



The Human Line Organization, Social Workers Society and Musawah Group's Parallel Report to the State of Kuwait's Report Submitted to the Human Rights Committee

August 2015

In reviewing the periodic report submitted by the state of Kuwait to the Human Rights Committee, the Human Line Organization, Social Workers Society and Musawah Group hope that their report would be beneficial in presenting helpful information and shedding light on some of the important issues concerning human rights in the country.

Background on the Participant Organizations in Preparing the Report:

Human Line Organization: active in the field of advocacy, legal observing and the preparation of human rights reports, **Social Work Society of Kuwait:** aimed at advancing the rights of migrant workers, **Musawah Group:** working on issues of women's rights.

1- Executing the Terms of the Treaty in Kuwaiti Laws:

Although article 70 of the Kuwaiti constitution states that international treaties ratified by Kuwait have the force of law, the judicial and executive authorities, however, have not taken enough measures to implement this article.

Recommendations:

1. Including the essential conventions on human rights within the regular training curriculum for lawyers and members of the judicial authorities.
2. Synchronizing national legislation with the clauses of the International Covenant on Civil and Political Rights.

2- Right to Life:

Kuwaiti laws allow for the enforcement of the death penalty on adults who are 18 years old and above. The death penalty is implemented in Kuwait on a person either by having them hanged or shot dead.¹ Different media outlets, either visual or printed, are permitted to transmit the proceedings of the death penalty procedures in addition to images and footage of those being executed.

Kuwaiti law stipulates the death penalty for a number of crimes such as those of criminal nature like murder,² kidnapping with intent to murder, blackmailing, sexual assault, forced prostitution,³ or rape (assault by penetration),⁴ in addition to piracy if it results in the death of a person,⁵ or drug dealing.⁶ Moreover, a perjurer or false witness whose testimony resulted in the execution of an innocent person is sentenced to death⁷ and so is a person committing an intended action threatening to people or things being transported through a public road which resulted in the death of a person.⁸ Kuwaiti law allows for the enforcement of the death penalty on crimes that relate to national security like an assault on the life of the Emir or Crown Prince or putting either of their lives in danger or forcibly attacking the powers of the Emir, spying for a foreign state, infringing on the country's independence, unity and security or fighting for an opposing country or cooperated with that country for the purpose of damaging Kuwait's military operations. It moreover includes hijacking airplanes if it inflicts injury on the aircraft, airport or people.⁹ In addition, giving a misleading signal, sending a call, issuing orders or warnings for the purpose of misleading a ship, aircraft or any other means of air or sea transportation intended to cause damage to people or things resulting in the death of a person.¹⁰

In 2014, the new environment law resulted in the increase of crimes involving the death penalty as this law stipulates the death sentence for the crime of importing or piling nuclear waste.¹¹

The death penalty is only carried out after being ratified by the Emir who is allowed to grant pardons or reduced sentences.¹² The death penalty has been carried out on 73 people since 1964 until this day. In 2013, after 6 years of the voluntary cessation of the death penalty, 5 people

¹ Kuwaiti Penal Code 16/1960, Article (58).

² Kuwaiti Penal Code 16/1960, Article (149).

³ Kuwaiti Penal Code 16/1960, Article (180).

⁴ Kuwaiti Penal Code 16/1960, Article (186-187).

⁵ Kuwaiti Penal Code 16/1960, Article (252).

⁶ Articles (31, 31 bis, 32 bis, 50) Law No. 74 of 1983 concerning the Combatting of Narcotics and the Regulation of their Use and Trafficking.

⁷ Kuwaiti Penal Code 16/1960, Article (137).

⁸ Kuwaiti Penal Code 16/1960, Article (171).

⁹ Law 6/1994 concerning Crimes Related to the Safety of Aircraft and Air Navigation, Article (4).

¹⁰ Law 6/1994 concerning Crimes Related to the Safety of Aircraft and Air Navigation, Article (170).

¹¹ Law 42/2014 concerning Environment Protection, Article (130).

¹² Law 42/2014 concerning Environment Protection, Article (60).

were sentenced to death and taken in two batches, one of whom was Hajaj Al-Saeidi who claimed he confessed his crime under torture.

What raises suspicion about the existence of discrimination in carrying out the death penalty is that even though charges of drug importation for the purpose of drug dealing have been pressed against a number of Kuwaitis and non-nationals and all have been sentenced to death but the death penalty was carried out on Pakistani nationals only.

Recommendations:

1. The voluntary and immediate suppression of carrying out the death sentence in preparation for its removal.
2. Ratifying the Second Optional Protocol to the International Covenant on Civil and Political Rights.

3- Conscientious Objection to Military Service:

In 2001, the state of Kuwait of Kuwait decided to halted the enactment of law 102/198 concerning military service for the purpose of revision. The country later enacted the conscription system according to law no. 20 of year 2015 concerning National Military Service although military conscription has not yet been implemented.

The law punishes a person who refrains from joining military conscription or delays it with a sentence that can reach up to five years in prison. This law moreover states that military service is considered a requirement for employment in the government and private sector and a requirement to attain a business license. Although the current law does not stipulate the right to conscientious objection to military service, article (11) paragraph (b) allows the Ministerial Council to give certain groups an exemption from performing military service based on the public interest. The Ministerial Council has not specified these groups yet, it is also yet to be known if it will include people claiming conscientious objection to military service. In addition, articles (7) and (8) of the law, by decision from the Minister of Defense, allow for the appointment of military conscripts and reserves in military occupations of a noncombatant nature that are associated with development and civil defense, although neither a procedure nor guarantees were provided to those with a conscientious objection to military service from performing military service in this way.

Recommendations:

1. Taking the necessary procedures to regulate the right to conscientious objection to military service.

4-Freedom of Thought and Expression:

Although article (36) of the Kuwaiti Constitution guarantees the freedom of expression and scientific research, this freedom is still restricted by a number of laws. From these laws is the Print and Publications law number 3/2006, which regulates the material permitted to be published on paper and highlights sanctions for disobeying the law through articles (19,20,21,26,28) and the Audio-Visual Media law 61/2007 through articles (11,13) regulates the spread of visual and audio material and sanctions for violating. Both laws provide a greater protection to Islamic Religion than that offered to other religions and criminalizes the “defaming of the Emir”. Violating the provisions of these laws can reach up to a year in prison, and the sentence in the Print and Publications law would be applied on the program producer and host and the owner of the channel, in addition to the possibility of incurring large fines and the shutting down of the media outlet. The Prosecution’s tendency to take a fundamentalist approach in interpreting provisions of the law when raising charges has also been noted.

Books in Kuwait, moreover, undergo prior censorship before being sold and the procedures of a plaint for redress of a decision for censoring books are lengthy and hard. The Academic Publication Council Regulations at Kuwait University undergoes the same restrictions outlined in the Print and Publications law without any regard to the specific nature of academic research.

Websites also undergo prior censorship and the Ministry of Communications blocks any websites it finds to be inappropriate like websites which include pornography, except the block extends to websites which do not meet the thoughts and political opinions accepted by the Ministry. For instance, one of the most famous intellectual and cultural websites, "the civilized dialogue" was blocked a few months ago.

Articles (14, 15, 25, 26, 29, 30, 33, and 34) of law 31/1970 with penal code amendments regulate national security cases with sanctions ranging from 3-25 years of prison. Most of the provisions of these articles are vague, loosely termed and can be easily abused. Article 29, for instance, criminalizes adopting certain ideas even without spreading them. Article 25, which sanctions anyone who objects to the rights and authorities of the Emir or faults him, was also used to prosecute more than 106 people over the past three years taking part in national protests, some of whom were convicted. A pardon was issued by the Emir for those who were convicted of "defaming" him but only included seven people excluding those whose ruling was not enforced or their cases not settled. Article 15 has been continuously used against Twitter users as a response to hate campaigns with religious undertones that were sparked on a national level. Charges were also raised against individuals who criticized the rulers of countries with strong ties to Kuwait.

Articles (109,110,111,112) of Penal Code 16/1960 regulate the protection of religions and religious beliefs and mandates jail terms reaching one year. This law has been used repeatedly due to religious campaigns, it was also noted that charges are only raised on cases that touched on religious beliefs prevalent in society and were not raised on cases that touched on other beliefs.

Moreover, the National Unity Law 19/2012 was decreed with the intention of prohibiting the denigration of people on the basis of religious sect or heritage, which mandates sanctions that may reach seven years in prison and hefty fines, which are doubled if the act is repeated. This law lacks clear definitions, which may lead it to become an instrument easily exploited amidst sectarian and social struggles.

In the period extending from 2012-2015, the charge of objecting to the rights and authorities of the Emir and faulting him was directed to nearly 106 people, no less than 30 people were found to be innocent whereas tens of them were sentenced to prison for periods ranging between 2-5 years and some were given a suspended sentence. The court is still reviewing some of these cases.

Although a special Emiri pardon was issued on 30/7/2013 inclusive of all people charged with objecting to the rights and authorities of the Emir and faulting him, only a few people benefited from it because the verdict for most cases has not been issued yet. In addition some charges were filed after the pardon was issued. Most of these charges were raised because of the speech delivered by the former parliament member, Musalam Al-Barak, titled "Kafa Abathan"

(Enough Misconduct), which was the reason the Court of First Instance sentenced him to imprisonment with labor.¹³ As a form of solidarity with former MP, Al-Barak, a group of 67 began repeating his speech. In addition, charges were filed against nearly 8 people in cases that relate to objecting to the authorities of the Emir and nearly 19 people who were charged with affronting an ally country.

Since 2011 and until 2015, nearly 12 charges filed on contempt of religions based on the provisions of the Print and Publications law and Audio-Visual Media law and the articles that relate to religious blasphemy in the Kuwaiti Penal Code, all of which were related to the contempt of the Islamic religion or its symbols. The person charged with this crime is sentenced to what may reach a year in prison. The Ministry of Communications had also shut down "Al-Yawm" TV channel, whose direction is considered opposing to the government because it violated the conditions for appointing the channel's general manager, based on the provisions of the Audio-Visual Media law after which the Ministry annulled its decision and allowed the channel to re-broadcast. In 2014, the Ministry of Communications terminated the license of "Al-Yawm" TV channel and "Alam Al-Yawm" newspaper, both of whose direction is considered opposing to the government, following the withdrawal of one of their owner's nationality, Ahmad Jaber Al-Shammari, whose nationality was withdrawn by the government because it considered him to have impinged on the country's national interest and promoted principles that seek to undermine the economic and social systems in the country. The request to return the licenses of both "Alam Al-Yawm" and "Al-Yawm" TV channel are still being looked into by the court.

Recommendations:

1. Releasing the people charged with cases relating to freedom of opinion and expression and dropping the charges against the people being trialed for the same charge.
2. Making the necessary legal amendments on Kuwaiti laws to ensure freedom of expression.
3. Guaranteeing the right of every individual in attaining information through the internet and halting the prior censorship of books.

5- The Right to Peaceful Assembly:

Article 44 of the Kuwaiti constitution guarantees the right of assembly to individuals without permission or prior notification and allowed for public meetings, processions and gatherings in accordance with the conditions specified by the law. The law also distinguishes between public meetings and public processions, demonstrations and gatherings.¹⁴ There are no regulations that govern public assembly, processions and demonstrations since the Constitutional Court dropped in a previous judgment the articles relating to it, while it is required by law to acquire prior permission for assembly on the condition that the request is put forward by a Kuwaiti registered voter. This law gives the government a wide capacity for banning an assembly, since the law does not require it to reply to the requests being put forth to it and does not indicate any regulations for issuing licenses, which allows it to disregard requests or refuse

¹³ This sentence was reduced to two-year imprisonment with labor by the Court of Appeals in February 2015. He is currently serving his sentence in prison.

¹⁴ Law decree no. 65 of year 1979 concerning Public Gatherings (65/1979).

them without a clear reason. Punishments for violating this law range from one month to two years in prison.

The law places regulations on public assembly, which accordingly prohibit any saying or action that violates religious orders and its teachings or public order or moral standards or harms the country's reputation and its pan-Arabism or affronting an ally or neighboring country.¹⁵ Article (12) of the law prohibits the participation of non-Nationals in processions, demonstrations and gatherings thereby violating article (44) of the constitution, which grants the responsibility of regulating gatherings and assemblies to the law not prohibiting them. In a number of occasions, security forces have prevented non-nationals from participating in assemblies.

Charges for demonstrating, sometimes rallying and vandalism, were raised against more than 190 people for demonstrating mostly on issues regarding stateless citizens and national protests in support of the opposition. The court later acquitted most of those prosecuted in these cases of all charges, however, there are still cases being looked into by the court.

The state of Kuwait has witnessed a large number of demonstrations and assemblies over the past years most of which were characterized as peaceful and in which the number of participants sometimes reached tens of thousands of protesters. Most of these demonstrations were organized either by the political opposition or by individuals who are stateless citizens or those sympathizing with their cause and trying to support their cause. There were also some demonstrations organized by individuals who aid the government and its policies. Moreover, authorities do not allow stateless citizens to apply to get a license for a demonstration, and a request put forth by an activist to obtain a license for one of the demonstrations was also refused. A number of demonstrations were organized by the political opposition activists without obtaining a license for them, consequently, the security forces attempted to break up the demonstration while sometimes using force. Security forces used violence to disperse some of these demonstrations with their batons, teargas and water pipes. In some cases, security forces also dismissed, detained or frightened the human rights legal observers who were present to observe and report on the progression of the demonstration. Security forces, moreover, did not disperse the pro-government demonstrations despite the fact that they had not obtained a license for it.

The General Prosecutor has raised charges against no less than 306 nationals on the charge of crowding and assembling and around 207 individuals who are stateless citizens were also charged. Most of the defendants were later found to be innocent after some of them had been held in remand for varying periods.

Recommendations:

1. Dropping the charges and granting a public pardon for all those detained due to these assemblies and people who are charged with related offenses
2. Making the necessary legal amendments to regulate the right to peaceful assembly in accordance with human rights standards.

6- The Right to Litigation:

Although the Kuwaiti constitution guarantees the absolute right to litigation, articles (1, 2) of the Legislative Decree Regulating the Judiciary (23/1990) state that some issues are

¹⁵ Law decree no. 65 of year 1979 concerning Public Gatherings (65/1979), Article (10).

excluded from litigation such as issues of sovereignty. Therefore, a number of disputes are excluded from being looked into by courts such as the granting of Kuwaiti nationality, its withdrawal and revoking and decisions on deportation and administrative removal, which denies some people any redress for abuses and injustices. Moreover, the Law concerning Clubs and Public Welfare Societies deprives those whose requests for establishing their societies were denied the chance of appealing at court. The law on establishing the administrative court prohibits the court from looking into issuing licenses for printing presses, newspapers and media channels and also from issuing licenses for places of worship.¹⁶ The law deprives children under the age of 21 from pressing charges without the permission of their guardian even if the child has suffered from physical or sexual abuse by his/her guardian and wanted to press charges against him/her.

In addition, the Court of Cassation has issued in 2013 a verdict on Hassan Qabazard who was convicted of embezzlement of public funds and sentenced to 55 years in prison. According to Kuwaiti law, the case was supposed to be dropped because of the statute of limitations,¹⁷ but the court decided not to drop the charges based on a law that was issued while the case was being looked into,¹⁸ despite the fact that the defendant and the Prosecution had requested not to enforce this law as it is inadmissible to enforce law retroactively. The court, however, considered the statute of limitation to be considered as a procedural and not substantive and thereby it is admissible to be enforced retroactively.

Recommendations:

1. Guaranteeing the right to litigation in all cases without any exception.
2. Not enforcing criminal law retroactively.

7- Judicial Independence:

Articles (5 and 163) of the Kuwaiti constitution stipulate the separation of all branches of government and judicial independence, however, articles number (4,6,7,8,12,16,17,20,25,31,32,35,41,63,67,69,70) of Decree Regulating the Judiciary deprive the judiciary of its administrative and financial independence making it greatly dependent on the Ministry of Justice. The law grants the Minister of Justice (MoJ) the ability to influence appointing, promoting, punishing, discharging and transferring judges and members of the prosecution service by his recommendation to the Council of Ministers for issuance of decrees to appoint and promote judges and grants him the right to supervise the Judiciary and Public Prosecution. It is important to note that many judges are non-Kuwaiti, therefore, they are required to renew their contracts every two years, which affects their autonomy since this matter is subject to the approval of MoJ.

Currently there are no laws, which subject a judiciary or the public prosecution to lawsuits in case of deceit, fraud, corruption, arbitrariness, malpractice or the abstention of the judge from answering a petition presented to him or abstaining for giving a verdict in case that is ready to be ruled in The judiciary also lacks a clear mechanism codified within a legal framework to deal with complaints against judges. Judges are moreover permitted by the law, according to article 25 of the Decree Regulating the Judiciary, to be delegated work outside the judiciary while in judicial office. Furthermore, the supporting bodies of the judiciary such as the General Department of Investigations and the General Department for Criminal Evidence are bodies of

¹⁶ Law no. 20 of the year 1981 regarding the establishment of a Department at the Court of First Instance to look into Administrative Disputes 20/1981, Article (1).

¹⁷ Kuwaiti Penal Code 16/1960, Articles (6 and 8).

¹⁸ Law no. 1 of the year 1993 concerning the Protection of Public Funds 1/1993, Article (22).

the Ministry of Interior and not the Supreme Judicial Council. The parliament is currently looking into a law on judicial independence; some members of the Kuwaiti are showing an inclination to passing a law making judges liable to being sued.

Recommendations:

1. Amending legislation to ensure the absolute administrative and financial independence of the judiciary and increasing the efficiency of supervisory mechanisms over the judiciary.
2. Including the bodies supporting the judiciary under the judiciary body.

9- Deportation:

According to the law, deportation in Kuwait is divided into two types: administrative deportation (administrative removal) and judicial deportation. Judicial deportation is considered to be a supplementary punishment, which a judge is permitted to impose on the person being convicted as a felony or a punishment restricting freedom in cases involving moral turpitude or dishonesty¹⁹ or as a substitute punishment to imprisonment in cases of drug abuse for foreigners.²⁰ Administrative deportation, on the other hand, is a discretionary authority given to the Minister of Interior (MOI) by the Aliens' Residence Law in a case a verdict is issued by the court on a person or if he/she did not have any evident means of living and subsistence or of achieving public good or public security or public order.²¹ This law does not contain any details or specifics about accurate standards for the terms of public good or public security and public order. A deported person is not allowed redress, except through the body which issued the decision of deportation since the law prohibits the court from looking into cases of administrative deportation.²²

The Ministry of Interior has announced that it will begin applying administrative deportation in certain cases against foreigners such as deporting a person who is charged with sexually harassing women if the victim of the sexual harassment case refuses to press charges against him.²³ Deportation is also applied on a person who commits traffic violations such as transporting passengers for a fee using a personal car,²⁴ driving a car without a driver's license²⁵ and running a red light.²⁶

A number of people who expressed their opinions about the political situation in their country were also deported. For example, Sayed Faraj, who is an Egyptian national and the Imam at Al-Khurainij mosque, was deported on the 31st of May 2014 following a complaint put forth by one of the people praying at the mosque due to his speech on the elections and the political situation in Egypt during the Friday sermon. He was then fired from his job as an Imam at the mosque of the Ministry of Awqaf and Islamic Affairs on the next day. After two days, the decision of deporting him and his family from the country was made.²⁷ Furthermore, Saad Al-Ajmi, a media person and part of the political opposition, was administratively deported to the Kingdom of Saudi Arabia after he was stripped of his Kuwaiti nationality because he had acquired another nationality, as was alleged by the government. Furthermore, the activist in the political opposition, Abdullah Fayrouz, was sentenced to five years of prison for objecting to the

¹⁹ Kuwaiti Penal Code 16/1960, Article (79).

²⁰ Law No. 74 of 1983 concerning the Combatting of Narcotics and the Regulation of their Use and Trafficking, Article (33 bis)

²¹ Emiri Decree no. 17 for the year 1959 on the Aliens' Residence Law, Article (16 and 17).

²² Law decree no. 20 of the year 1981 regarding the establishment of a Department at the Court of First Instance to look into Administrative Disputes, Article (1).

²³ <http://www.alraimedia.com/Articles.aspx?id=533985>

²⁴ <http://www.alraimedia.com/Articles.aspx?id=416039>

²⁵ <https://www.kuna.net.kw/ArticlePrintPage.aspx?id=2437577&language=ar>

²⁶ <http://www.aljarida.com/news/index/2012599504/>

²⁷ <http://www.alraimedia.com/Articles.aspx?id=507940>

rights and authorities of the Emir. He was, moreover, sentenced to judicial deportation on the allegation that he does not hold a Kuwaiti certificate of citizenship, despite him being a Kuwaiti national and gaining a final judgment from the court to prove his lineage to his father who is a Kuwaiti national and the Department for Citizenship refraining from issuing him a Kuwaiti citizenship.

According to the law, the authorities are allowed to detain a person sentenced to deportation for a period that can reach thirty days.²⁸ Although in reality, with practical implementation, the period of detainment for people awaiting deportation exceeds 30 days without any legal basis to this procedure since there are procedures that may hinder their deportation like having to settle their financial fines or the issuance of a travel ban on them or the absence or invalidity of their travel documents.

Recommendations:

1. Allowing foreigners judicial redress for decision on administrative deportation.
2. Ensuring that the detainment of people awaiting deportation is not prolonged and necessitating that the period of detainment does not exceed the legal period.

9- Gender Discrimination:

Although article (29) of the Kuwaiti constitution stipulates equality and opposes discrimination, some provisions of laws and some governmental decrees go against this principle. For example, despite the issuing of a decree on April 21st, 2014 compelling the Ministry of Justice to accept female applicants to work as public prosecutors and in addition to the Ministry hiring a number of women as public prosecutors, accepting further applications by women for the same job was brought to a halt under the pretext of evaluating the performance of women as public prosecutors.

Based on articles (1, 2, 3, 5, and 7) of law 15/1959 regarding Kuwaiti nationality, the nationality is passed by blood mandatorily through the father; however, it does not pass through the mother. There are nonobligatory exceptions stipulated by law, like: the death of the father, divorce, the father being a PoW, a martyr, or being born to an unknown father. It is still discretionary in all cases. In the case that nationality through a mother is passed, the children are considered naturalized citizens (denied full rights of native or original citizens), hindering their rights to vote, be elected, and hold ministerial office.

Article 153 of Penal Code 16/1960 reduces the sentence of any man who surprises his wife, mother, sister, or daughter in the act of adultery (in flagrante delicto) and immediately kills her or the man committing the act with her or both. The sentence is reduced from capital offense to a misdemeanor. Women who commit equivalent crimes do not benefit from similar reductions.

Recommendations:

- 1- Repealing the decree that halted the hiring of female public prosecutors and accepting their applications as the case with men.
- 2- Allowing women and men equal rights regarding Kuwaiti nationality laws.

10- Discrimination on the Basis of Nationality:

²⁸ Emiri Decree no. 17 for the year 1959 on the Aliens' Residence Law 17/1959, Article (18).

The Ministry of Interior imposed the following conditions or terms on expats who want to issue a driver's license: they must be a resident for at least two years, must have a university degree, and have a salary of no less than 600 K.D. In comparison, Kuwaiti citizens must fulfill the condition of being 18 years old only to obtain a driver's license.²⁹

Recommendation:

- 1- Amending the terms of obtaining a driver's license for expats so they are equal to Kuwaitis.

11- The Right to Nationality and Legal Identity:

Nationality law regulates the granting, revoking, and withdrawal of Kuwaiti nationality. According to this law, Kuwaiti nationality is divided into: original Kuwaitis and naturalized citizens. Each type has different rights and protections. An Original Kuwaiti is one who is residing, or whose ancestors resided, in Kuwait before 1920. Who is also given the nationality according to article 1 of the nationality law³⁰. The same is applied to those born to a Kuwaiti father who was granted citizenship according to article 7 of the same law. Original Kuwaitis are referred to as "first degree citizens."

A Kuwaiti naturalized citizen is one who used to carry another nationality or did not have one, and was later decided to be given the Kuwaiti nationality to. The law requires granting the nationality to those with unknown parents and to those with unknown fathers who are born to Kuwaiti women³¹. The law also approves granting the nationality to a legal resident residing in Kuwait for 20 consecutive years, or for 15 years for those with Arab origins who have a legal way of making money, know Arabic, have not committed a crime, and who are Muslims or converted to Islam following certain methods five years prior to application³². The law allows granting the nationality to an Arab belonging to an Arab country who has made significant contributions to Kuwait. It also allows granting the nationality to the children of Kuwaiti women in the following cases: the death of the father, divorce, and the father being a PoW or a martyr³³. In addition, the law permits granting the Kuwaiti nationality to those residing in Kuwait, or their ancestors, before 1965³⁴. It also permits passing the nationality to non-Kuwaiti women if they are married to a Kuwaiti; however, the law does not permit the passing of nationality to a non-Kuwaiti man if he marries a Kuwaiti woman³⁵. In the case of a male naturalized citizen, his wife and underage children have the right to obtain the Kuwaiti nationality.

Original Kuwaiti citizens have the rights to vote, be elected, and hold ministerial office. Naturalized Kuwaiti citizens are denied the right to vote for 20 years³⁶, the right to be elected as a member of the parliament³⁷ and the municipality³⁸, or hold ministerial office³⁹.

²⁹ <http://www.alanba.com.kw/ar/kuwait-news/516301/26-11-2014>

³⁰ Emiri Decree 15/1959 of the Kuwaiti Nationality Law.

³¹ Emiri Decree 15/1959 of the Kuwaiti Nationality Law, Article (3).

³² Emiri Decree 15/1959 of the Kuwaiti Nationality Law, Article (4).

³³ Emiri Decree 15/1959 of the Kuwaiti Nationality Law, Article (5).

³⁴ Emiri Decree 15/1959 of the Kuwaiti Nationality Law, Article (5).

³⁵ Emiri Decree 15/1959 of the Kuwaiti Nationality Law, Article (8).

³⁶ Law 35/1962 regarding parliamentarian elections, Article (1).

A naturalized Kuwaiti citizen can lose their nationality through withdrawal, in case they acquired nationality through falsification of information, if they are convicted within 15 years of getting the nationality for a crime of moral turpitude, being disciplinarily dismissed for reasons related to integrity and trust within 10 years or for national interest or external security, and in case competent authorities have evidence against them for advocating for values to ruin the economic and social systems of the country or for belonging to a foreign political institution.

In the case of withdrawal of nationality from a naturalized citizen, the withdrawal is also applicable to those who it was passed on to, such as the children and wife, despite the fact that this action contradicts the constitutional principle that states that the punishment must be personal⁴⁰. However, original Kuwaiti citizens have more protection regarding losing nationality, for the nationality is revoked if they join military service of a foreign country, after the government has requested they leave such military service. Nationality can also be revoked if the person has worked on the side of a foreign country going to war with the State of Kuwait or if Kuwait has severed political ties with that country, if they were residing outside Kuwait and joined an institution that undermines the social and economic systems in Kuwait, or if they were convicted with a crime related to national loyalty. In the case of revoking the nationality, it is not revoked for those who it was passed on to⁴¹. The exception to this is original Kuwaiti citizens who were granted nationality under article 7, meaning being passed on through the naturalized father. Here, the nationality is withdrawn and not revoked. In all cases, a Kuwaiti loses their nationality if they choose to have a foreign nationality⁴².

The law does not specify clear definitions for national interest or external security. The withdrawal or the revoking of nationality is done through a decree based on the review of the Minister of Interior, without judicial control, because the Kuwaiti Law does not allow courts to review issues related to sovereignty⁴³. The decree regarding the establishment of a department in Full Court forbids the court from reviewing issues related to nationality⁴⁴. However, the administrative court did actually review during the past years some of the revoked nationality cases that were related to revoking original nationality. An example is the ruling that the court issued about revoking the nationality of former oppositionist MP “Abdullah Al Barghash” that resulted in revoking the nationality of his brothers and their families as well, which added up to 58 people in total. That led to ending the employment of some of them, bringing the education of the students to a halt, and stopping the retirement income for some since August, 2014. The court of first instance ruled for revoking the decree of revoking their nationality and compensating them 5,000 K.D.

³⁷ Internal bylaw of the parliament, Article (2).

³⁸ Law 5/2005 regarding Kuwait Municipality, Article (3).

³⁹ According to the constitution, ministers are considered members of the parliament; therefore, the requirements for the members of the parliament mentioned in the internal bylaw have to apply to ministers as well.

⁴⁰ Kuwaiti Constitution, Article (33).

⁴¹ Emiri Decree 15/1959 of the Kuwaiti Nationality Law, Article (14).

⁴² Emiri Decree 15/1959 of the Kuwaiti Nationality Law, Article (11).

⁴³ Law Decree 23/1990 regarding regulating judiciary, Article (2).

⁴⁴ Law Decree 20/1981 regarding the establishment of a department in Full Court to review administrative issues, Article (1)

There is a complaint by those who belong to the political opposition movement that the nationality law has been used to target political activists and oppositionists, especially after the withdrawal and revoking of the nationality of a number of opposition figures including former MP “Abdulla Al Bargash,” “Ahmad Jabr Al Shamari,” who was the director of the political opposition TV channel, Al-Youm, “Saad Al Ajmi” who is a political activist and oppositionist, and “Nabil Al Awadhi” who is a religious figure with public political views related to what is known as the Arab Spring.

Recommendations:

- 1- Amending nationality law so the state is unable to deny a person their nationality, except for cases of falsifying nationality information and based on a judicial ruling.
- 2- Eliminating the discrimination in civil and political rights between original Kuwaitis and naturalized citizens.
- 3- Eliminating the discrimination between men and women regarding the laws of passing the nationality.

12- Stateless Citizens (Bedoun):

The Kuwaiti government officially calls *bedoun* “illegal residents,” while the *bedoun* consider themselves without citizenship. The number of *bedoun* in Kuwait reaches more than 106,000, according to officials at the Central Agency for Remediating Illegal Residents’ Status⁴⁵, the number of *bedoun* qualified to apply for citizenship according to section 3 of article (5) of the nationality law is around 30,000 according to a statement by the director of the Central Agency for Remediating Illegal Residents’ Status.

The *bedoun* are denied official identification cards, except those who are registered at the Central Agency for Remediating Illegal Residents’ Status, who are given security cards that allow them to handle some of their official paperwork and to get basic services such as issuing a driver’s license, a passport, official documents, getting a job in the government sector, and being provided with education and health services. Denial of security cards means denial of these services.

The Central Agency created a system that divides the *bedoun* into categories according to their standards. The *bedoun* are denied the right to access or protest the information that was used to categorize them. According to these categories, the *bedoun* are given different colored cards, each qualifies for varying state services. However, this system was not applied practically because the cards were approximately all issued in one yellow color, which means under review. Meanwhile, some with security restrictions are denied security cards. A security restriction is a note that is not defined legally on a person’s file. When first applied, it used to mean that the government prevents giving this person citizenship for suspecting they carry citizenship of another country.

The *bedoun* who are not registered at the Central Agency are divided into two categories, the first of which is those who are registered at the Civil Information. Those can refer to Zakat

⁴⁵ <http://alwatan.kuwait.tt/article/details.aspx?id=424330>

House to issue health insurance in collaboration with the Central Agency; therefore, they qualify for free education and health services. The second category includes those who are not registered at the Civil Information; they are not considered *bedoun* by the Agency, but are considered expats violating residency laws. The *bedoun* are given, on exceptional bases, passports under article (17) of the passport law⁴⁶. The Ministry of Interior had started to be strict in issuing these passports, according to statements by officials in May 2015. These passports are not issued except for those who carry 1965 census and who do not have security restrictions. Special exceptions can be made for humanitarian cases.

The Central Agency for Remediating Illegal Residents' Status decides that individuals from the *bedoun* qualify to apply for citizenship; therefore, the Agency nominates the name to the Ministry of Interior to review their application. This is considered a rare procedure. In addition, in case another citizenship existed the Agency closes the file with the continuation of education and health services, under the condition that they sign an undertaking to complete official procedures to get their original citizenship.

Since the state considers the *bedoun* illegal residents, they are always susceptible to administrative removal or judicial deportation if convicted by court. In case of removal, the person is taken to the deportation center where they stay for long amounts of time because no country is willing to receive a person without citizenship. After being detained for some time, they are released under the condition of presenting a *kafil* or a sponsor. When released, all of the official paperwork belonging to them is stopped because their legal status according to the state is classified as a deported person.

Recommendations:

1. Change the term "illegal resident" to enable members of this segment to attain their essential human rights, according to law.
2. Amending legislation to enable the judiciary to look into citizenship disputes.
3. Enabling the *bedoun* administrative and juridical appeal regarding security restrictions, while not tying the attainment of a valid security card to these restrictions.

13- Mental Health Act:

Kuwait lacks the minimum standard of laws required to regulate the procedures of treating and admitting people living with mental illnesses to the hospital. Currently, minimal administrative decisions regulate matters relative to in-patients but lack sufficient measures that would be provided by laws to protect this segment's basic rights of treatment, freedom and essential civil rights. Some patients suffer unjustified detention because their families refuse receiving them and there are no substitute shelters to accommodate them.

This problem is prevalent among children due to the absence of legislative frameworks, which forces their guardians to receive or deliver them to substitute institutions. Yet, there are no suitable institutions in Kuwait to receive these cases. Some current MPs have submitted a project for a mental health law; however, it has not been put forth for voting to the date of submitting this report.

⁴⁶ Law 11/1962, regarding issuing passports.

Moreover, in-patients are not able to enjoy adequate and regular leisure-time outdoors because there is no fence surrounding the premise; therefore, the hospital is not able to prevent them from escaping. Child in-patients are not allowed to spend leisure-time outdoors without prior approval from their guardians.

Recommendation:

- 1- Amending necessary legislation to regulate mental health according to WHO standards.

14- Child Marriage:

Article 24 of law 51/1984 regarding Family and Personal Status allows minors to contract a marriage upon reaching puberty⁴⁷ while article 26 of the same law specifies the age of notarizing the contract to be 15 years for females and 17 for males. Statistics calculated between the years 2008–2011 indicate that girls under the age of 15 get married annually in numbers that range between 51-261, while the number of marriages for girls between the ages of 15-19 ranges from 2662-3051 at a rate of 14.5-21% of total marriages. The official statistics of 2013 did not show any marriages for girls under the age of 15, despite the fact that the state did not make changes regarding this phenomenon.

Recommendation:

- 1- Amending legislation to determine 18 as the legal age for entering into a marriage contract.

15- The Right to Marriage and Having a Family:

The law denies a maiden (*beker*) under the age of 25 the right of contracting her own marriage without the permission of her legal male guardian (*wali*)⁴⁸, unless she raises charges against him for abusing his right over her. The matter is then left subject to the discretion of the Judge⁴⁹. A woman not considered a virgin (*thayeb*) is not required to get the approval of her male guardian to get married, however, he needs to be notified and his decision heard. Nonetheless, she is still not permitted to contract her own marriage unless through her male guardian or a Judge⁵⁰. Although the law requires the consent of a woman for marriage, it does not stipulate hearing her direct verbal approval or having her signature on the marriage contract, which may lead to marrying her off without her knowledge or consent.

Recommendation:

- 1- Amending legislation to enable women to contract their own marriages without the need for a legal male guardian or a judge in addition to necessitating their signature on the contract.

⁴⁷ Law 51/1984 regarding Personal Status, Article (24).

⁴⁸ Law 51/1984 regarding Personal Status, Article (29).

⁴⁹ Law 51/1984 regarding Personal Status, Article (31).

⁵⁰ Law 51/1984 regarding Personal Status, Article (30).

16 - Freedom of Belief:

While the constitution of Kuwait states that freedom of belief is absolute, and that the state is to protect the rituals and religious ceremonies of all faiths within the accepted norms of society; there are some laws, decrees and actions that constitute a form of discrimination against non-Muslims and other sects of Islam different than the dominant sect in the country.

For instance, Baha'is face difficulties when registering their religion in official papers. Despite the nonexistence of any law or regulation that forbids the registration of Baha'i faith as a religion in official documents, some were allowed to register it as their religion, while others were forced by the registration administrator to register as Muslims. This changed in the early 90s, when only three options became available for the religion box in official forms; Muslim, Christian and other. Consequently, not being able to specify the religion creates different problems, the most pressing of which appears in the personal status law, specifically with regard to marriage and inheritance.

The Kuwaiti citizenship law also includes articles that clearly discriminate against non-Muslims, as it does not allow a non-Muslim to be granted the Kuwaiti citizenship.

⁵¹ A Muslim citizen will be stripped of his/her citizenship should he/she convert to other religions or show evidence that he/she intends to convert. Additionally, non-Muslims are not allowed to work in the general department of investigation⁵² the office of the public prosecutions and the judiciary⁵³.

The department of authentication does not allow non-Kuwaitis who are not Muslim or Christian to get married unless they provide a copy of their country of origin's national law. As for those whose country of origin does not recognize their right to get married because of their religion, they also will not be allowed to authenticate their marriage contracts. As for Kuwaitis who are not Muslim or Christian, they cannot enter into marriage contracts through the Department of Authentication; should they get married abroad, the department will refuse to authenticate their marriage contract. Hence, the state of Kuwait does not allow Kuwaiti Baha'is to get married fully. Additionally, the personal status law in Kuwait definitively prohibits a Muslim who has converted to another religion from getting married, whether to a Muslim or non-Muslim⁵⁴, as well as denying his/her right to inherit⁵⁵. And upon this person's conversion, his/her possessions, assets and money will be transferred to his/her Muslim next of kin who have the right to inherit⁵⁶.

As for a non-Muslim's mother's custody of her Muslim children, the law stipulates that her custody ends as soon as they reach the age of 7, or as soon they understand the concept of

⁵¹ Emiri Decree 15/1959 of Kuwaiti Citizenship law, Article (4).

⁵² Law 53/2001 with regard to the General Department of Investigation at the Ministry of Interior, Article (3).

⁵³ Decree 23/1990 with regards to organizing the judiciary, Articles (19 and 61).

⁵⁴ Personal status law 51/1984. Article (18).

⁵⁵ Personal status law 51/1984. Article (293).

⁵⁶ Personal status law 51/1984. Article (294).

religions⁵⁷. Moreover, with regards to deaths, the state does not allow cremation, as per the statement of Faisal Al-Awadhi, the supervisor of the Funeral Services Affairs in Kuwait Municipality, however it does allow them to ship the bodies abroad.

The law in Kuwait punishes a person who drinks, eats or smokes in public during the fasting hours in Ramadan, with up to a month in prison⁵⁸. This law is applicable to Muslims and non-Muslims alike. It is worth noting that this law is not derived from any religious teachings or traditions.

Furthermore, non-Muslims face many difficulties in practicing their religion due to the state's strict measures in giving licenses to establish houses of worship. One of the reasons for this can be attributed to some Fatwas issued by Muslim clergymen, and an official Fatwa that was issued by the Ministry of Awqaf and Islamic Affairs in Kuwait regarding the illegality of building houses of worship for other religions, which in turn made some of the members of the municipality council and members of parliament, reject the licensing of new houses of worship. There is not one licensed temple for Sikh, Hindus or Buddhists despite their large numbers in Kuwait. Which forces them to hold their religious ceremonies and congregation in unlicensed residential areas; always threatened by eviction should any of the neighbors file a complaint.

As for Christians, the municipality council has repeatedly (for no reason) rejected requests to license a land to build the Roman Catholic church, despite their many requests since 2005, and the preliminary approval of the ministers' cabinet to allocate this land for them. The number of Christians in Kuwait is estimated to be around 450,000 of different denominations; around 200 of them are Kuwaitis. However, the number of churches in Kuwait is 8 only; which cannot accommodate the number of Christians in Kuwait, and does not serve the many different denominations of Christians.

However, there are 1,282 mosques according to the Public Census for the Populations, Dwellings, Buildings and Establishments of 2011. It is noteworthy to mention that the number of Jaafari Shiite mosques in Kuwait, in all provinces until the year 2013, is no greater than 35 mosques, due to the state's delay in approving the requests submitted to it to license these mosques, even though Shiites constitutes 30% of the population of Kuwait. In the year 2013, employees at the Kuwait Municipality have removed a number of kiosks and tents which are erected temporarily during the religious Shiite Ashura season, despite having permits. The Ministers' Cabinet have denounced this move and formed a committee to investigate and find the person responsible.

While the Ministry of Education does not obligate non-Muslim students to take Islamic Education classes in school, the course is mandatory for all Muslims and it teaches Sunni Islam only, which leads Shiite parents to teach their children a different form of prayer than the one they learn in school⁵⁹. The courses of some subjects contain hate speech and calls for violence; such as lessons on executing a convert from Islam to other religions, and in some lessons calls on killing infidels and taking them hostage.

⁵⁷ Personal status law 51/1984. Article (192).

⁵⁸ Law 44/1968 regarding the unlawful breaking of fast in public in Ramadan.

⁵⁹ Lesson 5 "Prayer", page 74 of Islamic Education textbook for first grade.

Recommendations:

1. Removing Islamic religion as a prerequisite to apply to Kuwaiti citizenship.
2. Permitting non-Muslims to build licensed houses of worship and crematoriums.
3. Enabling citizens to get their basic civil rights, like marriage and relevant status law cases, without any discrimination on basis of belief and religion.
4. Amending legislations to remove Islam as a prerequisite to fill positions in the judiciary and the General Department of Investigation.

17 - Cross-dressing (imitation of the opposite sex):

Under Kuwaiti law, cross-dressing in public is punishable by up to a year in prison⁶⁰. The law has not put any clear definition of what may constitute "cross-dressing", which led it to being left to the policeman's discretion, who would be able to enforce this law based on a person's clothes, behavior, speech, hairstyle or even body shape. Additionally, posting a picture or a video of a cross-dresser on social media is punishable by the same law, since social media is considered part of the public sphere.

This law is also applicable to transsexuals, who are under constant threat of being arrested and charged at any moment they are outside their homes. They also cannot resolve this issue by changing their sex in official documents as Kuwaiti courts have not ruled in favor of those who have requested to change their sex. There have been a number of documented incidents in which cross-dressers were arrested repeatedly and were subject to humiliation and aggressive treatment by the police.

During initial questioning, transsexual males are held in the men cell, which makes them often a target for harassment by their cellmates. One case has been documented in which a transsexual male has tried to file a complaint in the station in which he was held against policemen that have sexually assaulted him; but the station refused to file this complaint saying that he deserved it. There have also been other documented cases in which transsexuals were sexually assaulted and raped by policemen after being detained for cross-dressing.

In light of the existence of a law that penalizes cross-dressing, victims of such assaults do not file legal complaints against the policemen that committed these crimes in fear of being indicted of cross-dressing. They also fear for their complaints to not be taken seriously due to the contemptuous views in society towards homosexuals. Additionally, transsexuals may not be able to come forward when they are victims of any sort of crime, because their sexual identity itself is punishable by law; therefore, filing a complaint may lead to their arrest.

Recommendations:

1. Amending legislations to stop criminalizing cross-dressing.
2. Enabling transsexuals of changing their sex in official documents.

⁶⁰ Kuwaiti Penal Code 16/1960, Article (198).

18 - Right to Freedom:

The amended article no. 69 of law 17/1960 concerning the legal procedures and summary trials specified that the temporary preventive detention period shall not exceed 10 days, renewable by order of the presiding judge for an additional 10 days period, and it shall not exceed 40 days in total. While the article stipulates that preventive detention should only be used when there fear of the accusing escaping or risk of him influencing the course of the investigation. However, lawyers have stated that through their experience with their clients, the often followed procedure by the investigation bodies is to hold the accused in preventive detention, regardless of the justifications of detention stipulated in the law. It has also been noticed that most freedom of opinion cases are held in preventive detention.

There exists a department of internal affairs that oversees the work of the security forces, it is also part of the duties of the public prosecutions office to oversee the places of detention and cells, but despite that, it is believed that their supervision is ineffective and officers who violate the rights of prisoners are not effectively punished. The parliament is currently discussing a suggestion to increase the period of preventive detention and lessen the restrictions on its usage.

The Aliens' Residence Law gives the authorities a maximum of 30 days to hold those awaiting deportation; however, in reality people awaiting deportation are held for months at times. They're either waiting to be issued new traveling documents to their countries, or banned from leaving the country awaiting a ruling in a court case. In some cases, the deportation would be stopped but the person may still be held for overdue debt to individuals or unpaid fines to the states. The deportation may also be stopped if the sponsor (Kafil) has unpaid fines, which violates the personal nature of punishment. Should the sponsor refuse to pay for the ticket fare of deportation of the sponsored worker, the procedures to issue a ticket by the government might take a few months which he/she spends in detention.

According to the Juvenile Act⁶¹, a guardian has the right to request to send a son or a daughter to the social guesthouse⁶², because the law considers the defiance of a child to his/her parents authority a reason to be sent to the guesthouse and be deprived of his/her freedom⁶³. Should a guardian refuse to take a son or daughter back home if found after being reported missing/absent, the child will be placed in the guesthouse. Should the parent refuse to take the child, and their next of kin refuse to do so also, then the child may remain held in the guesthouse until they reach the age of 21, even if the supervisors at the guesthouse decide that there is no reason for the child to be held there any longer.

Recommendations:

1. Restrict the use of preventive detention to the minimum.
2. Take necessary measures to decrease the period of detention for those awaiting deportation.
3. Make necessary decisions to guarantee the right to freedom of the children whose parents refuse to take them home from the guesthouses, even after finding them fit to be released.

⁶¹ Juvenile Act no. 3/1983.

⁶² Ministerial decree no. 42/2004 concerning the internal bylaws of the department of juvenile care.

⁶³ Ministerial decree no. 42/2004 concerning the internal bylaws of the department of juvenile care,

Article (1).

19 - Torture and Cruel and Degrading Treatment:

Kuwaiti law criminalizes the use of force by public employees. It only criminalizes it if it is committed by public employees on defendants, witnesses or experts with the purpose of forcing a testimony or giving information that could affect the investigation⁶⁴. However, neither the law nor its explanatory memorandum have given a clear definition for torture. In addition, if torture is exerted on a convicted person or exerted by individuals it would not be considered, according to Kuwaiti law, a crime of torture.

As a result of the absence of a clear definition of what constitutes torture, investigation bodies often ignore the psychological side of torture. Therefore, charges of torture are not filed if a defendant is photographed in a humiliating manner or if the pictures were published, or for cruel and degrading treatment. Due to the absence of effective supervision mechanisms in detention and investigation centers, and in the absence of effective and secretive measures to file complaints and protect people putting forth complaints, there have been many repeated claims of torture and assault in detention centers.

For instance, non-Kuwaiti defendants accused of manufacturing alcoholic drinks had their moustaches shaved by the policemen to look like Hitler's moustache; they were then photographed and their pictures were published. An internal security source has said that they were suspended for 5 days. Also, a video went viral online that shows a policeman inside a police station kicking a non-Kuwaiti detainee as he forced him to do a strenuous physical exercise. The police station has not allowed volunteering lawyers to meet with the victim during the period of his detention, which is a clear violation of the law. One of the lawyers has filed a complaint for not being allowed to meet with the defendant, to the Department of Supervision and Inspection which oversees the performance of the security bodies. However, he was not called upon later to testify, which indicates that there has not been an investigation of the violation.

Moreover, there have been documented claims by Bidoun activists who have been tortured in order to confess to the charges they were accused of. (KH. R.) claims that he was detained and charged with offending the status of the Emir, in addition to demonstrating and inciting demonstrations, disturbing public security and assaulting security forces; he was detained for 8 days. He stated that for three of these days he was detained in the Office of National Security, where he was questioned for extremely long periods of time as well as being forced to stand for long periods. In order to force him to sign a testimony, he was beaten, kicked and tortured by the method of having his arms pulled, and the method of hanging him from his arms in a cold room, which resulted in shoulder injuries. He was also threatened to be murdered, raped and to have his family tortured in front of him, and have them fired from their jobs, which, in effect, has traumatized him psychologically resulting in sleep disorders.

This person has denied his testimony in front of the public prosecutor, and has complained of being tortured, his statement was also put in the official report, and then he was transferred to the forensics physician. According to him, the physician refused to check on him and accused him of lying; the physician then wrote a report indicating that there is no evidence of

⁶⁴ Law 31/1970, Articles (53, 54 and 56).

torture without even examining the victim. It is worth noting that the Department of Forensic Medicine and the Department of Criminal Evidence are part of the Ministry of Interior. There are no guarantees to their institutional autonomy, and there are no measures to protect their employees from any penalizing administrative procedures. Additionally, the two departments do not disclose to the public the laws and regulations that govern their work and guarantee its autonomy and quality.

It is noteworthy to mention that in the year 2011, the general public in Kuwait was preoccupied with the death of a citizen during torture. Following this incident the Minister of Interior gave his resignation and the men accused underwent trial. However, there has not been any reexamination of the policies that govern the work of security forces and the intelligence services, and no measures were taken to further protect detainees from torture.

Recommendations:

1. Take necessary measures to protect detainees from torture, and to activate supervision and inspection of security bodies.
2. Make necessary amendments to ensure that those who practice torture do not escape a fair punishment.

20-Forced Labor:

Foreigners' entry and residency to the State of Kuwait is regulated by law 17/1959, which includes private sector labor, government sector labor and domestic workers, in accordance with articles stated in ministerial decree 640/1987. A non-Kuwaiti employee needs a sponsor (*kafil*) in order to enter the State of Kuwait and continue to work there, granted that the sponsor (*kafil*) is the employer. Policies that regulate the relationship between employer (*kafil*) and employee create an immense imbalance of power in favor of the employer over the migrant worker, which may be abused. The regulations of the relationship between employer and employee are divided into three: private sector labor is regulated by Private Sector Labor Law 6/2010 and the Alien's Residence Law, the government sector is regulated by the Civil Service Law and the Aliens' Residence Law, while migrant domestic workers are regulated by the Aliens' Residence Law and Ministry of Interior decisions. In addition, a specific law for domestic workers⁶⁵ has been approved and published in the official newspaper on 25/7/2015, and is expected to take effect imminently.

A migrant worker in the private sector is required to get the approval of his/her employer to work elsewhere in the first three years of his/her employment unless he/she files a complaint - of which the outcome is uncertain - against the employer to the Ministry of Social Affairs and Labor proving the employer committed a breach of contract. The sponsor has the right to terminate the worker's residence permit at any time based on article 25 of the executive regulations of the Aliens' Residence Law. A sponsor is able to report his worker to be absconding to the concerned authorities, without having to prove it, which results in his/her

⁶⁵ Domestic Workers Law 68/2015.

imprisonment and deportation. This may lead some employers to coerce their employees into forced labor, which may be considered a form of human trafficking.

Moreover, domestic workers need prior permission from the sponsor to work elsewhere, noting that there isn't any complaint mechanism that could force the sponsor to transfer the sponsorship to the new employer. If the worker is found working elsewhere without the consent of their legal sponsor, then her/his legal residency will be canceled, deeming the worker illegal, and procedures are taken for her/his deportation. Based on the current system, the employer pays what may exceed \$3,000 as a recruiting fee for domestic workers to the recruitment agency. Consequently, some employers, whose workers want to transfer to another employer, demand their workers, or the new employer, to make a payment for their approval.

The absence of a domestic workers law in the past, and as a result of the permeating dominant culture, some domestic workers were subjugated to a number of violations, such as long working hours with no sufficient rest, lack of job descriptions, lack of privacy, forbiddance of leaving the residence, forbiddance of acquiring mobile phones and withholding their legal documents, which is a common practice despite its illegality⁶⁶.

Moreover, the new Domestic Workers Law⁶⁷, which hasn't been implemented yet, states various important rights to the domestic workers, such as: providing adequate housing, restricting working hours to 12 hours, granting paid weekends without setting curfews for the time they spend out of the household outside working hours, possession of their legal documents and forbidding dangerous or disgraceful labor. This law also includes a complaint mechanism through the Department of Domestic Workers followed by the right to legislation pro bono. The Domestic Workers Law also restricts recruiting agencies from marketing workers based on gender, color or religion; however, punishment was specified for anyone violating this article.

A large proportion of domestic workers do not comprehend the language their contracts are written in, which makes them susceptible to deceit to the articles of the contract, where they may be deluded into thinking that they will be working in businesses and are later surprised that they will be working as domestic workers once they reach the country. A number of cases have been documented, including a number of domestic workers from Ghana. Worker's inability to read or comprehend the language of their contracts creates a difficulty for them when attempting to file a complaint due to them being ignorant and unaware of their own rights, which also leads them to face many violations such as excruciatingly long working hours exceeding the time agreed on, being deprived of weekends, and housing them in inadequate accommodation. Workers are also ignorant of the place and mechanism whereby a complaint can be filed due to the absence of a national mechanism that would guarantee workers knowing their rights and how to demand them.

⁶⁶ In accordance with general laws and based on decree 200Ain/2011.

⁶⁷ Domestic Workers Law 68/2015

A number of cases of detained workers who could not leave to file complaints were registered. Even though detainment is criminalized by law, official authorities did not provide data regarding the number and nature of complaints or pertinent filed cases. There were moreover cases of detainment that reached police stations and were documented with a volunteering lawyer to defend them. Investigation bodies hindered the case from being filed until the sponsor threatened to file a theft case against them that is fabricated so as to negotiate with them abandoning the case of detainment they had raised against him so he drops the charges he raised against them, which was the actual final outcome.

In another case, a detained domestic worker was forced to work for 2 years without pay. During this period, the worker underwent forced labor, was tortured by her employer using a variety of tools such as scissors, which left prominent scars on her back and popped the worker's right eye using a metal piece. Security bodies did not press detainment or torture charges against the employer (Kuwaiti laws do not allow pressing charges of torture against civilians) and was satisfied with raising charges of abuse which led to a disability.

As was previously mentioned, the dominant culture plays a significant role in reinforcing such treatment and behavior toward domestic workers. It is noteworthy to mention the role of the educational curriculums in reinforcing similar behaviors. In fact, domestic workers were mentioned twice in sixth grade curriculums. The first was in the social studies textbook where domestic workers are portrayed resulted in the spread of a number of wrong behaviors and that our own society was affected by their norms and traditions such as a driver teaching his employer's child how to smoke or a nanny who skinned her employer's baby⁶⁸. The second time was in the Islamic studies textbook where domestic workers were referred to as "servants" and not "domestic workers".⁶⁹

Recommendations:

1. Amending legislation to abolish the sponsorship (*kafil*) system currently applied and terminating the imbalance of power it creates in favor of the employer over the worker.
2. Amending legislation and policies to enable migrant workers of having the liberty of changing their employment and being protected from imprisonment or deportation in case they refuse to continue working
3. Following necessary procedures to guarantee domestic workers' knowledge of their rights and complaint mechanisms.

⁶⁸ Page 126 of the sixth grade social studies textbook.

⁶⁹ Page 102 of part two of the sixth grade Islamic textbook.

21- The Right to Form Societies and Unions:

Although Kuwaiti law allows Kuwaitis to form licensed civil society institutions (CSIs), it prevents non-Kuwaitis from founding societies autonomously. The law also prohibits non-Kuwaitis to become active members in established societies.

According to articles (2, 3, 4, 9, 11, 13, 27, and 1bis) of Law 24 of 1962 regarding clubs and welfare societies, such civil society institutions must obtain a government license prior to their establishment. This entails that the respective ministry has the right to decline the request, leaving the injured party with the sole right to seek redress from the Council of Ministers (Cabinet), while denying the party the right to litigate. Moreover, only 120 (CSIs) were granted a government license (only 10 of which are charities),⁷⁰ whereas hundreds of other requests were declined. In some cases, the aforementioned law grants the Ministry of Social Affairs and Labor the right to interfere in the work of (CSIs) by dissolving or altering their board of directors, hence tampering with their performance.

In November 2014, the abovementioned ministry dissolved the board of directors of the Kuwaiti Society for the Basic Constituents of Human Rights. Due to some of the members' complaints, the ministry assigned temporary board members, thereby, prompting another election after several months.

In addition, the ministry dissolved the board of directors of the Kuwait Transparency Society on May 7, 2015 due to an investigation regarding tweets that reflect the personal opinion of the president of the society from his personal Twitter account. The tweets were viewed as forms of libel and slander that defamed the National Assembly and its members of parliament. The society was also dissolved on the grounds of joining international organizations without prior consent and also for its interference in political matters. The society notified the Ministry of Social Affairs and Labor of the possible shutdown of its headquarters. The former members of the society's dissolved board of directors state that the Ministry of Social Affairs and Labor was aware of the Kuwait Transparency Society's relationship with Transparency International, especially since the ministry itself provided travel tickets for the members of the society to attend meetings abroad. The former board members also consider that the official letter regarding the shutdown of the society's headquarters as well as the halt of some of its activities are attributed to the society's financial inadequacy. This occurred as a result of the delayed disbursement of government donations (an issue that was rectified shortly after).

In addition, in May 2015, the aforementioned ministry dissolved Fahad Al-Ahmad Humanitarian Society and liquidated its possessions. This came as a result of the violation of the ministry's resolutions regarding collecting donations without a license.

Not to mention that in 2014, the Minister of Social Affairs and Labor, Hind Al-Sabeeh, announced the formation of a committee that includes specialists and consultants who will assess the performance and conditions of welfare societies and unions. This action was taken to prevent (CSIs) from diverging from their main goals and rudimentary systems in a manner that aligns their activities with their initial goals.⁷¹

⁷⁰ <http://alwatan.kuwait.tt/articledetails.aspx?id=401551>.

⁷¹ <http://alwatan.kuwait.tt/articledetails.aspx?id=382733>.

Recommendations:

1. Amend legislations so that the establishment of (CSIs) does not require prior authorization from the government.
2. Amend legislations to protect (CSIs) from the unnecessary interference of the government.

22- The Participation in Public Life:

As a constitutional monarchy, Kuwait conforms to a system that divides power between three authorities: legislative, executive, and judicial; whereby the Emir, as the ruler of the state, possesses special jurisdiction along with his role in the other three authorities. The legislative authority consists partially of an elected parliament (National Assembly), where 50 members of parliament are elected through direct yet confidential elections, as well as no more than 16 ministers (based on their positions), provided that they include elected ministers.

The ruler of the state appoints the Prime Minister (President of the Council of Ministers or Cabinet) without a motion of confidence from the parliament, even if his appointment occurs after consultations. The assigned Prime Minister forms his ministry also without a motion of confidence from the parliament before issuing an Emiri decree of its formation. Therefore, the ministers automatically become members of parliament. The elected parliament does not have the power to dissolve the assigned government (ministers). However, the government and parliament equally have the right to request non-cooperation with the other authority. The Emir has the right to dissolve the parliament and the government. Kuwait lacks legislations that regulate political parties, despite the non-criminalization of the establishment political parties.

Although the Kuwaiti Constitution states that all citizens are equal, this article has not been implemented in reality, especially in sovereign positions such as the Minister of Interior, Exterior, and Defense, in addition to the position of the Prime Minister. Since their establishment, such positions have always been occupied by members of the ruling family.

Recommendations:

- 1- Make the necessary amendments to guarantee equality in the participation of political and public life, especially when it comes to public positions.
- 2- Enacting legislation that regulates the work of political parties.

23- Freedom of Information:

In 2006, Kuwait ratified the United Nations Convention against Corruption. In 2012, Decree Law number 24 of 2012 was issued: resulting in the establishment of the Kuwait Anti-Corruption Authority and the regulations concerning the public financial disclosure. The abovementioned law guarantees (when implemented) the supervision and inspection of the Anti-corruption Authority of government officials as well as the protection of those who report such corruption.

However, Kuwaiti Law does not clearly state that non-confidential information can be accessed by the public. Consequently, this law does not protect government workers from administrative penalties in the case of sharing non-confidential information related to their work without the permission of their superior administrators. This could

be interpreted as a breach of duty. As a result, government institutions often refrain from submitting information relating to their work to those requesting it. Moreover, Kuwait's corruption rank deteriorated from number 54 to 67 between the years 2010 and 2014.⁷²

Recommendation:

- 1- Amend legislations to guarantee transparency in accessing government information.

⁷² <http://www.transparency.org/cpi2014/results>