



# UNIVERSAL PERIODIC REVIEW

## KUWAIT

THIRD CYCLE

SUBMISSION TO THE STAKEHOLDERS' SUMMARY

**Alkarama Foundation, 18 June 2019**

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# 1 GENERAL CONTEXT AND RECENT DEVELOPMENTS

1. Following the Arab Spring in 2011, calls for political reform increased in the country. Despite some reforms, the authorities have restricted the rights to freedom of expression and peaceful assembly. Disproportionate force was used against peaceful protestors who were calling for political reform, including the use of tear gas, sound bombs, and beatings.
2. The authorities have also been relying on vague provision of the Kuwaiti Penal Code and the law of national security to crackdown on peaceful dissent. In 2015, the country introduced a new cybercrime law and amended its already broad counter-terrorism legislation.

## 1.1 Legislative Framework and Scope of International Obligations

3. Despite the many calls by the independent experts of the Human Rights Committee<sup>1</sup> as well as by UN Member States during previous UPR sessions,<sup>2</sup> the Constitution still does not recognise that international human rights instruments ratified by Kuwait have primacy over national law.
4. Alkarama is also concerned that International law is widely unknown or misunderstood by civil society, law enforcement agencies and judicial entities.<sup>3</sup>
5. Kuwait has not ratified the Optional Protocols to the International Covenant on Civil and Political Rights ICCPR). Kuwait has not ratified Optional Protocol (creation of national preventive mechanism) to Convention against Torture (UNCAT), nor accepted the individual complaint procedure of the UNCAT (article 22).
6. Kuwait has not ratified International Convention for the Protection of All Persons from Enforced Disappearance (ICPPED) nor has it ratified the Convention relating to the status of stateless persons and the Convention relating to the reduction of statelessness despite

<sup>1</sup> CCPR, 2016. "Concluding observations on the third periodic report of Kuwait" para.6 [https://tbinternet.ohchr.org/\\_layouts/15/treatybodyexternal/Download.aspx?symbolNo=CCPR/C/KWT/CO/3&Lang=en](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolNo=CCPR/C/KWT/CO/3&Lang=en)

<sup>2</sup> Such as recommendations made by Germany, Kazakhstan, Austria and Morocco in the previous 2 UPR cycles of Kuwait. [https://www.upr-info.org/database/index.php?limit=0&f\\_SUR=90&f\\_SMR=All&order=&orderDir=ASC&orderP=true&f\\_Issue=All&searchReco=&resultMax=300&response=&action\\_type=&session=&SuRRgrp=&SuROrg=&SMRRgrp=&SMROrg=&pledges=RecoOnly](https://www.upr-info.org/database/index.php?limit=0&f_SUR=90&f_SMR=All&order=&orderDir=ASC&orderP=true&f_Issue=All&searchReco=&resultMax=300&response=&action_type=&session=&SuRRgrp=&SuROrg=&SMRRgrp=&SMROrg=&pledges=RecoOnly)

<sup>3</sup> Alkarama Foundation, 2016. "Report submitted to the Human Rights Committee in the context of the third periodic review of Kuwait". P.4 <https://www.alkarama.org/en/documents/kuwait-human-rights-committee-2016-alkaramas-shadow-report-3rd-periodic-review>

the many calls to that end previously made by UN Member States during previous UPR cycles. Kuwait is also not a party to the Rome Statute.

## RECOMMENDATIONS

- a) Bring its constitution and national laws in conformity with the provisions of international law and treaties.
- b) Provide proper education and training courses to introduce members of civil society, the judiciary, and law enforcement agencies to international norms and standards related to human rights.
- c) Ratify OP 1 ICCPR, OPCAT and accept article 22 UNCAT.
- d) Ratify the ICPPED, the conventions related to the status of stateless persons, and the Rome Statute.

### 1.2 Human rights infrastructure

7. In 2015, Kuwait established a national human rights institution by Law No. 67, thus complying with several recommendations made by UN Member States during the 2014 UPR. The NHRI aim is to strengthen and promote human rights.
8. However, the independence of this NHRI is highly questioned as its members are appointed by a decree from the Emir and nominated by the council of ministers.<sup>4</sup>

## RECOMMENDATION

- a) Ensure the impartiality and independence of the Kuwaiti NHRI and its compliance with the Paris Principles.
- b) Request the accreditation of the NHRI with the Global Alliance of National Human Rights Institutions.

## 2 COOPERATION WITH INTERNATIONAL HUMAN RIGHTS

### MECHANISMS

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<sup>4</sup> Alkarama Foundation (2016), p.5 <https://www.alkarama.org/en/documents/kuwait-human-rights-committee-2016-alkaramas-shadow-report-3rd-periodic-review>

## 2.1 Cooperation with the Special Procedures

9. Kuwait has extended a standing invitation to Special Procedures.<sup>5</sup>
10. However, several requests by Special Rapporteurs have been pending for years without the authorities formally approving their request despite many reminders. For instance, this is the case of Special Rapporteur on freedom of expression (pending since 2014), the Special Rapporteur on minority issues (pending since 2013), and the Special Rapporteur on human rights defenders (pending since 2015).<sup>6</sup>

### RECOMMENDATION

- a) Accept all the pending requested invitations and cooperate effectively to facilitate the visits of Special Procedures to the country.

## 3 IMPLEMENTATION OF HUMAN RIGHTS LAW OBLIGATIONS

### 3.1 The right to life and protection from torture

#### 3.1.1 Capital punishment

11. Despite the repeated calls by the Human Rights Committee and UN Member States to abolish the death penalty, Kuwait still applies the death penalty in cases which are not considered "most serious crimes" in international law, such as drug crimes.
12. Although capital punishment can be turned into a life imprisonment, this is usually not the case with crimes threatening national security.<sup>7</sup>
13. Despite a *de facto* suspension of death penalty since 2013, Alkarama has documented several cases in which death sentences were implemented, such as in 2017 as seven persons were executed in one day.<sup>8</sup>

### RECOMMENDATIONS

- a) Consider a permanent moratorium on the death penalty.

<sup>5</sup> OHCHR (2019). Special procedures Country visits. [online] Spinternet.ohchr.org. Available at: [https://spinternet.ohchr.org/\\_Layouts/SpecialProceduresInternet/StandingInvitations.aspx](https://spinternet.ohchr.org/_Layouts/SpecialProceduresInternet/StandingInvitations.aspx) [Accessed 1 May 2019].

<sup>6</sup> OHCHR (2019). Special procedures Country visits. [online] Spinternet.ohchr.org. Available at: [https://spinternet.ohchr.org/\\_layouts/15/SpecialProceduresInternet/ViewCountryVisits.aspx?Lang=en&country=KWT](https://spinternet.ohchr.org/_layouts/15/SpecialProceduresInternet/ViewCountryVisits.aspx?Lang=en&country=KWT) [Accessed 15 May 2019].

<sup>7</sup> Alkarama Foundation (2016), p.9 available online on: <https://www.alkarama.org/en/documents/kuwait-human-rights-committee-2016-alkaramas-shadow-report-3rd-periodic-review>

<sup>8</sup> Alkarama Foundation (2017), available online on: <https://www.alkarama.org/en/articles/kuwait-unsatisfactory-implementation-committee-against-tortures-recommendations>.

- b) Prohibit death sentences against minors under the age of 18.
- c) Ensure an independent review of all death row candidates' files and immediately halt all executions that do not comply with international law standards and those issued following an unfair trial.
- d) Commute death sentences to prison sentences where possible.

### 3.1.2 Torture

14. During the third periodic review of Kuwait in 2016, the Committee against Torture (CAT) reiterated its serious concerns over the lack of definition of torture in Kuwaiti Criminal Code in accordance with article 1 UNCAT. Moreover, the CAT expressed concern over the fact that "torture is still considered as a misdemeanour, offence or common assault in domestic penal legislation and that the current maximum penalty for torture is only five years and is therefore not commensurate with the gravity of this crime".<sup>9</sup>

15. In its shadow report to the CAT, Alkarama stated that shortcoming of legal safeguards such as the absence of the guarantee to have access a lawyer during investigation, and prolonged periods of custody as well as indefinite pre-trial detention, all are increasing the risk of individuals being subjected to torture.<sup>10</sup>

16. Although Kuwait has taken some positive measures in ensuring legal safeguards for detainees, such as decreasing the period of custody from four to two days, Alkarama found that these measures are not effective and mostly ignored in practice by the authorities.<sup>11</sup>

17. Cases of torture and ill-treatment are rarely investigated in the country. In addition, prisons are lacking sufficient and independent complaining mechanisms of torture.

18. Although Kuwait reported that the General Department of Monitoring and Inspection is responsible for receiving complaints of torture and abuse, Alkarama believes that this cannot be a competent body as it is also tasked with "maintaining the police's reputation and image", preventing the department from any real investigations in the received complaints.<sup>12</sup>

19. Statistics issued by the Kuwaiti authorities showed that most of the complaints of torture are either pending or dropped due to "lack of evidence". Only in three cases officers have

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<sup>9</sup> CAT (2016). Concluding observations of the third period review of Kuwait. Available at: [https://tbinternet.ohchr.org/\\_layouts/15/treatybodyexternal/Download.aspx?symbolno=CAT/C/KWT/CO/3&Lang=en](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CAT/C/KWT/CO/3&Lang=en) para.7

<sup>10</sup> Alkarama Foundation (2016). Available at: <https://www.alkarama.org/en/articles/kuwait-alkarama-submits-shadow-report-un-committee-against-torture-ahead-countrys-review>

<sup>11</sup> Ibid.

<sup>12</sup> Alkarama Foundation (2016). Available at: <https://www.alkarama.org/en/articles/kuwait-alkarama-submits-shadow-report-un-committee-against-torture-ahead-countrys-review> (accessed 20 May 2019)

been fired, while in other cases officers only received a decrease in their salaries as a penalty for having subjected detainees to torture and other forms of ill-treatment.<sup>13</sup>

## RECOMMENDATIONS

- a) Provide a clear definition of torture in domestic law in accordance with article 1 UNCAT.
- b) Ensure the effective respect of legal safeguards for detainees in accordance with international standards.
- c) Create a national independent preventive mechanism against torture and establish independent complaint mechanism in prisons.

### 3.2 Independence of the judiciary

20. The independence of judiciary system is undermined in Kuwait despite article 163 of the Constitution formally guaranteeing its independence. Judges are appointed by the Supreme Judicial Council whose members are elected by the executive.<sup>14</sup> Moreover, most judges are appointed by Emiri decree.<sup>15</sup>

21. Alkarama documented and raised with several Special Procedures mandate holders cases in which the independence and impartiality of Kuwaiti courts was lacking. In one case, the court of cassation changed the deciding judge the day of the verdict, and replaced him with Saleh Al Marished who has close ties to the royal family. The ruling was about the suspension of detention on bail of 15 peaceful protestors sentenced to up to three and a half years of prison. The new judge of court of cassation refused the request of suspension.<sup>16</sup>

## RECOMMENDATIONS

- a) Guarantee the independence of the judiciary from the executive.
- b) Investigate all ruling cases which might be of political nature and ensure fair trial or release for the victims.

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<sup>13</sup> *Ibidem*.

<sup>14</sup> CAT (2016). Para.38. available at:

[https://tbinternet.ohchr.org/\\_layouts/15/treatybodyexternal/Download.aspx?symbolNo=CAT/OP/12/5&Lang=en](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolNo=CAT/OP/12/5&Lang=en). (accessed 30 April 2019)

<sup>15</sup> Alkarama Foundation (2016). Available at: <https://www.alkarama.org/en/documents/kuwait-human-rights-committee-2016-alkaramas-shadow-report-3rd-periodic-review>. P.12

<sup>16</sup> Alkarama Foundation (2018). Available at: <https://www.alkarama.org/en/articles/kuwait-top-court-sentences-peaceful-demonstrators-including-current-and-former-mps-three> (accessed 24 May 2019).

## 3.3 The rights to freedom of expression, peaceful assembly and association

### 3.3.1 Freedom of expression

22. Kuwait has increasingly restricted the rights of peaceful dissidents, human rights activists, and media workers. In some cases, the authorities have resorted to judicial harassment using flawed pieces of legislation.
23. Revocation of citizenship has also been used against political dissidents in an attempt to silence any form of criticism. In 2014 alone, Alkarama documented 33 such cases.<sup>17</sup>
24. Kuwait has approved the Cybercrime law No. 63 of 16 June 2015 which has entered into force in 2016. The law contains several disposition that severely curtails the right to freedom of expression online.<sup>18</sup>
25. Furthermore, the Commission for Mass Communication and Information Technology adopted new Communication Law No. 37/2014 which aims at controlling the content of information displayed in the media.<sup>19</sup> It is on this basis that in 2015, Kuwait has revoked the license and closed Al-Watan TV channel allegedly stating that they “do not meet their financial and commercial requirements to keep their license to publish and broadcast”. However, the real reason behind this decision is clearly political.<sup>20</sup>

## RECOMMENDATIONS

- a) Ensure the effective respect of the right to freedom of expression.
- b) End the prosecution of citizens for having merely expressed their opinions and cancel all decisions taken to strip political opponents of their citizenship.
- c) Respect freedom of the media and put an end to the authorities' policy of closing dissenting TV channels and newspapers.
- d) Free all persons prosecuted solely for expressing their opinions.

<sup>17</sup> Example cases documented by Alkarama are of **Jaber Al-Shammari** (owner of two opposition channels, Al-Youm and Alam Al-Youm), **Abdullah Al-Barghash** (former opposition leader at the Parliament), **Nabil Al-Awadhi** (TV talk show presenter), and **Saad Al-Ajmi** (the spokesman of Musallam Al-Barrak, a leading opposition figure). <https://www.alkarama.org/en/documents/kuwait-human-rights-committee-2016-alkaramas-shadow-report-3rd-periodic-review>. P.8

<sup>18</sup> Alkarama Foundation (2016). <https://www.alkarama.org/en/articles/kuwait-new-cyber-crime-law-disrespects-freedom-expression>. (accessed 20 May 2019).

<sup>19</sup> Alkarama Foundation (2016). <https://www.alkarama.org/en/documents/kuwait-human-rights-committee-2016-alkaramas-shadow-report-3rd-periodic-review>. P.16

<sup>20</sup> Alkarama Foundation (2015). <https://www.alkarama.org/en/articles/kuwait-al-watan-tv-closed-liberal-editorial-line-just-months-after-closure-dar-al-watan>. (accessed 24 May 2019).

### 3.3.1 Freedom of peaceful assembly and association

25. Kuwait is practicing severe crackdown and excessive use of force against peaceful assembly despite the right being protected under law No.65/1979.

26. Alkarama has documented several cases of violation to the right to freedom of peaceful assembly and association. For example, in 2018, Alkarama sent a complaint to the Special Procedures in the case of 20 members of parliament and opposition activists who were sentenced to between one and to three and a half years in prison for participating in a peaceful demonstration in 2011.<sup>21</sup> Among them was leader of opposition Musalam Al-Barrak.<sup>22</sup>

27. The demonstration in question took place on 16 November 2011, and consisted of a sit-in in front of the Kuwaiti National Assembly. It came after the parliament blocked a request to question Prime Minister Sheikh Al Sabah about the payment of bribes to 16 pro-government MPs. The peaceful protestors spontaneously decided to march to the house of the prime minister. Pushed by the police, who came with batons to block the march and disperse the demonstrations, they sought shelter inside the National Assembly building. Following the demonstration, the public prosecution charged 70 demonstrators with "illegal gatherings", "entry into state property in order to commit the crime of unlawful assembly", "damage to public property" and "insulting public officials".

28. After hearing all defence witnesses, the court of first instance acquitted the accused of all charges on the basis that there was a lack of evidence of criminal intent upon entering the National Assembly. It also found that the protestors' acts were related to the exercise of their fundamental right to freedom of expression. Following an appeal by the public prosecution, the initial acquittal decision was overturned, and, on 27 November 2017, the Court of Appeal sentenced the defendants to prison terms ranging from one to nine years, and immediately arrested them. The trial was marked by numerous irregularities, including the fact that defence lawyers were not allowed to examine all their witnesses, and were not informed of the dates assigned for their hearing.

29. On 28 January 2018, the Court of Cassation's public prosecutor examined the admissibility of the case and found that the Court of Appeal's ruling was void. During the hearing, the defence lawyers requested the suspension of the defendants' prison sentences and their release on bail. However, on 5 February 2018 – the day the decision upon this request was supposed to be issued – the judge suddenly stepped down and was replaced by Saleh Al

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<sup>21</sup> Alkarama Foundation (2019). <https://www.alkarama.org/en/documents/annual-report-2018>. P.27 (accessed 22 May 2019). More info

<sup>22</sup> Alkarama Foundation (2018). <https://www.alkarama.org/en/articles/kuwaits-top-court-sentences-peaceful-demonstrators-including-current-and-former-mps-three>

Marished, who the defence lawyers claimed has well-known ties to the royal family. While Al Marished initially refused to release the detainees on bail, they were eventually released some months later on the basis of a provisional order by the Supreme Court. The appointment of Al Marished not only raises serious doubts as to the independence and impartiality of the Court of Cassation, but also suggests that its decision is political in nature and designed to prevent peaceful dissidents from carrying out any political activity in Kuwait.

## RECOMMENDATIONS

- a) Respect the right of freedom of peaceful assembly and association.
- b) Stop the prosecution of peaceful demonstrators and political opponents.

### 3.4 Discrimination of the “Bidoon”

27. There is a wide discrimination of persons without nationality, also known as the “Bidoon”. Because they have no nationality, they suffer from a range of violations, including no access to education, health care, freedom of movement, participation in political life, and marriage and family law.

28. The Bidoon can be categorised into the following three groups: tribesmen whose ancestors failed to provide the necessary documents for obtaining Kuwaiti citizenship upon its independence; former nationals of neighbouring countries who renounced their nationalities in order to join the Kuwaiti armed forces in 1960s and 70s; and children of Kuwaiti women who are married to Bidoon men or non-Kuwaiti citizens.

32. Alkarama has documented many cases of violation of rights of the Bidoon in Kuwait. For instance, in April 2016, Alkarama has sent a complaint of the issue of Ahmad Ali Jabar who is a Bidoon person in Kuwait and has been denied passport several times since 2015 thus lost two opportunities to continue his studies abroad.<sup>23</sup>

## Recommendations

- a) Recognize the Bidoon as fundamental part of the Kuwaiti society and grant them Kuwaiti citizenship.
- b) End all forms of discrimination against the Bidoon.

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<sup>23</sup> Alkarama Foundation (2016). <https://www.alkarama.org/en/articles/kuwait-stateless-person-prevented-attending-university-abroad>. (accessed 24 May 2019).