documentation

- **Pursuant to Articles 7, 9 and 10 of the International Covenant on Civil and Political Rights (ICCPR);**

1. Kuwait Watch and Americans for Democracy & Human Rights in Bahrain have noted several cases of individuals undergoing police brutality, humiliation, torture, and verbal and physical abuse while in custody and during periods of investigation. Many of the accused individuals were also prevented from contacting their lawyers; lawyers were often not allowed into police stations where the investigations would be held. Additionally, accused individuals and convicted individuals were not differentiated in treatment, despite both local and international law making clear distinctions between the two in rights.

3. We have also observed several cases of arbitrary arrest, wherein arrests often occur without an arrest warrant. In some cases, arrests would be made and detainees were held incommunicado for several days. Arresting officers did not show ID cards or identify themselves in any form.

- **Pursuant to Article 16 of the International Covenant on Civil and Political Rights (ICCPR);**

1. In Kuwait, more than 100,000 individuals representing the Bidoon (stateless) population, live without legal recognition before the law. They lack basic rights such as the right to citizenship, education, and identification papers. They are also under constant threat of arrest and, or deportation.

2. Bidoon children are not considered as persons before the law, and they have consistently been deprived of their right to education. Kuwait's Ministry of Education deprived several stateless children from the right to attend both private and public schools justifying rejecting their applications due to these children not having birth certificates, which the Ministry of Health refuses to issue for stateless children without the approval of the National Center for Illegal Residents.

3. Also, more than 2,500 stateless persons have been dismissed from their jobs in government sectors in 2015 alone.

4. More recently, for politically motivated reasons, a total of more than thirty citizens have been denaturalized by orders from the Ministry of Interior, without due process. Many have

¹⁰ UN General Assembly. International Covenant on Civil and Political Rights. 16 December 1966.

been rendered stateless. It is worth noting that all matters relating to citizenship are considered to be ‘sovereign affairs’ in Kuwait and the judiciary has no authority on these matters.

- a. On 21 July 2014, parliamentary decree No. 8/2014 ordered the denaturalization of five citizens. This decision was justified on the basis that the citizens had engaged in “acts aiming to undermine the country’s security and stability”.¹¹ One of the citizens, Mr. Ahmed Jabr al-Shammari, 50 years old is the owner of the independent Al-Yom television station and Al-Yom newspaper. Al-Shammari’s nationality was revoked with reference to Kuwait’s Law of Nationality under article 13(5), which states that:

(Art. 13) “It is permissible by a decree upon the request of the interior minister – to revoke the Kuwaiti citizenship from Kuwaitis who obtained their citizenship through the application of provisions from articles 4, 5, 6, or 8 of this law, and in the following cases: ...

13(5) If evidence is available from competent authorities showing that he has promoted principles that will undermine the social or economic system of the country, or belongs to a foreign political party. In this case the court may also revoke the citizenship of those who obtained it from him by dependency.”

- **Pursuant to Article 19 of the International Covenant on Civil and Political Rights (ICCPR);**

1. Freedom of expression has been severely restricted in Kuwait, and is being subjected to further restriction under new laws introduced in 2014 and 2015. Many individuals were convicted on charges related to their freedom of expression or opinion. Specifically, a growing number were convicted for ‘insulting the Emir’ or other Gulf rulers.

- a. In July 2014, Kuwait’s Court of Cassation upheld a 10 year sentence against Mr. Hamad al-Naqi for tweets insulting religion, and the rulers of Saudi Arabia and Bahrain. The tweets were considered “endangering” to state security.
- b. In September 2014, Kuwaiti lawyer and parliamentarian Mr. Abdulhameed Dashti posted remarks on his Twitter account criticizing the government of Bahrain for engaging in human rights abuses. Soon after, the Government of Bahrain petitioned the Government of Kuwait to file suit against Dashti for insulting the Kingdom of Bahrain. The Kuwaiti court subsequently requested that his parliamentary immunity be revoked by the National Assembly. On 12 January 2015, the Kuwaiti National Assembly voted 33 to 15 to strip him of his parliamentary immunity. This was followed by collective calls on the Kuwaiti government to issue a formal statement and initiate disciplinary proceedings against him. He is currently pending prosecution for repeated outbursts against “sisterly states” and may be facing harsher charges due to other remarks posted on Twitter, deemed to be insulting to the Kingdom of Saudi Arabia.
- c. On 28 January 2015 Kuwaiti authorities arrested prominent rights activist Mohammed al-Ajmi outside his home in relation to comment he had made about the late Saudi King Abdullah’s death on Twitter.

¹¹ Human Rights Watch. “Kuwait: 5 Critics Stripped of Citizenship”. 10 August 2014. Retrieved from: <<https://www.hrw.org/news/2014/08/10/kuwait-5-critics-stripped-citizenship>>.

d. Earlier in January 2015, Kuwaiti authorities also detained former liberal opposition lawmaker Saleh al-Mulla for allegedly insulting the Emir.

• **Pursuant to Article 21 of the International Covenant on Civil and Political Rights (ICCPR);**

1. Under new regulations prohibiting public gatherings without prior approval from the Ministry of Interior, Kuwait Watch and Americans for Democracy & Human Rights in Bahrain are concerned with the government crackdown of freedom of assembly.

a. On 23 March 2015, a peaceful protest took place in Sahat al-Erada Square in front of the Kuwaiti Parliament to demand civil and political reforms. The protest was forcibly broken up by Kuwaiti Special Forces. A total of 16 individuals were arrested, including Head of Kuwait Watch, Mr. Nawaf al-Hendal who had attended the protest as an independent observer. Security forces sought out Mr. al-Hendal when forcibly engaging the gathering. At approximately 9am local time, security forces forcibly arrested Mr. al-Hendal while beating him on his head, arms and legs using batons. Security forces forcibly transported Mr. al-Hendal to the Central Investigations Directorate (CID). There, Kuwaiti authorities denied his access to a lawyer, and denied his request to contact his family for a total 18-24 hours.

Recommendations

Kuwait Watch Organization for Human Rights and Americans for Democracy & Human Rights in Bahrain issue the following recommendations to the State of Kuwait.

1. Ratify Optional Protocol 1 and Optional Protocol 2 of the International Covenant on Civil and Political Rights (ICCPR)
2. Amend or repeal all legislation that infringes on the international right to freedom of expression and opinion, including but not limited to:
 - a. 2015 Cyber Crime law;
 - b. 2014 Telecommunications Law;
 - c. 2006 Press and Publication Law;
3. Guarantee individuals' right to privacy
 - a. Repeal the 2015 DNA legislative amendment to the Counter-terror law;
4. Drop all charges against individuals related to their freedom of expression and opinion
 - a. End all convictions related to insulting the Emir or other Gulf Rulers
5. Stop and retract all denaturalization actions carried out against individuals without due process;
 - a. Amend or repeal Article 13 of the Nationality Law;
 - b. Permit the judiciary to examine cases relating to citizenship to guarantee individuals' right to due process;
 - c. End practice of denaturalization as a form of punishment for political dissent;
6. End all forms of persecution and discrimination of the Bidoon (Stateless) population;
 - a. Recognize all citizens before the law;
 - b. Ensure equal access to education for Bidoon children;
 - c. Re-instate dismissed government Bidoon employees and ensure equal access of the Bidoon to employment;
 - d. Stop arrests and deportation of the Bidoon;
 - e. Ratify the 1954 Convention relating to the Status of Stateless Persons;
7. End all practices of torture, mistreatment or excessive use of force against accused or convicted detainees
 - a. Investigate all allegations of torture or mistreatment and prosecute those responsible;
 - b. Guarantee individuals' right to file complaints and claim compensation in case of mistreatment during detention, without fear of reprisal;
8. Stop arbitrary arrest of individuals detained for exercising their rights to freedom of expression, association or assembly;
 - a. Ensure that an arrest warrant is presented upon arrest;
 - b. Ensure that once arrested, accused detainees are granted immediate access to a lawyer;
9. End crackdowns on peaceful assembly

- a. Repeal law on prohibition of public gatherings without permission from the Ministry of Interior
- b. Drop all charges against individuals related to the exercise of their right to free assembly;

10. Grant equal rights for women in practice and before the law

- a. Amend the Nationality law to comply with Article 29 of the Kuwaiti constitution, guaranteeing men and women equal rights and duties.
- b. Amend the Nationality law in line with the CEDAW and allow Kuwaiti women to pass on nationality to their children.