



KUWAIT

Follow-up to the Human Rights Committee's recommendations

Alkarama Foundation – 1 November 2017

1. Introduction

In its Concluding Observations to Kuwait's third periodic review, the Human Rights Committee (HRCtee) highlighted three priority recommendations, namely the discrimination against the Bidoon or stateless community, freedom of peaceful assembly and the excessive use of force by law enforcement officials, and the right to freedom of association. The Committee requested the State party to provide follow-up information on the implementation of these recommendations by 8 July 2017. The following report will address those recommendations that fall within the mandate of Alkarama and on which our organisation can provide accurate information.

2. Discrimination against Bidoon

The State party should: (a) speed up the process of granting Kuwaiti citizenship to Bidoon people, where appropriate; (b) guarantee the right of every child to acquire a nationality; (c) register and provide non-discriminatory access to social services to all Bidoon people residing in Kuwait; (d) ensure that Bidoon individuals enjoy their right to freedom of movement, peaceful assembly, opinion and expression; (e) set aside plans to offer Bidoon people the "economic citizenship" of another country in exchange for a permanent residence permit in Kuwait; and (e) consider acceding to the 1954 Convention relating to the Status of Stateless Persons and to the 1961 Convention on the Reduction of Statelessness and having the related obligations implemented through the State party's domestic law.

While the State party claims that there are no such people as "stateless" on their territory, but only "illegal residents", we would like to counter that narrative and recall that "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. While this group of stateless people was initially living side by side Kuwaiti nationals enjoying similar access to social, economic and cultural as well as civil and political rights, around the time of the invasion of Kuwait by Iraqi forces and particularly after the operation Desert Storm in early 1991, the government changed its discourse and started referring to the stateless population as illegal residents.

There are different categories of Bidoon: firstly tribesmen whose ancestors failed to apply for nationality or lacked necessary documentation at the time of Kuwait's independence; secondly children of Kuwaiti women married to Bidoon men as there are not able to pass on their nationality; and in fact thirdly, citizens of neighbouring countries who abandoned their original nationality to join Kuwaiti armed forces and police in the 1960s and 1970s. We would like to emphasize that while the third category might according to the State party's definition qualify as "illegal residents", given that they previously owned another nationality, it does not justify the government rendering all stateless "illegal residents" and therefore rejecting any recommendations made to aid their situation.

We regret to see that the Kuwaiti government makes reference to its rights as a sovereign State in order to reject the recommendations (a), (c) and (e) under paragraph 11 and does not resume responsibility for facilitating to the Bidoon the flawed acquisition of economic citizenship of third countries. Moreover, with regards to recommendation 11 (b), we like to highlight that women are still not equally able to pass on their nationality to their children.¹ Concerning recommendation 11 (d), Kuwait declares that: "[...] illegal residents are entitled to express their views in the media and are subject to no restrictions other than those prescribed by law. As peaceful assembly is a form of expression of one's opinion, Kuwaiti law does not discriminate in this regard between Kuwaitis and illegal residents". However, we maintain that this statement is directly contradicted by article 12 of the 1979 Kuwaiti Public Gatherings Law that bars non-Kuwaitis from participating in public gatherings.

¹ Kuwait Nationality Law (1959), artivlr 2, provides that "Any person born in or outside Kuwait whose father is a Kuwaiti national shall be a Kuwaiti national," <http://www.ilo.org/dyn/natlex/docs/ELECTRONIC/83364/91990/F734821664/KWT83364.pdf> (accessed October 11, 2017).

What is more, the Kuwaiti government does not only deny the existence of its stateless community, which is at the very least about a tenth of its population, it also has resorted to the practice of revoking citizenship of political dissidents. We like to recall that 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.

3. Freedom of peaceful assembly and use of excessive force

The State party should: (a) ensure that the exercise of the right to peaceful assembly is not subject to restrictions other than the ones permissible under the Covenant; (b) investigate all allegations relating to the excessive use of force by security forces and ensure that the perpetrators are prosecuted and the victims adequately compensated; (c) increase its efforts to systematically provide training to all security forces on the use of force, especially in the context of demonstrations, taking due account of the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials.

Regarding recommendation (a) on restrictions to the right to peaceful assembly as prescribed in article 21 of the ICCPR, we would like to reiterate that article 12 of the 1979 Kuwaiti Public Gatherings Law No. 65 bars non-Kuwaitis from participating in public gatherings. Moreover, article 16 of the same law prohibits public gatherings without a prior license and provides for punishments of up to two years imprisonment. Additionally, the State party in its follow up report, under paragraph 25, acknowledges that certain provisions of Criminal Code No. 16 of 1960 prohibit and punish public gathering without previously acquiring a license.

While the State party made information available on the training modalities of law enforcement officials and their coaching on the use of force, we regret that the Kuwaiti government refuses to comment on recommendation (b), failing to provide any information or documentation on the investigation into allegations relating to the excessive use of force by law enforcement officers and their subsequent prosecution. Unfortunately, this confirms our concern that there is complete impunity for state agents who violate the Basic Principles on the Use of Force and Firearms.

4. Conclusion

Alkarama and Kuwaiti civil society thank the Committee for raising the issue of DNA Law in its Concluding Observations, which majorly contributed to the decision made by the Constitutional Court of Kuwait, on 5 October 2017, to repeal the Law No. 78/2015 on compulsory DNA collection declaring that some of its provisions contravened the rights to privacy and personal liberty enshrined in articles 30 and 31 of the Kuwaiti Constitution.

At the same time, more needs to be done to aid the situation of the stateless in the country, who remain deprived of basic social and economic rights, let alone civil and political liberties. We also continue to be concerned about the restrictions to freedom of expression and the new tools used by the Kuwaiti authorities, such the Cybercrime Law No. 63 of 2015, to crackdown on dissenting voices. We will closely monitor the State’s implementation of the recommendations made by the Committee.