



UPR Submission

**Kuwait**

November 2009

## **Background**

Kuwait has improved its human rights record in some areas over the past few years, but needs to do much more. In 2005 the government decided to allow women to vote and run for office, but Kuwaiti women are still denied full citizenship rights. Kuwait continues to exclude the stateless Bidun from full citizenship, despite their long-term roots in Kuwaiti territory.

Kuwait has a mixed record on the right to freedom of expression. Journalists in July formed an independent union, four years after a Kuwaiti court dismissed their attempt to do so. Reform of the press law in 2006 struck imprisonment as punishment for infractions of the law, but maintained high fines. Since then, the number of cases for defamation that the government has brought against journalists has risen. Kuwait, which retains the death penalty, voted in December 2008 against a UN General Assembly resolution calling for a worldwide moratorium on executions. The last reported execution took place in May 2007.

## **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 Kuwait 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.

There are two distinct family laws in Kuwait; one for Sunnis and one for Shi'a. In both family laws, a husband may marry more than one wife without the prior approval of the first wife. The first wife may not petition for divorce based on these grounds. Sunni family law grants a divorced woman custody of her sons until they reach 15 and of her daughters until they are married, provided that she does not re-marry. If the woman remarries, she forfeits her custodial rights.

The government grants low-interest housing loans only to Kuwaiti men; Kuwaiti women, whether single or married, are ineligible. Upon divorce, married women lose their claim to homes

purchased through this program, even if they made payments on the loan. A single mother can claim rent only if she intends not to remarry.

There exist no data on the prevalence of violence against women in Kuwait, making it difficult to ascertain the magnitude of the problem or the effectiveness of government response. Victims are often reluctant to file complaints with the police as domestic abuse is still largely regarded as a private family affair and they have little hope of redress through the criminal justice system. Perpetrators are rarely arrested even when women file with the police complaints that are supported by medico-legal evidence.

In 2005, Kuwaiti women won the right to vote and to run in elections. In May 2009, voters elected four women to Parliament. In November 2009, Kuwait's Constitutional Court rejected an appeal by a Kuwaiti citizen urging two of the women parliamentarians to step down because they do not wear the Islamic headscarf. In August 2009, article 15 of the Passport Law 11/1962 was repealed to allow married women to obtain a passport without their husband's permission.

### **Bidun**

Kuwait hosts approximately 120,000 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 leave and return to 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 prosecution and deportation to Iraq and other countries for being out of residency status. The Kuwaiti government pressures the Bidun to sign affidavits renouncing any claim to Kuwaiti nationality when they attempt to renew their identity cards. Prosecution and deportation as illegal aliens are possible consequences of failing to do so.

In 2007, the National Assembly drafted a law granting the Bidun civil rights, but as of November 2009, it had not passed. The National Assembly unanimously rejected granting the Bidun nationality. A court in October 2009 fined a Kuwaiti member of parliament KD 3,000 (US\$10,500) for "slandering the government," for criticizing the Interior Ministry's treatment of the Bidun.

### **Lesbian, Gay, Bisexual, and Transgender Rights:**

Kuwait continues to criminalize consensual homosexual conduct in contravention of human rights jurisprudence and international best practices. In the 1994 case of *Nicholas Toonen v. Australia*, the U.N. Human Rights Committee held that sodomy laws punishing consensual, adult homosexual conduct violate the rights to privacy and nondiscrimination guaranteed by the International Covenant on Civil and Political Rights. The Yogyakarta Principles, adopted in 2006 state that "laws criminalizing homosexuality violate the international right to non-discrimination." Article 193 of Kuwait's Penal Code punishes consensual sexual 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.

Furthermore, Kuwait's National Assembly in December 2007 introduced restrictions on privacy and on a person's free choice of dress. The new article 198 of the Penal Code criminalized "imitating the appearance of a member of the opposite sex," with a sentence of up to one year in prison or a fine of up to KD 1,000 [\$3,500]. Immediately after the new law passed, police began arresting "cross-dressers," jailing at least 14 people in the first month and subjecting them to abuse and violence while in detention. In mid-March 2008, a new wave of arrests took place, and arrests and harassment of individuals who defy state-imposed rules on gender presentation has continued sporadically.

### **Migrant Workers:**

More than one million foreign nationals reside in Kuwait; these migrants constitute an estimated 80 percent of the country's workforce. Many of them experience exploitative labor conditions including private employers who do not pay them the wages they have earned and who confiscate their passports. Most of the workers pay exorbitant recruitment fees to labor agents in their home countries, and must then work off their debt in Kuwait. In some cases, Kuwaiti employers also withhold wages to recoup the fees that the employer paid to hire the worker. Kuwaiti law limits wage deductions for debt, but these limits are not enforced in practice.

While migrants in sectors such as construction are covered by the private sector labor law, in practice they are unable to 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." Migrant workers could only transfer employment with their sponsor's consent although a reform in August 2009 now allows them to transfer without explicit consent if they have worked more than one year. Sponsors must still consent to the worker leaving the country. The employer often holds inordinate power to force workers to remain in abusive situations.

Parliament's May 2009 draft revision of the Labor Law would incorporate more protective wage, working hour, and safety provisions, but does not elaborate monitoring mechanisms for workers' rights. The draft continues to exclude domestic workers from its protections.

Approximately 700,000 migrant women from Indonesia, Sri Lanka, the Philippines, and other Asian countries are employed in Kuwait as full-time live-in domestic workers. Their exclusion under the current labor law deprives them of protections afforded 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 exploitative working conditions, including unpaid wages for months or years.

These abuses are compounded by domestic workers' inability to leave abusive situations due to restrictions imposed by the sponsorship system. Currently, domestic workers must obtain their employer's consent to leave the country or to transfer employment unless they have completed three years of service. This system provides no exit option for workers with abusive employers,

and instead contributes to trapping them in situations of labor exploitation, physical and sexual abuse, and forced labor.

The requirement of sponsor's consent to leave the country often leaves many domestic workers who fled their workplace stranded at their embassies, at deportation centers, or at recruitment agencies. In October 2009, Indonesia banned further migration of domestic workers to Kuwait in response to 600 workers trapped in its embassy.

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 they fall out of legal status when they leave their employer. Domestic worker abuse is rarely investigated or prosecuted by the Kuwaiti government and workers are typically deported or choose to go home when faced with the long, costly and uncertain prospects of winning their rights in court.

### **Recommendations:**

#### *Regarding the Bidun:*

- Uphold the rights of the Bidun to nationality;
- Grant the Bidun and their children Kuwaiti nationality if they cannot establish the right to another nationality;
- Do not discriminate against the Bidun on the basis of their current statelessness in civil, economic, social, and cultural rights. In particular,
  - Issue the Bidun travel documents at their request;
  - Issue birth and death certificates, as well as marriage licenses to the Bidun;
  - End discrimination in employment, health care, and education;
  - Cease deportation of Bidun based on refusal to renounce claims to Kuwaiti nationality;
- Accede to the Convention On the Reduction of Statelessness of 1961, and to the Convention Relating to the Status of Stateless Persons of 1954.

#### *Regarding Women:*

- Amend the nationality law to grant Kuwaiti women the right to pass on her nationality to her non-Kuwaiti husband and their children, and remove discriminatory clauses that deny basic rights to the non-Kuwaiti husbands of Kuwaiti women and their children
- Amend personal status law to ensure that wives are informed when their husband enters into subsequent marriages and that they have a right to divorce in such cases;

- End all forms of discrimination against women found in Kuwait’s housing program, particularly in their access to low-interest loans and rent allowances;
- 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 Migrant Domestic Workers:*

- Include domestic workers in Kuwait’s new draft labor law for the private sector and ensure comprehensive protections including a weekly rest day, timely payment of wages in full, and limits to working hours;
- Replace the current sponsorship 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 worker abuse;
- Create and enforce new legislation that requires employers to leave workers’ passports in the possession of the workers themselves;
- 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.

*Regarding Rights to Privacy and Freedom of Expression:*

- Stop arresting individuals based on their sexual orientation or 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.