

Geneva International
Centre *for* Justice

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مركز جنيف الدولي للعدالة

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Report to

Human Rights Council

Working Group on Universal Periodic Review

35th Session

By

Geneva International Centre for Justice (GICJ)

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State Under Review

Kuwait

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Introduction

1. Kuwait's second UPR review took place in January 2015 during the 21st UPR session. Eight voluntary pledges were made in that report and, of the 159 recommendations formulated during the interactive dialogue, the State of Kuwait accepted 123 recommendations.
2. This report will focus on the issue of the Bidouns, a stateless people in Kuwait, whose basic rights have been violated by the Kuwaiti government. Out of all recommendations from the previous UPR review, ten referred specifically to the issue of the stateless Bidoun population. Kuwait rejected all recommendations related to the Bidoun.
3. The word *Bidoun* is from the Arabic phrase *bidoun jinsiyya*, literally meaning either "without nationality" or "without citizenship." Kuwait denies citizenship to an Arab minority that were not included as citizens at the time of the country's independence. Due to their stateless condition, Bidouns face difficulties in obtaining civil documents, finding employment, and accessing health care, education, and other social services provided to Kuwaiti citizens.
4. Kuwait practices a system of institutionalized discrimination against its residents known as Bidouns, long-time inhabitants who have been denied Kuwaiti citizenship and are now being rendered stateless. Barred from employment, denied education for their children, restricted in their movements, and living under the constant threat of arbitrary arrest and deportation; Bidouns are a community of economically disadvantaged people in one of the wealthiest countries of the world. At the same time, tens of thousands of Bidouns who fled Kuwait during the Iraqi occupation have been barred from returning to their country.

Stripping the Bidouns of Legal Status

5. Bidouns have been promised citizenship for a long time. But, ultimately, Kuwait has not kept its promise and instead declared them illegal residents. The policy was intensified after the Desert Storm military campaign of 1991. Kuwaiti authorities have justified their policy saying that Bidouns are illegal and therefore cannot enjoy the basic rights of citizenship. The vast majority of them were born in Kuwait and have lived there for generations. Since 1985, the law adopted by the Kuwaiti government caused this minority serious problem as the law banned them from government positions, the private sector and from receiving basic government services. Since they became illegal residents, they are not entitled to have identification cards, driver's licences or travel documents. Most of them live on charitable donations and in poor housing from which they are often threatened to be evicted.
6. Despite Bidouns enjoying a special status under Kuwait law that does not allow for their expulsion from the country, at least 24,000 expulsions have been issued against Bidouns since the end of the war. The process of citizenship has not been applied transparently; sometimes the citizenship process has been delayed. Then, by amending citizenship laws, the government has formally limited Bidoun eligibility for citizenship. The treatment applied to Bidoun by the Kuwaiti government contravenes the basic principles of human rights.
7. In protest against these unfair conditions, on February 2018, a Bidoun man attempted to commit suicide outside *Jahra* court. A Member of Parliament, Abdulkarim Al-Kandari, called on the Assembly's human rights panel to investigate the case. Director of the Kuwait Society for Human Rights, Mohammad Al-Humaidi, affirmed that “as long as the government does not stop the ‘atrocities’ of the central agency for the Bidouns, these incidents will continue and could become worse”. Ahmad Al-Dayeen, a senior official of the Progressive Movement, affirmed that, regardless of his criminal convictions, any person burning himself reveals their ordeal. He said what happened reveals the deep agony and the suffering of “Kuwaiti Bidouns”, adding the suicide attempt was not the first and will not be the last.
8. Bidouns amount to 300,000 persons, one third of Kuwait's native population; half of them still reside in Kuwait while the rest are in exile, mainly in Iraq, as Kuwait didn't let them back after the war. Despite having lived in Kuwait most of their lives, they have not received

citizenship status. In fact, in 1985, the government declared them illegal residents after having treated them like citizens and promising citizenship. Moreover, despite ratifying the Convention on the Elimination of All Forms of Racial Discrimination (CERD)¹ in 1968, Kuwait refuses to implement its obligations under Article 5. After having been treated for very long time as legal residents, although they were considered to be a lower class and typically employed as cheap labour, since 1985, Kuwait started a policy of aggression, intimidation and deportation, in an attempt to reduce the size of the Bidoun population. On the occasion of the Iraqi invasion on 2 August 1990, Bidoun were forced to join the army. Since Kuwait's liberation in February 1991, all Bidoun were dismissed by the army and substituted with Kuwaiti citizens. Because a few Bidoun were members of the Iraqi militia known as the Popular Army, the whole community has been placed under indictment for collaboration and face the threat of eviction from Kuwait, even though most had joined the militia due to coercion by the Iraqi government. When the Kuwait government gave residency permits to foreigners after liberation, Bidouns were considered ineligible as they did not have foreign passports. In this situation, Bidouns are not allowed to work and their children cannot go to school.

9. Bidouns live in an apartheid-like existence in their own country. Kuwait's policy of intimidation towards them is against the basic principles of human rights. As they lived in Kuwait for generations, they acquired rights that cannot be arbitrarily taken away. An arbitrary policy treats Bidoun child born in Kuwait, including children of Kuwaiti mothers, as illegal residents.
10. Denial of citizenship and lawful residence to the Bidouns clearly violates international law, which puts restrictions on the state's discretion to regulate citizenship, and in particular:
 - The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), which Kuwait has signed, by denying Kuwaiti women the ability to pass their citizenship to Bidoun husbands and children.
 - The United Nation Convention on the Rights of the Child, which Kuwait has also signed, by denying citizenship to the children of Bidouns, including children of Bidoun fathers and Kuwaiti mothers.

¹ International Convention on the Elimination of All Forms of Racial Discrimination Adopted and opened for signature and ratification by General Assembly resolution 2106 (XX) of 21 December 1965 entry into force 04 January 1969

- The universal right to equality before the law, as Bidouns cannot sign a petition to the courts to influence governmental decisions regarding their claims to citizenship.
- The Universal Declaration for Human Rights, the International Covenant on Civil and Political Rights, CEDAW, the Convention on the Rights of the Child and the United Nations conventions on the treatment of stateless persons, which prohibit rendering children stateless.

11. The eligibility of adult Bidouns to citizenship is a right originally stated in the Universal Declaration of Human Rights. The obligation to provide citizenship is imposed on states collectively, as well as through the individual treaties they sign. Kuwait is undoubtedly the country with primary responsibility for Bidouns who have lived there most of their lives. This obligation is particularly strong on Kuwait, as the Bidoun had previously enjoyed a legal status in the country. Prior to 1985, the official position of the Kuwait government was that Bidouns were lawful residents of Kuwait whose claims to citizenship were being considered. In 1985, the official position changed overnight. Bidouns were suddenly considered illegal residents and threatened with deportation. Since the end of the war, 24,000 administrative expulsion orders have been made, although most of them have not been carried out. Thus, the Bidoun were settled in Kuwait, granted legal status and given reasonable expectations of being citizens. They have no comparable claims to such rights in any other country. It is then mandatory that Kuwait grant to Bidouns the right of lawful residence and a fair process of obtaining citizenship.

The Government's Position

12. There has been an attempt by public officials to deny the existence of the Bidoun issue, and consider those people as foreigners who entered Kuwait illegally and take advantage of the country's welfare and social system. Sulaiman al-Shaheen, Undersecretary for Foreign Affairs said that "there are not such people under the category of *bidoun jinsiyya*, because everybody must have come from somewhere." And in a February 1994 speech before the Foreign Press Association in London, Sheikh Saud Nasser al-Sabah, Minister of Information and official spokesman for government policy, repeated this thesis that: "Everybody has a father and a grandfather. Nobody grew out of the desert without an ancestor. They are benefiting from the social services. Many people come across the border and destroy their existing nationality papers and claim they are stateless. If they had to pay income tax and if there was no free medical care or education in Kuwait there would be no

more Bidoun. Some people from the Arabian Peninsula may have been denied citizenship unjustly; we will look into those cases and they will be granted citizenship."

13. For Kuwaiti citizenship, the current law is based on restrictive male-oriented blood links (*jus sanguinis*). In this patrilineal system, the tribal identity is passed through the male. However, the link to territory (*jus soli*), not tribal identity, was the primary consideration in determining the "founding citizens" of Kuwait in 1920. Kuwaiti citizenship laws have since become exceedingly restrictive through numerous amendments clearly aimed at denying citizenship to all but a small group of original Kuwaiti city inhabitants. Kuwait now has classes of citizenship, and the law recognizes eligibility for full citizenship to only a small group of individuals who satisfy an elaborate set of conditions. The large proportion of the population has a lower grade of citizenship with circumscribed rights that can be easily taken away.
14. The Kuwaiti government considers granting citizenship as a sovereign right; however, there are limitations in several international instruments which prohibit discrimination based on race, gender, religion, etc. Bidouns believe that the denial of citizenship is clearly a discriminatory practice and a violation of Article 15 of the Universal Declaration of Human Rights, which provides that no one should be "arbitrarily deprived of his nationality." Similarly, they refer to the International Covenant on Civil and Political Rights, which Kuwait has not ratified but is the leading source of human rights standards regarding citizenship.
15. On the occasion of Kuwait's second UPR review in 2015, several states stated their concerns over the stateless persons known as Bidouns, and the importance of finding a permanent solution to their legal status in Kuwait. A total of ten recommendations were made in the UPR report adopted by the Human Rights Council at its 29th session.
16. The State of Kuwait rejected all recommendations related to the Bidoun in its last UPR review. Kuwait appears to claim the Bidoun are not, in fact, stateless, and so the conventions applicable to statelessness do not apply. Instead, the government considers the Bidoun to be illegal residents who have concealed their national identity documents. As a result, according to the government, the Bidoun are illegal residents in violation of the Kuwaiti Aliens Act No. 17/59 but are not stateless people.

RECOMMENDATIONS

17. Considering that the position of Kuwait has remained unchanged despite evidence to the contrary and the specific concern expressed by several countries about this issue, we offer Kuwait the following recommendations.

18. For Bidouns remaining in Kuwait, Kuwait should:

- Restore the Bidouns' rights to reside lawfully in Kuwait.
- Release those who are detained without trial only on the basis of their immigration status.
- Revoke the deportation or removal orders against around 24,000 Bidouns.
- Allows Bidouns to petition the courts for redress without discrimination.
- For Bidouns who left Kuwait after the Iraqi occupation, Kuwait should:
- Permit the return of those who had Bidoun status before the Iraqi invasion.
- Encourage family reunification.
- Give the possibility to collect wages and retirement benefits from their past service in the Kuwaiti government.

19. For Bidouns recognised as legal residents prior to the 1985 change in regulations, we call on the Kuwaiti government to end all discriminatory practices started in 1985. In particular, Kuwait should:

- Ensure the ability of Bidoun to travel within and outside the country with a right to return.
- Allow Bidoun to obtain driver's licenses.
- Ensure Bidoun children to right to education and health care;

20. Concerning the issue of citizenship, we encourage Kuwait to provide citizenship status to all those entitled by birth, marriage or long residence in the country. In particular, We call on the government to:

- Ensure transparent procedures for citizenship and permanent residence.
- Provide citizenship to children of Kuwaiti mothers and Bidoun fathers.
- Provide citizenship to Bidoun eligible for Kuwaiti citizenship under Law 15 of 1959.

- Provide citizenship to stateless Bedoons born in Kuwait.

21. To conclude, we call on the Kuwaiti government to ensure transparent and fair procedures for all in matters related to citizenship and immigration status.