

## **International Association of Democratic Lawyers**

### **State of Kuwait**

**UPR Pre-Session, Wednesday 11 December, Palais des Nations, Geneva**

**Speaker: Adam Smith-Anthony**

Distinguished delegates,

Your Excellencies,

Fellow members of civil society,

I am delighted to be representing the International Association of Democratic Lawyers. As many of you will know, IADL exists to defend and promote human and peoples' rights, specifically by restoring, defending and developing democratic rights and liberties in legislation and in practice. IADL is a leading advocate for strict adherence to the rule of law and the independence of the judiciary and legal profession.

IADL was pleased to provide a written submission as part of Kuwait's UPR, copies of which are available in this room and online.

Today, I wish to draw your attention to the two main concerns expressed in that submission:

- First, the serious gaps regarding necessary safeguards to protect fair trial rights, and worrying reports of due process violations in criminal proceedings in Kuwait; and
- Second, the lack of independence of judges and prosecutors in Kuwait, including broad executive powers over the judiciary, the lack of any specific code of conduct for public prosecutors, and regular attacks on lawyers.

In Kuwait's second UPR cycle, Cuba recommended that Kuwait continue cooperating with the international mechanisms in order to promote human rights, and promote efforts to consolidate the rule of law and its mechanisms. Bosnia and Herzegovina recommended that Kuwait continue promoting efforts to consolidate the rule of law and its mechanisms. All three recommendations were supported by Kuwait.

However, IADL remains extremely concerned by the clear indications of – actually – a deteriorating rule of law in Kuwait over the period under review. Exemplified by the campaign of persecution against Marsha Lazareva.

Marsha is a prominent businesswoman and an important example of women's leadership in the Middle East. Her case was outlined in IADL's UPR submission and is summarised in the UPR factsheets we have distributed. I would, however, like to highlight just some of the human rights violations Marsha has suffered:

- Ongoing prosecutions based on unsubstantiated criminal charges;
- Arbitrary and unlawful detention, including over 470 days in a famously overcrowded prison;
- The effective denial of Marsha's right to know the case against her and to present a defence;
- The repeated denial of courtroom translation, in violation of Kuwaiti law.
- Unauthorised surveillance; and
- Reprisals against Marsha and her legal team by a notorious Kuwaiti State entity in response to legitimate human rights advocacy.

Most recently, Marsha was acquitted of the principal charges against her.

However, there was a sting in the tail and Marsha was convicted on two relatively minor charges, seemingly to justify the State's long and vexatious campaign against her. It is plain that this operative part of the verdict condemning Marsha was fatally flawed – lacking reasoning, reliant on discredited prosecution witnesses, and in contradiction with other findings within the same judgment.

In all the circumstances, it seems overwhelmingly likely that the true reasons for Marsha's conviction are extra-judicial, and, accordingly, have been kept out of the judgment entirely.

Marsha's lawyers have engaged the Special Procedures of the United Nations – and in response were threatened by the Kuwaiti Governmental institution at the centre of Marsha's cases.

In Kuwait's second UPR cycle, Slovenia and Brazil recommended that Kuwait accede to or ratify Optional Protocol 1 of the ICCPR. Kuwait has not done so. As such, individuals such as Marsha are not able to make an individual complaint to the Human Rights Committee and remain unable to protect their essential legal rights.

Respectfully, and to assist their constructive review and ongoing peer engagement, IADL requests that States consider recommending that Kuwait should:

- 1. Take measures to prevent arbitrary detention and abuse of State authority in Kuwait, including by ensuring the effective guarantee of due process and the avoidance of systematic and sustained pre-trial detention.**
- 2. Ensure the independence and impartiality of the judiciary, especially with respect to the rights of the defence, transparency in judicial procedures, and the appointment and security of tenure of judges.**

- 3. Tackle corruption in Kuwait and take meaningful steps to strengthen the rule of law, including the equal enforcement of laws that are consistent with international human rights norms and standards.**
- 4. Host a country visit by the UN Working Group on Arbitrary Detention and the UN Special Rapporteur on the Independence of Judges and Lawyers.**
- 5. Become a party to Optional Protocol I to the ICCPR to recognise the competence of the UN Human Rights Committee to receive and consider communications from individuals subject to Kuwait's jurisdiction who claim to be victims of an ICCPR violation by Kuwait.**
- 6. Conduct an effective review of the investigation and judicial adjudication of accusations against Marsha Lazareva in light of the credible reports of procedural irregularities and due process concerns in that case.**
- 7. Engage effectively with human rights advocates when they report procedural irregularities and due process concerns in respect of particular cases or classes of case.**

Thank you very much and I welcome the opportunity to take questions during or after this session.