



Kuwait: Ongoing Decline in Fundamental Freedoms

**Follow Up Report submitted to the Human Rights Committee in
the context of the review of the second periodic report of Kuwait**

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1. Introduction

As per its normal practice, following the review of Kuwait by the Human Rights Committee (hereon in referred to as the Committee) in November 2011, the Committee requested the State party provide information concerning a limited number of priority recommendations.¹

The Committee selected recommendations at paragraphs No. 18, 19 and 25 of its Concluding Observations, concerning migrant domestic workers, length and conditions of pre-trial detention respectively as requiring urgent attention by Kuwait, and accordingly requested Kuwait to provide follow up information within one year, by 18 November 2012.² In November 2012, the Committee sent a reminder to Kuwait requesting that additional information be provided to the Committee regarding the recommendations that had been selected as requiring follow up action, as it found the recommendations had either not been implemented, or not enough information provided to determine this.³

In this report, following on from its alternative report submitted 30 September 2011, and participation at the NGO briefing in view of the review of Kuwait, Alkarama provides its assessment of the implementation of the above-mentioned recommendations by the Government of Kuwait, as well as an analysis the responses provided by the State party on 28 April 2012. This response has been prepared following consultation of local civil society and Alkarama mission to Kuwait from 17 to 21 February 2013.

2. Implementation of Recommendations

2.2 Recommendation 18 – Migrant Workers

The Committee's recommendation at paragraph 18 stated that "[T]he State party should abandon the sponsorship system and should enact a framework that guarantees the respect for the rights of migrant domestic workers. The State party should also create a mechanism that actively controls the respect for legislation and regulations by employers and investigates and sanctions their violations, and that does not depend excessively on the initiative of the workers themselves."⁴

The Government responded⁵ that:

2. The designation sponsor does not refer to a system but rather to an employer. All employment relationships in the governmental and private sectors involve two parties: the employer and the employee. These relationships could not exist in the absence of either party. However, in some laws, including Amiral Decree No. 17/59, the term "sponsor" is used to refer to an employer and employers are afforded certain rights that some unscrupulous individuals have exploited, a situation which certain States and human rights organizations have used in their turn as a pretext for interfering in the internal affairs of States.

3. Hence, if the precise and proper term — "employer" — were to be reinstated and the term "sponsor" eliminated, and if regulations were to be enacted defining the

¹ This procedure is falls under the Committee's Rules of Procedure (CCPR/20/C/3/Rev.10), Rule No. 71 para. 5. See <http://www.un.org/Docs/journal/asp/ws.asp?m=CCPR%20C/3/Rev.10> (accessed 6 June 2012).

² See paragraph 33 of the Human Rights Committee's Concluding Observations on the second periodic review of Kuwait (CCPR/C/KWT/CO/2) available at <http://www.un.org/Docs/journal/asp/ws.asp?m=CCPR/C/KWT/CO/2> (accessed 6 June 2012).

³ See the Human Rights Committee's letter prepared by Christine Chanet, Special Rapporteur for Follow-up on Concluding Observations of 12 November 2012 for more information. It is available at <http://www2.ohchr.org/english/bodies/hrc/docs/KuwaitFUnovember2012.pdf> (accessed 20 June 2013).

⁴ See paragraph 18 of the Human Rights Committee's Concluding Observations on the second periodic review of Kuwait (CCPR/C/KWT/CO/2) available at <http://www.un.org/Docs/journal/asp/ws.asp?m=CCPR/C/KWT/CO/2> (accessed 6 June 2012)

⁵ Follow up information provided by Kuwait to the Committee on 28 April 2012 (CCPR/C/KWT/CO/2/Add.1), paragraphs 2-6. Available at http://www2.ohchr.org/english/bodies/hrc/docs/followup/CCPR.C.KWT.CO.2.Add.1_en.doc (accessed 20 June 2013).

rights of employers in such a way as to prohibit arbitrary abuse of those rights, that would pose absolutely no problems, so long as the regulations served to do justice to both parties in the contractual relationship.

4. We should explain that the State does everything possible to safeguard the rights of domestic migrant workers who are employed in the private sector. To begin with, it regulates agencies that recruit domestic workers and workers in similar functions in accordance with Decree-Law No. 40/92 and Ministerial Decree No. 617/2010, establishing the rules and procedures for granting licences to agencies that recruit private domestic workers and employees in similar functions. These laws ensure that the rights of domestic migrant workers are respected.

5. As for the creation of a mechanism that actively controls respect for legislation by employers and investigates and sanctions their violations, the State created an entire department to carry out this control function. The Department of Domestic Workers receives complaints from domestic workers about their employers. It summons sponsors, questions them about such complaints and attempts to resolve cases amicably. Moreover, the State has given the Immigration Investigation Department a wider remit and turned it into a general department; it used to be a small department within the General Department for Immigration.

6. When the legislature updated the Private Sector Labour Code, pursuant to Act No. 6/2010, it took care to make provision for the establishment of a general authority to address workforce issues, particularly in relation to migrant workers. The process of recruiting workers for employment in the private sector is managed through the authority, the aim being to overcome the negative aspects of the sponsorship system.

Despite these responses, the fact is that the sponsorship system remains in place and no official action has been taken to replace it with a framework that would guarantee the rights of migrant workers, particularly domestic workers. Migrant workers still suffer discrimination and endure difficult working conditions. The 2010 Labour Law excludes domestic workers at its article 5. In addition, all legislation that refers to this issue is adopted by decrees issued by the Emir, without a debate taking place in the Parliament.

Alkarama re-iterates its concerns that the new labour law introduced in February 2010 did not cover the situation of migrant domestic workers. We strongly encourage the Kuwaiti government to take prompt action in this regard and adopt a draft law protecting the rights of migrant domestic workers.

As for the "mechanism that actively controls the respect for legislation and regulations by employers and investigates and sanctions their violations, and that does not depend excessively on the initiative of the workers themselves" requested by the Committee, the government refers to the Directorate for Domestic Labour, but this body still requires domestic workers to lay complaints. We submit that this is contrary to the Committee's recommendation that such a system should not "depend excessively on the initiative of the workers themselves".⁶ Moreover, the Directorate for Domestic Labour was described by local civil society partners as highly ineffective. This institution, competent to treat complaints of migrant workers against their sponsor (Kafil), does not have sufficient human resources to cover some 700'000 migrant workers that are present in the country.

Finally, as set out in paragraph 5 of its replies, the government has committed to establishing a public body responsible for the recruitment of labour. This is envisaged as a fully government-owned company to be functioning by the end of 2012, which would be responsible for recruitment of domestic and labour workers. As of June 2013, however, no concrete steps were known to have been taken in view of the creation of such a body. Public information on this question remains unclear and there is no clear timeline for the implementation of this initiative. In addition, this does not guarantee

⁶ Paragraph 18 of the Committee's concluding observations.

that abuses will be reduced and that the mechanism will “actively control[s] the respect for legislation and regulations by employers and investigate[s] and sanction their violations”⁷.

The Committee found in November 2012 that this recommendation had not yet been implemented.⁸ We further submit that despite the letter reminding Kuwait of the Committee’s recommendation to “overcome the negative aspects of the sponsorship system, this has not yet been done, some 7 months since the Committee’s reminder.

2.3 Recommendation 19 – Arrest and Detention

The Committee’s recommendation at paragraph 19 stated that “[T]he State party should adopt legislation to ensure that anyone arrested or detained on a criminal charge is brought before a judge within 48 hours. The State party should also guarantee that other aspects of pre-trial detention are harmonized with the Covenant, including by providing detained persons with immediate access to counsel and contact with their families.”

The Government responded⁹ that:

7. According to the recommendations in this paragraph of the concluding observations, the State should adopt legislation to ensure that anyone arrested or detained on a criminal charge is brought before a judge within 48 hours and should ensure that all other aspects of law and practice on pretrial detention are harmonized with the requirements of article 9 of the Covenant, including by providing detained persons with immediate access to counsel and contact with their families.

8. Article 42 of the Code of Criminal Procedure (Act No. 17 of 1960) provides that police officers must record, in their investigation reports, statements and arguments that are made by accused persons in their own defence. If a statement includes a confession to a crime, the officer must make a note of it, on principle, in the report. The accused will be referred to an investigator for questioning to verify the authenticity of the confession. Article 98 of the Code states that if the accused is present, the investigator must ask him or her about the charges before beginning the examination. If the accused confesses to the crime, at any given time, the confession must be recorded in the examination report without delay and subsequently explored in detail. If the accused denies the charges, he or she must be closely questioned after witnesses have been heard. The accused must sign his statement after it has been read out to him. Otherwise, a note must be added to the record stating that he cannot or will not sign.

9. Article 9, paragraph 3, of the International Covenant on Civil and Political Rights provides that: “Anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release. It shall not be the general rule that persons awaiting trial shall be detained in custody.” This provision is identical to those found in the laws that regulate this matter in Kuwait. Persons in custody and pretrial detention are afforded all possible guarantees for a fair trial, including the right to communicate with their families and to be represented by a lawyer.

⁷ Paragraph 18 of the Committee’s concluding observations.

⁸ See the Human Rights Committee’s letter prepared by Christine Chanet, Special Rapporteur for Follow-up on Concluding Observations of 12 November 2012, available at <http://www2.ohchr.org/english/bodies/hrc/docs/KuwaitFJNovember2012.pdf> (accessed 20 June 2013).

⁹ Follow up information provided by Kuwait to the Committee on 28 April 2012 (CCPR/C/KWT/CO/2/Add.1), paragraphs 7-11. Available at http://www2.ohchr.org/english/bodies/hrc/docs/followup/CCPR.C.KWT.CO.2.Add.1_en.doc (accessed 20 June 2013).

10. In addition, the Government has tabled a bill to amend article 60, paragraph 2, of the Code of Criminal Procedure (Act No. 17/1960) so as to reduce the length of police custody to 24 hours instead of the 4-day period has obtained hitherto and to amend article 69 of the Code so as to reduce the term of pretrial detention from 3 weeks to 1.

11. Consistent with the above, the Kuwaiti Code of Criminal Procedure provides that accused persons must be brought promptly before an independent judicial body after being placed in detention and that relatives, lawyers and physicians have the right to communicate with the accused as soon as they are detained. This constitutes a fundamental safeguard for all persons without exception.

However, as the Committee pointed out in its letter following up on the concluding observations of Kuwait's second periodic review, the information provided by the State party is insufficient. We would therefore like to provide the following information:

The Government has largely satisfied this recommendation on paper. On 10 June 2012, the Kuwaiti parliament adopted law No. 3/2012 amending law No. 17/1960 to reduce the period of police custody to 48 hours as stated in its article 60 paragraph 2. The length of preventive custody is also reduced to 10 days as stated in article 69, paragraph 1.¹⁰

In practice, the new amendments also appear to be respected, but harassment by the authorities of peaceful activists who use their freedom of expression through judicial prosecution remains of concern (see below for more information). In particular, a draft of a 'Unified Media Law' presented on 8 April 2013 highlights the restrictions that the Government seeks to impose on freedom of opinion and expression.

2.4 Recommendation 25 – Freedom of Opinion and Expression

The Committee's recommendation at paragraph 25 stated that "[T]he State party should revise the Press and Publication Law and related laws in accordance with the Committee's General Comment No. 34 (2011) in order to guarantee all persons the full exercise of their freedoms of opinion and expression. The State party should also protect media pluralism, and should consider decriminalizing defamation."

The Government did not provide any response on implementation of this recommendation, stating simply in the introduction of its follow up information that "[W]ith regard to the concluding observations of the Human Rights Committee which were discussed on 20 and 21 October 2011 and the concerns and recommendations set forth therein, and in line with the recommendation in paragraph 33 that the State should provide, within one year, relevant information on its implementation of the recommendations in paragraphs 18, 19 and 25, we should like to provide the information set out below, noting that the subjects raised in paragraphs 18 and 19 fall within the purview of the Ministry of the Interior."¹¹

In November 2012, the Committee once again requested information be provided, and in the view of the lack of information, considered that the recommendation had not been implemented. We would therefore like to provide the following comments:

The practice of the State party in this regard is particularly concerning, as the situation has worsened both legally and in practice.

¹⁰ El Watan newspaper, تعديل أحكام القانون رقم 12 لسنة 1960 من قانون الإجراءات والمحاكمات الجزائية (in Arabic only - Amend the provisions of Law No. 12 of 1960 of the Code of Criminal Procedure), 20 June 2012, <http://kuwait.tt/articledetails.aspx?Id=202928> (accessed 29 June 2013).

¹¹ Follow up information provided by Kuwait to the Committee on 28 April 2012 (CCPR/C/KWT/CO/2/Add.1), paragraphs 1. Available at http://www2.ohchr.org/english/bodies/hrc/docs/followup/CCPR.C.KWT.CO.2.Add.1_en.doc (accessed 20 June 2013).

The Government has not revised the Press and Publications Law, as recommended by the Committee. Instead, a law for protection of national unity was adopted in May 2013. This law further restricts freedom of expression and assembly. It provides for prison sentences lasting between one to seven years and a fine of a minimum of 3,000 dinars (approximately 8,200 Euros) for individuals convicted of flouting national unity, such as when media organizations are disrespectful of religious minorities, incite religious hatred or fail to respect the privacy of individuals.¹² Moreover this law, according to the official Kuwaiti press agency "bans any call or manifestation intended to promote hatred or any form of indiscriminate"¹³, which leaves it open to a broad interpretation by authorities who may use it to silence peaceful criticism of government policies.

In addition, a draft law restricting freedom of expression online and in social media was presented by the Government on 8 April 2013. This "Unified Media Law" would give Kuwait's Information Ministry excessive discretion to grant authorization to media to carry out their activities, including through electronic media. For example, this law would allow the authorities to deny an operating license to a media outlet without providing any reason for the refusal. It also sets out that media companies, including newspapers, would need to pay a "security deposit" that could reach up to 300,000 Kuwaiti dinars to operate. The draft law also allows the State to deny the publication of information, even online, without providing a reason. Finally, the law would authorize agents of the information minister to "enter all stores and establishments subject to the provisions of the [press law] to examine documents and assets and seize any document."

Furthermore, despite being listed as the top country for press freedoms in the Arab region,¹⁴ in practice, the number of cases of defamation has risen. There are multiple examples of this, as set out below. Both media outlets and individuals have been persecuted:

Scope TV, a private media company based in Kuwait and directed by a former Member of Parliament, Mr Tallal Al-Said, was fined the equivalent of 1.3 million Euros by a Kuwaiti court for broadcasting a programme that was found to insult a member of the royal family, to be paid to former information minister Sheikh Faisal Al-Malek Al-Sabah.

Three daily newspapers have also been threatened with judicial proceedings by information minister Sheikh Hamad Jaber Al Ali Al-Sabah earlier this year: for example, the privately-owned newspaper *Al-Dar* was suspended from its daily publication for 'promoting discord between communities and inciting to public disorder and advocating hatred of some religious groups and elements of society' for three months on 1 February 2012, renewed for another three months on 5 March 2012.¹⁵ It had published articles defending the country's Shiite minority.

Numerous individuals have suffered prosecution for exercising their right to freedom of expression. Common accusations including defamation and libel, or insulting members of the royal family or other ruling families in the Gulf.

Nasser Abel (formally known as Nasser Badr Hassan Mahmoud), another Twitter activist was sentenced to three months in prison in September 2011 for "offending the identity of the Emir of Kuwait" and "contempt for the Sunni sect" on Twitter.¹⁶ A few months earlier, the same court sentenced activist Mubarak Al-Batali to three months in prison on charges of "contempt for the Shiite sect" on the same website. The court also imprisoned blogger Mohamed Jassim in June 2010 after he

¹² See RSF/IFEX, *Television station fined over 1.3 million Euros*, 4 May 2012, http://www.ifex.org/kuwait/2012/05/04/scopetv_fined/ (accessed 6 June 2012).

¹³ Kuwait News Agency, *Kuwait affirms renunciation of all forms of indiscriminate*, 12 June 2013, <http://www.kuna.net.kw/ArticleDetails.aspx?id=2316378&language=en> (accessed 3 July 2013)

¹⁴ See Reporters sans frontières' 2011- 2012 ranking here: <http://en.rsf.org/press-freedom-index-2011-2012,1043.html> (accessed 6 June 2012). Kuwait is ranked at No. 78.

¹⁵ RSF/IFEX, *Electoral campaign marred by attacks, prosecutions against media*, 9 February 2012, http://www.ifex.org/kuwait/2012/02/09/kuwait_vote_campaign/ (accessed 7 June 2012).

¹⁶ Arabic Network for Human Rights Information, *Kuwait: Writer detained on libel charges*, 4 March 2012, <http://www.anhri.net/en/?p=7192> (accessed 20 June 2013).

criticized the Kuwaiti Prime Minister.¹⁷ We had already referred to his situation in our shadow report of 30 September 2011.¹⁸

Hamad Al-Alian and Tarek Al-Materi were detained in November 2011, accused of "prejudice to the monarchical entity" on Twitter.¹⁹

Kuwaiti writer Mohamed al-Melify was sentenced to 7 years' imprisonment and a fine of 18 000 US dollars in April 2012, on charges of spreading false statements via Twitter. He was arrested by the authorities last February.

Lawrence al-Rashidi, a Kuwaiti blogger was charged with "insulting the Prince and his powers in poems uploaded on YouTube". He was found guilty and sentenced to 10 years imprisonment and a fine of 1000 Kuwaiti dinars (approximately 2700 Euros) in May 2012.²⁰

Hamad al-Naqi was reported as having been arrested for "using a social network website to defame religious faith and slandering [sic] Muslims, the Prophet Mohammad ... his companions and his wife,"²¹ as well as insulting the rulers of Bahrain and Saudi Arabia. He was arrested in April 2012 and sentenced to 10 years in jail on 4 June 2012 with hard labour.²²

More recently, on 10 June 2013, Huda al-Ajmi, a 37-year-old teacher, was sentenced to the longest-known sentence to be handed down by a court for an online publication in the country. Ms al-Ajmi was sentenced to 11 years for posting remarks on Twitter "deemed insulting to the Emir and calling for the overthrow of the regime".

3. Analysis of State Replies

Alkarama is extremely concerned that the Kuwaiti authorities have not yet provided a response to the Committee's recommendation made at paragraph 25 relating to press freedoms. As demonstrated above, there has been a clear degradation of press freedoms in the country, continuing the trend reported in our alternative report, and which has further deteriorated since November last year, despite the Committee's letter sent that month.

The government's argument that it has provided response to recommendations No. 18 and 19 only, "as [implementation of] paragraphs 18 and 19 fall within the competences of the Ministry of Interior", implying that implementation of paragraph 25 is not within its competencies is inadequate. The State party was clearly requested to respond on all three recommendations, and so should do so.

Finally, we wish to point out that the response provided by the State party at its paragraph 7 relating to arrest and detention are an almost identical replica of the response provided in its State report to the Committee against Torture (CAT) during its review in 2010. Given the Committee found cause for concern about detention periods in 2011, despite the time Kuwait has had to implement changes following its review by the CAT, one must question whether this response can be considered sufficient.

The lack of response to the follow up to the Committee's November follow-up letter is further cause for concern, particularly given the degrading human rights situation in the country.

¹⁷ Arabic Network for Human Rights Information, *Bloggers sentenced for anti-monarchy posts*, www.ifex.org/kuwait/2011/11/10/bloggers_investigated/ (accessed 20 June 2013).

¹⁸ See page 14. It is available in Arabic, English and French from www.alkarama.org.

¹⁹ Arabic Network for Human Rights Information, *Bloggers investigated for anti-monarchy posts*, 10 November 2011 http://www.ifex.org/kuwait/2011/11/10/bloggers_investigated/, (accessed 20 June 2013).

²⁰ Arabic Network for Human Rights Information, *Blogger sentenced to ten years in prison*, 17 May 2012, http://www.ifex.org/kuwait/2012/05/17/alrashidi_sentenced/ (accessed 20 June 2013).

²¹ Reuters, *Kuwaiti denies blasphemous tweets, says account must have been hacked*, 3 April 2012, <http://english.alarabiya.net/articles/2012/04/03/205239.html>, (accessed 20 June 2013).

²² Amnesty International, *Kuwaiti man sentenced to 10 years' imprisonment for 'insulting' tweets*, 7 June 2012, <http://www.amnesty.org/en/news/kuwait-faces-prison-sentence-over-blasphemous-tweet-2012-06-06> (accessed 20 June 2013).

4. Conclusion

While positive change has taken place at the legislative level regarding periods of pre-trial detention referred to the Committee's recommendation No. 19, there remains ample concern about implementation of the other two recommendations relating to migrant domestic workers and freedom of expression, both legislatively and in practice.

The nature in which the State party provided information on the follow up is, as the Committee found in November 2012, insufficient.

Alkarama therefore recommends the Committee to once again request further follow up information, given the incomplete nature of the response provided thus far, and the lack of response it expressed in November 2012

We would further recommend the Committee refer to the "Unified Media Law" draft and suggest that the State party should withdraw this law, or propose a draft in conformity with international standards. The State party should also reconsider its "Law for the protection of national unity" which severely restricts the right to freedom of association and assembly.