



# **Kuwait**

## **Alternative Report**

**Report submitted to the Committee against Torture in the context of the review of the second periodic report of Kuwait**

**13 April 2011**

Alkarama recalls that it concentrates its work on four priority areas: arbitrary detention, enforced and involuntary disappearances, torture, and extrajudicial executions. We base our work primarily on the documented individual cases we submit to UN Special Procedures and Treaty Bodies, as well as our contacts with local actors including victims, their families, lawyers and human rights defenders.

[Translation of original report in French]

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## 1. Introduction

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Kuwait presented its second periodic report to the Committee against Torture (CAT/C/KWT/2) in June 2010 – with a delay of 9 years. Kuwait’s review by the Committee will therefore take place at its 46<sup>th</sup> session, scheduled from 9 May to 3 June 2011. We recall that UN institutions have, at various times, expressed concern at the lack of cooperation with UN mechanisms from the State party: Alkarama has submitted a number of communications about cases of torture in Kuwait to the Special Procedures over recent years – however, the State party has not responded to any to date. In addition, Kuwait only responded to two of the 21 questionnaires sent to the State party by Special Procedures mandate-holders.

Alkarama aims to participate in the current review of the State party by submitting a report providing an overview of our main concerns. We hope that a dialogue may be established between the Kuwaiti authorities and the Committee’s experts in order to clarify the present situation – with the objective of improving it – particularly in relation to the most fragile social groups which do not, at present, enjoy the full protection of the State as they should.

## 2. Background

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Kuwait is a constitutional Emirate governed by the Al-Sabah family. After being placed under a British protectorate in 1914, the Emirate obtained its independence in 1961. The 1962 Constitution entitles the Emir to name the crown prince and Prime Minister. The Prime Minister decides on a cabinet, which must be approved by the Emir. The Ministers of Defence, Petrol, Interior, Finance and Foreign Affairs are all held by members of the royal family.

Since 29 January 2006, former Prime Minister Sheikh Sabah Al-Ahmad Al-Jaber Al-Sabah is Emir. He replaced Emir Saad who was removed from the throne on 24 January 2006 by Parliament for medical reasons.

Legislative power is exercised by the government and National Assembly, for which, since 2006, 10 members are elected from 5 electoral districts. Its 50 parliamentarians have a 4-year mandate. It can be dissolved by the Emir with a simple decree. According to the Constitution, a new election must then be organised within two months. Although Parliament is not consulted during the selection of the government, Members may question ministers, have them individually expelled, and vote motions of censorship against the government.

While political parties are not authorised, the Assembly is composed of different blocks. Since 2005, women have been allowed to vote and present themselves for elections. Only Kuwaiti citizens are allowed to vote – they represent approximately 385 000 electors. Members of the police and the army are excluded from voting. However, members of the National Guard, who are exclusively of Kuwaiti nationality, may participate in political life.

Kuwait has ratified the majority of UN human rights conventions. Independence of the judiciary and the right to fair trial are guaranteed. There are important guarantees provided for in domestic law. However, in reality the executive, and particularly the Emir, intervenes in the nomination of members of the Judiciary, which can be considered a violation of the principle of the independence of judges.

As of January 2008, the Emirate had a population of 3.4 million inhabitants, with a total of 1 million nationals.<sup>1</sup> The migrant population is mostly Indian, Bangladeshi or Pakistani, having replaced the Arab nationals who were expelled following the 1991 Gulf war. Work conditions are most often deplorable and employees risk expulsion if they protest against mistreatment.

More than 100 000 people living in Kuwait are stateless (known as the “Bidun”) and victims of various kinds of discrimination: access to education, health and certain jobs is limited, and in some cases, may even be completely closed to them. Over the last few months, several gatherings of Bidun have been repressed. In recent years, a certain number of regularisations have taken place, but the problem remains as a whole.

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<sup>1</sup> French Ministry of Foreign and European Affairs, *Présentation du Koweït* (Kuwait Country File), 24 July 2010, [http://www.diplomatie.gouv.fr/fr/pays-zones-geo\\_833/koweit\\_427/presentation-du-koweit\\_985/presentation\\_13518.html](http://www.diplomatie.gouv.fr/fr/pays-zones-geo_833/koweit_427/presentation-du-koweit_985/presentation_13518.html) (accessed 12 March 2011)

### 3. Counter-Terrorism Measures

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Kuwait is a close ally of the United States in the region. In particular, it has allowed the establishment of American military bases on its territory and works closely with the latter on counter-terrorism efforts by providing logistical, diplomatic, and intelligence support, all the while participating in blocking the financing of humanitarian and charitable organisations considered as terrorist by the United States.<sup>2</sup> The Arifjan US military base is a particularly key logistical base for the wars being carried out in Afghanistan and Iraq. It serves as a transit zone for supplies, but also for soldiers coming in from other countries who are heading to or coming back from these operations. Approximately 9,000 soldiers are permanently stationed at the base situated to the south of Kuwait City.<sup>3</sup>

This does not prevent the American Department of State from regularly referring in its reports to the gaps in Kuwait's counter-terrorism measures, particularly in its laws, but also in its "lack of political will". The State Department also notes that the American military presence in the country increases the risk of terrorist attacks. The pressure on the Kuwaiti government caused by this has led to the implementation of an action plan worth US\$2.7 billion, in order to, inter alia, ensure surveillance of 'vital' installations. Other programmes include those aiming to 'counteract the propagation of radical ideas' through the participation of NGOs and local media.<sup>4</sup>

A Wikileaks cable dated the end 2009 regarding the region refers to numerous American concerns about, and disagreements with, Kuwaiti officials. It also describes the concerns they have regarding certain charitable organisations that they suspect of supporting terrorism, in contrast to the assessment made by their Kuwaiti allies. The Americans push for more cooperation from Kuwait yet also seek to introduce measures aimed at the criminalisation of organisations and individuals according to American criteria ("We urge your government to prioritize the passage of counterterror finance legislation...We would welcome the opportunity to work more closely with you to ensure that RIHS and other charities cannot be used to support terrorists.")<sup>5</sup> This pressure from the US has provoked public reactions opposed to Kuwait's cooperation with the US military; however, it is difficult to obtain concrete information on this cooperation, particularly with regards to the question of extraordinary rendition.<sup>6</sup>

The Kuwaiti authorities have arrested an undetermined number of its nationals who had spent time in Pakistan and Afghanistan at the request of the American authorities who considered them dangerous. It appears that the names of suspects of all nationalities were transmitted to Kuwaiti authorities by their American counterparts. These individuals were then arrested and interrogated in Kuwait. It seems that the American agents investigating these suspects actively participate in their interrogations.

The Obama administration has set up 'watch lists' to prevent people who have travelled to Yemen from returning to the United States without being interrogated.<sup>7</sup> When these people are identified as being in Kuwait, they risk being arrested and detained, as in the case of American-Somali national Mohamed Gulet, aged 19, who was living in the United States and travelled to Yemen in March 2009 to improve his Arabic and his knowledge of Islam. From there, he travelled to Somalia to visit his family, then to Kuwait in August 2009 in order to continue his Arabic studies while living with his uncle. On 20 December 2009, he went to the airport of Kuwait City to renew his visa as he had done in the past. After waiting 5 hours at the office, two men dressed in civilian clothing entered with

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<sup>2</sup> US State Department, Bureau of Near Eastern Affairs, *Background Note: Kuwait*, 4 May 2010, <http://www.state.gov/r/pa/ei/bgn/35876.htm> (accessed 14 March 2011).

<sup>3</sup> Home office, UK Border Agency, *Country of Origin Information Report, Kuwait*, 29 January 2010, p. 26-27, [http://uk.sitestat.com/homeoffice/rds/s?rds.kuwait-020210-doc&ns\\_type=clickout&ns\\_url=\[http://www.homeoffice.gov.uk/rds/pdfs10/kuwait-020210.doc](http://uk.sitestat.com/homeoffice/rds/s?rds.kuwait-020210-doc&ns_type=clickout&ns_url=[http://www.homeoffice.gov.uk/rds/pdfs10/kuwait-020210.doc) (accessed 18 March 2011)

<sup>4</sup> US State Department, *Country Reports on Terrorism 2008, Kuwait*, 30 April 2009, <http://www.state.gov/s/ct/rls/crt/2008/122433.htm> (accessed 14 March 2011)

<sup>5</sup> Revival of Islamic Heritage Society (RIHS) is a charitable organization that the Americans consider to support terrorism and wish to put on the UN blacklist, Secretary of State, *Terrorist Finance: Action request for senior level engagement on terrorism finance*, câble n° 09STATE131801, 30 December 2009, published by Wikileaks le 5 December 2010, <http://213.251.145.96/cable/2009/12/09STATE131801.html> (accessed 16 March 2011)

<sup>6</sup> John S. Adams, *Foggy World of CIA 'Renditions' Might Include Jet with Local Ties*, *Great Falls Tribune*, 9 November 2009.

<sup>7</sup> Mark Mazzetti, *Detained American Says He Was Beaten in Kuwait*, *New York Times*, January 2011, <http://www.nytimes.com/2011/01/06/world/middleeast/06detain.html> (accessed 11 March 2011)

handcuffs. They blindfolded him and took him to a detention centre located approximately 15 minutes from the airport. Alkarama has learned that he was tortured and questioned about his travel to Yemen and Somalia by the Kuwaiti security services. He was also interrogated about his relations with Anwar Al-Awkali, an American national suspected of instigating terrorist acts and whose targeted killing has been approved by the American authorities.<sup>8</sup>

Following his 'police custody', Mr Gulet received a visit from a US Embassy official, as well as agents of the FBI who also interrogated him and warned him that he would only be allowed to return to the US if he told the truth about his movements in Yemen. He was released in January 2011 and was able to return to the United States in mid-January 2011. A complaint has been laid against the American government regarding his case. At the time of his arrest and detention, neither the FBI nor the US Department of State were willing to comment on Mohammed Gulet's case. In particular, they refused to answer whether or not the US had collaborated with Kuwait to arrange Mohammed Gulet's arrest.

The attitude shown by certain Kuwaiti officials regarding Guantanamo detainees was revealed in a diplomatic cable made public by Wikileaks. In a meeting between the US Ambassador and the Kuwaiti Minister of Interior Shaykh Jaber al-Khalid Al Sabah on 3 February 2009, concerning the creation of a rehabilitation centre for former Guantanamo detainees, the Minister is stated as having said "You know better than I that we cannot deal with these people (i.e. the GTMO detainees). I can't detain them. If I take their passports, they will sue to get them back (Note: as happened with Al-Ajmi. End note.) I can talk to you into next week about building a rehabilitation center, but it won't happen. We are not Saudi Arabia; we cannot isolate these people in desert camps or somewhere on an island. We cannot compel them to stay. If they are rotten, they are rotten and the best thing to do is get rid of them. You picked them up in Afghanistan; you should drop them off in Afghanistan, in the middle of the war zone."<sup>9</sup>

The American authorities finally convinced Arab governments to build internment centres for terrorist suspects, in particular former Guantanamo detainees. In Kuwait, following initial opposition from the authorities, the Al-Salam 'rehabilitation centre' was established in October 2009. The authorities set up a re-insertion programme which is considered to be very controversial due to its security character. It must be recalled here that former Guantanamo detainees have been acquitted, with all the charges that were held against them dropped, and that some of them were humanitarian workers who had travelled to Afghanistan without any ties to Al-Qaeda. Some of them worked in humanitarian projects established by Kuwaiti charitable organisations whose leaders are close to the Kuwaiti authorities and who have themselves never been investigated. Regardless, the former detainees were obliged to participate in the stigmatising rehabilitation programme, when they should have been compensated for the arbitrary detention and mistreatment they suffered during the long years they spent at Guantanamo. This programme, similar to that in place in Saudi Arabia which is publically viewed as having failed, is strongly criticised in Kuwait as it is regarded as an American establishment.<sup>10</sup>

Amongst the twelve Kuwaiti nationals arrested by the Americans between 2005 and 2006 and detained at Guantanamo, eight were sent back to Kuwait where they were put in the rehabilitation centre mentioned above, alongside former Guantanamo detainees implicated in terrorist activities.

Former Guantanamo detainees released by the American authorities established their innocence following months and, in some cases, years of interrogation. Despite this, upon their return to Kuwait, they are exposed to difficult treatment in total disregard of their physical and psychological state. They are again detained and interrogated for long periods of time. Accused of belonging to Al-Qaeda, they are again judged, at which time they are often acquitted (see for example the case of Abd Al-Aziz Sayir Al-Shamri below).<sup>11</sup>

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<sup>8</sup> Scott Shane, Robert F. Worth, *Challenge Heard on Move to Kill Qaeda-Linked Cleric*, New York Times, 8 November 2010, <http://www.nytimes.com/2010/11/09/world/middleeast/09awlaki.html?ref=anwaralawlaki> (accessed 14 March 2011)

<sup>9</sup> Embassy of Kuwait, *The interior minister' remedy for terrorists : "let them die,"* Wikileaks, <http://213.251.145.96/cable/2009/02/09KUWAIT110.html> (accessed 18 March 2011)

<sup>10</sup> Jihad Abou Al'ess, *مركز كويتي لتأهيل عائدي غوانتانامو، جهاد أبو العيس* (Kuwait Center for the Rehabilitation of Former Prisoners of Guantanamo), Al-Jazeera, 27 October 2009, <http://www.aljazeera.net/NR/exeres/F88173D8-4665-4D81-A4EC-5D7FBD3D5880.htm>, (accessed 14 March 2011).

<sup>11</sup> *معتقلو غوانتانامو المفرج عنهم أحيلوا إلى أمن الدولة , سعد العجمي* (Kuwait: Guantanamo detainees released were transferred to State Security), Al-Riadh, 5 November 2005, <http://www.alriyadh.com/2005/11/05/article105683.html> (accessed 15 March 2011)

## 4. Legal Guarantees and the Legal System

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The constitution of Kuwait dates from 1962 and was amended in 1970 – the amendments in particular concerned articles relating to the internal and external security of the state. The Penal Code and Code of Criminal Procedure, which contain important guarantees, were promulgated in 1960 while under the British protectorate.

The authorities state that “most articles of the Constitution express the principle agreed upon by the international community and enshrined in the relevant international instruments.”<sup>12</sup> It is true that Kuwait has ratified some international treaties (International Covenant on Civil and Political Rights and the Convention against Torture in 1996) but its domestic laws are not always in conformity with the principles enshrined in these texts. The authorities also state that these Conventions can be evoked before courts, but the government has never made any effort to inform or train judicial officials in the use of these texts.

Despite the judiciary’s lack of information in this regard, the Kuwaiti delegation explained to the Committee against Torture that “the Penal Code contains no express provision for the compensation of victims of torture, but it is possible under common law to sue for compensation for torture or any other attack. Given that the Convention is an enforceable law, citizens can seek redress by invoking it since it contains a provision on this point.”<sup>13</sup>

Since 2008, the Ministry of Justice includes a Supreme Human Rights Committee headed by the Minister. The Committee hands down opinions, and aims to raise awareness of human rights via different media, work toward the training of officials, and give its opinion on international human rights instruments.<sup>14</sup> The Committee is composed of several sub-committees, including the ‘Domestic Follow-Up Subcommittee’ which can receive “complaints from various bodies and organizations about violations of human rights, and it establishes fact-finding teams to investigate such complaints and obtain statements and clarification from the bodies and organizations concerned”.<sup>15</sup> However, it is not clear how complaints can be submitted to this Sub-Committee, nor is it possible to determine how many complaints are received and what follow up is given to these. According to certain human rights defenders, the Committee is ineffective.<sup>16</sup>

The law provides for the independence of the judiciary and the right to a fair trial. In addition, article 50 of the Constitution guarantees the principle of separation of powers. However, articles 51, 52 and 53 give legislative, executive and judicial powers to the Emir.<sup>17</sup> Therefore, the Emir personally names judges and the appointment of magistrates must be approved by the government. Many judges are not of Kuwaiti nationality and have renewable employment contracts of one to three years. This vulnerability does not allow them to exercise their functions in a serene and independent manner, and so may hinder the principle of the tenure of judges.

## 5. Arbitrary Detention and Detention Conditions

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Protection against arbitrary arrest and detention is intended to be guaranteed by article 31 of the Constitution.<sup>18</sup> In addition, article 60 of the Code of Criminal Procedure states that police custody should not extend beyond four days.<sup>19</sup> During this time, detainees are not allowed access to their families, and while lawyers may access their client’s file, they are not permitted to visit their client in

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<sup>12</sup> Initial Report Presented by Kuwait to the Human Rights Committee under Article 40 of the International Covenant of Civil and Political Rights, (CCPR/C/120/Add.1), December 1999, para. 20.

<sup>13</sup> Committee Against Torture, *Summary record of the periodic review of Kuwait by the Committee Against Torture*, (CAT/C/SR.335/Add.1), 7 janvier 1999, para. 15.

<sup>14</sup> *National report of Kuwait submitted in accordance with paragraph 15 (a) of the annex to Human Rights Council resolution 5/1 (under the Universal Periodic Review)*, 22 February 2010, (A/HRC/WG.6/8/KWT/1).

<sup>15</sup> *Second periodic report presented by Kuwait to the Human Rights Committee under article 40 of the International Covenant of Civil and Political Rights*, 26 October 2009, (CCPR/C/KWT/2), para 28.

<sup>16</sup> Alkarama, *Interview with Usama M'naouar*, lawyer in Kuwait City, 11 January 2011

<sup>17</sup> The text of the Constitution is available at: <http://www.kt.com.kw/ba/dostour.htm> (accessed on 18 March 2011)

<sup>18</sup> The text of the Constitution is available at: <http://www.kt.com.kw/ba/dostour.htm> (accessed on 18 March 2011)

<sup>19</sup> *Code of Criminal Procedure*, article 60, available on <http://www.gcc-legal.org/MojPortalPublic/DisplayArticle.aspx?country=1&LawArticleID=5677> (accessed 18 March 2011)

person. In practise, such detentions can last several months.<sup>20</sup>

Article 9 of the Code of Criminal Procedure limits the power of the judiciary by attributing the police with a large jurisdiction over the investigation process. Article 69 sets out that pre-trial detention cannot extend beyond three weeks. Before this period has expired, the detainee must be brought before magistrate who determines whether an extension is necessary for further investigation. The total period of pre-trial detention cannot last more than six months, starting from the date of arrest.

Pre-trial detention can be renewed for 30 days if the competent court, upon request of the investigating judge, authorises the renewal for the purpose of the investigation. The accused must be heard and the state of the investigation examined (as set out in article 70). However, the Code of Criminal Procedure does not limit the number of renewals, which could be viewed as a contradiction to the principle of limiting detention before judgement as set out in the preceding article (article 69).

According to the U.S. State Department, about 4,035 people are detained awaiting trial, of which 150 are held at State Security headquarters. Approximately 10% of prisoners are held in pre-trial detention.<sup>21</sup>

Alkarama was informed of the persecution suffered by Mr **Abd Al-Aziz Sayir Al-Shamri** (عبد العزيز ساير عوين الشمري) at the hands of the Kuwaiti authorities because of his status as a former Guantanamo detainee. Upon his return to Kuwait in 2005, he was judged again by a criminal court for 'belonging to Al-Qaeda'. Despite being acquitted, the Kuwaiti authorities continue to harass him by regularly summoning him for interrogations. Mr Al-Shamri was again arrested on 6 July 2009 and accused once more of belonging to Al-Qaeda. He was detained in secret for 11 days at a State Security centre where he was tortured with electricity while blindfolded and handcuffed. He was also beaten and subjected to humiliations and other psychological torture. He was not given a reason for his arrest, other than that 'State Security' had ordered it. He was kept in isolation for five months in inhumane and degrading conditions, initially at the central prison near the Al Solaybia region, and then in the high security section of the same prison where he also suffered psychological pressure and torture. He was not able to contact his family. He was acquitted, once more, by a court, but he continues to regularly suffer harassment from security agents who summon him for interrogations. He is also banned from leaving Kuwaiti territory.<sup>22</sup> Mr Al-Shamri has no means to protest against this ill-treatment.

The KAEHR (Kuwaiti Association for Basic Evaluators of Human Rights) exposed conditions of detention in places intended for police custody. Cells are tiny without proper ventilation and detainees suffer torture and ill-treatment. The association described the anonymous case of an Egyptian who was tortured at the Al-Naqra police station (النفرة), of a Syrian national tortured at the Huli Square (ميدان حولي) police station and a Saudi national who was mistreated by a police officer.

In July 2010, the organisation was able to visit a detention falling under the control of the Interior Ministry (without specifying which one). It found that some detainees had been in police custody for more than three months and that detention conditions did not meet standards in the provision of water, the state of the cells, the lack of medical care, the detainees' contact with their families, etc.<sup>23</sup>

Conditions of detention in prisons are very concerning: there is overcrowding of cells that lack ventilation. The lack of medical care is made worse by long judicial proceedings.<sup>24</sup> KAEHR referred to the death of a prisoner in detention in 2009 due to a decline in his health.

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<sup>20</sup> Kuwaiti Association for basic Evaluators of Human Rights, *Annual Report 2010*, Chapter 9, [http://www.humanrights.org.kw/taqreer2010\\_15.aspx](http://www.humanrights.org.kw/taqreer2010_15.aspx) (Accessed 18 March 2011)

<sup>21</sup> US Department of State, *2009 Country Report on Human Rights Practices: Kuwait*, 11 March 2010, <http://www.state.gov/g/drl/rls/hrrpt/2009/nea/136072.htm> (accessed 18 March 2011)

<sup>22</sup> Alkarama press release, *Kuwait: Continued harassment of former Guantanamo prisoner, Abd Al-Aziz Sayir Al-Shamri*, 5 March 2010, [http://fr.alkarama.org/index.php?option=com\\_content&view=article&id=724](http://fr.alkarama.org/index.php?option=com_content&view=article&id=724). See also, Alkarama, الكويت : استمرار التنكيل بمعتقلي غوانتانامو السابقين (Sanction continue to bear down on former Guantanamo detainees), 26 November 2010, [http://ar.alkarama.org/index.php?option=com\\_content&view=article&id=3994](http://ar.alkarama.org/index.php?option=com_content&view=article&id=3994)

<sup>23</sup> Kuwaiti Association for basic Evaluators of Human Rights, *Annual Report 2010*, Chapter 9, [http://www.humanrights.org.kw/taqreer2010\\_15.aspx](http://www.humanrights.org.kw/taqreer2010_15.aspx), (accessed 18 March 2011)

<sup>24</sup> Kuwaiti Association for basic Evaluators of Human Rights (KAEHR), *Report presented under the Universal Periodic Review*, 1 November 2009, p.4, [http://lib.ohchr.org/HRBodies/UPR/Documents/Session8/KW/KAEHR\\_UPR\\_KUW\\_S08\\_2010\\_KuwaitiAssociationforbasicEvaluators%20HumanRights\\_A.pdf](http://lib.ohchr.org/HRBodies/UPR/Documents/Session8/KW/KAEHR_UPR_KUW_S08_2010_KuwaitiAssociationforbasicEvaluators%20HumanRights_A.pdf) (accessed 17 March 2011)

This same organisation described in the report it presented to the UPR that people had been placed in detention for undetermined periods of time, without charge or trial.<sup>25</sup>

Among these long-term prisoners are people of diverse nationality who have been accused of collaborating with the Iraqi forces during the invasion of Kuwait in 1990. Some of them have completed their sentences without being released. Despite hungerstrikes by some prisoners in 2005 and 2006 seeking release on humanitarian grounds, they remain in detention. The authorities did not take into account the fact that their trials were not fair. Unfortunately, the total number of people held beyond the end of their sentences is unknown.

The Human Rights Committee has come to the same conclusion in its past recommendation – expressing its concern at the number of people detained following sentences handed down in 1991 by Court Martials in the context of procedures which were not in conformity with minimum fair trial norms. It recommended that these cases be examined by an independent and neutral body and that the defendants concerned be compensated if necessary.

In addition, people facing expulsion from Kuwait are imprisoned in a specialised prison – sometimes for long periods of time.

## 6. Torture

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Articles 53, 159 and 184 of the Criminal code forbid torture and other cruel, inhuman or degrading treatment. Despite this, cases of torture by police or other security forces are regularly reported in the media and by human rights defenders. It seems that non-nationals are most often the victims of abuse.

Kuwait law does not clearly define torture. In its concluding observation, the Committee against Torture recommended Kuwait “consider enacting in its Criminal Code a defined crime of torture”.<sup>26</sup>

In recent years, the media has referred to several cases of people tortured by Kuwaiti security forces. For example, a number of Egyptian nationals are concerned, including 'Alaa Ahmed Al-Sayed Muhamad, who had been living in Kuwait for more than three years, who admitted under torture to having raped and killed a young Pakistani girl whose body had never been found. He also admitted to having raped 16 other girls. Upon his arrest by the police in January 2010, he was seriously tortured, including by electricity, at the police station before being presented to a psychiatrist who declared him psychologically unstable.<sup>27</sup> Presented once again to a judge on 7 March 2010 due to new facts – including the reappearance of the original girl in question who testified to not ever having met him – he was acquitted after 55 days of detention.

In 2007, the media reported the cases of several victims of torture, including two Egyptian nationals arrested on 24 July 2007 for having falsified their work permit who were tortured by an agent. One of them described how they were beaten and scalded with boiling water. The prosecutor did not want to release them when it became evident that the accusations against them were false due to the traces of torture on their bodies. The authorities declared that it was a lone case which would be sanctioned.

Alkarama itself identified several cases of torture including that of **Mr Khalif Amer Al-Anzi** (خليف عامر العنزي), submitted to the Special Rapporteur on Torture on 11 and 16 February 2005 and the Special Rapporteur on Summary, Arbitrary or Extrajudicial Executions on 24 February 2005. During January 2005, more than 25 Kuwaiti and Saudi nationals were interrogated by Kuwaiti authorities, including Mr. Al-Anzi. Seven of them were prosecuted for having planned terrorist attacks or for refusing to provide information on planned attacks. On 9 February 2005, the Kuwaiti authorities announced the death of Mr Al-Anzi, following a “sudden drop in blood pressure” according to the official announcement. Mr. Al-Anzi, a Kuwaiti citizen, aged 29 had voluntarily surrendered to the security services in Kuwait. The family, who saw the body of the deceased, said he died under torture:

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<sup>25</sup> Kuwaiti Association for basic Evaluators of Human Rights (KAEHR), *Report presented under the Universal Periodic Review*, p.4, [http://lib.ohchr.org/HRBodies/UPR/Documents/Session8/KW/KAEHR\\_UPR\\_KUW\\_S08\\_2010\\_KuwaitiAssociationforbasicEvaluators%20HumanRights\\_A.pdf](http://lib.ohchr.org/HRBodies/UPR/Documents/Session8/KW/KAEHR_UPR_KUW_S08_2010_KuwaitiAssociationforbasicEvaluators%20HumanRights_A.pdf) (accessed 17 March 2011)

<sup>26</sup> Committee Against Torture, *Report of the Committee Against Torture*, presented to the 53<sup>rd</sup> session of the United Nations General Assembly, 16 September 1998, (A/53/44) para. 230

<sup>27</sup> Al Wardani Abdelhafez, *حوادث ومحاكم الورداني عبد الحافظ*, Ad-Dostor, 23 February 2010, <http://dostor.org/crime/10/february/22/7332> (accessed 28 March 2011)

the hands and face bore deep wounds and mutilations. The authorities have refused to allow an autopsy to be performed by medical examiners chosen by the family. It should be noted that even the President of the Kuwaiti National Assembly did not accept the official version. On 10 February 2005, he publicly mentioned that Kuwait had ratified the Convention against Torture, implicitly implying that the death of Mr. Al Anzi had resulted from extrajudicial execution while in detention. The truth of the exact circumstances of his death has never been clarified, despite the insistence of the victim's family. No enquiry or official prosecution have taken place.

The authorities claim that investigations are conducted on all cases of abuse and those who are found responsible are sanctioned. The problem however, is that either complaints do not result in any investigation, or the results of investigations are not made public.

Magistrats confronted with cases of torture when the victim is brought before them do not order enquiries to establish the facts and prosecute those responsible. A key case is that of 27-year-old **Adel Aqel Salem Al-Dhafaery** of the Al-Jahra region of Al-Ouyoun: he was arrested on 22 May 2008 at around 5pm by agents from State Security and was taken to their office. He reports that during his interrogation, he underwent torture with ice-water as well as receiving blows on the bottom of his feet. When he was brought before a magistrate two days later, he complained about the torture, which had left visible marks on his body. The magistrate refused to register a complaint or even take the information into account. He notably also refused to authorise a medical exam as the victim requested, but rather placed him in pre-trial detention because 'it was required for the investigation'. Mr Al-dhafaery is certain that this further detention was ordered simply to give time for the traces of torture to disappear – and he was in fact released when this period of pre-trial detention finished.<sup>28</sup>

Among the rare cases in which enquiries are ordered and those responsible are charged is that of the 20-year-old Mr **Mohamed Ghazi Al-Maymuni Al-Matiri**, who was arrested by State Security agents and accused of selling alcohol. Savagely tortured, including being burned with a blowtorch and sodomised, he died while being transferred to the hospital of Al Ahmadi city on 11 January 2011. It is reported that agents threatened the medical examiner so that he changed his autopsy report which contained information relating to traces of torture found on the body. When the family learned of how Mr Al-Matri had died, they informed Members of Parliament who demanded explanations from the Minister of Interior. The Minister first published a press release based on the statements made by the agents who accused Mr Al-Matri of having threatened them with a knife before he was struck down by a heart attack. Under pressure from the Parliamentarians, an internal enquiry was ordered by the Minister of Interior who revealed that Mr Al-Matri was abducted because one of the agents wanted to settle a score. Mr Al-Matri had been detained for three days in a private location where he was tortured, then transferred to the Al Ahmadi office of the State Security services where he continued to be tortured until death. The agent's superior officer tried to conceal what had happened by falsifying official documents and by forcing other detainees to make false statements. They then gave a false version of what had happened to the Minister. This case provoked such a negative public reaction that the Minister of Interior was forced to resign.<sup>29</sup> Following the investigation by the prosecution, a total of 20 people, including 18 State Security agents were found to have been implicated and so were presented to criminal courts.<sup>30</sup>

## 7. Extraditions

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The Kuwaiti authorities have stated that political refugees cannot be extradited and by consequence "it also inherently implies that persons cannot be extradited to another State in cases in which there is a danger of torture".<sup>31</sup> However, it must be stated that there is no law prohibiting extradition to states that practice torture.

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<sup>28</sup> Alkarama press release, *Kuwait: Torture and ill-treatment of Mr. Al-Dhafaery*, 4 July 2008, [http://fr.alkarama.org/index.php?option=com\\_content&view=article&id=317](http://fr.alkarama.org/index.php?option=com_content&view=article&id=317).

<sup>29</sup> تعذيب مواطن حتى الموت بتهم ملفقه في الكويت، جمال الروح (Citizen tortured to death on fabricated charges in Kuwait), 25 January 2011, <http://www.shbab-2day.com/vb/t91683.html> (accessed on 16 March 2011)

<sup>30</sup> إحالة واقعة تعذيب المطيري لمحكمة جنابات الكويت (Al-Matri's torture case referred to the Criminal Court), Al Yaoum As-Sabe', 16 February 2011, <http://www.youm7.com/News.asp?NewsID=352654&> (accessed 16 March 2011)

<sup>31</sup> *Initial Report submitted by Kuwait to the Committee against Torture under article 19 of the Convention*, Octobre 1997, (CAT/C/37/Add.1), para. 57

Alkarama submitted the case of Mr **Zhiya Kassem Khammam Al Hussain** (ضياء قاسم خماس الحسين), an Iraqi national who had been living in Kuwait for many years, to the UN Special Procedures. He was arrested at home on 15 January 2007 without an arrest warrant and without being told the reason for his arrest. He was severely tortured at the headquarters of State Security, then transferred to an administrative retention centre and from there was forcibly expelled by plane to Riyadh in Saudi Arabia.

Before the presidential elections in Egypt scheduled to be held in September 2011, members of Dr Mohamed El Baradei's opposition party living in Kuwait were expelled to Egypt – when in fact, they had only been peacefully expressing their political opinions. On 8 April 2010, three Egyptians were expelled and more than 30 others suffered the same fate following an informal meeting to discuss what had happened to the first three. This is despite the fact that before events in Egypt in early 2011, Egypt was known for its widespread use of torture, that Mr El Baradei's supporters had suffered arrest and persecution there<sup>32</sup> and that some of them were tortured by intelligence services.

On 11 August 2009, the Kuwait authorities declared they had arrested six people whom they accused of planning an attack against American troops stationed at Arifjan camp – the most important military base in the country (see above for more information about the base).<sup>33</sup> The media reported that the suspects had confessed to the plan. However, the court nevertheless questioned the testimonies presented due to the torture the suspects had suffered, following which the prosecution ordered an investigation into the allegations. The suspects were finally acquitted due to lack of material evidence.<sup>34</sup>

## **8. The problem of the 'Bidun'**

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In 1990, 250 000 indigenous people did not have Kuwaiti nationality. During the Iraqi invasion of 1990, a great number of these persons fled the country and were then unable to obtain authorisation to return home. Many of them were forced to settle in other countries, particularly in Europe.<sup>35</sup>

At present, there are around 100 000 Kuwaitis who do not have Kuwaiti nationality, despite being indigenous to the country. They are called 'Bidun' (without nationality). This lack of recognition has led to a number of violations being committed against them, including lack of access to health services, education, work and housing. The Kuwaiti authorities have, over the years, created various categories of 'Bidun', which receive different treatment from the authorities depending on their status: some have a certain number of rights while others are treated as foreigners with no right to be in the country. This means that some have been recruited for government positions – mainly in the police and in the civil administration. Some have also received special passports to obtain medical treatment overseas.

A draft law that was intended to improve the civil and political rights of the Bidun (rather than simply giving them Kuwaiti nationality) was withdrawn in early January 2010 by the government before it could be discussed in Parliament.<sup>36</sup> Before this, a debate scheduled to take place on 10 December 2009 to discuss this draft law was cancelled as the required number of members for a debate was not reached. The problem has not been resolved in any way and the lack of political will to do so is evident.

The Kuwaiti authorities also resort to force to repress peaceful protests that are in full respect of the law. In recent months, all meetings have been banned to ensure 'internal security'. For example, on 18 February 2011, a peaceful gathering of around a hundred Bidun was violently repressed. Dozens of

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<sup>32</sup> Al-Jazeera, *أنباء عن ترحيل الكويت أنصارا للبرادعي* (Information relative to the expulsion of El-Baradei supporters by the Kuwaiti authorities), 10 April 2010, <http://www.aljazeera.net/NR/exeres/DF085904-0B32-46BD-AB45-131D81619A9E.htm> (accessed 19 March 2011)

<sup>33</sup> Reuters, *Kuwait says foils Qaeda plan to bomb U.S. Army camp*, 11 August 2009, <http://www.reuters.com/article/idUSTRE57A35F20090811> (accessed 17 March 2011)

<sup>34</sup> «الجنايات» تبرز المتهمين الثمانية في «شبكة عريفجان», أحمد لازم, <http://www.alraimedia.com/alrai/Article.aspx?id=202545&date=11052010> (accessed 15 March 2011)

<sup>35</sup> Association KAEHR (Kuwaiti Association for basic Evaluators of Human Rights), Annual Report 2010, chapitre 7, [http://www.humanrights.org.kw/taqreer2010\\_13.aspx](http://www.humanrights.org.kw/taqreer2010_13.aspx) (accessed 18 March 2011)

<sup>36</sup> Sa'ed Al Su'idi, *البرلمان الكويتي يسحب قانون البدون* (Kuwaiti Parliament repeals the "Law of the Bedouin), Al-Jazeera, 8 January 2010, <http://www.aljazeera.net/NR/exeres/658BA24E-3990-47AA-A671-575CE752F085.htm> (accessed 28 March 2011)

people were injured and dozens arrested.<sup>37</sup>

## 9. Rights of Migrants

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To be entitled to work in Kuwait, immigrants must have a "kafil" (guardian) of Kuwaiti nationality who often is also their employer. This condition increases their dependence on this person and restricts their freedom of movement, especially as their passports are often confiscated upon their arrival in Kuwait. They are not legally entitled leave their job or to change jobs without the consent of their guardian and are can be forced to pay fines, be arbitrarily detained or be sentenced to short detentions in prison under Kuwaiti law. There are employers who declare their employees as runaways all the while detaining them arbitrarily. Once the employees are registered as runaways, they are considered guilty of a crime and can be detained for several days or even months in police detention centres, in pre-trial detention or at Salmya camp.<sup>38</sup>

A new labour law that lifted some restrictions was adopted in December 2009, but it maintained others, including the guardianship system, which is at least in part responsible for these terrible work conditions. A minimum wage was supposed to be introduced for certain jobs, along with other measures, such as an increase in annual leave, the banning of arbitrary dismissal and sanctions for human trafficking. Unfortunately, it appears that domestic employees, mostly women, are not covered in the new law.

The International Trade Union Confederation (ITUC) describes a number of cases of violence used against domestic workers in its 2010 report. The workers continue to be exploited despite the fact the government has tried to improve their legal protection. For the month of November alone, 13 cases of what was assumed to be suicide and attempted suicide by domestic workers were recorded in Kuwait. In June, a delegation of Indonesian unions spoke out against the Indonesian embassy in Kuwait for failing to have taken action against employers who were suspected of having raped and tortured some 350 Indonesian migrant workers. In October, the Indonesian Ministry of Labour suspended the departure of domestic workers to Kuwait, until the cases of some 600 Indonesian domestic workers having suffered abuse were resolved. In November 2009, the Indonesian government announced the repatriation of 1,750 Indonesian workers in the region, including Kuwait.<sup>39</sup>

## 10. Conclusion

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Kuwait has legislation which grants its citizens fundamental rights despite some omissions. However, the application of this legislation leaves room for improvement. There is also a lack of oversight of the state and the justice system by independent organisations or credible state institutions. There are close to zero human rights associations, the National Human Rights Institution has not yet come into being and the media and Parliament only examine human rights issues in a disinterested manner and sometimes for purely political reasons.

It must be stated that the problem of the 'Bidun' is not really considered to be a national problem. The treatment of migrant workers by the administration and employers – be they companies or private individuals – is not debated in Kuwaiti public opinion. Numerous migrant workers, such as domestic workers, are kept in confinement and mistreated in complete impunity, without any legal protection.

Alkarama considers that the Kuwaiti state should incorporate the crime of torture as defined in article 1 of the Convention against Torture and remove reservations relating to article 21 and 22. The Kuwaiti state should consider ratifying the Optional Protocol. In order to better guarantee the independence of the judiciary, the authorities should enshrine the principle of the tenure of judges and extend it to all judges. They should give the right to appeal all cases related to the giving or removal of nationality and take all measures necessary to combat situations of statelessness as set out in the 30 August 1961 Convention on the Reduction of Statelessness. Finally, the government should take all necessary measures to permit migrant workers to benefit from protection under the law.

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<sup>37</sup> Benjamin Massot, *Trente manifestants blessés au Koweït, 50 arrestations* (Thirty demonstrators injured in Kuwait, 50 arrests), L'Express, 19 February 2011, [http://www.lexpress.fr/actualites/2/monde/trente-manifestants-blesses-au-koweit-50-arrestations\\_964205.html?xtor=x](http://www.lexpress.fr/actualites/2/monde/trente-manifestants-blesses-au-koweit-50-arrestations_964205.html?xtor=x) (accessed 28 March 2011)

<sup>38</sup> Human Rights Watch, *Walls at Every Turn, Abuse of Migrant Domestic Workers through Kuwait's Sponsorship System*, Chapter 6, 6 October 2006, <http://www.hrw.org/en/node/93333/section/9> (accessed 18 March 2011)

<sup>39</sup> International Trade Union Confederation, Annual survey of violations of trade union rights, 9 June 2010, <http://survey.ituc-csi.org/+Kuwait+.html> (accessed 18 March 2011)