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INTRODUCTION

Kuwait is a state party to eight international human rights treaties, including the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the Convention), to which it acceded in 1996.¹ It has also taken part in two cycles of the Universal Periodic Review (UPR), a state-led review of the implementation of international human rights law and standards.

Amnesty International acknowledges and welcomes Kuwait's consistent and committed engagement with international human rights mechanisms and non-governmental human rights organizations². However, progress in implementing its obligations under CAT has been challenging and much remains to be done.

In recent years, however, notably since the wave of social and political unrest that swept across the Middle East and North Africa from 2011, the Kuwaiti state has failed to uphold its international obligations to respect and protect human rights.

The present document assesses Kuwait's obligations under the Convention insofar as these relate to the status of the treaty in Kuwait's law and practice, including the re-legitimization of torture in the administration of justice; ill-treatment in the policing of demonstrations, issues relating to the stateless Bidun community, the question of Martial Law Courts and unresolved cases of enforced disappearances during and after the 1991 invasion, and the use of the death penalty.

Alongside these issues, Amnesty International also has concerns with regard to the July 2015 legislation requiring all citizens and residents in Kuwait to provide samples of their DNA to the authorities, on the basis that its availability will help combat terrorism. Refusal to comply with the law is punishable by up to one year's imprisonment and a fine.

This document is intended to be read alongside three Amnesty International publications:

- *The 'Withouts' of Kuwait – Nationality for Stateless Bidun Now*, September 2013³
- *The 'Iron Fist Policy': Criminalization of peaceful dissent in Kuwait*, December 2015⁴
- *Kuwait – Submission to the Human Rights Committee*, May 2016⁵

¹ Kuwait is a state party to the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD); Convention on the Rights of the Child (CRC); Convention on the Elimination of All Forms of Discrimination against Women (CEDAW); International Covenant on Civil and Political Rights (ICCPR); International Covenant on Economic, Social and Cultural Rights (ICESCR); the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) and Convention on the Rights of Persons with Disabilities. Kuwait is also party to the Arab Charter on Human Rights.

² For example, on 22 June, Kuwait's Permanent Representative to the United Nations and other humanitarian organizations in Geneva, Ambassador Jamal al-Ghunaim reportedly "reaffirmed [Kuwait's] commitment to the rule of law and respect for human rights despite the many surrounding security challenges...". See Kuwait News Agency (KUNA): Kuwait committed to rule of law, respect of human rights – Ambassador, 22 June 2016, accessible at: <http://goo.gl/NzwQpn>

³ AI Index MDE 17/001/2013 accessible at: <https://goo.gl/f6AHZG>

⁴ AI Index MDE 17/2987/2015 accessible at: <https://goo.gl/SWnmxs>

⁵ AI Index: Index number: MDE 17/4145/2016, accessible at: <https://goo.gl/bgt2ne>

This document also draws on the List of Issues⁶ (LOI) relating to the review of Kuwait's treaty obligations.

STATUS OF THE CONVENTION IN KUWAITI LAW AND PRACTICE (ARTICLE 20 AND 28; LOI, PARA. 34)

When it acceded to the Convention, Kuwait submitted a reservation to Article 20 of the Convention.⁷ Amnesty International regrets that Kuwait has not yet withdrawn this reservation despite its commitment during the last review before the Committee and is concerned by the position set out by the government in paragraph 136 of the report,⁸ in which it is reiterated that if Kuwait were to accept the proceedings for the Committee to undertake a confidential inquiry concerning allegations of systematic practice of torture, this would “undermine [... the] sovereignty and independence of the State and [it would] constitute [...] interference in its internal affairs.” Kuwait has likewise rejected accession to the Optional Protocol to the Convention.

RECOMMENDATIONS

Amnesty International calls on the Kuwaiti authorities to:

- Remove the reservation to Article 20 of the Convention.
- Consider acceding to the Optional Protocol to the Convention.

⁶ List of issues prior to submission of the Third Periodic Report, CAT/C/KWT/QPR/3 of 10 July 2013, available at: <http://goo.gl/zFHnrV>

⁷ Kuwait acceded to the Convention “With reservations as to article (20) and the provision of paragraph (1) from article (30) of the Convention.” See the United Nations treaties bodies database: <https://goo.gl/2UJGrR>

⁸Third Periodic Report of Kuwait, CAT/C/KWT/3 of 17 August 2015, page 52, available at: <http://goo.gl/zFHnrV>

RE-LEGITIMIZATION OF TORTURE IN THE ADMINISTRATION OF JUSTICE (ARTICLES 1, 2, 6, 12, 13, 15, 16; LOI, PARAS. 2 AND 3)

Amnesty International is concerned at signs of the emergence of a public narrative in Kuwait in which the use of torture and other ill-treatment is justified.

On 10 April 2014, in a public speech, the Ministry of Interior's Assistant Undersecretary For Citizenship Affairs, Major General Sheikh Mazen al-Jarrah al-Sabah, said "I have been a detective for 25 years, [and] beating is not necessary at all times. [It is,] however, in certain situations where the accused does not admit." He added that in "...big cases, like murder, detectives should use beatings, and the beatings that are not excruciating, help our aims, as the detective does not own a magic wand to detect suspects..."⁹

On 28 November 2015 the same official gave a televised interview.¹⁰ He said that, "an officer or detective can beat people who are accused of murder..." and "there must be beatings", arguing that beatings can help detectives solve a case, to get the accused to "confess", and that "otherwise no one will confess". While the official qualified such statements by stating that such practices were not currently necessary, the overall impression he gave was to suggest that torture or other ill-treatment was acceptable and potentially necessary.

In 2015 and 2016, Amnesty International has documented allegations of torture and other ill-treatment in high-profile criminal cases. While the courts have carried out investigations into some of these allegations, Amnesty International is concerned about the independence and impartiality of such investigations.

The practices reported in the cases below, taken alongside the views expressed by a senior Ministry of Interior official, raise serious concerns about whether torture and ill-treatment are considered acceptable practices among security officials.

BOMBING OF THE IMAM SADIQ MOSQUE

On 26 June 2015, a suicide bomb attack on the Imam Sadiq Mosque, a Shi'a mosque in Kuwait City, killed at least 27 people and injured more than 220 others. The attack was claimed by the armed group that calls itself Islamic State (IS).

⁹ Al-Rai (online newspaper), 10 April 2014, accessible at: <http://goo.gl/pbWcwp>

¹⁰ The clip was uploaded from <http://alziadiq8.com/187202.html> but the interview took place on the Baraka news platform. See: <http://brkaq8.com/>. The clip is entitled, in Arabic:

اللواء مازن الجراح: هناك ضرب للمتهمين في المباحث وهذا شيء ضروري.

Following a speedy investigation, the authorities made a range of arrests and on 14 July 2015, and charged 29 Kuwaitis and foreign nationals in connection with the attack¹¹. The names of those accused were numbered in court.¹² The trial began on 4 August 2015¹³. Of the accused, five were tried in absentia, while fifteen others were convicted. Of those convicted, seven were initially sentenced to death. In December 2015, the Appeal Court confirmed one of the death sentences and commuted another to 15 years' imprisonment. On 30 May 2016, the Court of Cassation, Kuwait's highest court upheld the death sentence handed down to 'Abdel-Rahman 'Aydan. The Court overturned the death sentence handed down to defendant No. 9, whom the Court sentenced to 15 years' imprisonment¹⁴.

A number of the defendants asserted in court that they were tortured or otherwise ill-treated in pre-trial custody, alleging that they were beaten, subjected to electric shocks, placed in stress positions and threats.

The court did not exclude statements that were allegedly extracted under torture and other ill-treatment as evidence in the proceedings. In some cases, the prosecutor argued that the lack of visible marks on the bodies of the defendants indicated that there was no substance to the allegations.

On 16 August 2016, media reports cited forensic medical examiners in the case as stating that defendants were not subjected to electric shocks, and that assertions by defendants that they had been ill-treated by the CID had not been proven¹⁵. Forensic examiners stated that an examination of one defendant showed an injury to right forearm and another to his backside but, the medical professionals concluded, these injuries were old and the result of a traffic

¹¹ The 29 consisted of 13 stateless Bidun; seven Kuwaiti women; five nationals of Saudi Arabia; three Pakistanis and one whose nationality was not immediately disclosed. See al-Watan:

عبدالرحمن صباح عايد أقرّ بجريمته أمام المحكمة: جلبت حزام المتفجرات وأوصلت القبايع للمسجد / المتهم الرئيسي: بايعت «داesh» لتفجير «الصادق»

or: 'Abdulrahman Sabah 'Ayed admitted his crime before the court: brought explosives belt and brought it to al-Qabba' at the mosque / The main culprit: pledged allegiance "Daesh" [and] to blow up al-Sadiq [Mosque], 4 August 2015, accessible at: <http://goo.gl/w9Ez1j>

¹² They are as follows: (1) Abdulrahman Sabah 'Aydan, (2) Badr al-Harbi known as Nabras, (3) Mohammad Abdullah al-Zahrani, (4) Majed Abdullah al-Zahrani, (5) Shabeeb Salem Sulaiman al-'Anzi, (6) Fallah Nimr Mujbel Ghazi Khulayf, (7) Jarrah Nimr Mujbel Ghazi Khulayf, (8) 'Ali Sabah 'Aydan Sa'ud, (9) Fahd Faraj Nasser Muhareb, (10) 'Adel 'Aql Salem Ruwaisan al-Thufayri, (11) Mohammad Khulayf 'Amer Mukhlef, (12) Salem Sabah 'Aydan Sa'ud, (13) Hajer Fahd Faraj Nasser, (14) Sarah Fahd Faraj Nasser (f), (15) Maryam Fahd Faraj Nasser (f), (16) Yasmeen Mohammad 'Abdulkareem (f), (17) 'Abdulsalam Subhan 'Aydan, (18) Saleh To'meh al-'Anzi, (19) Muzna Khulay Munawakh Khalaf (f), (20) Nasma Mohammad Qassem 'Ali (f), (21) Sahar Qassem 'Ali Ghulam (f), (22) Fahd Sa'ad 'Awad al-Fadhli, (23) Mohammad Fahd 'Abdullah al-Sa'eed, (24) Dhaifallah Fahd 'Abdullah al-Sa'eed, (25) Faraj Hmoud Faraj al-'Anzi, (26) Dhari Ahmad Ruway'i Khalaf, (27) Fahd Shukhayr 'Abdullah al-'Anzi, (28) Abdullah Musa'ed al-'Anzi, (29) Abdulrahman bin Nafe' al-Ruwayli

¹³ Qatar News Agency: Kuwait Court Resumes Al Sadiq Mosque Blast Trial, August 18, 2015, accessible at: <http://goo.gl/szNSEo>

¹⁴ Al-Ahed (news), أيدت محكمة التمييز في الكويت اليوم الاثنين حكم الإعدام بحق عبد الرحمن عايدان المتهم الرئيسي في قضية تفجير مسجد، وجميع الأحكام الأخرى بحق المتهمين في القضية / On Monday, Court of Cassation in Kuwait upheld death sentence against Abdel-Rahman Aydan, main suspect in Imam Sadiq Mosque bombing, along with other judgments against the defendants in the case, 30 May 2016, accessible at: <http://goo.gl/DDITcl>

¹⁵ Al-Watan: هل تعرض المتهمون في قضية مسجد «الصادق» إلى التعذيب والصعق الكهربائي؟ / Were the defendants in the Imam Sadiq Bombing case subjected to torture and electroshocks?, 16 August, 2015, accessible at: <http://goo.gl/wxlae4>

accident; not what the defendant described.

On 18 August 2015, the lawyer for Abdulrahman Sabah 'Aydan, requested that his client be referred and examined by a psychiatrist to assess his mental state, stating that security officials tortured both his client and members of his family¹⁶.

On 2 September 2015, lawyers for several of the defendants spoke of the torture and other ill-treatment their clients – and members of their families - allegedly suffered at the hands of the security forces¹⁷. The lawyer for defendant number seven said:

“The sister of my client was arrested and taken to the CID where she was assaulted by being beaten. She was detained without having committed a crime and without permission from the Public Prosecution. They then summoned her father and informed him that he had to go to the Military hospital to collect her [...]”¹⁸

In respect to his client, he said:

“The present photograph in the file shows a face that is swollen as a result of beating that he was subjected to at the CID.”¹⁹

The lawyer for some of the women accused in the case said that the female defendants “were subjected to torture and ill-treatment [but] that no marks were visible on their bodies by the time they were referred to government forensic examiners”.²⁰

On 1 September 2015, defendant No.15 told the court that the “confessions” she made to the Public Prosecution were not true and that she was ill-treated into making them: she said that State Security men had threatened her²¹. She said: “I was beaten and ordered to hold

¹⁶ See: al-Watan - الخميس المقبل - إلى.. الخميس المقبل «مسجد الإمام الصادق» -- تأجيل محاكمة المتهمين بتفجير مسجد الإمام الصادق إلى 6 أغسطس [6 August] , accessible at: <http://goo.gl/6DfMcR>

¹⁷ Al-Anba, الحكم على الإرهابيين المتورطين في تفجير مسجد الإمام الصادق 15 سبتمبر الجاري, Judgement on the terrorists involved in the bombing of the Imam Sadiq Mosque, 2 September 2015, accessible at: <http://goo.gl/uu4xiT>

¹⁸ Al-Anba, الحكم على الإرهابيين المتورطين في تفجير مسجد الإمام الصادق 15 سبتمبر الجاري, Judgement on the terrorists involved in the bombing of the Imam Sadiq Mosque, 2 September 2015, accessible at: <http://goo.gl/uu4xiT> In the original, the lawyer states:

لقد تم القبض على شقيقة موكلتي واقتيادها إلى مباحث أمن الدولة حيث تم الاعتداء عليها بالضرب وحجزها بدون أي جريمة وبدون إذن من النيابة العامة. ثم يطلبون والدها ويبلغونه بأن يتوجه إلى المستشفى العسكري لتسلمها. هذا يحدث في الكويت بلد الحرية والديمقراطية

¹⁹ Al-Anba, الحكم على الإرهابيين المتورطين في تفجير مسجد الإمام الصادق 15 سبتمبر الجاري, Judgement on the terrorists involved in the bombing of the Imam Sadiq Mosque, 2 September 2015, accessible at: <http://goo.gl/uu4xiT> In reference to the court exchange, the original states that the lawyer, al-Jeda'i questioned:

وتساءل الجدعي: هل وجه موكلتي هذا الواقف أمامكم هو نفس الوجه الموجود في الصورة الموجودة له في ملف القضية والتي تم التقاطها له أثناء التحقيق معه في مباحث أمن الدولة؟ إن الصورة الموجودة في الملف تظهر وجهه منتفخا بفعل الضرب الذي وقع عليه في مباحث أمن الدولة. إن ما تعرضت له أسرة «جراح» مخالف لكل القوانين والدساتير والشرائع

²⁰ Al-Anba, الحكم على الإرهابيين المتورطين في تفجير مسجد الإمام الصادق 15 سبتمبر الجاري, Judgement on the terrorists involved in the bombing of the Imam Sadiq Mosque, 2 September 2015, accessible at: <http://goo.gl/uu4xiT>

²¹ Al-Anba, الحكم على الإرهابيين المتورطين في تفجير مسجد الإمام الصادق 15 سبتمبر الجاري, Judgement on the terrorists involved in the bombing of the Imam Sadiq Mosque, 2 September 2015, accessible at:

both my arms high as a type of physical torture.” When asked by the court whether there were visible marks on her body, she stated that there were none²².

EIGHT MEN ACCUSED OF TAKING PART IN MILITARY ACTION IN IRAQ AND SYRIA

On 30 July 2015, a court handed down convictions to eight Kuwaiti nationals charged with joining and taking part in illegal armed combat with the Ansar al-Sham group in Iraq and Syria and fighting alongside IS²³. The eight men had been arrested along with others in September 2014. Two of the accused were also accused of taking part in the Imam Sadiq Mosque bombing (see above).

Prosecutors alleged that five of them took part in illegal armed combat in Iraq and Syria by joining IS. The authorities also alleged that they were members of, and sought recruits for, the armed organization, Ansar al-Sham, which was banned in Kuwait and that they collected and sent funds to IS, classed as a terrorist group in Kuwait, facilitating terrorist and subversive acts²⁴.

According to a press report on 23 July 2015, during the trial, unspecified defendants stated that their “confessions” were extracted under duress²⁵. The men stated that even after the investigation into the mosque bombing had been completed, State Security officials continued to hold them and that they “were scared of being beaten”.

The court did not order an investigation into allegations of torture and other ill-treatment against any of the defendants and members of their families. On 31 May 2016, the Court of Cassation upheld the convictions.

CHIBREET SIYASSI

<http://goo.gl/uu4xiT> The original states that:

وقرر المحامي أن موكلته المتهمة الخامسة عشرة تود أن تخاطب المحكمة، فسمحت لها المحكمة بالتقدم والإدلاء بما لديها. فقالت المتهمة إن كل أقوالها التي أدلت بها أمام النيابة العامة لم تكن صحيحة وإنما قد أكرهت على الاعتراف بها وتم تهديدها من قبل رجال أمن الدولة.

²² Al-Anba, Judgement on the terrorists / الحكم على الإرهابيين المتورطين في تفجير مسجد الإمام الصادق 15 سبتمبر الجاري, involved in the bombing of the Imam Sadiq Mosque, 2 September 2015, accessible at:

<http://goo.gl/uu4xiT> the original states:

وسألتها المحكمة عن نوع الإكراه والتهديد الذي تعرضت له فقالت: لقد تم الاعتداء علي بالضرب مع إعطائي أوامر برفع كلتا يدي إلى أعلى كنوع من التعذيب البدني. وبسؤال المحكمة لها عما إذا كانت بها إصابات ظاهرة بجسدها، أفادت بأنه ليست هناك إصابات ظاهرة على جسدها.

²³ The eight were allocated numbers: (1) ‘Ali Saleh al-Hubaysh; (2) Fahd Faraj Muhareb, called Wali Da’esh, or Leader of the Da’esh, also named in the Imam Sadiq bombing case; (3) ‘Abdul’aziz Sulaiman al-Sahli; (4) Himam Mubarak al-‘Adwani; (5) Majed Mutee’ al-‘Anezi; (6) Nasser Fahd Muhareb (7) ‘Abdulraman Khalaf al-‘Anezi; (8) Mohammad ‘Abdulrazzaq al-‘Anezi. In the original Arabic:

(1) على صالح الهبيش; (2) فهد فرج محارب (3) عبدالعزيز سليمان السهلي (4) ماجد مطيع العنزي (5) همام مبارك العدوانى (6) نصار فهد محارب (7) عبدالرحمن خلف العنزي (8) محمد عبدالرزاق العنزي

²⁴ Al-Watan: 20 years’ imprisonment for ‘Wali Da’esh’ (Da’esh Leader) and 15 years’ for Abu Talha al-Kuwaiti and others, 31 July 2015, accessible at:

<http://goo.gl/SAV1Oz> . Also: al-Khaleej Affairs: محكمة كويتية تقضي بحبس (والي داعش) بالكويت 20 عامًا / Kuwaiti court sentences ‘Wali Da’esh’ to 20 years, 30 July 2015, accessible at: <http://goo.gl/s10Dm8>

²⁵ Alaan (news website), citing al-Qabas: أحدهم متهم بقضية ‘الصادق’ ومسجون منذ 11 شهراً

/ One [of those] accused in [Imam] Sadiq [Mosque] jailed for 11 months / The accused in national security case [tell] judges [that] our confessions resulted from our being abused; beaten, 23 July 2015, accessible at: <http://goo.gl/ffUetQ>

In September 2015, the authorities tried Twitter commentator, Badr Abdulaziz, known as Chibreet Siyassi (meaning Political Match, or Firelighter) on charges that included defaming the Amir and judiciary; inciting sedition, inciting public order offences and publicising information that undermines the Kuwaiti political system.²⁶

In the course of his trial, he stated in court that officials forced him to 'confess' to things he did not know about, during which he was filmed. An authoritative social media account which reports on court cases in Kuwait reported on 17 September 2015 that Kabreet Siyassi stated that he "was beaten and that it had impacted upon [his] feet and forced [him] to confess [...]".²⁷

'ABDALI FARM OR 'ABDALI CELL CASE

Amnesty International is gravely concerned that the authorities concealed from court the findings of medical examinations into allegations of torture and other ill-treatment in a case known as the 'Abdali Farm or 'Abdali Cell case²⁸. The way in which the case has been handled has raised international concern²⁹.

On 13 August 2015, the Kuwaiti authorities seized a cache of arms, ammunition and explosives on a farm in 'Abdali, near the border with Iraq. On 1 September 2015, government prosecutors charged 26 people with "spying for Iran and Hezbollah [in order] to carry out aggressive acts against the State of Kuwait" by smuggling in and assembling explosives, as well as firearms and ammunition³⁰. All the defendants present in court, including one Iranian national, denied the charges. Three were charged in absentia.

²⁶ Al-Watan: Abuse of Amir, Country; Challenge to Judiciary – "Chibreet Siyassi" faces 330 cases / تتعلق 9 بواجه 330 قضية, «جبريت سياسي» يواجه 330 قضية, 9 July 2015, accessible at: <http://goo.gl/aW5ESr>

²⁷ Status update from @mediacourt, 17 September 2015, accessible at: <https://goo.gl/GTYevB>. The original states :

عاجل/ #جبريت_سياسي للمحكمة : تم ضربتي ولاتزال الأثار في قديمي وأرغموني على الاعتراف كراهية أن اللواء أنور الياسين مشترك مع بدر عبدالعزيز

²⁸ Amnesty International has repeatedly and publicly raised concerns about the 'Abdali Farm case. See, amongst others, the Urgent Action appeal: 'Abdali Cell sentenced to prison of death, 14 January 2016, AI Index number MDE 17/3194/2016, accessible at: <https://goo.gl/BaJRZ7> ; and Kuwait: Shi'a Men Allege Torture, risk unfair trial, 17 September 2015, AI Index number MDE 17/2453/2015, accessible at: <https://goo.gl/TOX4mn>

²⁹ See, for example: Americans for Democracy and Human Rights in Bahrain (ADHRB): Allegations of Torture and Discrimination Raise Tensions in Kuwait, 6 June, 2016, accessible at: <http://goo.gl/43tbYI>

³⁰ Those charged were allocated numbers:

(1) Hassan Abdulhadi Ali Hajiya, (2) 'Ammar Hassan Gholum Hussein, (3) Hussein Ali Sayed Hussein al-Tabtabaei, (4) Mohammad Jassem Mahmoud al-Me'raj, (5) Ali Abdulkarim Isma'il Abdulrahim, (6) Jassem Mohammad Sha'ban Ghadhanfari, (7) Mohammad Hassan Abduljalil al-Husseini, (8) Zuhair Abdulhadi Hajji al-Mahmid, (9) Hassan Ali Hassan Jamal, (10) Hassan Murad Hassan Jassem, (11) Mohammad Jaafar Abbas Gholum Hajji, (12) Abbas Issa Abdullah al-Mussawi, (13) Hassan Ahmad Abdullah al-'Attar, (14) 'Abdulmohsen Jamal Hussein al-Shatti (15) Mustafa 'Abdulnabi Ali Khan, (16) Hussein Juma'a Mohammad al-Bather, (17) Youssef Hassan Sha'aban Ghadhanfari, (18) Mahdi Mohammad Sayed 'Ali al-Mussawi, (19) 'Issa Jaber 'Abdullah Baqer, (20) Hassan Daoud 'Abdulkarim 'Abdullah Ramadan, (21) Ja'afar Haydar Hassan Haydar Jamal (22) Hashem Hussein Rajab Hassan 'Ali, (23) 'Abdulredha Hayday Dahqani, (24) Bassel Hassan 'Ali Dashti, (25) 'Abdullah Hassan 'Abduljalil al-Hussaini and (26) Hani 'Abdulhadi 'Ali Hajiya

From 15 September 2015, at the start of the trial, the defendants said that they had been tortured to make them “confess”, and that they still had marks of torture on their bodies. One of them said that during interrogation he had been forced to remove his clothes. Another said he had been raped with a baton.

The court ordered an independent medical committee to examine the accused for marks of torture and for them to be allowed telephone contact with their lawyers from prison.

The medical examination of the 23 defendants took place towards the end of September 2015. Amnesty International understands that officials blindfolded and handcuffed the men, but did not tell the men where they were taking them.

According to information received by Amnesty International, one doctor examined them, in the presence of a security official, in a room which did not contain any clinical or medical equipment. The examinations lasted about five minutes per person. Officials returned the men to their cells within two hours³¹.

On 29 September 2015, during the second court session, the medical report stated that the men had not been tortured.

A family member of one of those accused told Amnesty International that some of the men said that the interrogators also threatened to bring in their female family members and harm them unless they confessed, and that some also said they had been forced to read prepared “confessions” on camera³².

Mohammad al-Hussaini, one of the accused in this case, was arrested on 13 August 2015 in a raid by State Security forces at his family’s home in West Mishref, Hawalli Governorate. His brother Abdullah al-Hussaini was arrested there on 16 August 2015. Their relatives and their lawyers were only able to visit the men in prison after the Prosecution referred the case to a Criminal Court on 1 September 2015.

During these visits, the two men told their families and lawyers that they had been tortured, including beatings, being suspended by one or both arms, or by one or both legs, and administered electric shocks.

Mohammad al-Hussaini was an imam at a mosque and a religious teacher. He is married and has three children. He told his family that security officials insulted him, his family and his Shi’ism. Officials removed his black turban (which indicates that he is descended from the Prophet) and urinated on it. They then forced him to put it back on. At the first trial session, he told the court that officials repeatedly and continually beat him; subjected him to electroshocks in various places, including near the face and suspended him by his hands³³.

He said that during his own interrogation, officials tortured his brother Abdullah al-Hussaini in front of him, kicking him and stepping on his back. Information received by Amnesty International indicates that officials denied Abdullah al-Hussaini access to the prison doctor. Prior to the trial, family members visited both men. Abdullah al-Hussaini’s family saw that he could not stand up.

³¹ Information from a family member of one of the accused; name withheld.

³² Information from a family member of one of the accused; name withheld.

³³ Information from a family member of one of the accused; name withheld.

On 12 January 2016, a lower Criminal Court sentenced 26 of the defendants to jail terms on charges including "spying for Iran and Hezbollah".

Mohammad al-Hussaini was sentenced to five years in prison for "obtaining and possessing explosives prior to obtaining a licence" and "obtaining and possessing wireless communication devices prior to obtaining licences". His brother Abdullah al-Hussaini was fined 5,000 Kuwaiti Dinars (about US\$16,450) on several firearms-related charges³⁴.

Kuwaiti national Hassan Abdulhadi Ali al-Hajiya, and Iranian national Abdulredha (or, Abdulreza) Haydar Dahqani, were sentenced to death, the latter in absentia, one man was sentenced to life in prison, 19 received prison terms of between five and 15 years, while three were acquitted and one fined. The lawyers of the defendants have argued that there were several violations of the right to a fair trial and have said they will appeal the verdict.

RECOMMENDATIONS

Amnesty International recommends that the authorities of Kuwait:

- Publicly condemn the use of torture and other ill-treatment and send a clear message that such acts will not be tolerated and those responsible will be held to account;
- Ensure that all medical examinations conducted into allegations of torture and other ill-treatment are carried out in line with the Istanbul Protocol;
- Ensure the burden of proof rests with police and prosecutors to demonstrate that statements have been rendered without coercion and are not the result of other human rights violations;
- Exclude any evidence where there is reasonable grounds to believe that it has been obtained as a result of torture and other ill-treatment;
- Establish an independent body to conduct a re-assessment of the independence and quality of the mechanisms used to investigate allegations torture and other ill-treatment in pre-trial detention and for that body to make specific recommendations to parliament and the government relating to the administration of justice.

³⁴ Al-Anba – Al-Anba publishes full text of the 'Abdali Cell' judgment: Criminal Court seeks execution of the first defendant and [the] 23 'Abdali terrorist case /

الأنباء" تنشر النص الحرفي الكامل للحكم في قضية خلية العبدلي":
محكمة الجنايات تقضي بإعدام المتهم الأول والـ23 في قضية العبدلي الإرهابية

,13 January, 2016, accessible at: <http://goo.gl/19rCvx>

ALLEGATIONS OF EXCESSIVE USE OF FORCE IN THE POLICING OF DEMONSTRATIONS (ARTICLES 2, 4, 6, 10, 11, 12, 13, 16; LOI, PARAS. 5, 14, 16, 17 AND 24)

Kuwaiti security forces have forcefully dispersed largely peaceful gatherings and marches on at least 12 occasions that Amnesty International is aware of between the beginning of 2011 and the end of March 2015, causing injuries to protesters³⁵. In some of those cases, the security forces used force – including tear gas, sound bombs and beating of protesters with batons – which was disproportionate, or which amounted to excessive force. The incidents include:

- 18 February 2011: a mainly Bidun gathering at which the security forces used force to disperse protesters including using batons, following which 30 people required medical treatment.
- 6 January 2013 – during a large rally in Kuwait City’s Damascus Street, riot police beat human rights activist Nawaf al-Hendal and others with batons. Nawaf al-Hendal told Amnesty International that the police attacked him and other protesters without warning although they were not engaged in any violent or destructive action.
- 17 April 2013 – towards the end of a peaceful rally held outside the residence of Musallam al-Barrak in al-Andalous in Kuwait City, security forces fired rubber bullets, one of which hit human rights activist, Sulaiman al-Jassem (Bin Jassem), who police also punched and beat with batons, injuring him. He was arrested and a State Prosecutor who observed his injuries filed a complaint on his behalf, but a subsequent investigation failed to identify the police officers responsible, who had been hooded and wore no name badges. In October 2013, a court convicted Sulaiman al-Jassem of “illegal gathering” and sentenced him to one month’s imprisonment but one year later a Misdemeanours Court overturned his conviction.

³⁵ Amnesty International believes that the legal framework governing demonstrations or gatherings is confusing and provides inadequate guidance to security forces policing them. Legal restrictions on the right to peaceful assembly in Kuwait limit people’s ability to express dissent as part of a protest or rally as the legal framework lacks clarity. This issue is addressed in the section entitled Legal Restrictions on the Rights to Freedom of Assembly, in Amnesty International – The ‘Iron Fist Policy’: Criminalization of peaceful dissent in Kuwait, December 2015, AI Index MDE 17/2987/2015, accessible at: <https://goo.gl/MVLEY1> as well as the contents of a memorandum sent to the government of Kuwait on 22 May 2015. The government of Kuwait replied to Amnesty International on 10 March 2016.

- 3-7 July 2014 – activists told Amnesty International that protesters had been injured during unrest in the central part of Kuwait, near the Grand Mosque, as well as the Sabah al-Nasser district, between 3 and 7 July 2014 including as a result of sound bombs. One of the protestors, Abdulhadi al-Hajeri, was hit in the head by a tear gas canister, apparently fired at him at close range, causing serious bleeding. In a letter to Amnesty International in September 2014, the government denied that the security forces had used excessive force. In a March 2016 letter to Amnesty International, the government stated that it has insufficient information in order to address the case of Abdulhadi al-Hajeri.
- 23 March 2015 – security forces attacked protesters at a peaceful demonstration in Kuwait City's Erada Square, striking them with batons to force them to disperse. Human rights activist Nawaf al-Hendal told Amnesty International that he was among around 20-22 people who riot police officers attacked without warning.

RECOMMENDATIONS

Amnesty International recommends that the Kuwaiti government:

- Clearly instruct police that the use of unnecessary or excessive force is not permitted; and that those who unnecessarily or excessively use force will be held accountable;
- Ensure that all police likely to be involved in policing demonstrations be fully instructed and trained as required by international law and standards, in particular on the UN Basic Principles on the Use of Force and Firearms;
- Ensure that all police officers visibly wear identification at all times;
- Require officers to account for use of any devices or ammunition (such as sound bombs or stun grenades; bullets, tear gas, etc) issued to them for crowd control purposes;
- Ensure that the use of force and dispersal devices such as tear gas and sound bombs, or 'flash-bang' devices be used in the context of a graduated police response, in accordance with the principles of proportionality and necessity and under a clear chain of command, in accordance with 'best practice' standards;
- Ensure that any allegation of unnecessary or excessive use of force be promptly and impartially investigated, and anyone found responsible for abuses be brought to justice in accordance with international fair trial standards; and
- Carry out independent investigations into injury at the scene of demonstrations.

THE STATELESS BIDUN COMMUNITY (ARTICLE 16; LOI PARA. 30)

For over 50 years, the Kuwaiti authorities have denied Bidun people citizenship of the only country they know, labelling them “non-Kuwaiti”, “unidentified [citizens]” and, more recently, “illegal residents”. Many Bidun living in Kuwait were born and raised in Kuwait, some have Kuwaiti mothers and other Kuwaiti relatives. Many belong to families that have been settled in Kuwait for many years, including before independence in 1961. The term “illegal residents” used to refer to the Bidun community appears expressly formulated in order to undermine the rights of the members of the community. The word ‘bidun’ means without and they are without nationality and without the rights conferred by full citizenship, and reflects the marginalization in which the community lives, many of them who have been repeatedly forced or induced to take other countries’ citizenship.

In October 2012, the Prime Minister of Kuwait, Jaber Al-Mubarak Al-Hamad Al-Sabah, told Amnesty International that the government would resolve the situation of the Bidun within five years. Amnesty International is concerned that the Kuwaiti authorities have not taken concrete and transparent steps to resolve fairly the plight of the Bidun community, in particular by establishing a fair and independent pathway towards ending the legal uncertainty in which over 120,000 people are living.

The government continues to deny citizenship rights to the Bidun community; despite many years of domestic and international appeals, the government also continues to avoid the establishment of an independent and transparent decision-making system, with right of appeal that would provide members of the Bidun community with a clear pathway to advance citizenship claims³⁶. It leaves the Bidun beholden to the opaque and arbitrary decisions made by staff of the Central Agency for the Regularization of the Status of Illegal Residents (or, Central Agency) that control, in effect, every aspect of a Bidun person’s life.

The diminished legal standing of the Bidun in Kuwait and the denial of their rights is discriminatory. It further underscores wider social discrimination against members of the community, including in relation to the administration of justice.

Bidun activists have told Amnesty International that they believe the Bidun are at greater risk of suffering torture and other ill-treatment than full Kuwaiti citizens due to their lack of legal recognition and diminished access to rights, including access to legal counsel.

Amnesty International is concerned by the emphatic denial by the government in response to the Committee’s question as to whether any Bidun detained as a result of the unrest in

³⁶ See, for example, Amnesty International, Refugees International and Human Rights Watch: Joint Open Letter to His Highness The Amir of Kuwait regarding The Bidun, 27 September 2012, AI Index MDE 17/004/2012, accessible at: <https://goo.gl/8OjyMF> as well as The ‘Withouts’ of Kuwait – Nationality for Stateless Bidun Now, September 2013, AI Index MDE 17/001/2013, accessible at: <https://goo.gl/f6AHZG> and The ‘Iron Fist Policy’: Criminalization of peaceful dissent in Kuwait, December 2015, AI Index MDE 17/2987/2015, accessible at: <https://goo.gl/75HIq9>

February and March 2011, were subjected to ill-treatment in detention³⁷. Amnesty International has documented at least ten cases of members of the Bidun community who have alleged they had been tortured and otherwise ill-treated by Kuwait's security forces in connection with the protests. Some said that they were blindfolded, suspended by the hands and feet, beaten with sticks, slapped and forced to "confess". Several said that they had been held in small, overcrowded cells or in solitary confinement for over 15 days, had not been allowed to use the toilet or wash, or had food withheld. Amnesty International is not aware that there has been any independent and impartial investigations into their allegations apart from the work of Kuwait human rights organizations.

Abdullah 'Ata Allah Daham, 29, told Amnesty International that on 17 January 2011, after he returned home from a demonstration in Taima, east of Kuwait City, four police cars arrived outside his house:

"Each car had four people in plain clothes but armed. They smashed the front door and asked for my father then took his military identity card and threatened not to return it to him unless 'he brought 'Abdullah'.

This was because they had chased me after a demonstration that day in Taima but could not catch me. When I learned of the threat against my father I went to the police and they handcuffed my hands behind my back and blindfolded me. They then took me by car to unknown destination and put me in a basement place. I knew it was a basement because I walked down into it. During interrogation, they beat me with a stick on my thighs and stomach and slapped me. They also suspended me using the Ferrouj method [where the victim is suspended from hung from a bar behind the knees while the victim's wrists are tied to his or her ankles].

The interrogation focussed on questions about my supposed membership of illegal organizations and lasted from 'Asr prayer to midnight on the day and in total for two days. After that they took me to the Central Prison in Kuwait where I was detained for 75 days without knowing the charges against me.

The first visit I had in detention was after one month from my arrest and it was by my father. I went on hunger strike for ten days in protest against my arbitrary detention."³⁸

On 16 December 2011, members of the Bidun community staged a gathering in Taima. The authorities made around 20 arrests following the protest. Those detained were held for three days in the Criminal Investigations section and were released after signing promises not to partake in future demonstrations "against the government". Many of those detained were beaten during arrest.

Those detained at this protest have reported poor prison conditions contrary to the UN Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules), including being held in cells with suspected drug dealers³⁹; that the cells were about 6 by 5 metres and housed 35 to 38 people⁴⁰; no toilets and shower were available⁴¹ and that

³⁷ Third Periodic Report, CAT/C/KWT/3 of 17 August 2015, page 32, available at: <http://goo.gl/zFHnrV>.

³⁸ Interview with Amnesty International, Taima, Kuwait; 17 May 2012.

³⁹ Rule 11 of the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Mandela Rules) provides for the separation of prisoners by category.

⁴⁰ Rule 13 sets out standards relating to accommodation.

⁴¹ Rules 15-18.2 set out standards concerning sanitation.

detainees were given two thin covers: one to put on the floor as a makeshift mattress; the other to cover themselves⁴²

Bidun journalist Bandar al-Fadhli, who has been detained eight times since 2009 for criticizing the government and taking part in largely peaceful demonstrations, described to Amnesty International the torture he suffered on one of these occasions:

“On 10 February 2010... I was beaten by two people... kicking me on the legs, punching me in the head and slapping my face. They also threatened to put out a cigarette in my eye... After the interrogation they made me stay standing up for the rest of the day without water. They refused me access to the toilets and told me ‘go in your clothes’.”⁴³

RECOMMENDATIONS

With respect to the Bidun community, Amnesty International recommends that the government of Kuwait:

- Open prompt, thorough, independent and impartial investigations into the allegations of ill-treatment and use of unnecessary and excessive force by security forces against Bidun demonstrators, and ensure that those responsible are held to account;
- Take the necessary measures to ensure the full exercise of rights without discrimination of the Bidun community;
- Enable Bidun residents of Kuwait to have access to an independent decision-making body, with the right of appeal, facilitating the open and transparent assessment of nationality claims;
- Sign and ratify the Convention on the status of statelessness and the Convention on the Reduction of Statelessness.

⁴² Rule 19 sets out standards regarding clothing and bedding.

⁴³ Interview with Amnesty International, Kuwait City; 16 May 2012

MARTIAL LAW COURTS AND CASES OF ENFORCED DISAPPEARANCE DURING AND AFTER THE 1991 INVASION (ARTICLES 11, 12 AND 13; LOI PARAS. 21 AND 26)

LACK OF INFORMATION ON THE STATUS OF PRISONERS HELD AS A RESULT OF MARTIAL LAW AND STATE SECURITY COURTS' DECISIONS

In paragraph 93 of its Third Periodic Report, the government of Kuwait asserts that: “No military tribunals have hitherto been constituted in Kuwait and no one at the present time is being detained in the manner described in the recommendation [...]”⁴⁴.

On 2 August 1990, Iraqi forces invaded Kuwait and carried out a wide range of human rights violations⁴⁵. Between 24-27 February 1991, an international coalition under the leadership of the United States took part in the expulsion of Iraqi forces and the return of the Kuwait government from the end of February 1991, when the then Amir, Shaikh Jaber al-Ahmad al-Sabah declared martial law. He extended it until 26 June 1991.

Temporary, Martial Law Courts sat from the very end of February 1991 to 26 June 1991. According to research conducted by Amnesty International, 164 alleged ‘collaborators’ were tried by the Martial Law Court (MLC) before its dissolution. Trials before this court were manifestly unfair, as set out in successive Amnesty International reports⁴⁶.

Upon dissolution, upward of 450 cases not heard by the MLC were transferred to another special court, the State Security Court (SSC) which sat between April 1992 and September 1995. It also tried cases of alleged ‘collaborators’. Amnesty International’s research revealed gross flaws in cases heard before the SSC, where trials likewise did not meet minimum international standards for fair trial⁴⁷.

⁴⁴ Third Periodic Report, CAT/C/KWT/3 of 17 August 2015, page 32, available at: <http://goo.gl/zFHnrV>

⁴⁵ Amnesty International – Iraq/Occupied Kuwait – Human Rights Violations Since 2 August [1991], December 1990, AI Index MDE 14/16/90, accessible at: <https://goo.gl/RYkcjU> and Iraq: Secret Detention of Kuwaitis and third-country nationals, 8 September 1993, AI Index MDE 14/005/1993, accessible at: <https://goo.gl/JfUTdc>

⁴⁶ Amnesty International – Kuwait: cases of “disappearance”, incommunicado detention, torture and extrajudicial execution under Martial Law, 1 October 1992, Index number: MDE 17/002/1992, accessible at: <https://goo.gl/nZ1ANp> and, for others, see below.

⁴⁷ Amnesty International - Kuwait: Three Years of Unfair Trials, 24 February 1994, Index number: MDE

In the years and decades since the conflict, Amnesty International has monitored and received information of releases of those convicted by SSC. However, the organization has not received information about such cases since 2005, apart from Salem Hashoush al-'Obeid, whose release – apparently in 2012 - was reported to Amnesty International, but which the organization has been unable to confirm. The cases of historical concern to Amnesty International are set out in the Appendix, below.

RECOMMENDATIONS

Amnesty International recommends that the government of Kuwait:

- Provide precise details of the release dates of the individuals set out in the appendix, below;
- Clarify the status of those released following conviction by SSC, stating whether have been, for example, deported, and if so, to where and under what circumstances.

UNRESOLVED CASES OF ENFORCED DISAPPEARANCE

In the final days of Iraq's occupation of Kuwait from 2 August 1990 to 26 February 1991, at least 407 Kuwaiti and other third-country nationals were transferred from Kuwait to Iraq by Iraqi forces⁴⁸. Hundreds more were disappeared in Kuwait.⁴⁹ Political changes in Iraq in the course of 2003 and 2004 enabled officials to discover 199 bodies of those taken to Iraq⁵⁰.

In paragraph 26 of the LOI, the Committee against Torture requests updated information on progress made in clarifying 62 cases of people detained and disappeared in the aftermath of the 1991 war⁵¹, referred to in paragraph 14 of the June 2011 Concluding Observations of the Committee⁵².

By way of reply, the government of Kuwait states in paragraph 110 of its Third Periodic report that:

“Despite the efforts ceaselessly pursued by Kuwait from the time of the liberation until now, there have been no new identifications of prisoners of war

17/001/1994, accessible at: <https://goo.gl/OFqzme> as well as Kuwait: Five Years of Impunity – Human Rights Concerns since the Withdrawal of Iraqi Forces, 1 February 1995, Index number: MDE 17/001/1996, accessible at: <https://goo.gl/wwJZw7>. See section 4.3.1 in 'Five Years', entitled Flaws in trials before the Martial Law Court and State Security Court for a summary explanation as to how the trials did not minimum international standards for fair trial.

⁴⁸ Amnesty International – Iraq: Secret detention of Kuwaitis and third-country nationals, 8 September 1993 AI Index: MDE 14/005/1993, accessible at: <https://goo.gl/9ODMu0>

⁴⁹ Amnesty International – Kuwait: cases of “Disappearance”, Incommunicado Detention, Torture and Extrajudicial Execution under Martial Law, 1 October 1992, Index number: MDE 17/002/1992, accessible at: <https://goo.gl/zikJNJ>

⁵⁰ Amnesty International – Kuwait: “Disappeared” Appeal Case – George Victor Salsa – the need for closure, 11 January 2005, AI Index MDE 17/001/2005, accessible at: <https://goo.gl/mdGmTH>

⁵¹ Third Periodic Report, CAT/C/KWT/3 of 17 August 2015, available at: <http://goo.gl/zFHnrV>

⁵² See Concluding observations of the Committee against Torture – Kuwait, CAT/C/KWT/CO/2 of 28 June 2011, available at: <http://goo.gl/t8vOfQ>

and disappeared persons from Kuwait since 2004.⁵³”

Amnesty International published a table of the 62 such cases in 1992⁵⁴.

Amnesty International is concerned that Kuwaiti authorities are no longer taking effective action to determine the fate and whereabouts of the disappeared. According to international law and standards, an enforced disappearance shall be deemed continuous or permanent, as long as the fate or whereabouts of the person has not been determined. Where the fate or whereabouts of the victims or their remains is not established, the enforced disappearance continues to be committed, such as the case of George Victor Salsa, now aged 52, whom the International Committee of the Red Cross (ICRC) had located but lost track of in August 1991. In August 1992, a doctor informed his parents that he had seen their son but after that, reports about him became scant and hearsay.

RECOMMENDATIONS

Amnesty International recommends that the government of Kuwait:

- Step up its efforts to determine the fate and whereabouts of those who are still considered to be disappeared;
- Ensure the rights of truth, justice and reparations for all victims, including by establishing a fund for reparations;
- Publicise the precise actions taken by the Kuwaiti authorities in the last 10 years in respect to locating the at least 62 individuals who disappeared in Kuwait in the course of the 1990/1991 conflict;
- Publicise whether and how the government has informed family members of the efforts undertaken in order to find their loved ones.

ISSUES RELATING TO THE DEATH PENALTY (ARTICLE 11; LOI PARAS. 19 AND 34)

Kuwait did not execute anyone between 2007 and 2013 and while the government infrequently implements it, courts continue to hand down and uphold death sentences.

According to the government's Third Periodic Report to the Committee, as of 28 December 2014, the Court of Cassation had handed down 29 death sentences, including five to

⁵³ Third Periodic Report, CAT/C/KWT/3 of 17 August 2015, page 38, available at: <http://goo.gl/zFHnrV>

⁵⁴ Amnesty International published the 62 cases in – Kuwait: Cases of "disappearance", incommunicado detention, torture and extrajudicial execution under Martial Law, 1 October 1992, AI Index MDE 17/002/1992, accessible at: <https://goo.gl/JfUTdc>

women. A total of 16 of the cases related to murder; eight were for drug trafficking; two for torture leading to death and one for kidnapping and forced sexual intercourse. A further 15 were on death row while the government stated that it had executed nine individuals since 2011⁵⁵.

Amnesty International is concerned that vague offences relating to internal and external security; deliberately misleading air or marine navigation; perjury and forced perjury; kidnapping by force; importing or dumping nuclear waste, human trafficking where it results in death and other offence are subject to the death penalty.

Amnesty International regrets that during the review of Kuwait under the UPR in January 2015, Kuwait did not accept the recommendations to abolish the death penalty, and to establish a moratorium on executions with a view to abolishing the death penalty.

Amnesty International echoes the November 2011 appeal of the UN Human Rights Committee for the Government of Kuwait to establish a formal moratorium on the death penalty.

RECOMMENDATIONS

Amnesty International recommends that the government of Kuwait:

- Immediate commute to prison terms the sentences of all those on death row;
- Halt further confirmation by the Court of Cassation of death sentences;
- Remove the death penalty as an option for all acts defined as criminal that do not have, as a direct result, a lethal outcome;
- Conduct a review of the efficacy of the death penalty with a view to its abolishment;
- Consider acceding to the Second Optional Protocol to the International Covenant on Civil and Political Rights.

⁵⁵ Third Periodic Report, CAT/C/KWT/3 of 17 August 2015, pages 28-30, available at: <http://goo.gl/zFHnrV>

APPENDIX: CASES OF PROLONGED DETENTION FOLLOWING TRIAL UNDER MARTIAL LAW BETWEEN 1991- 1994

No.	Name	DoB	Origin	Date of arrest / conviction / release
1	Kettab Hakem Aqalleh	1972	Iraq	11 October 1992
2	Malek Sultan Murdhi al-Mutairi	5 January 1951	Bidun (Kuwait)	14 March 1991
3	Salem Hashoush al-'Obeid		Iraqi	14 March 1991; Reportedly released in 2012
4	Monkhi Jaber			8 June 1991
5	Juma Khalil Mohammad al-'Aboudi			3 January 1991
6	Mohsen Shoukat		Iraqi	26 February 1991
7	Qassem Saleh Bashir 'Abdallah		Iraqi	15 March 1991 Late Feb-May 1991
8	Sami Mocar Hamad Kezzar al-			8 March 1991

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