

KUWAIT

SUBMISSION TO THE
UNITED NATIONS HUMAN
RIGHTS COMMITTEE

117TH SESSION, 20 JUNE- 15 JULY 2016

AMNESTY
INTERNATIONAL



Amnesty International Publications

First published in 2016 by
Amnesty International Publications
International Secretariat
Peter Benenson House
1 Easton Street
London WC1X 0DW
United Kingdom
www.amnesty.org

© Amnesty International Publications 2016

Index: MDE 17/4145/2016
Original Language: English
Printed by Amnesty International, International Secretariat, United Kingdom

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INTRODUCTION

Kuwait is a state party to seven international human rights treaties, including the International Covenant on Civil and Political Rights (the Treaty, the Covenant or the ICCPR)¹. It has also taken part in two cycles of the Universal Periodic Review (UPR), a state-led review of the implementation of international human rights law and standards.

Broadly speaking, for many years Kuwait made progress towards complying with the ICCPR and other international treaties. In recent years, however, notably since the wave of social and political unrest that swept across the Middle East and North Africa from 2011, the Kuwaiti state has struggled to uphold its international obligations. Whilst the authorities have pointed to genuine security concerns, they have taken ill-considered measures aimed at quelling dissent and unrest in the country.

The present document specifically assesses Kuwait's ICCPR obligations insofar as these relate to: the status of the Covenant in Kuwaiti law; the situation of the stateless Bidun community; and the rights to freedom of expression and peaceful assembly. The organization also draws on the recommendations made, accepted and/or rejected by the government of Kuwait following the 28 January 2015 session of the Universal Periodic Review.²

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

- *The 'Withouts' of Kuwait – Nationality for Stateless Bidun Now*, September 2013³
- *The 'Iron Fist Policy': Criminalization of peaceful dissent in Kuwait*, December 2015⁴

¹ Kuwait is a state party to, chiefly, the conventions on (the): Elimination of All Forms of Racial Discrimination (ICERD), 1968; Rights of the Child (CRC), 1991; Elimination of All Forms of discrimination against Women (CEDAW), 1994; Civil and Political Rights (ICCPR), 1996; Economic, Social and Cultural Rights (ICESCR), 1996; and Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), 1996. Kuwait is also party to the Arab Charter on Human Rights.

² The review of Kuwait was held during the 21st session, 19-30 January 2015, at the 16th meeting of the Universal Periodic Review (UPR), on 28 January 2015. At the 18th meeting of the same session, the UPR's Working Group adopted the Report of the Working Group on the Universal Periodic Review – Kuwait, issued 13 April 2015, UN reference A/HRC/29/17, which can be accessed from the Kuwait page of the UPR (2nd cycle): <http://www.ohchr.org/EN/HRBodies/UPR/Pages/KWSession21.aspx>

³ AI Index MDE 17/001/2013 accessible at: <https://www.amnesty.org/en/documents/MDE17/001/2013/en/>

⁴ AI Index MDE 17/2987/2015 accessible at: <https://www.amnesty.org/en/documents/mde17/2987/2015/en/>

STATUS OF THE COVENANT IN KUWAITI LAW (ART. 2)

In respect to the preamble and article 2 of the Covenant, Amnesty International welcomes the withdrawal of the interpretative declaration to article 25b of the Covenant, as in 2005 the state party extended universal suffrage in domestic law. The organization likewise welcomes the Council of Ministers' decision of 25 May 2014, under which a national committee has been formed to explore the withdrawal of Kuwait's reservations to international treaties including the ICCPR.

When it ratified the ICCPR in 1996, in respect to articles 2.1 and 3, Kuwait asserted that:

“Although the Government of Kuwait endorses the worthy principles embodied in these two articles as consistent with the provisions of the Kuwait Constitution in general and of its article 29⁵ in particular, the rights to which the articles refer must be exercised within the limits set by Kuwaiti law.”

Similarly, Kuwait set out an interpretative declaration with regard to Article 23 of the treaty, asserting that Kuwait's Law 51 of 1984, on Personal Status, would take precedence. It stated that “[w]here the provisions of that article [from the ICCPR] conflict with Kuwaiti law, Kuwait will apply its national law”.

Article 23 of the Covenant states that “The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.” It provides for the right to marriage, noting in 23.3 that “No marriage shall be entered into without the free and full consent of the intending spouses.” Article 23.4 calls for equality of rights and responsibilities, “during marriage and at its dissolution”.

Kuwait's Personal Status Law contains discriminatory provisions that limit, amongst other things, the freedom of women to marry and live with non-Kuwaiti men, and other provisions⁶.

⁵ Article 29 of Kuwait's Constitution states: Article 29 [Equality, Human Dignity, Personal Liberty] (1) All people are equal in human dignity and in public rights and duties before the law, without distinction to race, origin, language, or religion; (2) Personal liberty is guaranteed.

⁶ For example, Article 30 states, “A women who has been previously married or who has attained twenty-five years of age has freedom of choice in her marriage. She shall not however make her own contract; this shall be done by her guardian”. In paragraph 50 of its 8 November 2011 Concluding Observations, The Committee on the Elimination of Discrimination against Women noted “with concern the continued application of the discriminatory provisions contained in the State party's Personal Status Act, in particular the permissibility of polygamy, the prohibition for Muslim women to marry non-Muslim men, the requirement of consent of walis (guardians) for the marriage of Sunni women, the restrictions on women's right to divorce, and the inheritance rights of Sunni women, who, unlike Shia women, must share their deceased husband's property with his male relatives [...]” from in United Nations, Convention on the Elimination of All Forms of Discrimination against Women, Committee on the Elimination of

For that reason, Amnesty International shares the concern of the Human Rights Committee, expressed in paragraph 7 of the 2011 Concluding Observations on Kuwait's Second Periodic Report that Kuwait's interpretative declarations systemically limit the application of the ICCPR.⁷ Such provisions restrict the scope of its obligations and impose the less demanding standards of Kuwait's domestic legislation, which perpetuates entrenched discrimination of women and the stateless Bidun community.

RECOMMENDATIONS

Amnesty International recommends that the government of Kuwait:

- Publish a detailed report on the actions and progress made by the national committee formed by the Council of Ministers in 2014 with a view to withdrawing reservations and interpretative declarations made by the government in respect to the Covenant;
- Take all necessary steps to withdraw the interpretative declarations on articles 2.1, 3 and 23; and
- Provide a specific timetable for adopting the necessary legislative amendments in order to fully comply with the object and purpose of the treaty and ensuring that women and the stateless Bidun community are not discriminated against.

Discrimination against Women; Fiftieth session 3 - 21 October 2011, Concluding observations of the Committee on the Elimination of Discrimination against Women, UN reference CEDAW/C/KWT/CO/3-4, accessible via the Kuwait page of the Office of the High Commissioner for Human Rights:

http://tbinternet.ohchr.org/_layouts/TreatyBodyExternal/countries.aspx?CountryCode=KWT&Lang=EN

⁷ United Nations, International Covenant on Civil and Political Rights: Human Rights Committee, Consideration of reports submitted by States parties under article 40 of the Covenant - Concluding observations of the Human Rights Committee: Kuwait; UN reference CCPR/C/KWT/CO/2, 18 November 2011; accessible from the Kuwait page of the Office of the High Commission for Human Rights: <http://www.ohchr.org/EN/Countries/MENARegion/Pages/KWIndex.aspx>

RIGHTS OF THE STATELESS BIDUN COMMUNITY (ARTS.2, 24, 26)

OVERVIEW OF THE STATELESS BIDUN IN KUWAIT

Many Bidun currently living in Kuwait were born and raised in Kuwait. Some have Kuwaiti mothers and other Kuwaiti relatives. Many belong to families that have been settled in Kuwait for many years, including before independence in 1961. Yet for over 50 years, the Kuwaiti authorities have denied Bidun people citizenship of the only country they know, labelling them “non-Kuwaiti”, “unidentified [citizens]” and, more recently, “illegal residents”. The term Bidun comes from “bidun jinsiyya” (“without nationality”). The Bidun are indeed Kuwait’s “withouts” – without nationality but also without the rights conferred by full citizenship.

For an overview of the situation of the Bidun community in Kuwait, with special reference to Bidun-lead demonstrations for the conferral of citizenship, which took place between 2011 and 2013, see the Amnesty International publication *The ‘Withouts’ of Kuwait – Nationality for Stateless Bidun Now*.⁸

Amnesty International remains concerned that the stateless Bidun community continues to face discrimination, including in relation to: access to health and education; allocation of identity documents; and standing before the courts.

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

MISLEADING DESIGNATION OF THE BIDUN COMMUNITY AS “ILLEGAL RESIDENTS”

“Where do they expect to send us back? We have no country, we are Bidoon, stateless. My country [is] Kuwait”

*Saad al-Kowaili, a Bidun asylum seeker in France*⁹

In its responses to recommendations made in the course of the UPR, Kuwaiti officials

⁸ Amnesty International: The ‘Withouts’ of Kuwait – Nationality for Stateless Bidun Now, September 2013, AI Index MDE 17/001/2013, accessible at:

<https://www.amnesty.org/en/documents/MDE17/001/2013/en/>

⁹ Quoted in Al-Jazeera - Bidoon fleeing Kuwait, stuck in the Calais ‘jungle’, 29 March 2016, accessible at: <http://www.aljazeera.com/indepth/features/2016/03/bidoon-fleeing-kuwait-stuck-calais-jungle-160327123602407.html>

rejected recommendation 157.30 from Honduras, to ratify the Conventions on refugees and stateless persons. Kuwaiti authorities then stated:

“The State of Kuwait rejects this recommendation because it is not applicable to the categories mentioned therein (the Bidouns and stateless persons). The issue that the State of Kuwait is looking into is the status of illegal residents who have concealed their national identity documents and are thereby in breach of the Residence of Foreigners Act No. 17/59.”

Moreover, although “stateless” is a legal term used in the Conventions of 1954 and 1961, its meaning as defined in those Conventions does not apply to illegal residents. A stateless person is one whom no State recognizes as a national under its legislation. In the case of illegal residents, on the other hand, their original nationalities have been established by the Central Agency on the basis of documentary evidence and, consequently, not being covered by those Conventions, they are regarded as being in breach of the Residence of Foreigners Act No. 17/59.

They are therefore designated as illegal residents in accordance with Decree No. 467/2010, establishing the Central Agency, and the preceding Decree No. 221/93 establishing the Central Committee and Decree No. 58/96 establishing the Executive Committee.”

Kuwait alleges that members of the Bidun are “illegal residents” in breach of immigration legislation. Media reports have stated that the government believes that 60,000 out of an officially-registered 93,000 [Bidun] have destroyed papers demonstrating that they have rights to citizenship in other countries, to be naturalized in order to benefit from Kuwait’s “lucrative” welfare program¹⁰. However, for several decades, the authorities have not provided credible evidence proving that members of the Bidun have access to another nationality and if so, to which.

Not holding Kuwaiti nationality severely impedes the Bidun community’s access to the rights they are entitled to, including education, medical assistance and employment. It also promotes social stigmatization and further marginalization of the community. Failure to resolve the situation and grant access to nationality to those who are entitled to it has forced a significant number of Kuwait Bidun – at least 300, according to some media reports - to leave the country where they were born to seek asylum in the European Union¹¹.

INDUCED OR COERCED ACQUISITION OF OTHER NATIONALITIES

¹⁰ This is referenced in: Middle East Eye - Kuwait's stateless offered nationality not their own, 12 December 2014, accessible at: <http://www.middleeasteye.net/in-depth/features/kuwaits-stateless-offered-nationality-not-their-own-415185571>

¹¹ Al-Jazeera - Bidoon fleeing Kuwait, stuck in the Calais 'jungle', 29 March 2016, accessible at: <http://www.aljazeera.com/indepth/features/2016/03/bidoon-fleeing-kuwait-stuck-calais-jungle-160327123602407.html>

While the Kuwaiti authorities assert to the international community that Bidun conceal their “true nationality”, in fact, the government of Kuwait has repeatedly sought to induce or coerce a great many members of the community into acquiring another country’s “nationality”. In the late 1990s the government induced scores, if not hundreds of Bidun to acquire passports of Latin American, African and other nationalities. In return for acquiring these passports, they were promised that their status would be regularized and with that, medical and education services would be arranged and their future secured, albeit as a third country national. Often acquired fraudulently, such passports could not be renewed and the initiative was quietly abandoned, having caused widespread suffering.

In 2014 the government of Kuwait announced it would extend unspecified socio-economic benefits to the Bidun community on condition that they acquired Comorian nationality. Shaikh Mazen al-Sabah, Assistant Undersecretary for Citizenship and Passports affairs in Kuwait’s Interior Ministry announced in 2014 that the Comoros Islands had agreed to offer “economic citizenship” to the Bidun community¹². He did not define the meaning of “economic citizenship” but stated in November 2014 that the Central System itself “will be distributing applications for Bidoons to request passports of the Comoros Islands”, reassuring the Bidun community that the move would guarantee them a permanent residence in Kuwait as well as access to free education and health services among other privileges¹³.

Rather than seeking other states to offer a spurious form of citizenship to the Bidun, Kuwait should recognize the right to nationality of the Bidun community, which would grant them access to the effective realization of their rights.

ARBITRARY AND DISCRETIONARY ACCESS TO STATE RESOURCES

Kuwait’s Third Periodic Report to this Committee sets out detailed information regarding the number of Bidun able to access free medical treatment and education and the discretionary means used to extend these free services, including in private schools. The report also sets out detailed information on the number of Bidun who, on a discretionary basis, have managed to obtain identity documents such as birth, marriage and death certificates as well as driver’s licences.

It remains the case, however, that access to public services remains discretionary and is not available on an equal basis to citizens. Access is administered by the Central System to Resolve Illegal Residents’ Status (the Central System), also called the Central Agency for Illegal Residents (CAIR), which is accountable only to the Executive and, as many Bidun argue, open to abuse, including forms of bribery. The decisions of its director, who has ministerial rank, are not open to independent appeal. Bidun activists have repeatedly told Amnesty International, over a number of years, that members of the community cannot

¹² Middle East Eye - Kuwait’s stateless offered nationality not their own, 12 December 2014, accessible at: <http://www.middleeasteye.net/in-depth/features/kuwaits-stateless-offered-nationality-not-their-own-415185571m>

¹³ Kuwait Times – Government to offer Bedoons Comoros Citizenship, 10 November 2014, accessible at: <http://news.kuwaittimes.net/pdf/2014/nov/10/p01.pdf>

register any property, such as a car or business, under their name. Many allege that they need to bribe officials in order to do so.

The Central System divides the Bidun into three categories, allocating them green, yellow and red cards. In its Third Periodic Report, the government does not clearly set out how the colour-coded category system of identity cards functions, with different colours denoting the likelihood of the holder to be eligible for consideration for citizenship and ultimately to access public services, nor the varying and sometimes very short validity of the cards. The government does not explain whether the categorization is subject to appeal and fails to mention that possession of a valid ID card is required to obtain the state-facilitated assistance set out in the Third Report, including with respect to holding a bank account¹⁴.

RECOMMENDATIONS

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

- Cease to refer to Bidun as “illegal residents” which further stigmatizes and marginalizes the community.
- Sign and ratify the Convention on the status of statelessness and the Convention on the Reduction of Statelessness.
- Begin a fair, transparent and swift adjudication of all pending applications for nationality, including but not only the acknowledged 34,000 individuals who reportedly meet eligibility criteria for Kuwaiti nationality.
- Enable Bidun residents of Kuwait to have access to the courts or another form of independent and impartial tribunal with the force of law to challenge decisions made by the authorities with regards to their claim of nationality and to make the case for their recognition as Kuwaiti nationals.
- Pending full naturalization, rescind regulations that discriminate against Bidun in terms of access to employment, health care and education.

FREEDOM OF EXPRESSION (ART. 19)

Paragraphs 122-130 of Kuwait’s Third Periodic Report assert that freedom of expression is guaranteed in Kuwait, in line with the provisions of the Covenant¹⁵. Regrettably, violations of

¹⁴ For historic examples of these types of discrimination, see Review of the UK Home Office Country Information and Guidance (CIG) Report Kuwait, Bidoon, -3 February 2014; Prepared for the Chief Inspector of Borders and Immigration & the Independent Advisory Group on Country Information (IAGCI) by Claire Beaugrand, Institut français du Proche Orient (Ifpo), accessible at: <http://icinspector.independent.gov.uk/wp-content/uploads/2014/11/IAGCI-evaluation-of-the-Home-Offices-CIG-Report-on-Kuwait.pdf>

¹⁵ International Covenant on Civil and Political Rights – Human Rights Committee: Consideration of reports submitted by States parties under Article 40 of the Covenant: Third Periodic reports of States

the right to freedom of expression are a pressing concern for Kuwaiti and international human rights defenders. The authorities have used existing laws and created new ones to bring criminal charges against and imprison their critics, and to chill free expression. They have stripped Kuwaiti nationals of citizenship, apparently because of their perceived opposition to the government.

Amnesty International's December 2015 report, *The 'Iron Fist Policy': Criminalization of peaceful dissent in Kuwait* provides detailed legal analysis and a catalogue of case examples that show that Kuwait is not meeting its international obligations in relation to freedom of expression¹⁶.

The report provides an overview of the web of overlapping, vaguely worded, broadly framed laws that the government uses to restrict individuals' right to express themselves freely. It reviews flaws in Kuwait's constitution as well as legal provisions relating to "insult" and defamation, national security and "insult" to religion. It examines the targeting of opposition activists, human rights defenders and journalists for "crimes" of expression; the issue of insult of the Amir and other state officials, in addition to the criminalization of peaceful criticism of foreign states and rulers. It examines restrictions on the media itself, including online media, with reference to 2016's Cybercrimes law. It also documents the use of the revocation of citizenship and deportation as a way to restrict expression.

Amnesty International is concerned by the scale of ongoing arrests, trials and convictions relating to the peaceful exercise of the right to freedom of expression.

For example, Amnesty International has expressed its concern over the charging of academic Sheikha al-Jassem in connection with an interview she gave on 8 March 2016 in which she addressed questions regarding religiously-based extremist conduct. She expressed the view that politics and religion should be kept apart and stated, amongst other things, that it was her understanding that while Islamic Shari'a was one source for Kuwaiti law, it was not the only source and that the Constitution of Kuwait should be paramount for all Kuwaitis.

On 14 and 24 April 2016, she was summoned for questioning by two different public prosecutors on the basis of two sets of complaints brought by two private plaintiffs. On 14 April the prosecutor charged her for violations under Article 29 of Law 31 of 1970, Amending the Penal Code, and Article 11 of the 2007 Audio-visual Crimes Law. Amnesty International would consider her a prisoner of conscience – a person detained or imprisoned for the peaceful expression of a conscientiously held belief -and will call for her immediate and unconditional release if she is detained.

Amnesty International has observed an increased degree of self-censorship in Kuwait since

parties due in 2014 – Kuwait, 8 December 2014; UN reference CCPR/C/K/WT/3, accessible at the Kuwait page of the Office of the High Commissioner for Human Rights:

<http://www.ohchr.org/EN/Countries/MENARegion/Pages/KWIIndex.aspx>

¹⁶ Amnesty International – The 'Iron Fist Policy': Criminalization of peaceful dissent in Kuwait, December 2015, AI Index MDE 17/2987/2015, accessible at:

<https://www.amnesty.org/en/documents/mde17/2987/2015/en/>

2014, on social media and in online and print media. Independent reporting has grown increasingly cautious and guarded as the space to freely express opinions and ideas has been closing.

Additionally, the government has used the threat of and the actual removal of Kuwaiti citizenship as a tool to restrict freedom of expression and association. A summary of this issue is set out below.

STRIPPING OF NATIONALITY

Kuwait's activists have told Amnesty International that the revocation of citizenship is widely seen as an even more severe punishment than imprisonment, since the government also strips the nationality of dependants of adult males whose citizenship has been revoked.

Kuwait's Nationality Law gives the Ministry of Interior wide powers to revoke the Kuwaiti citizenship of individuals, including on grounds that they are deemed to have "disseminated opinions which may tend to seriously undermine the economic or social structure of the state" because they are a "member of a political association of a foreign state" and it has been used in contravention of Kuwait's obligations under article 19 of the ICCPR, which provides for the right to hold opinions without interference, and 22, which guarantees freedom of association.¹⁷

In a resolution that was adopted in July 2012, the UN Human Rights Council urged all states "to refrain from taking discriminatory measures and from enacting or maintaining legislation that would arbitrarily deprive persons of their nationality on grounds of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status, especially if such measures and legislation render a person stateless."¹⁸

In June 2015, at the concluding session of the UN Human Rights Council's second Universal Periodic Review of Kuwait, the Kuwaiti government made a number of undertakings.¹⁹ These included commitments to "[e]nsure the realization of freedom of the press and the media, in line with ICCPR standards," and to "[l]egislate to guarantee the freedoms of expression, of assembly and of opinion" and "allow the use of social media without undue restrictions and

¹⁷ See also Human Rights and Arbitrary Deprivation of Nationality Report of the Secretary-General, 19 December 2013. UN index: A/HRC/25/28. The report also stipulated that to be legitimate, all citizenship revocation decisions should be subject to administrative or judicial review, and that extending nationality revocations to the dependants of individuals stripped of their citizenship rights is "problematic" in all cases and prohibited by international law when this would have the effect of rendering such dependants stateless.

¹⁸ UN, Human Rights Council: Report of the Human Rights Council on its 20th Session, 3 August 2012, containing resolution 20/5, entitled Human Rights and Arbitrary Deprivation of Nationality, of 5 July 2012; UN reference A/HRC/20/2, accessed at:

http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session20/A-HRC-20-2_en.pdf

¹⁹ United Nations: Human Rights Council: Report of the Working Group on the Universal Periodic Review (UPR), 13 April 2015, UN index A/HRC/29/17, accessible at:

<http://undocs.org/m2/QRCode.ashx?DS=A/HRC/29/17&Size=2 &Lang=E> and the Kuwaiti government's 4 June 2015 response, UN index A/HRC/29/17/Add.1, in Arabic.

limitations.” The government also said it would “repeal [the] arrest, trial and imprisonment of persons exercising their freedom of opinion through media and Internet.”

Such commitments are welcome. Their implementation would mark a major breakthrough and an apparent reversal of state strategy, since the past four years have seen a significant, ongoing deterioration of respect for human rights in Kuwait, marked by growing government intolerance of criticism and dissent – as well as repeated breaches of the government’s obligations under international human rights law and treaties.

RECOMMENDATIONS

Amnesty International urges the Kuwaiti government to take the necessary measures in order to reverse the current restrictions to the right to freedom of expression by taking the following steps:

- Fully implement international obligations and commitments relating to the rights to freedom of expression by respecting, protecting, promoting and fulfilling this right in particular and all other human rights in general.
- Release all prisoners of conscience – those imprisoned solely for their peaceful exercise of freedom of expression or other human rights – immediately and unconditionally.
- End all prosecutions for peaceful exercise of the right to freedom of expression.
- Review all laws that impinge upon the right to freedom of expression, and amend, and where necessary repeal, these laws to ensure and facilitate the effective exercise of the rights to freedom of expression in accordance with Kuwait’s international human rights obligations and commitments. Any restrictions placed on this right must be demonstrably necessary and proportionate for one of the grounds expressly identified in human rights law.
- Decriminalize laws relating to defamation.
- Uphold the right to information – the public’s right to know – and incorporate a public interest defence in any laws that limit this right, for example in relation to the dissemination of information that state authorities deem confidential.
- Guarantee media freedom, including by requiring that government decisions to suspend or close media outlets are made subject to judicial challenge and approval.
- Uphold internet freedom in accordance with international standards including those articulated by the UN Human Rights Council 20 June 2014 resolution on “The promotion, protection and enjoyment of human rights on the Internet.”
- Accept the requests to visit Kuwait made by the UN Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, and the UN Special Rapporteur on the situation of human rights defenders, and schedule specific dates for such visits.
- Review all cases in which citizenship has been revoked to ensure that the decisions follow due process of law and meet international standards of fairness; and amend the 1959 Nationality Law to ensure that the peaceful exercise of the right to freedom of expression, association and assembly can never be used as an excuse or ground for the revocation of citizenship.

FREEDOM OF ASSEMBLY AND EXCESSIVE USE OF FORCE (ARTS. 7, 21)

Amnesty International believes that the explanation provided by the government, in paragraphs 136-139 of Kuwait's Third Periodic Report, is confusing and that legal restrictions on the right to peaceful assembly in Kuwait limit people's ability to express dissent as part of a protest or rally.²⁰ Several provisions of the 1979 Law on Public Gatherings and Meetings, in particular, unduly restrict exercise of the right to peaceful assembly.²¹

In 2006, Kuwait's Constitutional Court ruled on a challenge to aspects of the law. It found that specific provisions limited social freedom and violated Kuwait's Constitution. The court expressed the view that prior permission for public meetings and the ability of security forces to disrupt such meetings constituted "arbitrary law-sanctioned repression of opinion" and constituted "a mandate for the security apparatus to control public debate", a "moratorium on the right to public discourse". But the ruling stopped short of striking down these provisions, ruling that restrictions on the right to assembly contained in the law were justified because they met a social need.²²

²⁰ International Covenant on Civil and Political Rights – Human Rights Committee: Consideration of reports submitted by States parties under Article 40 of the Covenant: Third Periodic reports of States parties due in 2014 – Kuwait, 8 December 2014; UN reference CCPR/C/KWT/3, accessible at the Kuwait page of the Office of the High Commissioner for Human Rights: <http://www.ohchr.org/EN/Countries/MENARegion/Pages/KWIndex.aspx>

²¹ This section draws on the section entitled Legal Restrictions on the Rights to Freedom of Assembly, in Amnesty International – The 'Iron Fist Policy': Criminalization of peaceful dissent in Kuwait, December 2015, AI Index MDE 17/2987/2015, accessible at: <https://www.amnesty.org/en/documents/mde17/2987/2015/en/> as well as the contents of a memorandum sent to the government of Kuwait on 22 May 2015. The government of Kuwait replied to Amnesty International on 10 March 2016.

²² The Constitutional Court's 2006 ruling stated that Articles 1 and 4 of the 1979 law contradicted Article 44 of the Constitution, in addition to finding them contradictory to the spirit of Articles 30, 34, and 36. In addition, Articles 2, 3, 5, 6, 8, 9, 10, 11, 16, 17, 18, 19, and 20 of Law 65/1979, which contain regulations and instructions relating to Articles 1 and 4, were found to contain unconstitutional text as applied to public assembly. The Constitutional Court rejected a further challenge to the 1979 law in March 2015, ruling that irrespective of the guarantees of individual freedom contained in the Universal Declaration of Human Rights and Kuwait's Constitution, such rights had to be exercised in accordance with Kuwait's domestic laws, and that the state had an obligation to protect the public interest as well as the rights of individuals. See Annulment by the Constitutional Court of Article 15 of the Law on gatherings: unconstitutional and without prejudice to the freedoms guaranteed by the Constitution, published in the al-Rai al-'Am newspaper on 2 May 2005; accessible at: <http://www.mohamoon-kw.com/default.aspx?Action=DisplayNews&ID=6719>

Paragraph 139 of the Third Periodic Report describes how the Constitutional Court decision struck down 13 articles of the 1979 law, without explaining that the Ministry of Interior subsequently circulated an interpretative directive that appeared to erode the Constitutional Court's ruling.

Under Article 12 of the 1979 law, those who do not hold Kuwaiti citizenship – including members of the Bidun minority and foreign migrant workers, who make up more than half of Kuwait's 3.5 million population – are prohibited from participating in “processions, demonstrations and gatherings”. This prohibition directly breaches Kuwait's obligations under international human rights law²³.

Article 4 of the 1979 law also makes it illegal to hold demonstrations or other public gatherings without first obtaining a licence issued by the relevant local government body. Organizers of gatherings must also provide their identities to the authorities in advance.²⁴

A requirement to give prior notice of demonstration is compatible with international standards. But a requirement to give notification must not amount in practice to a requirement to obtain authorization or “licence”, as is required under Kuwaiti law. The purpose of notification requirements must be to allow the authorities to take reasonable and appropriate measures to guarantee the smooth conduct of any assembly, meeting or other gathering, and while the authorities may use notification requirements to ensure protection of the rights of others or to prevent disorder or crime, these requirements should not represent a hidden obstacle to the freedom of peaceful assembly. So, no authorization should be required to assemble peacefully. Notice should be subject to a proportionality assessment, and should only be required for large assemblies or those where a certain degree of disruption is anticipated, with a recommended maximum notice requirement of, for example, 48 hours - this should act as a “notice of intent rather than a request for permission”.²⁵

The authorities have also used the Law on Public Gatherings and Meetings, to ban, declare illegal or disperse rallies and demonstrations, including those organized by stateless Bidun and several Nation's Dignity (*Karamat Watan*) rallies between 2011 and 2014.²⁶

²³ In particular, Article 21 of the ICCPR, guaranteeing the right of peaceful assembly, and under Articles 3 and 26, which require, respectively, that all state parties “ensure the equal right of men and women to the enjoyment of all civil and political rights set forth in the Covenant,” and afford all persons equality before the law and “equal and effective protection against discrimination on any ground,” including “political or other opinion, national or social origin, property, birth or other status.”

²⁴ Articles 5-11.

²⁵ UN Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, A/HRC/20/27, 21 May 2012, para. 28. See also A/HRC/23/39, 24 April 2013, paras. 28, 51, 52 and 90.

²⁶ Mass *Karamat Watan*, Nation's Dignity rallies were held on: 21 October 2012, 4 November 2012, 30 November 2012, 8 December 2012, 6 January 2013, 13 January 2013, 23 January 2013 and 6 July 2014.

ALLEGATIONS OF EXCESSIVE USE OF FORCE IN THE POLICING OF DEMONSTRATIONS

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

- 18 February 2011: a mainly Bidun gathering at which the security forces used force to disperse protesters including using batons, following which 30 people required medical treatment;
- 6 January 2013 – during a large rally in Kuwait City's Damascus Street, riot police beat human rights activist Nawaf al-Hendal and others with batons. Nawaf al-Hendal told Amnesty International that the police attacked him and other protesters without warning although they were not engaged in any violent or destructive action.
- 17 April 2013 – towards the end of a peaceful rally held outside the residence of Musallam al-Barrak in al-Andalous in Kuwait City, security forces fired rubber bullets, one of which hit human rights activist, Sulaiman al-Jassem (Bin Jasem), who police also punched and beat with batons, injuring him. He was arrested and a State Prosecutor who observed his injuries filed a complaint on his behalf, but a subsequent investigation failed to identify the police officers responsible, who had been hooded and wore no name badges. In October 2013, a court convicted Sulaiman al-Jassem of "illegal gathering" and sentenced him to one month's imprisonment but one year later a Misdemeanours Court overturned his conviction.
- 3-7 July 2014 – a spokesperson for the Ministry of the Interior acknowledged that protesters had been injured during unrest between 3 and 7 July 2014. He stated that "injuries have resulted from protestors escaping from sound bombs." One of the protestors, Abdulhadi al-Hajeri, was hit in the head by a tear gas canister, apparently fired at him and close range, causing serious bleeding. In a letter to Amnesty International in September 2014 the government denied that the security forces had used excessive force. In a March 2016 letter to Amnesty International, the government stated that it has insufficient information in order to address the case of Abdulhadi al-Hajeri.
- 23 March 2015 – security forces attacked protesters at a peaceful demonstration in Kuwait City's Erada Square, striking them with batons to force them to disperse. Human rights activist Nawaf al-Hendal told Amnesty International that he was among around 20-22 people who riot police officers attacked without warning.

RECOMMENDATIONS

Amnesty International recommends the government to:

- Amend the 1979 law on gathering, taking into consideration the 2006 ruling that struck down parts of the law, in order to ensure the principle of legality and bring it

- into line with international law and standards;
- End the requirement under which those who take part in a peaceful assembly, irrespective of its nature, are obliged to obtain a prior permission, and ensure that any such requirement is only in the form of a notification to the authorities;
- Ensure that everyone in the territory of Kuwait are subject to the same legal framework in relation to the exercise of the right to peaceful assembly,

Amnesty International further recommends that the government take action to end the use of unnecessary and excessive force, including by:

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

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