



Universal Periodic Review: Kuwait

Second Cycle

Submission to the summary of stakeholders' information

Alkarama Foundation – June 2014

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1. This contribution falls under the second cycle of the Universal Periodic Review of the general situation of human rights in Kuwait in light of the recommendations given to the country in 2011.

1 General Context and Recent Developments

2. In 2011, Kuwait experienced significant popular demonstrations, particularly by the "Bidun," who were violently repressed by the authorities who reacted by announcing several social reforms. Spurred by the demonstrations, the government resigned on 31 March, but the Emir denied its resignation.

3. The following November, 15,000 protestors occupied the Parliament to again call upon the government to resign and accused it of corruption. When the government once again resigned, the Emir allowed it to do so and he appointed a new Prime Minister. Following these events, Parliament was dissolved at the end of the year.

4. The elections of February 2012 were won by the opposition, which carried 34 seats out of 50. Obaid Wasmi and Mussallam Al Barrak, two leaders of the opposition, were also elected. The latter was arrested on 15 March.

5. The new Parliament was dissolved by the Emir, which led to a new wave of demonstrations. In October 2012, in the run-up to the December elections, the Emir introduced an amendment to the electoral law that set off yet another round of protests that included tens of thousands of people and caused hundreds of injuries and arrests. Mr Al Barrak was arrested again and freed a few days later under pressure from the public.

6. New protests were banned by the authorities in November 2012, and the website of MP Musallam Al Barrak was blocked. The opposition turned to social media such as Twitter to express its dissatisfaction and claims of arbitrary arrests followed by convictions, including for "insulting the Emir."

7. On 1 December 2012, legislative elections were held after the new electoral law was challenged. The elections saw the lowest voter turnout since the introduction of popular suffrage following the call for a boycott by the opposition.

8. The authorities have carried out a campaign of repression and have arrested and prosecuted protestors *en masse*. Sentences were also carried out to repress the freedom of expression on the Internet.

9. In June 2013, the Constitutional Court finally invalidated the legislative elections of December 2012 but confirmed the constitutionality of the amendment to the electoral law¹. New elections led to a redistribution of seats in Parliament following a higher rate of participation by the opposition².

1.1 Scope of International Obligations

10. Kuwait is party to several international human rights instruments, among them the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, and the Convention against Torture. The state has not, however, ratified the additional protocols nor made declarations under Articles 21 and 22 of the Convention against Torture.

11. Recommendations:

- a. Ratify the above protocols and make declarations under Articles 21 and 22 of the Convention against Torture.
- b. In view of the difficulties experienced by stateless people in the country, ratify the 1954 Convention Relating to the Status of Stateless Persons.

¹ Nathalie Gillet, RFI, [La Cour constitutionnelle du Koweït invalide les dernières élections législatives](#), 16 March 2013 (accessed 2 June 2014).

² Yasser Al ayyat, RFI, [Koweït : Les chiïtes grands perdants des dernières élections législatives](#), 28 July 2014 (accessed 2 June 2014).

1.2 Constitutional and Legal Context

12. The Constitution stipulates that "the system of government must be democratic." Kuwait is a hereditary monarchy governed by the Al Sabah family. The Emir appoints the heir to the throne, who must be approved by a majority of Parliament.

13. The separation of powers remains illusory. The Emir holds executive and legislative powers, appoints ministers, and can recall a Parliament elected by the people. This power constitutes a serious contradiction to the principle of democracy proclaimed by the Constitution.

14. Recommendations:

- a. Institute a true separation of powers and decrease the power of the Emir to dissolve a Parliament elected by the people.

1.3 Institutional and Infrastructural Context of Human Rights

15. Parliament is made up of one chamber, the National Assembly, which includes 50 members elected by universal suffrage for four-year terms. It has the power to dismiss the Prime Minister, or any member of the Council of Ministers of his or her functions.

16. Alkarama notes that Kuwait still does not have a national human rights institution in line with the Paris Principles.

17. There is a High Commission of Human Rights under the Ministry of Justice; it is composed of representatives of the executive branch, which cannot be considered independent.

18. There is also a commission mandated to remedy the issue of statelessness before 2014; no notable result has been credited to the commission since its creation, as noted by the Committee on Economic, Social and Cultural Rights³.

19. Recommendations:

- a. Create a national human rights institution that is independent and conforms to the Paris Principles.

2 Promotion and Protection of Human Rights

2.1 Cooperation with the Relevant Human Rights Mechanisms

20. Kuwait sent an open letter on 12 May 2010 to the Special Procedures inviting them to the country. It has not, however, received representatives from the Special Procedures bodies since the visit of the Special Rapporteur on Racism in 1996.

21. Recommendations:

- a. Send direct invitations to pertinent Special Procedures bodies according to the situation of the country and send an invitation to the Special Rapporteur on Torture, the Working Group on Arbitrary Detention, and the Special Rapporteur on the Rights of Minorities.

2.2 Respect of International Human Rights Obligations

2.2.1 Equality and non-discrimination

22. The "Biduns" (stateless people) are considered illegal residents and are constantly victims of discrimination. Estimated to include 120,000 people, they have lived in the country for more than a century but continue to be the subject of systematic violations of their most fundamental rights.

23. Despite the acceptance of the recommendation from Lebanon and Austria to improve the situation of the Bidun and "grant Kuwaiti citizenship to those who meet the applicable conditions and criteria" and "a right of residence, by issuing identity papers and permitting them to have access to public health and education systems," the situation of stateless persons has not been regulated or improved since the last Periodic Review.

³ Comité des droits économiques, sociaux et culturels, 51^{ème} session, *Observations finales concernant le deuxième rapport périodique du Koweït*, 19 December 2013, E/C.12/KWT/CO/2, §9.

24. The law on nationality guarantees the right to nationality of every stateless person whose ancestors lived in the state territory since 1920⁴. Nonetheless, Biduns who gain access to nationality are rare. There is also a large number of pending applications for nationality that remain unanswered after years of waiting⁵.

25. In March 2013, Parliament adopted a draft bill that aimed to guarantee citizenship to 4,000 foreigners. Initially announced as a response to the calls of the Bidun population, the project was diverted from that goal by replacing the word "stateless" with "foreign"⁶.

26. Additionally, the Biduns are the object of serious violations of their civil, economic, and social rights. Kuwait also seriously violates its obligations under the two international Covenants to which it is a party. The majority of Biduns are deprived of identification documents or passports to travel, in violation of the principle of freedom of movement guaranteed by Article 12 al. 2 of the Covenant.

27. They have no access to free education nor to several medicines that are limited to people who possess identification documents, or less than 30 per cent of the stateless population⁷.

28. **Recommendations:**

- a. Extend the scope of the principle of equal treatment instituted by Article 29 of the Constitution in conformity with Article 26 of the Covenant, and take concrete measures to end the discrimination against the Biduns.

2.2.2 Right to Life, Liberty, and Personal Security

29. Since the last Review, we have found that the practice of torture was never eradicated in places of detention. It is all the more concerning that minors have also been subjected to abuse in prisons.

30. The Kuwaiti Penal Code bans torture and imposes a punishment of five years in prison or more and/or a fine for those responsible⁸. The definition of torture in Kuwaiti national law is restrictive and does not conform to Article 1 of the Convention.

31. It is equally concerning that serious discriminations are inflicted on torture victims based on their nationality and their political opinions. In effect, complete impunity is bestowed upon those responsible for torture practiced against non-Kuwaitis or political opponents.

32. In 2011, Mohamed Al Maymouny Al Mutairi, a Kuwaiti citizen arrested for the sale of alcohol, was tortured to death by police. His death caused an uproar in the country until the resignation of Jaber Khaled Al Sabah, the Minister of the Interior at the time, who declared that "there is no honour in being in charge of a ministry that tortures Kuwaitis"⁹. On 17 June 2013, the Supreme Court condemned the torturers to death¹⁰. The procedure for such cases is different, however, when it relates to the torture of Biduns or political opponents. The same rigorous standards are not observed by the investigation and certain cases of torture or death in prison of several political opponents or non-Kuwaiti citizens have been allowed.

33. It is pertinent here to recall the case of Khalif Al Anzi, whose death was allegedly due to a "sudden loss of blood pressure" according to official reports. Despite the apparent signs of torture on the body of the victim, the authorities have never taken any measure to bring him justice nine years after his death.

34. Many other cases of torture were reported over the last years. Abdulhakim Al Fadhli was arrested in February 2014 during a protest and was tortured by agents of the state security services. After having complained to the Prosecutor, Mr Al Fadhli was sent back to prison and no measure was taken to investigate his allegations.

⁴ Article 1 of Loi sur la nationalité de 1959.

⁵ Refugees International, [Kuwait: Bidoon Nationality Demands Can't Be Silenced](#), 03 March 2012 (accessed 27 March 2014).

⁶ BBC News Middle East, [Kuwait MPs pass law to naturalise 4,000 stateless Bidun](#), 20 March 2013 (accessed 27 May 2014).

⁷ Refugees International, [Kuwait: Bidoon Nationality Demands Can't Be Silenced](#), 03 March 2012 (accessed March 2014).

⁸ Article 53 of Law n° 31 of 1970, amendment of Criminal Code n° 16 of 1960.

⁹ Mona Kareem, Al-Akhbar English, [Torture in Kuwait: Who deserves It ?](#), 5 March 2013 (accessed 27 May 2014).

¹⁰ Ahram Online, [Kuwait court sentences police to death over torture](#), 17 June 2013 (accessed 26 May 2014).

35. During the last Review of Kuwait, Switzerland recommended the withdrawal of reservations to the Convention against torture as well as accession to the Optional Protocol. We suggest reiterating this recommendation, which was previously refused by the state party.

36. During the UPR of 2011, no recommendation relative to arbitrary detention was made. We believe that arbitrary detention continues to be a common practice and constitutes a form of repression of rights and liberties guaranteed by international and national human rights instruments.

37. Indeed, arrests and arbitrary detentions are used in particular to repress the exercise of the freedom to peacefully protest and the right to freedom of opinion and expression. The majority of victims of these violations were arrested in peaceful demonstrations or following posts on social media (cf. *infra*).

38. Following the recent protest movements, the authorities have reinforced their practice of arbitrary detention with the aim of dissuading any person from expressing criticism or calling into question the legitimacy of state institutions, in particular that of the Emir. These arbitrary sentences are pronounced, the most serious of which was against Houda Al Ajmi, who was sentenced to 11 years in prison because of a Tweet¹¹.

39. Recommendations:

- a. Put an end to the practice of torture, open inquiries into allegations of torture, and prosecute those responsible.
- b. Free all those who are detained arbitrarily for having exercised their fundamental rights and freedoms.

2.2.3 Freedom of Expression, Association, and Peaceful Assembly and the Right to Participate in Public and Political Life

40. The state of freedom of expression and freedom of the press has significantly deteriorated since the last Review. The state is not committed to addressing violations of this liberty, which is essential to any state that claims to possess rule of law.

41. Since the last Review of Kuwait, the law on the press and publications, which was already restrictive, was expanded by another "law on the protection of national unity," which instituted additional restrictions on freedom of expression and extensively criminalised a series of acts relevant to the exercise of freedom of expression.

42. Cases of attacks on freedom of expression were more and more frequent, notably concerning freedom of expression on the Internet. The symbolic and most serious case in terms of the sentence is that of Houda Al Ajmi, sentenced on 10 June 2013 to 11 years in prison¹² for Tweets that were judged insulting to the Emir. The accusation of "insulting the person of the Emir" has become a regularly invoked pretext to systematically convict any person who criticises politics or the government.

43. Musallam Al Barrak, a former MP, was sentenced to five years in prison for insulting the Emir after a speech in which he expressed his now famous slogan, addressed to the Emir: "We will not let you", in response to the amendment to the electoral code that was unfavourable to the opposition. This slogan has since become widely used in demonstrations.

44. On 18 April 2013, the journalist Sulaiman Bin Jasim¹³ was arrested while he was covering a protest in support of Mr Al Barrak in Kuwait City. He was wounded by rubber bullets and physically assaulted by police officers. The right of freedom of expression and opinion, however, also includes the right to collect information and share it with others.

45. Arrests due to peaceful protests have multiplied during the last few years, in particular among the "Biduns" who are systematically the objects of violent interventions on the part of the security services.

¹¹ Le Monde, [Une Koweïtienne condamnée à 11 ans pour des tweets contre l'émir](#), 10 June 2013 (accessed 20 May 2014).

¹² *Idem*.

¹³ Front Line Defenders, [Koweït : Arrestation et détention arbitraire du défenseur des droits de l'homme M. Sulaiman Bin Jasim](#), 22 April 2013 (accessed 26 May 2014).

46. One of the most recent cases was that of Mr Abdulhakim al Fadhli, arrested several times because of his participation in peaceful protests over the last years. In May 2012, Alkarama submitted an urgent appeal to the Special Rapporteur on the Right to Peaceful Assembly and Association¹⁴ on his case following his persecution for taking part in the protests. He was arrested again recently for the same reasons. He has testified to being brutally tortured by the security services, but no investigation has been opened to follow up on these allegations. Following a hunger strike, Mr Al Fadhli was released on bail on 10 April 2014 pending his trial for "inciting Biduns to protest" and "provoking riots"¹⁵.

47. On 2 October 2012, a protest during the National Day of Non-Violence organized in the town of Tayma was violently dispersed by the security forces. Alkarama submitted to the Special Procedures of the United Nations the cases of Messrs Humam Mubarak, Bassel Al Fadhli, and eight other people who were arrested for participating in the demonstration¹⁶.

48. Freedom of association is established by Article 43 of the Kuwaiti Constitution, which guarantees to all the right to form an association " on a national basis and by peaceful means under the conditions provided for by law."

49. Kuwait has several political groups and parliamentary blocs that act as de facto political parties, which are formally banned¹⁷ despite the guarantees of Article 43 of the Constitution.

50. Recommendations:

- a. Put an end to the repression of peaceful demonstrations and respect its obligations under international and national instruments for the protection of human rights.
- b. Take necessary measures to address the violation of freedom of expression and ensure that the freedom of the press and media are regulated by applying exceptions restrictively and respecting the principle of proportionality in conformity of Article 19§3 of the Covenant on Civil and Political Rights.

¹⁴ Alkarama, [Kuwait: Arbitrary detention of Bidun rights activist Abdulhakim Al Fadhli](#), 9 May 2013 (accessed 26 May 2014).

¹⁵ Front Line Defenders, [Update : Kuwait – Release of human rights defenders MrAbdulhakim Al Fadhli](#), 15 April 2014 (accessed 26 May 2014).

¹⁶ GlobalVoices, [Koweït: Assaut policier et arrestations après les manifestations des apatrides](#), 21 December 2011 (accessed 4 June 2014).

¹⁷ Helen Ziegler & associates, [The Political System of Kuwait](#), (accessed 2 June 2014).