



Kuwait: A Worrying Decline in Fundamental Freedoms

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

30 September 2011

Alkarama recalls that it concentrates its work on four priority areas: arbitrary detention, enforced and involuntary disappearances, torture, and extrajudicial executions. We base our work primarily on the documented individual cases we submit to UN Special Procedures and Treaty Bodies, as well as our contacts with local actors including victims, their families, lawyers and human rights defenders. [Translation of original report in French]

About Alkarama

Alkarama is a registered Swiss foundation headquartered in Geneva, established in 2004 by volunteer human rights lawyers and defenders. It works on human rights violations in the Arab world with offices and representatives in Lebanon (Beirut), Qatar (Doha), Cairo (Egypt) and Yemen (Sana'a).

Its work focuses on four priority areas: extra-judicial executions, disappearances, torture and arbitrary detention. Related activities include protecting human rights defenders and ensuring the independence of judges and lawyers.

Alkarama engages with the United Nations (UN) human rights mechanisms. It has submitted over 2,000 cases and urgent appeals to the Special Procedures of the UN, the Special Rapporteur on Torture, the High Commissioner for Human Rights and various UN human rights treaty bodies. Additionally, Alkarama has submitted numerous reports on the human rights situation in 7 of the 10 Arab states reviewed under the initial sessions of the Universal Periodic Review, and to the UN Special Procedures and human rights treaty bodies.

Basing its work on principles of international human rights law and humanitarian law, Alkarama uses UN human rights mechanisms on behalf of victims of human rights violations and their families. It works constructively with sovereign states, the Office of the High Commissioner for Human Rights and national human rights institutions, as well as victims' lawyers and human rights defenders. It also organises seminars and undertakes campaigns to raise awareness of human rights issues in the Arab world.

In Arabic, Alkarama means 'dignity'.

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1. Introduction

Kuwait presented its second periodic report to the Human Rights Committee (CCPR/C/KWT/2) in August 2009, more than five years late (the report should have been submitted in June 2004). Kuwait's report is due to be examined by the Committee in its 103rd session, which will take place between 17 October and 4 November 2011. We recall that UN institutions have, at various times, expressed concern at the lack of cooperation with UN mechanisms from the State party.

The State Party has responded to only two of the 21 questionnaires sent by the Special Procedures mandate holders. It has not issued an open invitation to the mandate holders, and has still not responded to the Special Rapporteur's questions on the human rights of victims of trafficking in human beings, in particular women and children, first addressed to the authorities in 2005 and repeated in 2007.

On 20 and 21 April 2010, the High Commissioner for Human Rights was in Kuwait as part of her visit to the Gulf Region. She emphasised the need for an end to the sponsorship system of domestic workers, a resolution to the situation of the Bidun and greater freedom of expression, association and assembly.¹

In recent years our organisation has submitted several cases of civil and political rights violations in this country to the United Nations Special Procedures. Kuwait has not responded to any of these.

In submitting this report, which expresses its main concerns, Alkarama wishes to participate in the examination of the State Party in the hope that a calm dialogue between the Kuwaiti authorities and the Committee's experts will allow for the resolution of these issues in full transparency, in particular those concerning the most fragile social groups such as the Bidun, who are not sufficiently protected by the State, and those relating to the protection of human rights in the context of the fight against terrorism.

It must also be noted that attacks on the freedom of expression, assembly and association have increased in recent years, calling into question the independence of the judiciary in the face of executive power.

Kuwait is still the only Gulf country with a representative assembly that has real legislative power. Unfortunately, as we demonstrate below, it seems that its influence is waning. We hope that the Committee's examination of Kuwait will give the State Party the opportunity to set a course for a more positive future.

The information provided below was collected by our organisation's correspondents in Kuwait, as well as by an Alkarama representative during a mission to the country, conducted in collaboration with local civil society.

2. Context

Kuwait is a constitutional Emirate governed by the Al-Sabah family. After being placed under a British protectorate in 1914, the Emirate obtained its independence in 1961. The 1962 Constitution entitles the Emir to name the crown prince and Prime Minister. The Prime Minister decides on a cabinet, which must be approved by the Emir. The Ministers of Defence, Petrol, Interior, Finance and Foreign Affairs are all held by members of the royal family.

Since 29 January 2006, former Prime Minister Sheikh Sabah Al-Ahmad Al-Jaber Al-Sabah is Emir. He replaced Emir Saad who was removed from the throne on 24 January 2006 by Parliament for medical reasons.

Kuwait is the exception among the Gulf States, in that power is shared between the royal family and Parliament². Legislative power is exercised by the government and National Assembly, for which, since

¹ The office of the High Commission for Human Rights, *UN human rights chief notes changes under way in Gulf region, highlights key concerns* <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=9972&LangID=E> (accessed 25 August, 2011)

² Michael Herb, *Kuwait and the United Arab Emirates*, in Michele Penner Angrist, *Politics and Society in the Contemporary Middle East*, Lynne Rienner Publishers Inc., 2010, Colorado, USA, p. 339

2006, 10 members are elected from five electoral districts. Its 50 parliamentarians have a four-year mandate. It can be dissolved by the Emir with a simple decree. According to the Constitution, a new election must then be organised within two months. Although Parliament is not consulted during the selection of the government, Members may question ministers, have them individually expelled, and vote motions of censorship against the government. The Emir names the Prime Minister, who is always a member of the royal family.

Despite the population's ability to participate in the country's affairs, political parties are not allowed, even though the assembly is composed of different informal blocs. Since 2005, women have had the right to vote and to submit their nominations for election. Only Kuwaiti citizens aged over 21 who have held Kuwaiti nationality for at least 20 years are eligible to vote; they constitute around 385,000 voters.

Members of the security services (police and military) are excluded from political life, with the exception of the National Guard. Parliamentary elections took place in 2006, 2008 and in May 2009. The 2008 elections occurred in a context of violence: the authorities suppressed certain meetings organised by tribes who attacked police stations for detaining tribal chiefs arrested because they had organised first-round elections within their tribes, which is illegal in Kuwait.³

Kuwait has ratified some of the core UN human rights convention, including the Convention against Torture. However, the country has not ratified either of the two optional protocols to the International Covenant on Civil and Political Rights. The State Party has not ratified the International Convention for the Protection of All Persons from Enforced Disappearance, nor the Convention on the Rights of Persons with Disabilities, nor the Convention on the Protection of the Rights of All Migrant Workers, despite having agreed to do so after the country's Universal Periodic Review (UPR) in May 2010.

The independence of the judiciary and the right to a fair trial are enshrined in law, while at a legislative level important guarantees have been established in domestic law. In reality, however, the executive powers – notably the Emir – intervene in the nominations and dismissals of members of the judiciary. This represents an obstacle to the independence of the judiciary and the principle of the irremovability of judges.

As of January 2008, the Emirate had a population of 3.4 million inhabitants, with a total of 1 million nationals⁴. The migrant population is mostly Indian, Bangladeshi or Pakistani, having replaced the Arab nationals who were expelled in large numbers following the 1991 Gulf war. Work conditions are most often deplorable and employees risk expulsion if they protest against mistreatment.

More than 100,000 people living in Kuwait are stateless (known as the "Bidun") and victims of discrimination: access to education, health and certain jobs is limited, and in some cases, may even be completely closed to them. Over the last few months, several gatherings of Bidun have been repressed. In recent years, a certain number of regularisations have taken place, but the problem remains as a whole.

3. Constitutional and legal framework for implementation of the Covenant (art. 2)

The State's constitution does not explicitly state that international treaties and conventions have primacy over domestic law. Article 177 of the Constitution states only that the application of the law does not prejudice international agreements and conventions, and law no. 12 of 1996, passed on 3 April, provides that the Convention's provisions are enshrined in domestic legislation.

It is necessary to repeat that the Convention's provisions remain largely unknown or misunderstood by civil society and the political class, including certain elected members of Parliament interviewed by our correspondent during his recent mission in the country.

³ Mary Ann Tétreault, *Bottom-Up Democratization in Kuwait*, in Mary Ann Tétreault et al, *Political Change in the Arab Gulf States: Stuck in Transition*, Lynne Rienner Publishers Inc., 2011, Colorado, USA, p. 88

⁴ French Ministry of Foreign and European Affairs, *Présentation du Koweït* (Kuwait Country File), 24 July 2010, http://www.diplomatie.gouv.fr/fr/pays-zones-geo_833/koweit_427/presentation-du-koweit_985/presentation_13518.html (accessed 12 March 2011)

The lawyers we interviewed said they had never directly invoked the Convention's provisions before a national court; that they did not know this was possible, had never heard of any of their colleagues having invoked the Convention's provisions before national courts, and were not even aware that a jurisprudence existed in this field. It appears the authorities are not making the necessary efforts to inform citizens of the treaty bodies' recommendations.

No national human rights institution (NHRI) exists in the country that might influence public opinion. The Parliament's human rights commission take on a few of the functions of such an institution, notably undertaking prison inspections and receiving complaints of human rights violations. A few members of this commission undertook an annual inspection of the Central Prison in 2009 and 2010, but no report was ever made public after these visits.

At the time of its Universal Periodic Review in May 2010, Kuwait agreed to set up an NHRI. In August 2011, the Minister of Social Affairs reportedly met with a few organisations in order to discuss the possibility of creating an NHDI. We encourage the State Party authorities to ensure the wide participation of civil society in order to ensure maximum representativity

4. The principle of non-discrimination (art.2): Statelessness and the question of the 'Bidun'

In 1990, 250,000 indigenous people did not have Kuwaiti nationality. During the Iraqi invasion of 1990, a great number of these persons fled the country and were then unable to obtain authorisation to return home. Many of them were forced to settle in other countries, particularly in Europe⁵. At present, there are around 100 000 Kuwaitis who do not have Kuwaiti nationality, despite being indigenous to the country. They are called 'Bidun' (without nationality). This lack of recognition has led to a number of violations being committed against them, including lack of access to health services, education, work and housing. The Kuwaiti authorities have, over the years, created various categories of 'Bidun', which receive different treatment from the authorities depending on their status: some have a certain number of rights while others are treated as foreigners with no right to be in the country. This means that some have been recruited for government positions – mainly in the police and in the civil administration. Some have also received special passports (known as "article 17s") to obtain medical treatment overseas.

A certain category of 'Bidun', including those who were registered during the census of 1965, can acquire nationality by submitting a request to the 'Central system for the resolution of the status of illegal residents' (also known as the 'Committee for the Bidun') – the government authority specially set up to resolve their situation. The number of people granted nationality each year, however, is limited to 2,000. The workings of this committee remain murky, and it is impossible to obtain an explanation for why a request is rejected or delayed. It is also forbidden to appeal against its decisions, which is in itself a violation of the right to appeal. Requests for citizenship can also be refused because of criminal or security offenses committed by the claimant or members of his or her family – in violation of the principle of the individual nature of sanctions. In 2009 and 2010, as in preceding years, there were at least 80,000 requests for nationality being processed, but none were successful. This is in contrast to the preceding years; in both 2007 and 2008, 573 Bidun obtained nationality.⁶ In 2005, the figure was 1800 people, and in 2006 it was 400.⁷

The courts cannot intervene in administrative procedures relating to naturalisation. In fact, a 1990 law deprived the judiciary of all competence to deal with requests for citizenship or with administrative decisions concerning the granting of temporary travel papers, as well as all other administrative procedures relating to the Bidun considered as being a question of 'national sovereignty'.⁸ So these people find themselves unable to obtain the necessary documents to gain access to a large number of services, such as birth certificates, marriage certificates, and access to education, health and work;

⁵ Association KAEHR (Kuwaiti Association for basic Evaluators of Human Rights), *Annual Report 2010*, chapter 7, http://www.humanrights.org.kw/taqreer2010_13.aspx (accessed 18 March 2011)

⁶ US State Department, Bureau of Democracy, Human Rights and Labor, *2009 Country Reports on Human Rights Practises: Kuwait*, 11 March, 2010, section 2 (d).

⁷ US State Department, Bureau of Democracy, Human Rights and Labor, *2007 Country Reports on Human Rights Practises*, 11 March, 2008, Section 2 (d).

⁸ Human Rights Watch, *Prisoners of the Past: Kuwaiti Bidun and the Burden of Statelessness*, New York, June 2011, p. 4

this puts them in a very weak position and exposes them to serious discrimination in many areas of life.

Most of the Bidun population has access to 'security cards' or 'green cards'. These documents protect them from being deported and are necessary for gaining access to services that the government has set up specifically for them (but which are of inferior quality to those which serve the rest of the population). Anyone wishing to obtain civil documents such as a birth certificate must request a prior agreement from the Committee for the Bidun.⁹ The rights bestowed by this document are not clearly defined and relate only to people registered in the 1965 census or to people who registered with the Committee between 1996 and 2000 as stateless persons with a naturalisation request pending.

Without this document, the Bidun live in fear of being arrested and detained, and find themselves excluded from basic social services such as compulsory schooling and medical treatment.¹⁰

A bill designed to offer more protection to their civil, legal and political rights was proposed and then withdrawn at the beginning of January 2010 by the government before any substantive discussion could take place in parliament. Furthermore, the session called to debate this bill had to be cancelled on 10 December 2009¹¹ as the required number of members for a debate was not reached. This attitude shows the lack of political will, even in Parliament, to resolve the Bidun situation.

Attempting to change their situation, the Bidun sometimes organise peaceful protests, to which the Kuwaiti authorities respond with violence. The right to protest is recognised by law, but in recent months all gatherings have been forbidden for 'internal security' reasons. On 18 February of this year, for example, a peaceful gathering of several hundred Bidun was violently suppressed. Dozens of people were injured and dozens of others arrested¹².

Following protests that took place in March, Saleh al-Fadhala, head of the Committee for the Bidun, announced a reform including the enactment of government decrees designed to protect certain fundamental rights – such as access to official documents, to education, and to health. This announcement was never followed up, however, and the question of the statelessness of the Bidun is still unresolved.¹³ They remain in the precarious situation of being 'illegal residents' in the country.

Another example of discrimination is the 'double jeopardy' suffered by Bidun who are given a criminal sentence: Ahmad Al-Shammari, detained at the Talha deportation centre for five years, was not released until 7 July, 2009, after the intervention of the Parliamentary Committee for Human Rights.¹⁴ According to many local sources, this kind of behaviour is common (also see the case of Ahmed Zidan mentioned in section 8 of this report relating to arbitrary detention).

5. Torture, maltreatment and persons deprived of liberty (art. 7, 10, and 12)

Articles 53, 159 and 184 of the Criminal code forbid torture and other cruel, inhuman or degrading treatment. Despite this, cases of torture by police or other security forces are regularly reported in the media and by human rights defenders. It seems that non-nationals are most often the victims of abuse.

Kuwait law does not clearly define torture. In its concluding observation, the Committee against

⁹ Human Rights Watch, *Prisoners of the Past: Kuwaiti Bidun and the Burden of Statelessness*, New York, June 2011, p. 5

¹⁰ Human Rights Watch, *Prisoners of the Past: Kuwaiti Bidun and the Burden of Statelessness*, New York, June 2011, p. 6

¹¹ Sa'ed Al Su'idi, البرلمان الكويتي يسحب قانون البدون (Kuwaiti Parliament repeals the "Law of the Bedouin"), Al-Jazeera, 8 January 2010, <http://www.aljazeera.net/NR/exeres/658BA24E-3990-47AA-A671-575CE752F085.htm> (accessed 28 March 2011)

¹² Benjamin Massot, *Thirty protesters injured in Kuwait, 50 arrests*, L'Express, 19 February, 2011, http://www.lexpress.fr/actualites/2/monde/trente-manifestants-blesses-au-koweit-50-arrestations_964205.html?xtor=x (accessed 28 March, 2011)

¹³ Human Rights Watch, *Prisoners of the Past: Kuwaiti Bidun and the Burden of Statelessness*, New York, June 2011, p.22

¹⁴ US Department of State, Bureau of Democracy, Human Rights and Labor, 2009 Human Rights Report: Kuwait, 11 March 2010, Section 1 (d).

Torture recommended Kuwait "consider enacting in its Criminal Code a defined crime of torture".¹⁵

In recent years, the media has reported the cases of several victims of torture, including two Egyptian nationals arrested on 24 July 2007 for having falsified their work permit who were tortured by an agent. One of them described how they were beaten and scalded with boiling water. The prosecutor did not want to release them when it became evident that the accusations against them were false due to the traces of torture on their bodies. The authorities declared that it was a lone case which would be sanctioned. However, in 2010, **'Alaa Ahmed Al-Sayed Muhamad**, an Egyptian national living in Kuwait for nearly three years, was forced to confess under torture to the rape and murder of a young Pakistani girl whose corpse had never been found. He was also forced to confess, again under torture, to having raped sixteen other girls. Arrested by the police in January 2010, he was severely tortured, notably with electricity, in a police station before being taken to a psychiatrist who declared him mentally unstable¹⁶. Summoned before a judge again on 7 March 2010 because of new evidence – notably the reappearance of the girl, supposedly raped and killed, who stated that she did not know him – he was exonerated after 55 days in detention.

Alkarama itself identified several cases of torture including that of **Khalif Amer Al-Anzi**, submitted to the Special Rapporteur on Torture on 11 and 16 February 2005 and the Special Rapporteur on Summary, Arbitrary or Extrajudicial Executions on 24 February 2005. During January 2005, more than 25 Kuwaiti and Saudi nationals were interrogated by Kuwaiti authorities, including Mr. Al-Anzi. Seven of them were prosecuted for having planned terrorist attacks or for refusing to provide information on planned attacks. On 9 February 2005, the Kuwaiti authorities announced the death of Mr Al-Anzi, following a "sudden drop in blood pressure" according to the official announcement. Mr. Al-Anzi, a Kuwaiti citizen, aged 29 had voluntarily surrendered to the security services in Kuwait. The family said he died under torture: the hands and face bore deep wounds and mutilations. The authorities have refused to allow an autopsy to be performed by medical examiners chosen by the family. It should be noted that even the President of the Kuwaiti National Assembly did not accept the official version. On 10 February 2005, he publicly mentioned that Kuwait had ratified the Convention against Torture, implicitly implying that the death of Mr. Al Anzi had resulted from extrajudicial execution while in detention. The truth of the exact circumstances of his death has never been clarified, despite the insistence of the victim's family. No enquiry or official prosecution have taken place.

The authorities claim that investigations are conducted on all cases of abuse and those who are found responsible are sanctioned. The problem however, is that either complaints do not result in any investigation, or the results of investigations are not made public

Deaths of non-nationals seem to provoke little reaction on the part of the authorities. The US Department of State reported two deaths under torture in 2005, and again in 2006. The same year, it was reported that a man of Asian origin had died in custody after being arrested for possession of drugs. In November of the same year, a Pakistani man told his family he had been subjected to torture.¹⁷ The authorities did not investigate this death.¹⁸

More recently, Alkarama learned of the case of a young worker of Bangladeshi origin who died at the beginning of March after having been subjected to violence in a police station. This young man was beaten by a group of three Kuwaitis who accused him of having burned their farm and stolen their property, as well as by two policemen at the Kabad police station in. He collapsed during the interrogation and died a few hours later. The medical report established that his death was due to the torture he had suffered. Criminal proceedings were begun against his killers, including the two policemen in charge of his interrogation.¹⁹

¹⁵ Committee against Torture, *Report of the Committee Against Torture*, presented to the 53rd session of the United Nations General Assembly, 16 September 1998, (A/53/44) para. 230

¹⁶ Al Wardani Abdelhafez, *الحاف عبد الوردانى، المحاكم حوادث* (Trial and events), Ad-Dostor, 23 February, 2010, <http://dostor.org/crime/10/february/22/7332> (accessed 28 March, 2011)

¹⁷ US State Department, Bureau of Democracy, Human Rights and Labor, *2006 Country Reports on Human Rights Practises: Kuwait*, 6 March 2007, Section 1 (a).

¹⁸ US State Department, Bureau of Democracy, Human Rights and Labor, *2007 Country Reports on Human Rights Practises: Kuwait*, 11 March, 2008, Section 1 (a).

¹⁹ Arab Times Online, *Asian tortured to death by two policemen, 3 Kuwaiti citizens*, 10 March, 2011, <http://www.arabtimesonline.com/NewsDetails/tabid/96/smId/414/ArticleID/166567/reftab/69/t/Asian-tortured-to-death-by-two-policemen-3-Kuwaiti-citizens/Default.aspx> (accessed 25 August, 2011).

Magistrates confronted with cases of torture when the victim is brought before them do not order enquiries to establish the facts and prosecute those responsible. A key case is that of 27-year-old **Adel Aqel Salem Al-Dhafeery** of the Al-Jahra region of Al-Ouyoun. He was arrested on 22 May 2008 at around 5pm by agents from State Security and was taken to their office. He reports that during his interrogation, he underwent torture with icy water as well as receiving blows on the bottom of his feet. When he was brought before a magistrate two days later, he complained about the torture, which had left clearly visible marks on his body. The magistrate however refused to register a complaint or even take the information into account. He notably also refused to authorise a medical exam as the victim requested, but rather placed him in pre-trial detention for 15 days because 'it was required for the investigation'. Mr Al-Dhafeery is certain that this further detention was ordered simply to give time for the traces of torture to disappear. He was released on bail at the end of this period without his request being granted²⁰.

The authorities claim that all cases of abuse are investigated and that those responsible are punished. In many cases, however, either the complaints are not followed up or the results of the investigations are never made public.

The case of **Mohamed Ghazi Al-Maymuni Al-Matiri** is an exception: this 20-year-old man, who was arrested by agents of the State security services and accused of selling alcoholic drinks, was severely tortured – with a blowtorch among other things – and sodomised; he died during his transfer to hospital in the town of Al Ahmadi on 11 January 2011. The agents threatened the medical examiner and forced him to alter his autopsy report which mentioned signs of torture. When the family learned of how Mr Al-Matiri had died, they informed Members of Parliament who demanded explanations from the Minister of the Interior. The Minister first published a press release based on the statements made by the agents who accused Mr Al-Matiri of having threatened them with a knife before he was struck down by a heart attack. Due to parliamentary pressure, the Minister of the Interior ordered an internal inquiry which revealed that Mr Al-Matiri was abducted because one of the agents wanted to settle a personal score. Detained for three days in secret, Mr Al-Matiri was severely tortured. He was then transferred to State Security services headquarters in Al Ahmadi, where he was further tortured until he died. The agent's superior officer tried to conceal what had happened by falsifying official documents and by forcing other detainees to make false statements. They then gave a false version of what had happened to the Minister. This case provoked such a negative public reaction that the Minister of the Interior was forced to resign²¹. Following the investigation by the prosecution, a total of 20 people, including 18 State Security agents were found to have been implicated and so were presented to criminal courts²².

The Kuwaiti authorities have stated that political refugees cannot be extradited and by consequence "it also inherently implies that persons cannot be extradited to another State in cases in which there is a danger of torture".²³ However, it must be stated that there is no law prohibiting extradition to states that practice torture.

For example, Alkarama submitted the case of **Zhiya Kassem Khammam Al Hussain** to UN Special Procedures. This Iraqi national who lived legally in Kuwait was arrested at his home on 15 January 2007 without an arrest warrant and without being told the reasons for his arrest. Severely tortured for a week at the State Security services headquarters, he was transferred to an administrative detention centre where he was not allowed to challenge his detention. On 31 January 2007 he was forcibly removed by plane to Saudi Arabia, where he was again severely tortured during his detention.

Similarly, we reported the case of six people who, in August 2009, were accused of having planned an attack against American troops stationed at Camp Arifjan, the biggest military base in the country (see

²⁰ Alkarama press release, *Kuwait: Torture and ill-treatment of Mr. Al-Dhafeery*, 4 July 2008, http://fr.alkarama.org/index.php?option=com_content&view=article&id=317 (accessed 18 March 2011)

²¹ **تعذيب مواطن حتى الموت بتهم ملفقه في الكويت، جمال الروح** (Citizen tortured to death on fabricated charges in Kuwait), 25 January 2011, <http://www.shbab-2day.com/vb/t91683.html> (accessed 16 March 2011)

²² **إحالة واقعة تعذيب المطيري لمحكمة جنایات الكويت** (Al-Matiri's torture case referred to the Criminal Court), Al Yaoum As-Sabe', 16 February 2011, <http://www.youm7.com/News.asp?NewsID=352654&> (accessed 16 March 2011)

²³ Initial Report submitted by Kuwait to the Committee against Torture under article 19 of the Convention, October 1997, (CAT/C/37/Add.1), para. 57

below)²⁴. The media reported that the suspects had confessed their involvement in this plan, but the court called these confessions into question because they were extracted under torture; the public prosecutor ordered an inquiry on the subject. The suspects were finally acquitted due to lack of material evidence²⁵.

6. Rights of migrant workers (art. 8 of the Convention)

The obligation for a 'kafil', a guardian (or sponsor) of Kuwaiti nationality in order to be able to work in the country, is still in effect. This condition increases the dependence of migrant workers on this person and restricts their freedom of movement, especially as their passports are often confiscated upon their arrival in Kuwait. Migrant workers are not legally entitled leave their job or to change jobs without the consent of their guardian and if they do so, can be forced to pay fines, be arbitrarily detained or be sentenced to short detentions in prison under Kuwaiti law. They can be detained without legal process for several days or several months in police detention centres, temporary detention centres, or at the camp in Salmiya²⁶.

A new employment law for the private sector was adopted on 20 February 2010. This represents an important advance as it forbids child labour and sets up a new body responsible for controlling recruitment procedures²⁷, employment rights for migrant workers, a minimum salary for certain jobs, and other measures such as the length of annual holidays, protection from arbitrary dismissal, and punishments for the trafficking of workers. The 'Kafala' system remains in place, however, and domestic workers, most of them women, are not covered by this new law.

The International Trade Union Confederation (ITUC)'s 2010 report describes numerous cases of mistreatment of domestic workers. The ITUC notes that these workers continue to be exploited, even if the government has attempted to give them greater legal protection. In November 2010 alone, there were 13 cases of presumed suicides or suicide attempts among domestic workers reported in Kuwait. In June, a trade union delegation in Indonesia condemned the Indonesian Embassy in Kuwait for not having taken measures against employers suspected of having raped and tortured 350 female Indonesian migrant workers. In October, the Indonesian Minister of Employment suspended the emigration of domestic workers to Kuwait until the 600 cases of abuse against Indonesian domestic workers were resolved. In November 2009, the Indonesian government announced the repatriation of 1,750 Indonesians employed in the region, including Kuwait²⁸.

Migrant workers protest regularly against their situation and the lack of any adequate reaction by the government to their problems. For example, on 26 April 2001 there was a strike involving more than 300 people working in the cleaning and security sectors who had not been paid for more than four months.²⁹ In 2008, a hundred or so Bangladeshi workers rioted; they were arrested and detained for five days, during which they were beaten, and then sent back to Bangladesh³⁰.

Kuwait is still one of the favoured destinations for human trafficking. It is regularly marked as level three as defined by the US State Department, and the country does not appear to have the political will to reverse this trend, despite the voluntary commitment it made at its UPR to 'continue its efforts to adapt the law on combating human trafficking and the smuggling of the labour force'.³¹

²⁴ Reuters, *Kuwait says foils Qaeda plan to bomb U.S. Army camp*, 11 August, 2009, <http://www.reuters.com/article/idUSTRE57A35F20090811> (accessed 17 March, 2011)

²⁵ « لاور أحمد . » عريفجان شبكة « في النماينة المتهمين تبرؤا » الجنابات Al Rai, 21 May 2010, <http://www.alraimedia.com/alrai/Article.aspx?id=202545&date=11052010> (accessed 15 March, 2011)

²⁶ Human Rights Watch, *Walls at Every Turn, Abuse of Migrant Domestic Workers through Kuwait's Sponsorship System*, chapter 6, 6 October, 2010, <http://www.hrw.org/en/node/93333/section/9> (accessed 18 March, 2011)

²⁷ Amnesty International, *Annual Report 2011*, London, 13 May, 2011, p. 188

²⁸ International Trade Union Confederation, *Annual survey of violations of trade union rights*, 9 June, 2010, <http://survey.ituc-csi.org/+Kuwait+.html> (accessed 18 March 2011)

²⁹ US State Department, Bureau of Democracy, Human Rights and Labor, *2009 Country Reports on Human Rights Practises: Kuwait*, 11 March, 2010, Section 7 (a).

³⁰ US State Department, Bureau of Democracy, Human Rights and Labor, *2008 Country Reports on Human Rights Practises: Kuwait*, February 25 2009, Section 1 (c).

³¹ *National report conforming to 15 a) of the annex to resolution 5/1 of the Human Rights Council: Kuwait* (A/HRC/WG.6/8/KWT/1), 22 February, 2010, Section 8 'Voluntary commitments'.

7. Arbitrary detention and conditions of detention (art. 9 of the Convention)

Protection against arbitrary arrest and detention is intended to be guaranteed by article 31 of the Constitution³². In addition, article 60 of the Code of Criminal Procedure states that police custody should not extend beyond four days³³. During this time, detainees are not allowed access to their families, and while lawyers may access their client's file, they are not permitted to visit their client in person. In practise, such detentions can last several months³⁴.

Article 9 of the Code of Criminal Procedure limits the power of the judiciary by attributing the police with a large jurisdiction over the investigation process. Article 69 sets out that pre-trial detention cannot extend beyond three weeks. Before this period has expired, the detainee must be brought before magistrate who determines whether an extension of the detention is necessary for further investigation. The total period of pre-trial detention cannot last more than six months, starting from the date of arrest.

Pre-trial detention can be renewed for 30 days if the competent court, upon request of the investigating judge, authorises the renewal for the purpose of the investigation. The accused must be heard and the state of the investigation examined (as set out in article 70). However, the Code of Criminal Procedure does not limit the number of renewals, which could be viewed as a contradiction to the principle of limiting detention before judgement as set out in the preceding article (article 69).

According to the U.S. State Department, about 4,035 people are detained awaiting trial, of which 150 are held at State Security headquarters. Approximately 10% of prisoners are held in pre-trial detention³⁵.

In its annual report for 2010, the organisation KAEHR (Kuwaiti Association for Basic Evaluators of Human Rights) noted conditions of detention in police custody facilities where the cells are tiny and badly ventilated, and where the accused can suffer torture and mistreatment. The report mentions the cases (without revealing their identities) of an Egyptian who was tortured in the station at Al-Naqra (النقرة), and of a Syrian and a Saudi in the station at Huli square (حولي ميدان) who were mistreated by a police officer.

In July 2010, the organisation was able to visit one of these detention centres falling under the jurisdiction of the Ministry of the Interior. It was noted that some detainees were held in police custody for more than three months and that conditions of detention were very precarious, particularly with regard to the provision of water, the state of the cells, the lack of medical facilities, and the prisoners' lack of contact with their families.³⁶

Detention conditions are a cause for concern in many prisons. Overcrowding in badly ventilated cells and the absence of medical facilities compounds with the slowness of legal proceedings.³⁷ The KAEHR organisation mentions (without naming) a prisoner who died in detention in 2009 due to his deteriorating state of health.

This same organisation described in the report it presented to the UPR that people had been placed in detention for undetermined periods of time, without charge or trial.³⁸

³² The text of the Constitution is available at: <http://www.kt.com.kw/ba/dostour.htm> (accessed 18 March 2011)

³³ Criminal Procedure Code, article 60, available from <http://www.gcc-legal.org/MojPortalPublic/DisplayArticle.aspx?country=1&LawArticleID=5677> (accessed 18 March 2011)

³⁴ Association KAEHR (Kuwaiti Association for basic Evaluators of Human Rights), *Annual Report 2010*, chapter 9, http://www.humanrights.org.kw/taqreer2010_15.aspx (accessed 18 March 2011)

³⁵ US State Department, Bureau of Democracy, Human Rights and Labor, *2010 Country Reports on Human Rights Practises: Kuwait*, 8 April, 2011, Section 1 (d).

³⁶ Association KAEHR (Kuwaiti Association for basic Evaluators of Human Rights), *Annual Report 2010*, chapter 9, http://www.humanrights.org.kw/taqreer2010_15.aspx, (accessed 18 March 2011)

³⁷ Kuwaiti Association for basic Evaluators of Human Rights (KAEHR), *Report presented as part of the Universal Periodic Review*, 1 November, 2009, p.4, http://lib.ohchr.org/HRBodies/UPR/Documents/Session8/KW/KAEHR_UPR_KUW_S08_2010_KuwaitiAssociationforbasicEvaluators%20HumanRights_A.pdf (accessed 17 March, 2011)

³⁸ Kuwaiti Association for basic Evaluators of Human Rights (KAEHR), *Report presented as part of the Universal Periodic Review*, 1 November, 2009, p.4,

Among these long-term prisoners are people of diverse nationality who have been accused of collaborating with the Iraqi forces during the invasion of Kuwait in 1990. Some of them have completed their sentences without being released. Despite hunger-strikes by some prisoners in 2005 and 2006 seeking release on humanitarian grounds, they remain in detention. The authorities did not take into account the fact that their trials were not fair. Unfortunately, the total number of people held beyond the end of their sentences is unknown.

The Human Rights Committee has come to the same conclusion in its past recommendation – expressing its concern at the number of people detained following sentences handed down in 1991 by Court Martials in the context of procedures which were not in conformity with minimum fair trial norms. It recommended that these cases be examined by an independent and neutral body and that the defendants concerned be compensated if necessary.

In addition, people facing expulsion from Kuwait are imprisoned in a specialised prison – sometimes for long periods of time.

The case of the Bidun is particular, because they are exposed to a double jeopardy. During our visit to the country, the situation of **Ahmed Zidan** was mentioned to us several times. This Bidun, who did not have Kuwaiti nationality despite having been born and lived his whole life in Kuwait and on top of that being married to a Kuwaiti woman, was accused of spying for Iran. After his lawyer had demonstrated the vacuity of these accusations, Mr Zidan was acquitted by the court. But even though he had not been found guilty, Mr Zidan was held in a detention centre while awaiting deportation to an unknown destination. According to some Kuwaiti lawyers, this kind of practice against the Bidun is widespread. They mentioned the cases of people held in detention for more than five years, sometimes ten, with no release possible.

8. Legal safeguards and the legislative system (right to a fair trial - art. 14 of the Convention)

The independence of the judiciary and the right to a fair trial are enshrined in article 50 of the Constitution which guarantees the principle of the separation of powers. Nevertheless, articles 51, 52 and 53 assign legislative, executive and judicial powers to the Emir³⁹. He is also personally responsible for nominating judges. Although Kuwaiti judges are nominated for life, foreign judges have three-year renewable contracts. This precariousness does not allow them to perform their duties calmly and independently, and is an obstacle to the principle of the irremovability and independence of judges. No judicial council exists to guarantee the independence of the judiciary, to intervene in the nomination process for judges and prosecutors, nor to discipline them.

The constitution of Kuwait dates from 1962 and was amended in 1970 – the amendments in particular concerned articles relating to the internal and external security of the state. The Penal Code and Code of Criminal Procedure, which contain important guarantees, were promulgated in 1960 while under the British protectorate.

The authorities state that “most articles of the Constitution express the principle agreed upon by the international community and enshrined in the relevant international instruments.”⁴⁰ It is true that Kuwait has ratified some international treaties (International Covenant on Civil and Political Rights and the Convention against Torture in 1996) but its domestic laws are not always in conformity with the principles enshrined in these texts. The authorities also state that these Conventions can be evoked before courts, but the government has never made any effort to inform or train judicial officials in the use of these texts.

Despite the judiciary’s lack of information in this regard, the Kuwaiti delegation stated to the Committee against Torture that “while the Penal Code contained no specific provision relating to compensation for victims of torture, it was possible under ordinary law to sue for damages resulting from torture or any other offence. Since the Convention, which contained such a provision, had force

http://lib.ohchr.org/HRBodies/UPR/Documents/Session8/KW/KAEHR_UPR_KUW_S08_2010_KuwaitiAssociationforbasicEvaluatorof%20HumanRights_A.pdf (accessed 17 March 2011)

³⁹ The text of the Constitution is available at: <http://www.kt.com.kw/ba/dostour.htm> (accessed 18 March, 2011)

⁴⁰ Initial Report presented by Kuwait to the Human Rights Committee under Article 40 of the International Covenant of Civil and Political Rights, (CCPR/C/120/Add.1), December 1999, para. 20

of law, citizens could seek redress on that basis.⁴¹

As mentioned in our submission for the list of questions, a Supreme Human Rights Committee has existed since 2008, presided over by the Minister of Justice. The Committee dispenses advice and is empowered to raise the population's awareness of human rights through the media, to train staff, and to offer advice on international human rights authorities⁴². It has several subcommittees including the 'local monitoring subcommittee' which 'hears complaints about authorities or institutions that infringe on human rights, sets up committees to investigate these crimes, and demands information and explanations from those authorities and institutions'⁴³. All the same, it is not made clear how cases can be submitted to this subcommittee, and the number of complaints and their pursuit is not mentioned. According to some human rights activists, the subcommittee's work is ineffective⁴⁴.

9. Freedom of opinion and expression (art. 19)

Although freedom of opinion and expression are enshrined in the Constitution, in practice they are not respected and the media practices self-censorship.⁴⁵ The general trend reveals a deterioration in these freedoms in recent years, especially in relation to the press. Offenses against the royal family carry prison terms of two years and fines stretching to an excess of 200,000 dinars. Examples of attacks on the freedom of opinion and expression are becoming more common, indicating a desire on the part of the authorities to restrict these freedoms. Internet use continues to increase however.

More than 10 daily newspapers exist, two of which are in English. The State owns four television stations and nine radio stations and there are also a number of foreign stations.⁴⁶

National security and criticism of the royal family, the courts or the state prosecutor are particularly used by the authorities as pretexts to restrict the right to freedom of expression. Any Muslim citizen may file a criminal complaint against an individual who has publicly criticized the royal family, Islam or morality. For example, 100 complaints were filed in 2009 compared with 678 in 2010, most of which were settled with fines.⁴⁷ This figure is increasing from year to year.

In 2009, a number of people were arrested and detained for having expressed a critical opinion of the royal family.⁴⁸ For instance, former Member of Parliament **Dhaifallah Bu Ramiya**, arrested on 17 April 2009 and detained for three days, was criminally prosecuted for having stated that a member of the royal family was not capable of being Prime Minister. Similarly, **Khalifa Al-Kharafi**, a candidate in the legislative elections, was detained for 24 hours on 19 April 2009. A **female Australian national** was arrested in December 2008 for having insulted the Emir. She was released on 12 June, 2009 having been sentenced to two years in prison the previous April.

On 7 March 2010, Member of Parliament **Mohammed Hayef** was ordered to pay a fine of 3000 dinars (approximately US\$10,400) for making comments judged to be insulting to the royal family during the parliamentary session in May 2009. The newspaper which reported his words was ordered to pay the same fine. The same day, **Marzouk al-Ghanem and the newspaper Al-Nahar** were each fined for publishing an article considered disrespectful to the royal family. On 30 June, **Khaled al-Fadala**, a Member of Parliament and director of the National Democratic Alliance was sentenced to

⁴¹ Committee against Torture, Summary record of the periodic review of Kuwait by the Committee against Torture, (CAT/C/SR.335/Add.1), 7 January, 1999, para. 15

⁴² National report of Kuwait submitted in accordance with paragraph 15 (a) of the annex to Human Rights Council resolution 5/1 (under the Universal Periodic Review), 22 February 2010, (A/HRC/WG.6/8/KWT/1)

⁴³ Second periodic report presented by Kuwait to the Human Rights Committee following article 40 of the International Covenant on Civil and Political Rights, October 26 2009, (CCPR/C/KWT/2), para 28.

⁴⁴ Alkarama, interview with Usama M'naouar, barrister from Kuwait City, 11 January 2011

⁴⁵ US State Department, Bureau of Democracy, Human Rights and Labor, *2010 Country Reports on Human Rights Practises: Kuwait*, 8 April 2011, Section 2 (a).

⁴⁶ Freedom House, *Freedom in the World 2011*, January 13 2011, section on Kuwait, available from: <http://www.freedomhouse.org/template.cfm?page=22&year=2011&country=8070> (accessed August 25, 2011)

⁴⁷ US State Department, Bureau of Democracy, Human Rights and Labor, *2010 Country Reports on Human Rights Practises: Kuwait*, 8 April 2011, Section 2 (a).

⁴⁸ US State Department, Bureau of Democracy, Human Rights and Labor, *2009 Country Reports on Human Rights Practises: Kuwait*, 8 April 2011, Section 2 (a).

three months in prison and a fine of 150 dinars (approximately \$525) for defamation of the Prime Minister. On 12 July, his sentence as reduced to 10 days on appeal and he was freed.⁴⁹

On 13 December 2010, **Al Jazeera's** local offices were closed by the authorities for the third time – they had previously been closed in June 1999 and November 2002⁵⁰ and the station had its accreditation withdrawn following the broadcast of images of the police attack during the **Juma'an Al-Harbish** protest in December (see below for more information about the incident), and interviews with opposition members strongly criticizing the actions of the police.⁵¹

The lawyer, journalist and parliamentary candidate **Mohammed Abdulqader Al-Jassem** continues to suffer persecution by the authorities, for having "insulted government officials", "undermined the reputation of the Emir", "attacked the regime" and "spread false information damaging to the national interest".⁵² He was previously a victim of censorship in 2009 following declarations he made against the Prime Minister during a *dewaniya*. He was sentenced to a year in prison in November 2010 for defamation. This sentence was reduced to three months on appeal, before the Supreme Court finally annulled the ruling.⁵³

In June 2011, the case of the young blogger **Nasser Abul** (real name Nasser Badr Hassan Mahmoud) provoked much controversy in Kuwait. Following statements on Twitter criticizing the attacks by the Bahrain authorities against Shiite demonstrators and the intervention of Saudi military forces, he was arrested on 7 June, accused of defamation against the Emir and having undermined national security. According to his lawyer, Khalid Al-Chatti, Nasser Abul was held for 21 days and, although the criminal procedure was respected, he was mistreated. The charges against him were dropped, although Nasser Abul remained in custody for other reasons. As of 24 August 2011, he is still being held.

Before the presidential elections in Egypt scheduled to be held in September 2011, **members of Dr Mohamed El Baradei's opposition party** living in Kuwait were expelled to Egypt – when in fact, they had only been peacefully expressing their political opinions. On 8 April 2010, three Egyptians were expelled and more than 30 others suffered the same fate following an informal meeting to discuss what had happened to the first three. Some of these people had their employment contracts terminated and their residence permits cancelled on the pretext of preserving good relations between Kuwait and Egypt.⁵⁴ This is despite the fact that torture was known to be common in Egypt and that Mr El Baradei's supporters had suffered arrest and persecution there and that some of them were tortured by intelligence services.

In relation to internet use, the International Telecommunications Union reports that 38.3% of the population regularly accessed the internet in 2010 (an increase in usage since the start of the decade, with 5.8% of the population using the internet in 2000 and 34.3% in 2008).⁵⁵ The government continues to ban some sites, however, and monitors blogs and forums, on the pretext of security and combating defamation.⁵⁶ Reasons given for closing down sites are often political or security-related (preventing "incitement to terrorism and instability") or religious (some sites "violate Kuwait's customs and traditions"). For example, the UK-based website of **Yasser Al-Habib**, a Shiite Imam, was blocked in 2010.⁵⁷ Cybercafés are obliged to record the name and identity card number of their users. This

⁴⁹ US State Department, Bureau of Democracy, Human Rights and Labor, *2010 Country Reports on Human Rights Practises: Kuwait*, 8 April 2011, Section 1 (a).

⁵⁰ Mary Ann Tétreault, *Bottom-Up Democratization in Kuwait*, in Mary Ann Tétreault et al, *Political Change in the Arab Gulf States: Stuck in Transition*, Lynne Rienner Publishers Inc., 2011, Colorado, United States, p. 81

⁵¹ US State Department, Bureau of Democracy, Human Rights and Labor, *2010 Country Reports on Human Rights Practises: Kuwait*, 8 April 2011, Section 2 (a).

⁵² US State Department, Bureau of Democracy, Human Rights and Labor, *2010 Country Reports on Human Rights Practises: Kuwait*, 8 April 2011, Section 2 (a).

⁵³ Human Rights Watch, *Kuwait: Free Speech and Assembly Under Attack*, New York, January 31, 2011, <http://www.hrw.org/news/2011/01/31/kuwait-free-speech-and-assembly-under-attack> (accessed August 25, 2011).

⁵⁴ Al-Jazeera, *أخبار عن ترحيل الكويت أنصارا للبرادعي*, (Information relative to the expulsion of El-Baradei supporters by the Kuwaiti authorities), 10 April 2010, <http://www.aljazeera.net/NR/exeres/DF085904-0B32-46BD-AB45-131D81619A9E.htm> (accessed 19 March, 2011)

⁵⁵ International Telecommunications Union, Free statistics available from <http://www.itu.int/ITU-D/ict/statistics/material/excel/2010/InternetUsersPercentage00-10.xls> (accessed 25 August 2011).

⁵⁶ US State Department, Bureau of Democracy, Human Rights and Labor, *2010 Country Reports on Human Rights Practises: Kuwait*, April 8 2011, Section 2 (a).

⁵⁷ US State Department, Bureau of Democracy, Human Rights and Labor, *2010 Country Reports on Human Rights Practises: Kuwait*, April 8 2011, Section 2 (a).

practice is conducive to fostering an atmosphere of fear among users since this information can be supplied to the Communications Ministry on request.⁵⁸

10. Freedom of assembly and association (art. 21 and 22)

Apart from the fact that **freedom of assembly** is enshrined in law, it is an integral part of the Kuwaiti political tradition as illustrated by *dewaniyas*, meetings held in the evenings in specially designed premises. Political and public affairs are debated during these meetings, which are particularly beneficial to fostering a social bond. This right has been curtailed in recent years, however.

On 13 September 2010, public meetings of more than 20 people without formal authorisation from the authorities were prohibited, based on a 1979 law regarding public meetings which had never been fully implemented before.⁵⁹ This ban includes *dewaniyas*.⁶⁰ Political opponents have suffered most from the restrictions on freedom of assembly. On 8 December 2010, for instance, security forces violently dispersed a *dewaniya* organised to debate the constitution by the Member of Parliament **Juma'an Al-Harbish**. Several participants were injured in the attack, including four Members of Parliament, one of whom was **Dr. Obaid Wasmi**, a professor of law at the University of Kuwait. **Dr. Wasmi** decided to file a complaint against the Ministry of the Interior and the officers who had wounded him. He was arrested for this complaint two days later. On 20 December 2010, he was indicted on six counts, including "dissemination of false information abroad" and defamation of the Emir, accusations often used against political opponents. Dr Wasmi was finally released on bail on 10 February 2011. These examples are proof that if it necessary, the authorities repress political criticism.

Freedom of association is also enshrined in law, but in practice is highly restricted. Political parties are non-existent and although informal groups have formed in recent years based on political affinities, they are not legally recognised and there is no procedure for officially registering them as parties. The electoral system operates on the same principle of informal groups, based on political and tribal affiliations. These groups may not organise first round elections, although that did happen during the parliamentary elections in 2009.⁶¹ Candidates present themselves as independents.

Union law is limited.⁶² Workers (with the exception of domestic workers) may join unions, although this is subject to numerous restrictions such as obtaining a certificate of good behaviour and morality from the authorities. 100,000 workers are affiliated to a union out of an employed population of two million, and are concentrated above all in the public and petroleum sectors. Only one union is permitted per business sector and they are all part of an official federation, the Kuwaiti Trade Union Federation which includes 15 of the 47 unions. Unions recognised by the government receive most of their funding from the government and may be dissolved via a decree by the Emir.

Like domestic workers, who represent approximately a third of the foreign work force, maritime workers are not permitted to join unions. Foreign workers are not authorised to vote, or stand for a position of responsibility on the union, and may not join a union until they have lived in the country for five years.⁶³ Although recognised, the right to strike is subject to authorisation. A number of illegal strikes were organised in 2010 by foreign workers, particularly employees of cleaning and security companies who had not been only partially or not at all paid for several months.⁶⁴

⁵⁸ US State Department, Bureau of Democracy, Human Rights and Labor, *2010 Country Reports on Human Rights Practises: Kuwait*, April 8 2011, Section 2 (a).

⁵⁹ US State Department, Bureau of Democracy, Human Rights and Labor, *2010 Country Reports on Human Rights Practises: Kuwait*, April 8 2011, Section 2 (a).

⁶⁰ Human Rights Watch, *Kuwait: Free Speech and Assembly Under Attack*, New York, 31 January, 2011, <http://www.hrw.org/news/2011/01/31/kuwait-free-speech-and-assembly-under-attack> (accessed 25 August, 2011).

⁶¹ US State Department, Bureau of Democracy, Human Rights and Labor, *2010 Country Reports on Human Rights Practises: Kuwait*, April 8 2011, Section 3

⁶² US State Department, Bureau of Democracy, Human Rights and Labor, *2010 Country Reports on Human Rights Practises: Kuwait*, April 8 2011, Section 7 (a)

⁶³ US State Department, Bureau of Democracy, Human Rights and Labor, *2010 Country Reports on Human Rights Practises: Kuwait*, April 8 2011, Section 7 (a)

⁶⁴ US State Department, Bureau of Democracy, Human Rights and Labor, *2010 Country Reports on Human Rights Practises: Kuwait*, April 8 2011, Section 7 (a)

The ability to set up **associations** is restricted. Although the law allows the creation and existence of non-governmental organisations (NGOs), the government continues to restrict the number of licences issued. A number of NGOs, working to promote the rights of certain specific sections of the population (children, women, disabled people etc.), exist but only two human rights organisations are allowed, the Kuwaiti Human Rights Society and the Kuwaiti Society for Fundamental Rights.⁶⁵ A large number of organisations (149 in 2010) are still waiting to be registered.⁶⁶ Representatives of NGOs must also obtain formal permits from the authorities in order to attend conferences abroad on behalf of their organisation.⁶⁷

11. Counter-Terrorism Measures

Kuwait is committed alongside the United States to its anti-terrorism program. It is nevertheless difficult to find concrete information about this collaboration, particularly regarding extraordinary rendition⁶⁸.

US military bases have been established in the country and Kuwait supplies logistical and intelligence assistance. The Arifjan US military base is a key logistical base for the wars being carried out in Afghanistan and Iraq. Kuwait allows refuelling and soldiers coming from other countries to transit the territory. There are around 9000 soldiers stationed at the camp south of Kuwait City at any one time⁶⁹.

Kuwait also contributes to blocking the funding of humanitarian and charitable associations considered to be terrorists by the United States since 11 September 2011.⁷⁰ Some of these associations nevertheless received significant aid from the government or persons close to the royal family before they were banned.

This does not prevent the U.S. Department of State from regularly referring in its reports to the gaps in Kuwait's counter-terrorism measures, particularly in its laws, but also in its "lack of political will". The State Department also notes that the American military presence in the country increases the risk of terrorist attacks. The pressure on the Kuwaiti government caused by this has led to the implementation of an action plan worth US\$2.7 billion, in order to, inter alia, ensure surveillance of 'vital' installations.

Other programmes include those aiming to 'counteract the propagation of radical ideas' through the participation of NGOs and local media⁷¹. However, Kuwait has refused to confiscate passports and impose other restrictions on Khaled Al Mutairi and Fouad Al Rabia, former Guantanamo detainees, in spite of a request from the United States.⁷²

A Wikileaks cable dated the end 2009 regarding the region refers to numerous American concerns about, and disagreements with, Kuwaiti officials. It also describes the concerns they have regarding certain charitable organisations that they suspect of supporting terrorism, in contrast to the assessment made by their Kuwaiti allies. The Americans push for more cooperation from Kuwait yet also seek to introduce measures aimed at the criminalisation of organisations and individuals according to American criteria ("We urge your government to prioritize the passage of counterterror finance legislation...We would welcome the opportunity to work more closely with you to ensure that RIHS and other charities cannot be used to support terrorists."⁷³)

⁶⁵ US State Department, Bureau of Democracy, Human Rights and Labor, *2010 Country Reports on Human Rights Practises: Kuwait*, April 8 2011, Section 5

⁶⁶ US State Department, Bureau of Democracy, Human Rights and Labor, *2010 Country Reports on Human Rights Practises: Kuwait*, April 8 2011, Section 2 (a)

⁶⁷ Freedom House, *Freedom in the World 2011*, 13 January, 2011, section on Kuwait, available from: <http://www.freedomhouse.org/template.cfm?page=22&year=2011&country=8070> (accessed 25 August, 2011)

⁶⁸ John S. Adams, Foggy World of CIA 'Renditions' Might Include Jet with Local Ties, Great Falls Tribune, 9 November 2009.

⁶⁹ Home office, UK Border Agency, *Country of Origin Information Report, Kuwait*, 29 January 2010, p. 26-27, [http://uk.sitestat.com/homeoffice/rds/s?rds.kuwait-020210-doc&ns_type=clickout&ns_url=\[http://www.homeoffice.gov.uk/rds/pdfs10/kuwait-020210.doc\]](http://uk.sitestat.com/homeoffice/rds/s?rds.kuwait-020210-doc&ns_type=clickout&ns_url=[http://www.homeoffice.gov.uk/rds/pdfs10/kuwait-020210.doc]).

⁷⁰ US State Department, Bureau of Near Eastern Affairs, *Background Note: Kuwait*, 4 May 2010, <http://www.state.gov/r/pa/ei/bgn/35876.htm> (accessed 14 March 2011)

⁷¹ US State Department, *Country Reports on Terrorism 2008, Kuwait*, 30 April 2009, <http://www.state.gov/s/ct/rls/crt/2008/122433.htm> (accessed 14 March 2011)

⁷² Amnesty International, *Annual Report 2011*, London, 13 May, 2011, p. 188

⁷³ Revival of Islamic Heritage Society (RIHS) is a charitable organisation that the Americans consider to support terrorism and wish to put on the UN blacklist, Secretary of State, *Terrorist Finance: Action request for senior level engagement on*

This pressure from America is provoking a feeling of unease and increasing opposition among the population to the collaboration with the US army.

On an order from the United States, the Kuwaiti authorities arrested an unspecified number of Kuwaiti nationals who had visited Pakistan and Afghanistan. It appears that the names of suspects of all nationalities were transmitted by the Americans authorities to their Kuwaiti counterparts. These individuals were then arrested and interrogated in Kuwait. It seems that the American agents investigating these suspects actively participate in their interrogations.

Abd Al-Aziz Sayir Al-Shamri was detained for several years in Guantanamo Bay. Upon his return to Kuwait in 2005, he was judged again by a criminal court for 'belonging to Al-Qaeda'. Despite being acquitted, the Kuwaiti authorities continue to harass him by regularly summoning him for interrogations. Mr Al-Shamri was again arrested on 6 July 2009 and accused once more of belonging to Al-Qaeda. He was detained in secret for 11 days at a State Security centre where he was tortured with electricity while blindfolded and handcuffed. He was also beaten and subjected to humiliations and other psychological torture. He was kept in isolation for five months in inhuman detention conditions, without any contact with the outside world. He was acquitted, once more, by a court, but he continues to regularly suffer harassment from security agents who summon him for interrogations. He is also banned from leaving Kuwaiti territory⁷⁴.

The Obama administration has set up 'watch lists' to prevent people who have travelled to Yemen from returning to the United States without being interrogated.⁷⁵ When these people are identified as being in Kuwait, they risk being arrested and detained, as in the case of American-Somali national **Mohamed Gulet**, aged 19, who was living in the United States and travelled to Yemen in March 2009 to improve his Arabic and his knowledge of Islam. From there, he travelled to Somalia to visit his family, then to Kuwait in August 2009 in order to continue his Arabic studies while living with his uncle. On 20 December 2009, he went to the airport of Kuwait City to renew his visa as he had done in the past. After waiting five hours at the office, two men dressed in civilian clothing entered with handcuffs. They blindfolded him and took him to a detention centre located approximately 15 minutes from the airport. Alkarama has learned that he was tortured and questioned about his travel to Yemen and Somalia by the Kuwaiti security services. He was also interrogated about his relations with Anwar Al-Awkali, an American national suspected of instigating terrorist acts and whose targeted killing has been approved by the American authorities⁷⁶.

Following his 'police custody', Mr Gulet received a visit from a US Embassy official, as well as agents of the FBI who also interrogated him and warned him that he would only be allowed to return to the US if he told the truth about his movements in Yemen. He was released in January 2011 and was able to return to the United States in mid-January 2011. A complaint has been laid against the American government regarding his case. At the time of his arrest and detention, neither the FBI nor the US Department of State were willing to comment on Mohammed Gulet's case. In particular, they refused to answer whether or not the US had collaborated with Kuwait to arrange Mohammed Gulet's arrest. The attitude shown by certain Kuwaiti officials regarding Guantanamo detainees was revealed in a diplomatic cable made public by Wikileaks. In a meeting between the US Ambassador and the Kuwaiti Minister of the Interior Shaykh Jaber al-Khalid Al Sabah on 3 February, 2009, concerning the creation of a rehabilitation centre for former Guantanamo detainees, the Minister is stated as having said "You know better than I that we cannot deal with these people (i.e. the GTMO detainees). I can't detain them. If I take their passports, they will sue to get them back (Note: as happened with Al-Ajmi. End note.) I can talk to you into next week about building a rehabilitation centre, but it won't happen. We

terrorism finance, cable no. 09STATE131801, 30 December 2009, published by Wikileaks 5 December, 2010, <http://213.251.145.96/cable/2009/12/09STATE131801.html> (accessed 16 March 2011)

⁷⁴ Alkarama press release, *Kuwait: Continues harassment of former Guantanamo prisoner, Abd Al-Aziz Sayir Al-Shamri*, 5 March 2010, http://en.alkarama.org/index.php?option=com_content&view=article&id=444. See also, Alkarama, الكويت : استمرار التنكيل بمعقلي غوانتانامو السابقين (Former Guantanamo prisoners continue to suffer sanctions), 26 November, 2010, http://ar.alkarama.org/index.php?option=com_content&view=article&id=3994 (accessed 18 March 2011)

⁷⁵ Mark Mazzetti, *Detained American Says He Was Beaten in Kuwait*, New York Times, January 2011, <http://www.nytimes.com/2011/01/06/world/middleeast/06detain.html> (accessed 11 March, 2011)

⁷⁶ Scott Shane and Robert F. Worth, *Challenge Heard on Move to Kill Qaeda-Linked Cleric*, New York Times, 8 November 2010, <http://www.nytimes.com/2010/11/09/world/middleeast/09awlaki.html?ref=anwaralawlaki> (accessed 14 March 2011).

are not Saudi Arabia; we cannot isolate these people in desert camps or somewhere on an island. We cannot compel them to stay. If they are rotten, they are rotten and the best thing to do is get rid of them. You picked them up in Afghanistan; you should drop them off in Afghanistan, in the middle of the war zone.⁷⁷

The American authorities finally convinced Arab governments to build internment centres for terrorist suspects, in particular former Guantanamo detainees. In Kuwait, following initial opposition from the authorities, the Al-Salam 'rehabilitation centre' was established in October 2009. The authorities set up a re-insertion programme which is considered to be very controversial due to its security character. It must be recalled here that former Guantanamo detainees have been acquitted, with all the charges that were held against them dropped, and that some of them were humanitarian workers who had travelled to Afghanistan without any ties to Al-Qaeda. Some of them worked in humanitarian projects established by Kuwaiti charitable organisations whose leaders are close to the Kuwaiti authorities and who have themselves never been investigated. Regardless, the former detainees were obliged to participate in the stigmatising rehabilitation programme, when they should have been compensated for the arbitrary detention and mistreatment they suffered during the long years they spent at Guantanamo. This programme, similar to that in place in Saudi Arabia which is publically viewed as having failed, is strongly criticised in Kuwait as it is regarded as an American establishment⁷⁸.

Amongst the twelve Kuwaiti nationals arrested by the Americans between 2005 and 2006 and detained at Guantanamo, eight were sent back to Kuwait where they were put in the rehabilitation centre mentioned above, alongside former Guantanamo detainees implicated in terrorist activities.

Finally, eight men accused of belonging to Al-Qaida and having planned an attack against a US base were acquitted by the criminal court. This decision was confirmed by the court of appeal on 28 October 2010. However, no action was taken to punish those responsible for the ill treatment they had received.⁷⁹

12. Conclusion

Although the situation in Kuwait is less worrying than that of most of its neighbours, the gradual attrition of fundamental liberties (freedom of expression, assembly and association) in recent years remains of concern and many observers and members of civil society have expressed fears that this situation will worsen in the current context of calls for democracy in the Arab world.

The planned dialogue with the Committee should encourage the country towards greater political openness and greater respect for the population's civil and political rights.

The marginalisation and discrimination of the Biduns and immigrant workers are the priority issues to be addressed. Their claims are legitimate and the country's authorities unfortunately too often respond to them with violence.

The question of judicial independence also remains a priority question and one which is decisive to improving the human rights situation in the country. Reactions, including among the political class, to deaths under torture demonstrate unanimous opposition to the most serious breaches. The government must take radical measures to avoid such violations occurring again, particularly by setting up transparent, impartial and rapid inquiries and bringing those responsible to justice.

The need is also emerging for an independent National Human Rights Institution which adheres to the Paris Principles and for the initiation of a dialogue with civil society.

Finally, signature and ratification of other international human rights treaties and their optional protocols would demonstrate Kuwait's desire to respect the rule of law and create a more equal society.

⁷⁷ Embassy Kuwait, *The Interior Minister's remedy for terrorists: "let them die"*, Wikileaks, <http://213.251.145.96/cable/2009/02/09KUWAIT110.html> (accessed 18 March, 2011)

⁷⁸ Jihad Abou Al'ess, *مركز كويتي لتأهيل عائدتي غوانتانامو، جهاد أبو العيس* ((Kuwait Center for the Rehabilitation of Former Prisoners of Guantanamo), Al-Jazeera, 27 October, 2009, <http://www.aljazeera.net/NR/exeres/F88173D8-4665-4D81-A4EC-5D7FBD3D5880.htm>, (accessed 14 March 2011)

⁷⁹ Amnesty International, *Annual Report 2011*, London, 13 May 2011, p. 188