



UPR Submission
Kuwait
June 2014

Background

There have been some encouraging reforms in Kuwait since its last UPR in 2010. For example, in January 2013 a judicial decision granted women the right to apply for posts as prosecutors, allowing them to therefore enter the career path to become judges eventually. However Kuwait has yet to reform any of the provisions in its personal status laws that discriminate against women.

The most significant human rights regression in the last three years is the authorities' aggressive prosecution of individuals that use Twitter and other social media to criticize local and foreign leaders as well as national politics and policies.

In addition, despite significant reforms announced in 2011 to increase welfare benefits and access to work for Kuwait's stateless population, known as the Bidun, the government has not fulfilled promises to grant nationality to all those with legitimate citizenship claims.

Women

In 2012, an administrative court cancelled a ministerial order that barred women from entry-level jobs at the Ministry of Justice. Also in 2012, an administrative court ordered Kuwait University to cancel a policy requiring female students to achieve better results in exams than male students in order to enroll in certain departments like medicine and architecture. In 2013, Kuwait gave women the right to apply for posts as prosecutors, which until then were only open to male candidates.

Despite these gains, major gaps in the law allow continued discrimination against women. Kuwait's nationality law denies Kuwaiti women married to non-Kuwaiti men the right to pass their nationality on to their children and spouses, a right Kuwaiti men married to foreign spouses have. Foreign husbands of Kuwaiti women have no legal right to remain in the country without a residency permit. Such permits are granted only to non-Kuwaiti men who are employed. In contrast, foreign women married to Kuwaiti men are granted residency automatically and qualify for citizenship after ten years of marriage.

Kuwait's Personal Status Laws – both the codified law no.51 of 1984 which applies to Sunni Muslims and the uncodified Ja'fari interpretation of personal status matters which applies to Shi'a Muslims – discriminate against women. In particular, women's testimony is given lesser weight than men's; they are afforded lesser inheritance rights; and spouses are assigned unequal rights and responsibilities as to marriage, during marriage and at its dissolution.

Among the most discriminatory provisions in the Personal Status Law No.51 of 1984 are those regarding contracting marriage. Under the law, a woman is never free to make a marriage decision on her own. Unlike a man, she is not free to conclude her marriage contract but must have a male guardian (wali) do so on her behalf,

regardless of her age. A woman between 15 and 25 years of age may be prohibited by her guardian from marrying, and while she may appeal to the courts she still cannot marry if the court rules against her. In addition, the minimum age for registering a marriage is fifteen for women, and 17 for men in contravention with international standards that recommend a minimum age of marriage at 18. Witnesses to the marriage must be Muslim men for the marriage to be valid. In addition, a man may legally have up to four wives simultaneously, without the permission or even the knowledge of his first wife/wives.

Kuwait has no laws prohibiting domestic violence, sexual harassment or marital rape.

Freedom of Expression

The Kuwaiti authorities have increased internet surveillance, and continue to detain and criminally prosecute individuals based on nonviolent political speech, including web commentary.

The government has aggressively cracked down on free speech, often resorting to a law from 1970 (article 25 of the penal code) which prescribes a sentence of up to five years in prison for anyone “who publicly objects to the rights and authorities of the emir or faults him.” It also uses laws that prohibit insulting the rulers of other countries, Islam, the Prophet or Kuwaiti government officials.

Human Rights Watch knows of at least nine cases in 2012 and 29 in 2013 where local authorities brought cases against people who expressed views critical of the government over Twitter, Facebook, blogs or other means of social media.

In June 2012 authorities arrested and detained for four months Nasser Abul, a 26-year-old Kuwaiti man, for Tweets critical of the Bahraini and Saudi royal families. According to his lawyer, state security officers beat and insulted Abul in detention. In July 2012, police detained Sheikh Meshaal al-Malek al-Sabah, a member of Kuwait’s ruling family, over comments promoted through Twitter in which he allegedly accused authorities of corruption and called for reform.

In July 2013, during the Muslim fasting month of Ramadan, Kuwaiti ruler Emir Sabah al-Ahmad al-Jaber al-Sabah issued a pardon for all those who had been jailed under article 25. However, the authorities have subsequently brought charges against multiple individuals under that article, indicating that the pardon did not represent a change in policy.

Bidun

According to the government, Kuwait hosts 105,702 stateless persons, known as the Bidun. The state does not recognize the right of these long-time residents to Kuwaiti nationality. Children of the Bidun are also stateless. As a consequence of their statelessness, the Bidun cannot freely travel in and out of Kuwait. The government issues them one-time travel documents at its discretion. Bidun cannot participate in elections. As non-Kuwaitis, they face restrictions in employment, health care, education, marriage and founding a family. The Bidun have no right to residency in Kuwait, and may be subject to deportation if found guilty of committing certain crimes. According to Bidun interviewed by Human Rights Watch, the Kuwaiti government has pressured some of them to sign affidavits renouncing any claim to Kuwaiti nationality when they attempted to renew their identity cards.

In 2011, the government granted Bidun certain benefits and services such as free health care and education, though the benefits differ from those granted to Kuwaitis- as well as registration of births, marriages and deaths. Some Bidun have complained that they still face administrative hurdles to access these benefits. In 2013, the Parliament passed a law to naturalize 4000 “foreigners”, but activists within the Bidun community said that this

measure did not benefit their community, but has functioned instead to facilitate citizenship for children born to Kuwaiti mothers and foreign fathers. The Central Agency for Remediating Illegal Residents' Status, known as 'the Bidun Committee', the administrative body responsible for reviewing Bidun claims to nationality, confirmed to HRW in November 2013 that no Bidun benefitted from the law that year.

Since early 2011, members of the Bidun community have frequently taken to the streets to protest the government's failure to address their citizenship claims, despite government warnings that Bidun should not gather in public. Article 12 of the 1979 Public Gatherings Law bars non-Kuwaitis from participating in public gatherings. Kuwait arrested and detained at least two Bidun individuals in 2014 for participating in protests.

Migrant Workers

Migrant workers make up around 2 million of Kuwait's population of 2.9 million, including more than 600,000 domestic workers. While migrant workers in sectors such as construction are covered by the private sector labor law, in practice officials do not enforce its protections, in particular wage and safety provisions. A major barrier to redress is the sponsorship (*kafala*) system by which their legal residence in Kuwait is tied to their employer, who serves as a "sponsor."

The Parliament passed a new private sector labor law in 2010 that sets maximum working hours, required a weekly rest day and annual leave, and end-of-service bonuses. However, the law excluded migrant domestic workers, mainly women who come chiefly from South and Southeast Asia and work and live inside employers' homes in Kuwait. Their exclusion under the current labor law deprives them of protections afforded to other workers, such as a weekly rest day or limits on working hours, thus leaving the conditions of employment subject to an employer's whim. Many domestic workers complain of confinement in the house; long work hours without rest; months or years of unpaid wages; and verbal, physical, and sexual abuse.

Workers who escape situations of abuse may also be arrested and detained before they can obtain any form of assistance, since their passport is often kept in employers' custody, and the workers fall out of legal status when they leave their employer. Authorities rarely investigate or prosecute domestic workers' abuses and workers are typically deported or choose to go home when faced with the long, costly and uncertain prospects of winning redress in court.

In June 2011 Kuwait was one of the governments that voted to adopt the International Labour Organization's Convention on Decent Work for Domestic Workers, which establishes the first global labor standards on domestic work. However it has still not yet ratified the convention.

In March 2013, the government announced that it intended to reduce the number of expatriate workers by 100,000 every year for the next 10 years, in order to bring the total down to one million. Kuwait has since adopted a number of mechanisms facilitating quick, non-judicial deportations in order to reach its goal.

Lesbian, Gay, Bisexual, and Transgender Rights

Article 193 of Kuwait's Penal Code punishes consensual intercourse between men over the age of 21 with up to seven years imprisonment. If the conduct involves persons under the age of 21, then imprisonment is increased to ten years. Moreover, an amendment to article 198 of the penal code criminalizes "imitating the appearance of the opposite sex," imposing arbitrary restrictions upon individuals' rights to privacy and free expression.

In May and June 2012, the Kuwaiti police arrested hundreds of young people on spurious grounds which included "imitating the appearance of the opposite sex," practicing "satanic rituals," engaging in "lewd behavior" and

“immoral activities,” prostitution, and homosexuality. Many of these arrests took place during raids on private homes. A month earlier, the Justice Bloc, a Salafi parliamentary group, proposed establishing “a prosecutions of-fice and a police force to combat crimes against public morality,” which could potentially institutionalize such crackdowns.

Death Penalty

On April 1, 2013, Kuwaiti authorities executed three men convicted of murder, one Pakistani, one Saudi, and one Kuwaiti Bidun. On June 18, 2013, Kuwaiti authorities executed two Egyptian men, one convicted of abduction and rape, and the other on murder charges. These cases were the first applications of the death penalty in Kuwait since 2007.

International Criminal Court

Kuwait signed the treaty establishing the International Criminal Court (ICC) in 2000. Kuwait stated its intention to ratify the ICC Statute publicly at the 9th Session of the Assembly of States parties in 2010, at the Review Conference of the ICC in 2010 and during its last Universal Periodic Review in 2011, but has not yet taken steps to do so.

The International Criminal Court is the first permanent international tribunal with jurisdiction over war crimes, crimes against humanity and genocide. As a court of last resort, which only has jurisdiction when national courts are unwilling or unable to prosecute these crimes, it is an essential institution in the effective implementation of international human rights and humanitarian law.

Recommendations:

Regarding Women:

- Amend Kuwait’s Nationality Law to recognize Kuwaiti women’s right to confer nationality on spouses and children on par with the right enjoyed by Kuwaiti men;
- Ensure that women have equality before the law;
- Amend Personal Status Law No.51 of 1984 and the application of uncodified personal status laws in line with international human rights standards. In particular, revoke those provisions which assign lesser weight to women's testimony, give lesser rights in inheritance, and assign spouses unequal rights as to entering marriage, during marriage, and at its dissolution;
- Raise awareness about gender-based violence, create accessible complaints mechanisms for reporting sexual and domestic violence, including hotlines, and ensure that complaints are investigated, prosecuted when warranted, and that judgments are enforced.

Regarding Freedom of Expression:

- Amend national laws that prohibit insulting the Emir, rulers of other countries, the prophet, Islam, and other government officials, which infringe the right to free speech;
- Only pursue criminal charges against those exercising speech that amounts to incitement to violence or hatred;
- Do not seek prison sentences for speech alleged to be defamatory.

Regarding the Bidun:

- Implement a strategic plan to remedy Kuwait's longstanding problem of statelessness, in accordance with international legal standards and in consultation with UNHCR and local civil society organizations. Publish a timetable for ending statelessness in Kuwait and dedicate adequate resources to expediting resolution;
- Grant temporary legal residency to Bidun pending resolution of their claims to Kuwaiti nationality. Cease treating the Bidun as "illegal residents";
- Grant nationality to children born in Kuwait who would otherwise be stateless;
- Grant nationality to long-term residents with strong claims to nationality, including residents who lack documented ties to other states and whose primary place of residence, familial, economic, and/or social ties are with Kuwait;
- Continue to register all children born in Kuwait upon birth and issue them birth certificates, do not return to previous position of non-registration;
- Issue travel documents, marriage registration, death certificates, and drivers' licenses to all Bidun;
- Ratify the 1954 Convention relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness.

Regarding Migrant Domestic Workers:

- Ratify the International Labour Organization's Convention on Decent Work for Domestic Workers;
- Amend Kuwait's labor law in order to include coverage of domestic workers and ensure comprehensive protections including a weekly rest day, timely payment of wages in full, limits to working hours, and the right to keep possession of one's passport;
- Replace the current *kafala* system with domestic worker residency permits overseen by the government, permits that would allow workers to change employers and to exit Kuwait without obtaining consent from a private individual or entity;
- Investigate and prosecute domestic workers' abuses;
- Provide adequate shelter facilities, medical assistance, and counseling to workers fleeing situations of abuse, and staff these centers with persons fluent in workers' native languages, bring no criminal charges against domestic workers fleeing situations of abuse.

Regarding LGBT Rights

- Stop arresting individuals based on their sexual orientation, gender identity or presentation;
- Repeal articles 193 and 198 of the Kuwaiti Penal Code, criminalizing consensual homosexual conduct and imitating the appearance of a member of the opposite sex, respectively.

Regarding the Death Penalty

- Reinstate a *de facto* moratorium of the death penalty and move towards complete abolition.

Regarding the ICC

- Ratify the ICC Statute and align national legislation with all obligations under the Rome Statute, including by incorporating provisions to cooperate promptly and fully with the International Criminal Court and to investigate and prosecute genocide, crimes against humanity and war crimes effectively before its national courts.