



## **Kuwait**

**Submission to the List of Issues to be taken up in connection  
with the consideration of Kuwait's third periodic report by the  
Human Rights Committee**

**Alkarama Foundation – 5 August 2015**

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## 2. Introduction

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In the context of its contribution to the third review of Kuwait by the Human Rights Committee, Alkarama would like to provide suggestions of questions for the review of the State Party to be held in June/July 2016. This contribution is based on information received by Alkarama on individual cases of violations as well as on an analysis of the law and practice of the State party regarding its conventional obligations under the International Covenant on Civil and Political Rights (ICCPR).

Since a political crisis triggered mass protests and ultimately the resignation of the government in 2011, Kuwaiti officials have repeatedly invoked vaguely worded provisions of the Penal Code and the national security law to suppress freedom of expression. Indeed, since then, Kuwait has witnessed political turmoil, largely stirred by a major corruption scandal that surfaced involving bribes and funds allegedly transferred to members of Parliament in return for voting along government lines. In that wake, the parliamentary elections of February 2012 produced a victory for the opposition. In June, the Constitutional Court exclusively composed of the Emir's appointees, annulled February's poll and dissolved the new Parliament. Again in October 2012, the Emir dissolved the Parliament and called for new elections to be held in December. He also issued a decree to change the electoral process<sup>1</sup> that caused opposition groups to boycott the following elections in protest. Opposition groups claimed that the new electoral law favoured pro-government majorities and that the decision itself was in violation of the constitution since Kuwaiti constitutional law provides that such a change can only be taken by a legislative decision.

In response to these protests, the government used disproportionate force, including excessive use of tear gas, sound bombs, beatings and arbitrary arrests, in order to disperse peaceful crowds on several occasions between October and December 2012.<sup>2</sup> Since then, the authorities increasingly use excessive force to crackdown on peaceful assemblies and to silence dissenting opinions and critics. This crackdown has been fostered by new laws adopted in order to curb freedom of expression and to allow a stricter persecution via hefty prison sentences for both Kuwaiti citizens and the "Bidoon" (stateless people) for peacefully voicing critique. Whilst discrimination of the Bidoon persists, the Kuwaiti authorities have since 2014 also resorted to the revocation of citizenship as a means to stifle criticism.

## 3. Concerns over the independence of the judiciary

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While Kuwait is the first country in the Gulf which adopted a Parliament and a Constitution, its judiciary turned to beex ante only partially independent as judges are appointed by the Emir acting on the advice of the Supreme Judicial Council. However, if the judges were long viewed as relatively independent, the overriding powers of the executive over the judiciary have strongly been felt in recent jurisprudence, which goes along with the dominant pursuit to silence political dissent since 2011.

The lack of independence of the judiciary is most clearly exemplified by the case of Dar Al Watan Publishing and Dar Al Watan TV channel, that had their license removed and premises

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<sup>1</sup> European Parliament Policy Briefing, Kuwait's Political Crisis deepens, 2013, [http://www.europarl.europa.eu/RegData/etudes/briefing\\_note/join/2013/491461/EXPO-AFET\\_SP%282013%29491461\\_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/briefing_note/join/2013/491461/EXPO-AFET_SP%282013%29491461_EN.pdf) (accessed on 4 August 2015).

<sup>2</sup> Human Rights Watch, Kuwait: Rights Setbacks Amid Political Crisis, 2013, <https://www.hrw.org/news/2013/02/12/kuwait-rights-setbacks-amid-political-crisis> (accessed on 4 August 2015).

shut down by administrative decision earlier in 2015 due to the liberal style of reporting of both entities. The executive dismissed two judicial rulings that declared the administrative decision invalid and neither reissued the company its licenses nor allowed it to resume its business. Alkarama referred the case<sup>3</sup> to the Special Rapporteur on Freedom of Expression arguing that the executive decision not only violated domestic provisions but also Kuwait's conventional obligations under article 19 and 21 of the ICCPR.

**Questions:**

1. *What are the steps taken to ensure that the judiciary remains independent and that its decisions are put under the authority of the Ministry of Justice alone?*
2. *Is the State party willing to review the situation of both Dar Al Watan Publishing and Dar Al Watan TV channel in order to end the violations of its conventional obligations and ensure a non-repetition of these violations?*

**4. Persistent Discrimination against the Bidoon (Articles 2, 16, 24 & 26)**

Kuwait counts about 120,000 stateless persons, known as the Bidoon whose civil and political rights are being infringed on a multitude of levels, crosscutting several different violations of the ICCPR. The State does not recognise the right of these long-time residents to Kuwaiti nationality. This situation has far-reaching consequences on entire families since children of the Bidoon are also stateless. As a consequence of their statelessness, the Bidoon cannot freely travel in and out of Kuwait since the government issues them one-time travel documents at its discretion. The Bidoon cannot participate in elections nor as candidates, neither as voters. As non-Kuwaitis, they also face restrictions in employment, health care, education, marriage and family law. Furthermore, the Bidoon have no right to residency in Kuwait, and may be subject to deportation if found guilty of committing certain crimes, a situation that entails in reality indefinite administrative detention.

Over the years, the Kuwaiti authorities have created different categories of Bidoon, who are treated differently by the government. Moreover, if in 2011, the government granted the Bidoon some benefits and services such as free health care and education, the benefits differed from those granted to Kuwaitis, as well as registration of births, marriages and deaths. Furthermore, various Bidoon have complained that they still face administrative obstacles to access these benefits.

**Questions:**

1. *Does the State party plan to eliminate those obstacles, so that all Bidoon enjoy access education, health care and legal recognition in equality with Kuwaiti citizens?*
2. *Does the State party plan to provide long term resident Bidoon and their children access to the Kuwaiti citizenship?*

In 2013, the Parliament passed a law to grant 4000 "foreigners" citizenship, but Bidoon activists confirm that this did not benefit their community, but instead facilitated the naturalisation of children born to Kuwaiti mothers and foreign fathers. The Central Agency for

<sup>3</sup> Alkarama, *Kuwait: Authorities Close Dar Al Watan Newspaper in Retaliation for Liberal Editorial Line ; Al Watan TV Risks Same Fate*, 1 April 2015, <http://en.alkarama.org/kuwait/1643-kuwait-authorities-close-dar-al-watan-newspaper-in-retaliation-for-liberal-editorial-line-al-watan-tv-risks-same-fate> (accessed on 4 August 2015).

Remedying Illegal Residents' Status established in 2010, known as 'the Bidoon Committee', the administrative body responsible for reviewing Bidoon claims to nationality, substantiated that no Bidoon benefitted from the law that year.<sup>4</sup>

In November 2014, the Undersecretary of State for the Interior announced that all Bidoon would be given economic citizenship in the archipelago of Comoros<sup>5</sup> as well as certain domestic benefits, notably a residence permit in Kuwait, which includes free education and healthcare, and the right to work. According to the authorities, this measure should become effective upon the opening of the Comoros Embassy in Kuwait, scheduled for 2015.

### Question:

1. *Is the State party willing to adopt bona fide sustainable measures to set an end to the discrimination against the Bidoon including full citizenship?*

Furthermore, since early 2011, members of the Bidoon community have frequently taken the streets to ask for Kuwaiti citizenship and access to public services. In its State report, Kuwait declares that: "since peaceful assembly is a form of expression of opinion, Kuwaiti law does not discriminate in this regard. Hence, illegal residents enjoy the right to peaceful assembly to express their views, provided that they observe the rule of law."<sup>6</sup> However, this statement is directly contradicted by Article 12 of the 1979 Kuwaiti Public Gatherings Law that bars non-Kuwaitis from participating in public gatherings.

Indeed, Alkarama has documented numerous cases of violent dispersal of Bidoon protests in which several hundred members of the Bidoon community were arrested and detained, as was the case with Abdullah Atallah and Yousef al-Zhairi, who had taken to the streets on 18 February 2014 to mark the third anniversary of the Bidoon protests. Another prominent example is this of Bidoon human rights activist Abdulhakim Al Fadhli, who was arrested many times because of his participation to peaceful protests. On 29 January 2015, the Criminal Court sentenced Mr Al Fadhli to one year in prison with hard labour on charges of "inciting Bidoon in Kuwait to protest and cause chaos". The Court also issued a deportation order that will come into effect at the end of his prison sentence.<sup>7</sup>

In the same vein, Alkarama is concerned over the indefinite administrative detention of Bidoon in retention centres for non-citizens. Indeed, Kuwaiti law provides that non Kuwaiti citizens who commit a crime and are charged and sentenced, can be expelled to their country of citizenship after serving their sentence. Since Bidoon are not considered as Kuwaiti citizens, the authorities have been using this provision against them, mainly as retaliation for actively claiming their rights. After serving their sentences, Bidoon are being kept in retention centres in order to be expelled as "foreigners". From there, two scenarios are possible: the individual has another citizenship given to him arbitrarily by the authorities and risks being sent to the country of this other citizenship or, the individual has not been given any other citizenship by the authorities, and risks being detained indefinitely in a retention

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<sup>4</sup> Human Rights Watch, Kuwait: UPR Submission 2014, 11 January 2015, <https://www.hrw.org/news/2015/01/11/kuwait-upr-submission-2014> (accessed on 4 August 2015).

<sup>5</sup> Kuwait's stateless Bidun 'offered Comoros citizenship', BBC News, 10 November 2014, <http://www.bbc.com/news/world-middle-east-29982964> (accessed on 4 August 2015).

<sup>6</sup> Kuwait Periodic Report, p.22.

<sup>7</sup> OHCHR, Communication from the Mandates of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; the Special Rapporteur on the rights to freedom of peaceful assembly and of association; the Special Rapporteur on the situation of human rights defenders; and the Special Rapporteur on the independence of judges and lawyers, 25 February 2015, [AL\\_Kuwait\\_25.02.15\\_%281.2015%29.pdf](AL_Kuwait_25.02.15_%281.2015%29.pdf) (accessed on 4 August 2015).

centre. Since foreign citizenships given to Bidoon are not effective but rather “fictional”, even individuals who have an “attributed citizenship” can be kept indefinitely since the country of their citizenship will not recognise the individuals effectively as their national. This situation is a direct consequence of inequality deriving from the denial of Kuwaiti citizenship to individuals who have been in Kuwait for several generations and do not have any attachment to another country.

**Question:**

1. *Is the State party taking concrete measures to ensure the right to peaceful assembly without fear of persecution or detention for all citizens, including the Bidoon and repeal Article 12 of the 1979 Kuwaiti Public Gatherings Law?*

## **5. Revocation of Citizenship to Neutralise Political Opponents (Articles 2, 12 & 24)**

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Over the past year, Alkarama has observed with concern that the Kuwaiti authorities have stripped at least 33 people of their citizenship for various reasons, including some government critics for “acts aiming to undermine the country’s security and stability, bringing harm to its institutions”. Indeed, this worrying phenomenon constitutes the latest form of reprisal against all forms of criticisms towards the government.

Article 13 of the 1959 Law 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(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.

Alkarama documented the case of Jaber Al Shammari, the owner of both television channel Al-Youm and the daily Alam Al Youm. On 21 July 2014, a Parliamentary Decree (No. 185/2014) ordered the revocation of his nationality. His four children were thus also left without nationality. The next day, the two pro-opposition media companies were closed by the authorities since, under the Law on Press and Audio-Visual Media, the owner of media channels must be of Kuwaiti nationality. Other prominent examples include Abdullah Al Barghash, a former opposition leader in parliament; Nabil Al Awadhi, a conservative cleric widely known for his TV talk shows; and Saad Al Ajmi, the spokes man for Musallam Al Barrak, a leading oppositional figure.

The United Nations Human Rights Committee, which provides the definitive interpretation of the ICCPR, has interpreted its Article 12 to mean that no state may ban or exile its citizens on the basis of repressive domestic law. The Kuwaiti law’s provisions conflict directly with the ICCPR, whose Article 12 states unequivocally that, “No one shall be arbitrarily deprived of the right to enter his own country.”<sup>8</sup>

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<sup>8</sup> Human Rights Watch, *Kuwait: 5 Critics Stripped of Citizenship*, 10 August 2014, <https://www.hrw.org/news/2014/08/10/kuwait-5-critics-stripped-citizenship> (accessed on 4 August 2015).

### **Questions:**

1. *Can the State party comment on the individual cases cited above and explain which steps it is willing to take in order to put an end to the violations, i.e. giving back the Kuwaiti citizenship to the victims and their families, and ensure their non-repetition?*
2. *How does the State party plan to adhere to its obligations under Article 12 of the ICCPR with regard to the practice of citizenship stripping?*
3. *What are the legal remedies provided for by the State party for persons stripped of their nationality?*

## **6. The Right to Freedom of Opinion and Expression (Article 19)**

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With regard to the right to freedom of opinion and expression, Alkarama is concerned about the deteriorating state of affairs in both legal and factual terms that the increased political persecution against dissenting voices poses.

Alkarama has witnessed an alarming trend of judicial persecution for criticising the State or its institutions and offending the Emir allowed by Article 25 of the Kuwait Criminal Code. The ICCPR states in its article 19 that any restrictions on speech can only be for legitimate reasons and only to the extent strictly necessary. Alkarama believes that this Kuwaiti provision and the practice based on it directly violates the ICCPR.

On 18 May 2015, the Kuwaiti Court of Cassation sentenced former Member of Parliament, Musallam Al Barrack, to two years imprisonment on charges of "insult to the Emir", an accusation that has become a regular pretext to convict any person who criticises the government's policy.<sup>9</sup>

Kuwait's crime of offending the Emir is essentially a defamation charge. Former Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Mr Abid Hussain, has clearly stated that imprisonment is no legitimate sanction for defamation.<sup>10</sup>

### **Questions:**

1. *Can the State party comment on the arbitrary detention of former MP Musallam Al Barrack and explain the steps it is willing to take in order to put an end to the violation committed against him as well as ensure reparation and non-repetition?*
2. *What measures is the State party taking to decriminalise defamation and stop punishing political opponents with hefty prison sentences and especially by repealing Article 25 of the Kuwait Criminal Code?*

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<sup>9</sup> Alkarama, *Kuwait: Former MP Gets 2 Years Prison Sentence for Denouncing the Emir's Arbitrary Politics*, 9 July 2015, <http://en.alkarama.org/kuwait/1775-kuwait-former-mp-gets-2-year-prison-sentence-for-denouncing-the-emir-s-arbitrary-policies> (accessed on 4 August 2015).

<sup>10</sup> Promotion and protection of the right to freedom of opinion and expression, UN Doc. E/CN.4/1999/64, 29 January 1999, para. 28.

*3. Is the State party considering legal reform to bring its domestic law in conformity with the rights prescribed by Article 19 of the ICCPR?*

Furthermore, on 16 June 2015, the National Assembly passed a new Cybercrime Law which contains several dispositions that reinforce the ongoing crackdown on peaceful criticism. Article 6 extends Article 25 of the Kuwait Criminal Code by providing for prison sentences for “criticising the Emir on the Internet”. Article 7 imposes a punishment of up to 10 years in prison for using the Internet to attempt to “overthrow the ruling regime or incite the change of the system”. The cybercrime law’s vague provisions surpass the strict conditions for limitations on freedom of expression set by the ICCPR and give way to persecute political speech on the cyber space.<sup>11</sup>

Furthermore, Kuwait’s new Communication Law of 2014 (No.37/2014) immensely curtails the freedom of the press. Article 15, for instance, provides a sentence of three years imprisonment for “intentionally broadcasting news, statements, or false or malicious rumours [...] that harm the national interest of the State”. The Commission for Mass Communications and Information Technology established by this law, is mandated with supervising technical issues, but also with controlling the content of the information and can grant or refuse licenses without giving any reason and without the possibility to appeal the decision.

An example of the enlargement of executive power over the control of press and publications is the closure of Dar Al Watan Newspaper and Al Watan TV Channel earlier this year in retaliation for its liberal editorial. An administrative decision issued by the authorities revoked the publishing and broadcasting license of both entities in early January and June 2015 and was upheld even though it was rendered invalid by judicial decision in two instances.<sup>12</sup>

**Questions:**

- 1. Will the State party remove the domestic provisions which harshly criminalise freedom of expressions in the cybercrime law before the final approval by the Emir and its entering into force?*
- 2. Does the State party consider amending the Communications Law (No.37/2014) to preserve relative freedom of the press existing in Kuwait?*
- 3. Can the State party explain if it is willing to cancel the administrative decisions taken against Dar Al Watan Newspaper and Al Watan TV Channel, to give them back their publishing and broadcasting license as well as to allow them to re-open their premisses and publish/broadcast again?*

Furthermore, Kuwait, whose Parliament had previously rejected the agreement in 2014, is now the last of the six Gulf Cooperation Council (GCC) member countries to ratify the November 2012 GCC Security Agreement. Vague provisions of the GCC joint security agreement give way to suppress free expression and undermine privacy rights of citizens and residents and criminalise criticism of Gulf countries or rulers.

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<sup>11</sup> Human Rights Watch, *Kuwait: Cybercrime Law a Blow to Free Speech*, 22 July 2015 <https://www.hrw.org/news/2015/07/22/kuwait-cybercrime-law-blow-free-speech> (accessed on 4 August 2015).

<sup>12</sup> Alkarama, *Authorities Close Dar Al Watan Newspaper in Retaliation for Liberal Editorial Line; Al Watan TV Risks Same Fate*, 1 April 2015, <http://en.alkarama.org/kuwait/1643-kuwait-authorities-close-dar-al-watan-newspaper-in-retaliation-for-liberal-editorial-line-al-watan-tv-risks-same-fate> (accessed on 4 August 2015).



There are a number of cases that illustrate the implementation of this agreement since the beginning of 2015, such as the arrest on 6 January of a former lawmaker, Saleh Al Mulla, for insulting Kuwait's Emir and Egyptian President Abdel Fattah al-Sisi in tweets; the issuance of a warrant on 27 January against human rights activist Nawaf Al Hindal, while he was out of the country, over tweets about Saudi Arabia's late King Abdullah; and the arrest on 28 January of another activist, Mohammed Al Ajmi, for insulting King Abdullah on Twitter.<sup>13</sup>

**Questions:**

1. *Can the State party comment on the individual cases of violations mentioned in the above paragraph and explain the steps it is willing to take in order to put an end to the violations described, ensure redress and non repetition ?*
2. *What are the measures taken to ensure that the provisions of the GCC security agreement are solely applied to prevent violent security threats as opposed to crackdown on political dissent?*

## **7. The Right to Freedom of Assembly (Article 21)**

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Although the right to peaceful assembly is enshrined in Kuwait's Legislative Decree No. 65/1979 of its Public Gathering Law – while restricting to in the law itself –,<sup>14</sup> through the last years, Alkarama has witnessed the violent crackdown of numerous demonstrations and the increase of excessive use of force against peaceful protesters.

The first large wave of demonstrations hit the country in 2012, when Kuwaitis demonstrated against the dissolution of Parliament, the corruption scandal and to boycott the amendments to the parliamentary election law. General demands were voiced for judicial reform and to demand a more rigorous government response to allegations of corruption, mismanagement and an unrepresentative parliament. Amongst other means, Kuwaiti security forces used stun grenades and tear gas to disperse the protesters. In fear of greater demonstrations to follow, the government even banned public gatherings of more than 20 people in October 2012 and given the security forces authority to disperse any protests.<sup>15</sup>

**Question:**

- *What measures does the State party take to guarantee the right to freedom of peaceful assembly as prescribed by Article 21 of the ICCPR?*

Moreover, protesting against the multiple discriminations they are subjected to, the Bidoon have been demonstrating regularly for the last three years to ask for Kuwaiti citizenship and access to public services. Whereas peaceful assemblies are systematically dispersed with excessive force, since 2011, several hundreds of peaceful protesters have been injured and arrested, some of whom remain imprisoned today, many of whom are typically charged with the offence of "inciting rebellion" and "calling for illegal assemblies."

**Question:**

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<sup>13</sup> Human Rights Watch, *Kuwait: Crackdown on Free Speech*, 3 February 2015, <https://www.hrw.org/news/2015/02/03/kuwait-crackdown-free-speech> (accessed on 4 August 2015).

<sup>14</sup> Cf. Section 4 of this contribution "Persistent Discrimination against the Bidoon" citing article Article 12 of the 1979 Kuwaiti Public Gatherings Law that bars non-Kuwaitis from participating in public gatherings.

<sup>15</sup> Aljazeera, *Kuwait warns of harsher crackdown on protests*, 1 November 2012, <http://www.aljazeera.com/news/middleeast/2012/11/201211114229930360.html> (accessed on 4 August 2015).

1. *How is the practice of arresting Bidoon, who are protesting for their basic social and political rights, and persecuting them under charges of "calling for illegal assemblies" compatible with Article 21 of the ICCPR?*

Finally, in July 2014, Alkarma has documented<sup>16</sup> the mass arrest and arbitrary detention of 45 demonstrators, who protested between 2 and 7 July against the arrest of leading oppositional figure and former MP Musallam Al Barrak. During these demonstrations, police forces fired rubber bullets aiming at the chest and upper part of demonstrators bodies while legal standards operating procedures limits the use of this weapon to the legs of the demonstrators. The security services employed excessive use of force and utilised sound bombs and tear gas as well as nitrous oxide gas. They also severely beat up several demonstrators causing them severe injuries.

### **Questions:**

1. *Can the State party explain what are the Standard Operating Procedures related to law and order operations especially crowd control and explain how it is in line with the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials?*
2. *What measures does the State party take to ensure that security forces do not use disproportional force to control or disperse demonstrations?*
3. *Are spontaneous assemblies recognised in law and exempted from prior notification?*

## **8. Right to Privacy and compulsory indiscriminate DNA collection (Article 17)**

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Alkarama is deeply concerned about the passing of the law No. 78/2015 regarding DNA samples that consists in 13 articles and which provides for general and compulsory DNA collection<sup>17</sup>. The law came into force after its publication in the Official Gazette of 2 August 2015. Its Article 3 sets a deadline of one year to implement the dispositions of the new law from the date of its publication.

The Law is part of the counter-terrorism legal framework and constitutes, according to the authorities, a response to the deadly terrorist attack of 26 June 2015 against the Shia mosque of Imam Sadiq which killed 27 people and wounded 227 in Kuwait-city. Alkarama believes the law constitute a violation of the right to privacy enshrined in Article 17 of the ICCPR and should be promptly repealed. To date, Kuwait is the only country to require nationwide compulsory DNA testing setting therefore a dangerous precedent in international law.

According this new law, all Kuwaiti citizens and residents indiscriminately, are under the obligation to provide DNA samples to the authorities. The Law provides in its article 8 for "one year in prison and 10 thousand dinars fine for anyone who deliberately and without any excuse refrain from giving a sample of his DNA". Article 4 recall the compulsory nature of the

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<sup>16</sup> Alkarama, *Kuwait: Intensification of the repression against peaceful demonstrations*, 16 July 2014, <http://en.alkarama.org/kuwait/1458-kuwait-intensification-of-the-repression-against-peaceful-demonstrations> (accessed on 4 August 2015).

<sup>17</sup> Original text of the law in arabic available at : <http://bit.ly/1SKT8Ep> (accessed on 4 August 2015).

measure by stating that individuals subjected to this law are not allowed to refuse to give a sample, within the given deadline when requested to do so by the authorities.

Moreover, the individuals subjected to this law include all Kuwaiti citizens, residents and visitors in Kuwait. This expands the scope of the law even to non-Kuwaiti individuals who are under Kuwaiti jurisdiction for a short period of time.

Furthermore, Alkarama believes that the substance of the law is not the only problematic side of it but also the way in which the samples can be used by the Ministry of Interior.

Indeed, Article 5 of the Law gives to the “competent authorities” the capacity to investigate and use the DNA database in the following matters:

- To identify the perpetrator of a crime and his relation to the crime;
- To identify suspects and their families;
- To identify unidentified bodies;
- For any other cases required by the supreme interest of the country or required by the courts or the competent investigating authorities.

Lastly, the DNA collecting program and the database will be under direct control of the Ministry of Interior, which can collaborate with the Ministry of Health and the law does not provide for any independent control of the collecting process of the database management. Local centers for collection will be set up to facilitate the collection of samples thorough the country in order to ensure a collection all thorough the country.

Alkarama believes that the compulsory, indiscriminate and general elements of the DNA collection set in the law are making it contrary to Article 17 since it does not respect the necessary,<sup>18</sup> proportional and reasonableness criteria<sup>19</sup> of restriction to the right to privacy. This is worsened by the unlimited capacity given to the Ministry of Interior in the use of these samples and the complete absence of independent control and the impossibility to challenge the law before an independent Court. We thus consider that the law constitutes and unlawful<sup>20</sup> and arbitrary interference with individuals privacies and families.

#### *Questions:*

1. *Can the State party explain how this new law is compatible with Article 17 of the ICCPR and especially how it respects the criteria of restraint, necessity and proportionality in restriction to the right to privacy?*

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<sup>18</sup> We recall that in assessing the necessity of a measure, the Human Rights Committee, in its general comment No. 27, on article 12 of the International Covenant on Civil and Political Rights, stressed that that “the restrictions must not impair the essence of the right [...]; the relation between right and restriction, between norm and exception, must not be reversed.” See: Human Rights Committee, General Comment 12, Article 1 (Twenty-first session, 1984), Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies, U.N. Doc. CCPR/C/21/Rev.1/Add.9, paras. 11 to 16.

<sup>19</sup> We recall that the concept of reasonableness is interpreted as “any interference with privacy must be proportional to the end sought and be necessary in the circumstances of any given case”. See: Human Right Committee, Communication No. 488/1992, *Toonan v Australia*, para. 8.3; see also communications Nos. 903/1999, para 7.3, and 1482/2006, paras. 10.1 and 10.2.

<sup>20</sup> Even if the dispositions are based on a law, this law must however comply with with the provisions, aims and objectives of the Covenant, which we consider is not the case here. See: Human Rights Committee, General Comment 16 (Twenty-third session, 1988), Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies, U.N. Doc. HRI/GEN/1/Rev.1 at 21 (1994), para 3.

2. *Can the State party demonstrate the necessity and the proportionality of the Law to the pursuance of legitimate aims in order to ensure continuous and effective protection of Covenant rights as well as its reasonableness according to standards set by the Committee?*<sup>21</sup>
3. *Is the State party willing to repeal the law in order to put its domestic law in line with its international obligations?*
4. *Is the State party at the very least willing to change the law in order to restrict DNA collecting to the minimum necessary and repeal the universal and compulsory character of the measure ?*

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<sup>21</sup> This question is based on the Human Rights Committee General Comment No. 31 on the nature of the general legal obligation on States parties to the Covenant, in which it provides that States parties must refrain from violation of the rights recognised by the Covenant, and that "any restrictions on any of [those] rights must be permissible under the relevant provisions of the Covenant. Where such restrictions are made, States must demonstrate their necessity and only take such measures as are proportionate to the pursuance of legitimate aims in order to ensure continuous and effective protection of Covenant rights." See: Human Rights Committee General Comment No. 31 CCPR/C/21/Rev.1/Add. 13, para. 6.