



Kuwait

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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.

1. Background

Kuwait is a constitutional emirate ruled by the al-Sabah family. Established as a British protectorate in 1914, it gained its independence in 1961. The Constitution of 1962 allows the Emir to choose the crown prince and appoint the Prime Minister. The latter constitutes a cabinet, which must however be approved by the Emir. The ministries of Defense, Oil, Interior, Finance and Foreign Affairs are staffed by members of the ruling family.

Since 29 January 2006, Sheikh Sabah Al-Ahmad Al-Jaber Al-Sabah, former Prime Minister, is the Emir of Kuwait, after replacing the Emir Saad who was deposed by Parliament on 24 January 2006 for medical reasons.

Legislative power is exercised by the government and the national assembly. As of 2006, the national assembly is elected from 5 constituencies of ten members. The assembly is composed of 50 members who are elected for a period of 4 years. The Emir can dissolve the national assembly by decree. A new election must then be held within two months. Parliament is not consulted during the formation of the Government, but may challenge the elected ministers or dismiss them on an individual basis, and motions of censure may be passed against the government.

Political parties are not allowed, but the assembly is made up of different blocks. Since 2005, women have the right to vote and submit their nominations for elections. Only Kuwaiti citizens can vote; there are about 385 000 voters. The police and the army do not have the right to vote.

Over the last three years, five cabinets have resigned and Parliament has been dissolved by the Emir three times - most recently in March 2009 - due to disputes between elected officials and the Government. New parliamentary elections were held in May 2009.

Kuwait has ratified the main United Nations human rights conventions. The independence of the justice system and the right to a fair trial are enshrined in law. On the legislative front, important safeguards are established in law. In practice, however, the Executive Branch and in particular the Emir are involved in the appointments of judicial officers, which can be considered interference in the independence of the justice system.

In January 2008, the emirate included approximately 3.4 million inhabitants of which 1 million are citizens.¹ Immigrants, who came mainly from India, Bangladesh and Pakistan, replaced the citizens of Arab countries who were expelled after the Gulf War in 1991. Their working conditions are often deplorable, and they are often dismissed if they protest against their situation.

More than 100 000 inhabitants of Kuwait are stateless (designated by the term Bidoon). They are victims of a number of forms of discrimination. Access to education, health and certain jobs is difficult or prohibited. Some of those concerned have had their situation regularised in recent years, but the problem remains unsolved.

Kuwait is an ally of the United States, but its shortcomings in the fight against terrorism are often noted in US reports, in particular because of legislative shortfalls but also for a "lack of will." They also find that their military presence in the country increases the risk of attack. The pressure on the Kuwaiti government has resulted in funding a plan of action to the tune of 2.7 billion dollars for, among other things, monitoring 'vital' facilities.²

2. The judiciary

The Codes for Penal and Criminal Procedure were issued in 1960 under the British protectorate. The first text was amended in 1970 to include provisions relating to violations of State's internal

¹Ministère des Affaires Etrangères et Européennes (Ministry for Foreign and European Affairs), *Présentation du Koweït (Presentation on Kuwait)*, 5 February 2009 http://www.diplomatie.gouv.fr/fr/pays-zones-geo_833/koweit_427/presentation-du-koweit_985/presentation_13518.html (accessed 27 October 2009)

² US State Department, Bureau of Democracy, Human Rights and Labor, *Country Reports on Terrorism 2008, Kuwait*, 30 April 2009 <http://www.state.gov/s/ct/rls/crt/2008/122433.htm>

and external security. The Constitution dates from 1962. The authorities claim that "most of the articles of the Constitution set out the universal principles established by the international community and enshrined in international human rights instruments."³ Indeed, Kuwait has ratified a number of international treaties (the International Covenant on Civil and Political Rights and the Convention against Torture in 1996) but its own laws are not always consistent with the principles embodied in those texts. For example, Kuwaiti law does not clearly define torture. In its concluding observations, The Committee against Torture had recommended that Kuwait "consider including a precise definition of torture in the Penal Code."⁴

International conventions can theoretically be invoked before the courts. Thus, the Kuwaiti delegation explained to the Committee against Torture that "the Penal Code contains no express provision for the compensation of victims of torture, but it is possible under common law to sue for compensation for torture or any other attack. Given that the Convention is an enforceable law, citizens can seek redress by invoking it since it contains a provision on this point."⁵

The Kuwaiti authorities claim that political refugees can not be extradited and therefore "it also follows implicitly that individuals cannot be extradited to another state where they risk being tortured."⁶ However, it must be noted that there is no legislation prohibiting extradition to states where torture is practiced. Alkarama submitted the case of **Mr Al Hussaini** to UN procedures after he was extradited to Saudi Arabia (see below).

The law provides for an independent and impartial judiciary to guarantee fair trials. However, it should be noted that the Emir personally appoints the judges, and that the appointment of judicial personnel must be approved by the government. Many judges are not Kuwaiti nationals and have renewable employment contracts of one to three years. This vulnerability does not allow them to exercise their functions in a serene and independent way, and so may hinder the principle of tenure of judges.

Article 60 of the Code of Criminal Procedure provides that custody cannot exceed 4 days. During this time the accused cannot contact their families. Even if lawyers are able to begin judicial proceedings during this period, they are not permitted to visit their clients.

Article 69 states that the length of pre-trial detention may not exceed three weeks. The accused must be brought before a judge before three weeks pass. The judge can then decide on the possibility of extending the detention for the purposes of investigation. This detention can not exceed six months from the date of arrest.

If the judge responsible for the investigation requests, detention can be extended for thirty days by the competent court after hearing the accused and examining the status of trial (art. 70). This legal provision does not however put a limit on the number of extensions of this detention, which could be considered a contradiction with article 69.

3. Arbitrary detentions and torture

According to the U.S. State Department, about 3,500 people are detained awaiting trial, of which 150 are held at State Security headquarters. Approximately 10% of prisoners are in pre-trial detention.⁷ Among the long-term prisoners are people of various nationalities accused of

³ *Initial Report presented by Kuwait submitted to the Human Rights Committee pursuant to article 40 of the International Covenant on Civil and Political Rights*, (CCPR/C/120/Add.1), December 1999

⁴ Committee against Torture, *Report of Comité Committee against Torture*, 16 September 1998 (A/53/44), para. 230

⁵ Committee against Torture, *Summary record of the Committee against Torture's report*, 1998 (CAT/C/SR.335/Add.1) 7 January 1999, par. 15

⁶ *Initial Report presented by Kuwait submitted to the Human Rights Committee pursuant to article 40 of the International Covenant on Civil and Political Rights*, (CCPR/C/120/Add.1), December 1999, par. 57 <http://www.unhcr.ch/tbs/doc.nsf/%28Symbol%29/CCPR.C.120.Add.1.Fr?Opendocument>

⁷ US State Department, Bureau of Democracy, Human Rights and Labor, *Country Reports on Human Rights Practices 2008*, 25 February 2009

<http://www.state.gov/g/drl/rls/hrrpt/2008/nea/119119.htm> (accessed 27 October 2009)

collaborating with Iraqi forces during their invasion of Kuwait in 1990. Some of them have served their sentence and have not been released. Despite several hunger strikes by certain prisoners in 2005 and 2006 requesting a release on humanitarian grounds, they were kept in detention. The authorities did not take into account the fact that these individuals were not given fair trials and that they had committed no crime.

The Kuwaiti authorities say the security services do not use torture, and that the few cases of abuses are brought to justice. But in several cases, some of which led to the death of the victim, no action was taken by the court; families have sometimes been threatened to stop them from complaining.

During the month of January 2005 were several skirmishes between the Kuwaiti armed forces and armed groups. Nearly forty people were arrested. As of 15 January 2005, over twenty-five suspects of Saudi and Kuwaiti nationality were arrested. Seven of them were charged with plotting attacks or refusing to provide information on the planning of attacks. On 9 February 2005, Kuwaiti authorities announced the death of Mr. Amer Khalif Al Anzi, which according to official reports was due to a "sudden drop of blood pressure." Mr. Al-Anzi, a Kuwaiti citizen, aged 29, voluntarily turned himself in to the Kuwaiti security services. After seeing the body of the deceased, the family said that he died under torture: the hands and face were severely injured and mutilated. The authorities did not allow a forensic expert chosen by the family to perform an autopsy. It is worth noting that even the President of the Kuwaiti National Assembly has not accepted the official version; on 10 February 2005, when speaking about this case, he publicly referred to the fact that that Kuwait had ratified the Convention against Torture, implying that Mr. Al Anzi was indeed the a victim of death while in detention.⁸

On 15 January 2007, **Mr. Zhiyi Khammam Kassem Al Hussain**, an Iraqi national who had lived in Kuwait for a long time, was arrested at his home by around twenty officers of State Security (Amn ad-Daula) without any judicial warrant and without being informed of the reasons for his arrest. On the same day, the agents conducted a search at his home, still without a judicial warrant. He was taken to the headquarters of the State Security services, which are controlled by the Ministry of Interior, where he was brutally tortured for a week. He was subsequently transferred to an administrative detention centre which is generally used for foreigners awaiting deportation to other countries. From there, he was allowed to communicate with a relative, a Kuwaiti national. Mr. Al Hussain reported that he had not been subjected to legal proceedings and had been threatened by the authorities with deportation to Iraq. He reported that he was "hung from the ceiling by the wrists for long periods" and "repeatedly beaten with sticks on the soles of the feet and other body parts." His family decided to initiate legal proceedings to challenge the lawfulness of his detention pending his deportation. On 31 January 2007, meanwhile, the Kuwaiti authorities forcibly returned Mr. Al Hussain by airplane to Riyadh, Saudi Arabia⁹.

Alkarama also submitted to the Special Rapporteur on torture the case of **Mr. Adel Al-Salem Aqel Dhafeery**, aged 27, arrested on 22 May 2008 after a police vehicle deliberately hit his car while he was driving. Numerous officers, armed and wearing balaclavas, violently pulled him out of his damaged vehicle, beat him, tied his hands and feet and blindfolded him before driving him to premises of the State Security. Mr. Al-Dhafeery reported that once he arrived at the headquarters of the State Security, agents photographed him and took his fingerprints, all without presenting him with any charges nor informing him about the reasons of his arrest. He was then put in a cell. At sunset, he underwent an initial interrogation during which he was abused using iced water and was beaten with sticks on the soles of his feet. He was also forced to run, blindfolded and hands and feet tied, in a long corridor until being unable to walk due to fatigue and pain. He was then forced to

⁸ Alkarama sent this case to the Special Rapporteur on Torture on 11 and 16 February 2005 and the special Rapporteur on extrajudicial, summary or arbitrary executions on 24 April 2005

⁹ Alkarama, *Koweit, Arabie Saoudite: détention arbitraire et torture de Zhiya Al Hussain*, (Kuwait, Saudi Arabia: torture and arbitrary detention of Zhiya Al Hussain) 6 February 2007, http://fr.alkarama.org/index.php?option=com_content&view=article&id=56

remain standing for several hours despite his condition, his cries of pain and his supplications. It was only when he began to have trouble breathing and his condition severely deteriorated that he was allowed to sit while continuing to be interrogated.

The psychological torture of interrogation and torture sessions continued the next day with threats that he would "disappear forever without anyone being informed" or "rot for years in the Central Prison without trial and without anyone being informed". He was then placed in a cold room and subjected to threats and insults for several hours. At 19:00 on the same day, Saturday, 24 May 2008, Mr. Al-Dhafaery was brought before the Attorney General and questioned. When he complained to the judge about the torture he suffered and showed visible signs of abuse, the judge refused to register a complaint or take his statements into account. In particular, he refused to allow a medical examination as requested by the victim and ordered his remand in custody for 15 days "for the purposes of the investigation." Mr. Al-Dhafaery is convinced that this detention was ordered only to allow the traces of torture to dissipate. Indeed, after this period, he was released on bail.¹⁰

4. Kuwaiti citizens deprived of their nationality

Approximately 100,000 people, called Bidoon (stateless), do not have Kuwaiti citizenship. They are descendants of nomadic tribes from the region who cannot prove they have lived in Kuwait since 1920, as required by the Nationality Act of 1959. Some of these people have had their requests accepted for consideration, but the Kuwaiti authorities have not yet taken a decision. People who came to Kuwait from neighbouring countries and subsequently lost all links to their countries of origin are also affected, as are their children born in Kuwait. Children born of Bidoon parents, including children of Kuwaiti mothers and Bidoon fathers are similarly concerned.

The Bidoon have been victims of discrimination in education, employment, health and have had their freedom of movement impeded since the 1980s. Newborns do not receive birth certificates, which means that their very existence is not recognized by the authorities. They cannot attend state funded schools and have no access to secondary education. It is only through private funding that they have access to schools and healthcare, which still remain insufficient.

It was only in the 2000s that the government began to take certain measures to normalise their status. The process of access to citizenship could be initiated for those registered by the end of June 2000, but they had to prove their presence in the country before 1965, which is impossible for some of them. In recent years, 10,600 Bidoon have obtained citizenship, but more than 80,000 applications are still pending as of the end of 2008.¹¹

The Kuwaiti authorities have over the years created different categories of Bidoon who are all treated differently by the government: some are granted certain rights while others are treated as aliens. Thus, some of them have been recruited for positions, including in the police and the government, and some get special passports for healthcare/medical treatment abroad for example.

Finally, it must be noted that the Ministry of Interior has the power to deprive any citizen of his nationality and that the law does not provide any right of appeal against such decisions.

5. The situation of migrants

To be entitled to work in Kuwait, immigrants must have a "kafil" (guardian) of Kuwaiti nationality who often is also the employer. This condition increases their dependence on this person and restricts their freedom of movement, especially as very often, their passports are confiscated upon their arrival in Kuwait. They are not legally entitled leave their employer: this is an additional

¹⁰ Alkarama, *Kuwait: Torture and ill-treatment of Mr. Al-Dhafaery*, 4 July 2008, http://en.alkarama.org/index.php?option=com_content&view=article&id=119:kuwait-torture-and-ill-treatment-of-mr-al-dhafaery&catid=25:communiqu&Itemid=126 (accessed 27 October 2009)

¹¹ Home Office, UK Border Agency, *Operational Guidance Note: Kuwait*, March 2009, p.5. <http://www.ukba.homeoffice.gov.uk/sitecontent/documents/policyandlaw/countryspecificasylumpolicyogms/kuwaitogn?view=Binary> (accessed 27 October 2009)

constraint for immigrants, especially for domestic workers, who are often isolated and victims of all sorts of abuse. "In response to scandals about the abusive treatment and conditions, in 2007 the government introduced a standard employment contract for domestic workers, but recruitment agencies try to get round it."¹²

In 2007 and 2008, migrant workers organised several strikes to protest against working conditions and low wages. The government subsequently ordered the arrest of the strikes' leaders and the deportation of numerous strikers. Hundreds of Bangladeshis employed as cleaners and rubbish collectors by Al-Jawhara Company in Jleeb Al-Shyouch were arrested by police on 29 July in Kuwait City after a week of violent strikes and protests. Up to 7000 Bangladeshi workers had been protesting the fact that their salaries had been withheld for up to nine months and their housing conditions. The government made concessions in terms of wages but also expelled 200 strikers¹³.

The authorities have not modified national legislation to protect these workers, despite announcing their intention to do so several times. The actions of trade unions remain very limited. The introduction of a minimum wage of \$150 in the cleaning sector and \$260 for security jobs has supposedly been announced. The "Kafala" system is to be reformed and replaced by a public company which would recruit workers¹⁴, but so far nothing seems to have actually changed.

6. Recommendations

- Implement policy reforms towards the genuine participation of citizens, through the election of members of Parliament, the choice of cabinet members and by giving legal status to political parties that actually exist in fact.
- Enshrine the principle of tenure of judges by extending it to all judges in the country, including foreign judges on contract, in order to ensure real independence of the judiciary.
- Take necessary steps to fight against situations of statelessness according to the Convention on the Reduction of Statelessness of 30 August 1961.

On the normative level:

- The State should incorporate the crime of torture into domestic law as defined by Article 1 of the Convention against Torture.
- The state should remove reservations to articles 21 and 22 and consider ratifying the Optional Protocol of the Convention against Torture.

¹² International Trade Union Confederation (ITUC), *Annual survey of trade union rights* (2008) <http://survey08.ituc-csi.org/survey.php?IDContinent=5&IDCountry=KWT&Lang=EN> (accessed 27 October 2009)

¹³ International Trade Union Confederation (ITUC), *Annual survey of trade union rights* (2008) <http://survey09.ituc-csi.org/survey.php?IDContinent=5&IDCountry=KWT&Lang=EN> (accessed 27 October 2009)

¹⁴ Radio France Internationale, *Le Koweït se penche sur le sort de ses immigrés, (Kuwait examines the issue of immigration)*, by Franck Weil-Rabaud (10 September 2008) http://www.rfi.fr/actuifr/articles/105/article_72189.asp (accessed 27 October 2009)