



Prisoners of the Past

Kuwaiti Bidun and the Burden of Statelessness

Copyright © 2011 Human Rights Watch
All rights reserved.
Printed in the United States of America
ISBN: 1-56432-780-9
Cover design by Rafael Jimenez

Human Rights Watch
350 Fifth Avenue, 34th floor
New York, NY 10118-3299 USA
Tel: +1 212 290 4700, Fax: +1 212 736 1300
hrwnyc@hrw.org

Poststraße 4-5
10178 Berlin, Germany
Tel: +49 30 2593 06-10, Fax: +49 30 2593 0629
berlin@hrw.org

Avenue des Gaulois, 7
1040 Brussels, Belgium
Tel: + 32 (2) 732 2009, Fax: + 32 (2) 732 0471
hrwbe@hrw.org

64-66 Rue de Lausanne
1202 Geneva, Switzerland
Tel: +41 22 738 0481, Fax: +41 22 738 1791
hrwgva@hrw.org

2-12 Pentonville Road, 2nd Floor
London N1 9HF, UK
Tel: +44 20 7713 1995, Fax: +44 20 7713 1800
hrwuk@hrw.org

27 Rue de Lisbonne
75008 Paris, France
Tel: +33 (1) 43 59 55 35, Fax: +33 (1) 43 59 55 22
paris@hrw.org

1630 Connecticut Avenue, N.W., Suite 500
Washington, DC 20009 USA
Tel: +1 202 612 4321, Fax: +1 202 612 4333
hrwdc@hrw.org

Web Site Address: <http://www.hrw.org>

Prisoners of the Past

Kuwaiti Bidun and the Burden of Statelessness

Case Study: Talal O, 27 Years Old.....	1
Summary	3
Key Recommendations.....	8
To the Government of Kuwait.....	8
Methodology	9
I. Background: Who are the Bidun?	11
II. National Legal and Policy Framework: Perpetuating Statelessness	17
Laws Governing Access to Nationality.....	17
The Central System to Resolve Illegal Residents' Status.....	18
Potential for Reform	22
III. Document-Related Violations	25
Right to Travel: Passports and Travel Documents.....	29
IV. The Rights to Health, Education, and Work.....	31
Education.....	31
Employment and Property	37
Health Care	39
V. Discrimination Against Women: Another Cause of Statelessness	43
VI. International Law on Statelessness.....	45
International Legal Protections Against Statelessness	45
Human Rights Protections While Stateless	48
Education Rights.....	50
Health Rights	50
The Rights of Non-Citizens	51
Recommendations	52
To the Government of Kuwait.....	52

To the National Assembly	52
To the Ministries of Health, Education, and Labor	53
To the Ministry of Justice	53
To the Gulf Cooperation Council (GCC) Secretariat	53
To the United Nations High Commissioner for Refugees (UNHCR).....	54
Acknowledgements.....	55
Appendix: Draft Law Apropos of the Civil, Legal and Social Rights of Stateless People	56

Case Study: Talal O, 27 Years Old

I come from a Bedouin background. My family's life [in the past]... all they worried about was finding water sources, grass for the sheep, basic necessities in life. You can imagine; they were not educated. I remember a time in my childhood when I was actually visiting my uncles and aunts, and they were [living] in tents and what not. It was not such a very long time ago.

When Kuwait became an independent country, the whole concept of citizenship was a new thing to people. My grandfather [thought], "I'm not even sure I need this." He just decided not to do it [obtain his citizenship papers].

I was born in Jahra, in the old city. For the first two years [of school], I went to a government school just like any other Kuwaiti, mainly because my dad worked for the Ministry of Defense. Bidun [with] parents who work for the ministry do enjoy certain privileges and services that other Bidun don't.

[When] the [1990 Iraqi] invasion happened, that's when everything changed for the Bidun. People started looking at the Bidun suspiciously. There are families back in the day who were friends, then suddenly... there was this lack of trust and... overall xenophobia.

After [the war ended] I had to go to a private school. It was the [worst] kind of school you can imagine; the standards were really, really low. I basically continued my education in these private schools. [There are] a few different schools owned by the same company; it's called Meshaal al-Jahra. Almost any Bidun you meet in Jahra will have gone there. My [graduating] class in high school was pretty much 100 percent Bidun.

My cousins, their dad was not [working] in the army or the Ministry of Interior or anything. He was doing whatever he could – sometimes he would sell vegetables on the street, all sorts of odd jobs. They used to go to these schools way before me. They had to pay the fees themselves, [for them,] there was no aid from the government.

[When I graduated from high school], it was then that I really realized I'm Bidun – what it meant. There was an educational fair in Kuwait, a lot of American universities

[were there.] I was so thrilled; I collected all the brochures and leaflets. I was fully convinced I would actually go to the States and study. [But] my family [said], “You can’t do this. First of all we can’t really afford it; second, even if we were to make such an investment, we have heard a lot about Bidun who [went] to study who had their passport taken away when they came back for their summer holidays and could never finish their studies.’ They were afraid of that. Back then there were no private universities [in Kuwait, so] the only option I had was to go to this technical institute.

[At my] very first job, I worked there... for three or four months. The Ministry of Labor and Social Affairs [would visit] a company without an appointment and check if everyone had their residency [visa] or not. I remember when they visited the company I worked for; the Ministry official came up to me and asked me for my ID. He said, “How the hell did you get this job?” His voice was really loud. He said, “You don’t have a right to get this job; you’re not supposed to work here.” He verbally abused me in front of everyone. That was another time in my life when I [thought], “This is what it’s like to be a Bidun.”

My aunt got citizenship through marriage. The company that my aunt owns sponsors my residency – it sponsors the whole family, anyone older than 18. Everything we own is under her name, including the house we live in.

We’re doing well compared to your average Bidun. We really came to terms with it – it’s not like we can do anything. I do keep hearing about friends who are giving up. [Kuwaiti citizenship is like] some sort of club: when they got enough members in, they said “listen, that’s it, we’re closing the door.” Whoever didn’t get in the right time...that’s all there is to it.

Talal O., a 27-year-old Bidun man living in Jahra, Kuwait.

Summary

“There is nothing stable about the Bidun’s status.”

– Dr. Ghanim al-Najjar, a Kuwait University professor

As protestors took to streets throughout the Middle East demanding rights long denied by their governments, there were also mass demonstrations in Kuwait, where the country’s stateless Bidun staged protests against years of disenfranchisement and discrimination by the Kuwaiti government. During the months of February and March 2011, hundreds of men and women protested in neighborhoods on the far outskirts of Kuwait City, where government forces used tear gas and water cannons to break up the gatherings, and detained dozens of apparently peaceful protestors.

This Human Rights Watch report addresses the Kuwaiti government’s failure to resolve the longstanding problem of the Bidun—more than 106,000 stateless persons who claim Kuwaiti nationality but have remained in legal limbo for the past fifty years. The report calls attention to Kuwait’s restrictive nationality laws that create new cases of statelessness. It also documents violations of the Bidun’s rights while they await resolution of their status and makes recommendations to help guarantee this group’s rights in any future reforms.

Kuwait’s Bidun population originates from three broad categories: 1) those whose ancestors failed to apply for nationality or lacked necessary documentation at the time of Kuwait’s independence in 1961; 2) those recruited to work in Kuwait’s army or police force during the 1960s who permanently settled in Kuwait, along with their families; and 3) children of Kuwaiti mothers and stateless or foreign fathers.

During the 1960s and 70s, the Bidun received economic and social benefits equal to those of Kuwaiti citizens, including free health care and education, though they could not vote. Regional political instability during the 1980s and 1990s led the government to significantly shift its policy towards the Bidun by downgrading their status to that of “illegal residents,” revoking benefits, and excluding them from government services and jobs.

In recent months, amidst a turbulent regional climate of large scale protests and the local demonstrations organized by Bidun, Kuwaiti government officials have promised a number of new policies to improve the situation of the Bidun. In April 2011, Saleh al-Fadhala, head of

the Central System to Resolve Illegal Residents' Status (the government body tasked with overseeing the Bidun's situation) announced that government decrees would be passed protecting eleven new rights for the Bidun, including rights to civil documentation, education, and health. To date, however, the Bidun still hold the precarious legal status of "illegal residents" in the country. For the last two decades, the government's official position on the Bidun has been to deny the issue of statelessness in Kuwait and to assert that the vast majority of the Bidun are former citizens of other countries who destroyed evidence of their foreign nationality and took up illegal residence in Kuwait to gain Kuwaiti nationality. Whatever the merits of these assertions, the government has failed to implement a timely and transparent mechanism to review citizenship claims. The newly proposed reforms do nothing to correct this failure.

Kuwait's Nationality Law sets forth strict conditions for receiving nationality. The law excludes many long-term residents of Kuwait, some of whom have had no ties to other countries for generations, if at all, from obtaining Kuwaiti nationality, and renders stateless many children born on Kuwaiti soil to families who have lived there for generations. The Nationality Law of 1959 has been amended more than a dozen times since its passage, with each amendment creating more stringent requirements for those claiming citizenship. A 1980 amendment stripped Kuwaiti women of the right to bestow citizenship upon their children, even in cases where children may not take their father's nationality. Thus, children of Kuwaiti mothers and stateless fathers are born stateless.

Bidun interviewed by Human Rights Watch say they have never established residence in any country besides Kuwait, and that familial, cultural, and economic links tie them to Kuwait. To date, Kuwait has not afforded the Bidun an adequate opportunity to prove such links.

The Central System to Resolve Illegal Residents' Status, generally known as the Bidun committee, is the sole government body through which Bidun can register and seek resolution of their claims for Kuwaiti citizenship. The committee's procedures are opaque and applicants may never be told the reason for non-review, delay, or denial of nationality. Nor can the Bidun challenge matters relating to their citizenship claims or status through the judicial system. A 1990 law governing the judiciary took away courts' jurisdiction over all matters relating to national sovereignty, including citizenship claims as well as administrative decisions to deny the Bidun temporary travel documents, or other government documentation. Only small numbers of applicants become naturalized Kuwaiti citizens each year. Kuwaiti law limits the number of citizens that can be naturalized annually to 2000, and naturalizations consistently fall well below the permitted quota. For these reasons, at least 106,000 claims for nationality remain unresolved with the Bidun committee.

Besides failing to provide adequate mechanisms by which the Bidun can pursue claims to citizenship, the Kuwaiti government has inadequately protected the rights of the Bidun while they remain stateless by failing to ensure their right to civil documentation, as well as to their rights to education, work, and health.

Individual rights, including the right to registration upon birth, the right to marry and found a family, and the right to travel, come under threat when governments fail to issue civil documentation. As “illegal residents,” the Bidun do not receive the civil identification cards issued to citizens and legal non-Kuwaiti residents, and which are the sole form of identification accepted for many purposes including purchasing property, legally registering as an employee, and enrolling in most school or educational institutions.

Instead, the Bidun committee has issued security cards to 106,000 Bidun who registered with the committee between 1996 and 2000 as stateless residents of Kuwait with claims to Kuwaiti nationality. These cards help protect Bidun from deportation—the ordinary consequence for nationals of other countries who have violated the country’s residency laws. They are also required in order to access any services the government provides to the Bidun, such as registration in the private schools that primarily serve Bidun students (who cannot enroll in free government schools), and access to a government-administered health care provision program.

Bidun seeking other civil documents including birth, marriage, and death certificates, as well as passports, must apply to the Bidun committee for approval. The committee maintains files on all security card holders. Many files allegedly include information collected from secret intelligence sources that indicate that the card holder has a non-Kuwaiti “true nationality.” If the committee determines that an individual’s “true nationality” is that of another country (e.g. Iraq, Saudi Arabia, Iran, or Yemen), officials deny approval for birth certificates or other documentation, unless the applicant “corrects his status” by forfeiting claims to Kuwaiti nationality. Bidun individuals interviewed by Human Rights Watch said that the committee may determine that an applicant is a national of another country based upon arbitrary criteria, and that they had no opportunity to view any supporting evidence.

Human Rights Watch also documented the problems of unregistered Bidun, who live in Kuwait without even the protection of these security cards. Unregistered Bidun include individuals whose security cards the Bidun committee has refused to renew, as well as those whose applications for cards it has denied at the outset. Bidun who lack valid security cards live in self-imposed confinement, fearing arrest and detention. They cannot obtain other

civil documentation such as birth, marriage, or death certificates, or travel documents. Without any recognized identification, they also face significantly less access to social services, including educational funding, health care, and travel documents. Because government policy and legislation maintain that Bidun are “illegal residents,” authorities provide the Bidun with educational and health services, as well as limited access to employment, on “humanitarian grounds” rather than recognizing their rights in these areas. Stateless Bidun find their position in Kuwait dependent upon a number of factors, including their possession of a security card; whether they have managed to keep jobs in the police or military; having first-degree Kuwaiti relatives or a Kuwaiti mother; and registration in the 1965 census (the last comprehensive census to include the Bidun).

The Kuwaiti government restricts non-citizens, including Bidun, to private schools. Most Bidun students attend Arabic-language private schools that cater primarily to the Bidun, where annual fees run between KD250 and KD450 (US\$860 to \$1550) per child, and parents must pay additional costs for textbooks and uniforms. Bidun parents, as well as Kuwaiti human rights activists and Bidun school administrators, told Human Rights Watch that these schools have inferior resources and standards to those found in government schools.

The Kuwaiti government says “irregular migrant” children are provided with an education through a government-administered charity fund established by the Education Ministry’s decree. Though many Bidun children do receive free education through this fund, some parents interviewed for this report said that not all of their children were covered by the fund. In past years, government policies have also excluded children without valid security cards, or those who failed their examinations the previous year, from funding, thus failing to guarantee their access to free primary education.

The Bidun remain ineligible for the majority of jobs in Kuwait, as they lack civil ID cards required for employers to register them as legal employees. Moreover, Kuwaiti law prevents those who lack civil IDs from owning property or receiving business licenses, thus hindering the Bidun’s ability to be self-employed. Security card holders may apply for a restricted pool of jobs that the government has opened to Bidun applicants, or may seek jobs with private employers willing to overlook their legal status. However, Bidun interviewees said that barriers to higher education and limitations in finding work experience, in addition to their lack of legal status, left them at a disadvantage in the job market.

Bidun also reported violations of their rights in work. Without permanent employment status, they are not able to enjoy the benefits accorded to job-holders in similarly-situated (but legally sanctioned) positions, including pensions, childcare supplements, protections

against unfair termination, promotions, job security, and end-of-service bonuses. Some told Human Rights Watch that they could find work only in the low-paying informal sector, working as street vendors, tradespeople, or providers of services such as auto repairs or sewing, and again lacked legal protection.

Bidun also report problems accessing health care. In the past the government has gone some way towards providing the Bidun with health care through low-cost insurance. However, this insurance provides only limited coverage, unlike that granted to Kuwaiti citizens. Bidun interviewed for this report said they could not afford their health care costs, and that the government policy failed to cover testing, medication, or surgical care that medical professionals had recommended to them. According to the government, a government-administered charitable fund serves the medical needs of 60,000 children of “irregular migrants in need.” No provisions for adults exist.

International law provides clear guidelines on how governments must protect the rights of stateless persons and enact national laws that prevent further creation of statelessness. Kuwait’s nationality law does create further statelessness because it stipulates that a child has the nationality of his or her father, not that of the mother or both parents. Kuwaiti women may pass their nationality on to their children only when the father is unknown or fails to establish legal paternity, when the couple divorces, or upon death of the stateless husband. Such discriminatory provisions not only hinder Kuwaiti women’s rights to marry and found a family; they also render children born to Kuwaiti mothers and Bidun fathers stateless.

More generally, international law requires states, when evaluating claims for nationality, to consider individuals’ “genuine and effective links” with a country, including the social, cultural, and economic ties they have established over time. Article 15 of the Universal Declaration of Human Rights (UDHR), adopted in 1948, asserts that “everyone has the right to a nationality,” and that “no one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality. States must avoid acts that would render stateless anyone who has a genuine and effective link to that state. Moreover, international covenants ratified by Kuwait require the government to protect the rights of all individuals under its jurisdiction, and specifically prohibit discrimination on the basis of national origin, or of statelessness. At present, Kuwait’s treatment of the Bidun fails to meet these standards.

Unless the Kuwait government resolves the Bidun problem, it can expect further expressions of discontent and consequent instability. The Bidun of Kuwait will not wait quietly while their rights are on hold.

Key Recommendations

To the Government of Kuwait

- Adopt a rights-based approach to ending Kuwait’s longstanding problem of statelessness in accordance with international legal standards. Make public a clear roadmap and timetable for ending statelessness in Kuwait.
- Grant nationality to long-term residents with strong claims to nationality, including residents who lack documented ties to other states and whose primary place of residence, familial, economic, and/or social ties are with Kuwait. Give Kuwaiti women the same legal rights as men to confer nationality upon their spouses and children. Grant nationality to children born in Kuwait who would otherwise be stateless.
- Create a transparent mechanism for individuals to apply for citizenship with the opportunity for judicial review to guard against procedural error or abuse of discretion and to ensure due process in determining citizenship claims.
- Grant temporary legal residency to stateless individuals pending resolution of their claims to Kuwaiti nationality. Cease treating the Bidun as “illegal residents.”
- Through legal reform, ensure the Bidun’s right to civil documentation, including birth certificates, marriage registration, death certificates, and travel documents.
- Allow Bidun children the right to enroll in government schools in order to safeguard their right to free and compulsory primary education and available and accessible secondary education.

Methodology

Research for this report was conducted from January 2010 to February 2011. Human Rights Watch researchers visited Kuwait in November 2009, January 2010, and October 2010. In November 2009 we conducted preliminary interviews with advocates for Bidun rights. In January 2010 we conducted in-person interviews with 18 stateless men and women, and held three group interviews—one with three individuals, and two with over fifteen persons. We also interviewed representatives of local human rights groups, including the Kuwait Human Rights Society, the Committee for the Kuwaiti Bidun, and the Kuwaiti Biduns' Congregation. One researcher conducted further telephone interviews in June and July 2010 with three persons who reported that they were stateless. Upon interviewees' request or where we felt it necessary to protect their privacy and safety we identify those interviewed with pseudonyms. We located interviewees with the assistance of the local rights groups listed above. We also interviewed individuals who reached out to us because of the problems they faced as Bidun.

Human Rights Watch interviewed three academics at Kuwait University who have studied the Bidun in Kuwait, as well as one Kuwaiti lawyer. We also visited two private schools that primarily serve Bidun students: one boys' high school and one girls' primary school. We interviewed administrators at both institutions. All interviews, which included nearly 70 people in total, were conducted in Arabic or English by researchers who spoke these languages.

Human Rights Watch did not seek to evaluate the validity of individual interviewees' claims to citizenship. Our research investigated two issues: first, whether stateless persons have the legal and institutional means to claim a right to Kuwaiti citizenship; and second, whether the human rights of stateless persons are protected while they remain stateless. No one we approached to describe their experience of being stateless declined to be interviewed. The primary restriction on our research was that government officials repeatedly either declined or made themselves unavailable for interviews.

In October 2010 Human Rights Watch sought an interview with Najib al-Othman, the director of the Executive Committee for Illegal Residents' Affairs (the Bidun committee). Despite repeated requests to the Interior Ministry, of which the Bidun committee is a part, the interview was not granted. Human Rights Watch sought an official government response to our report by providing a detailed summary of our findings in a letter dated May 2, attached as an appendix to this report, but received no reply.

Additionally, we consulted representatives of international organizations whose work relates to the Bidun, including Refugees International, the UN Development Program, and the Statelessness Unit and Middle East and North Africa Unit of the UN High Commissioner for Refugees (UNHCR). Human Rights Watch reviewed pertinent laws and regulations, academic and government studies, and international organizations' reports on stateless persons in Kuwait.

This report draws on and updates two past Human Rights Watch reports covering stateless persons in Kuwait: "The Bedoons of Kuwait: Citizens Without Citizenship," issued in August, 1995; and "Promises Betrayed: Denial of Rights of Bidun, Women, and Freedom of Expression," issued in October 2000.

I. Background: Who are the Bidun?

Stateless persons live on the margins of society and are, almost by definition, “uncounted.”

– Mark Manly and Santhosh Persaud, *Forced Migration Review*, 2007

Kuwait, a small Gulf country with just 1.3 million citizens, holds eight percent of the world’s oil reserves and has a median income of over \$81,000.¹ As the fifth richest country in the world, it provides its citizens nearly unparalleled benefits, including free health care, free education at all levels, virtually guaranteed employment, and housing grants.² For the country’s Golden Jubilee, the 50th anniversary of Kuwait’s independence and the 20th anniversary of its liberation from Iraqi occupation, celebrated in February 2011, the Amir granted every citizen a gift of KD1,000 (US \$3,570).³

Amidst this relative privilege live the Bidun, more than 106,000 stateless persons who claim Kuwaiti nationality but have remained in legal limbo for the past fifty years. International law defines a stateless person as one “who is not considered as a national by any state under the operation of its law.”⁴

Because Kuwait does not officially recognize statelessness in its territory, the government does not grant stateless persons residence permits pending resolution of their citizenship claims. Instead, all Bidun have the status of “illegal residents.” Over time, as applications remain stalled and progress uncertain, their precarious position has contributed to poverty, limited access to education and health care, and growing hopelessness for the future.

In February and March 2011, as protests swarmed through the streets of Cairo, Tunis, Libya, and Yemen, Kuwait’s Bidun also organized public demonstrations that reached more than 1,000 participants in the primarily-Bidun neighborhoods of al-Ahmadi, Taima’a, and Sulaibiyya. State security forces cracked down on these demonstrations – dispersing protestors with tear gas, smoke bombs, and water cannons, beating them with batons, and arresting dozens of protesters. Some were detained for weeks on end. In response to the

¹ *CIA World Factbook*, “Kuwait,” u May 3, 2011, <https://www.cia.gov/library/publications/the-world-factbook/geos/ku.html> (accessed May 16, 2011).

² *Ibid.*

³ *Ibid.*

⁴ UN Convention Relating to the Status of Stateless Persons, 360 U.N.T.S. 117, entered into force June 6, 1960, art.1.1.

protests and regional events suggesting that governments that failed to address rights violations could face grave consequences, Kuwait's government also offered the prospect of reform. In March 2011 the head of the Bidun committee, Saleh al-Fadhala, announced that a new package of eleven rights for Bidun, including the right to civil documentation, as well as rights to education, health, and work, would be protected in new government decrees. But the reforms offered have yet to be implemented and stop short of setting out an agenda for resolving the underlying problem of statelessness in Kuwait.

Statelessness in Kuwait, as in neighboring Gulf countries, stems from restrictive citizenship laws, and from the lack of effective mechanisms to hear and review applicants' claims for citizenship. The problem has its roots in recent history. Kuwait's population in the 19th and into the 20th century consisted of settled citizens who lived inside the walls Kuwait City, working in ship-building, pearl diving, and trade; and Bedouin, or tribal nomads, who lived in the surrounding territories, frequently crossing borders between the present-day Gulf states.⁵ At the turn of the 20th century approximately 50,000 people lived in Kuwait City, but after the discovery of oil in the 1930s, the city expanded substantially as Bedouin began to settle there, or to establish towns nearby.⁶

In 1959, in preparation for achieving full independence from Britain, Kuwait issued Law No. 15 governing Kuwaiti nationality. This law (the Nationality Law, discussed in detail in Section II) set forth the conditions determining residents' eligibility for nationality, as well as the rights to citizenship and the other privileges of nationals.⁷ At the time the authorities attempted to register all residents of Kuwait, and identify those eligible for nationality.⁸ However, many of those living in outlying areas – primarily of Bedouin origin – either did not learn about the nationality drive, or neglected to register their claims. Some could not read or write and those who kept no written records faced particular difficulties proving that they met the legal requirements of the new Nationality Law.⁹ Others simply put little stock in the new concept of nationality, failing to foresee the rights and benefits that would accrue to citizens in later decades as Kuwait's wealth increased and government services expanded.¹⁰

⁵ See Abbas Shibliak, "The Lost Tribes of Arabia," *Forced Migration Review*, vol.32.

⁶ Anh Nga Longva, *Walls Built on Sand: Migration, Exclusion, and Society in Kuwait* (Oxford: Westview Press, 1997), p.47.

⁷ Law No.15 of 1959, concerning Kuwaiti citizenship.

⁸ Human Rights Watch, *The Bedoons of Kuwait: Citizens without Citizenship* (New York: Human Rights Watch, 1995).

⁹ Ibid.

¹⁰ Ibid.

Today's Bidun include those who were eligible for nationality under the Nationality Law but who failed to complete the application procedures by 1960 during the initial registration efforts that preceded Kuwait's independence.¹¹ Following passage of the Nationality Law Kuwait's government still granted Bidun residency rights, equal employment opportunities, and full access to social services that included free education and health care.¹² In effect, except for their lack of voting rights, the government treated them as equal to Kuwaiti citizens. In official government data the Bidun were counted among Kuwait's total citizen population and census data from that time listed approximately one-third of Kuwait's population as Bidun.¹³ The authorities informed these Bidun that they remained eligible to present claims for nationality and issued them temporary documents that identified them as "without nationality" – in Arabic *bidun jinsiyya*, from which the term Bidun (without) derives.¹⁴

However, between 1960 and 1987, the Kuwaiti government amended the Nationality Law seven times, each time introducing further restrictions on eligibility.¹⁵ Amendments included a 1960 restriction that limited the number of naturalizations that could take place each year to 50, a 1980 amendment removing a Kuwaiti woman's ability to transmit her citizenship to her children; and a 1981 amendment that specified that only Muslims could qualify for Kuwaiti nationality.¹⁶

Official tolerance of those who lacked citizenship shifted dramatically when the outbreak of war between Iran and Iraq in 1980 threatened Kuwait's internal stability and the country became a target of terrorist attacks. In December 1983 a series of bombings targeted the American and French embassies as well as five Kuwaiti businesses, killing five people and wounding 63 others.¹⁷ Ahn Nga Longva, a scholar of Kuwaiti society, writes that:

when Khomeini's revolution swept across Iran and war broke out between Iran and Iraq, much of Kuwaitis' concern for the country's internal security found its concrete expression in the existence of the *bidoons*: their ambiguous status...

¹¹ Ibid.

¹² Longva p.51.

¹³ Longva p.50.

¹⁴ Human Rights Watch, *The Bedoons of Kuwait: Citizens without Citizenship*, p.9.

¹⁵ Ibid.

¹⁶ Ibid.

¹⁷ Abdul-Reda Assiri, *Kuwait's Foreign Policy: City-State in World Politics*, p.47.

provided a human pool into which Iraqi refugees, draft dodgers, and infiltrators... could easily blend after getting rid of their identity papers.¹⁸

In May 1985 the then-ruler of Kuwait, Sheikh Jaber Al-Ahmed Al-Sabah, escaped an assassination attempt when a bomb detonated in one of the cars forming his motorcade.¹⁹ That year the government changed the Bidun's status from that of legal residents without nationality to "illegal residents," marking the beginning of a new anti-Bidun policy.²⁰ However, it is worth noting that during the 1980s Bidun constituted between 80 and 90 percent of the Kuwaiti army.²¹

The Kuwaiti government's attitude towards the Bidun further hardened following the Iraqi invasion of August 1990 and the ensuing war to liberate Kuwait. Prior to 1990 the official number of Bidun resident in Kuwait was around 250,000. However many Bidun who fled the country during the war found themselves stranded outside of Kuwait. Most Bidun could not flee to Saudi Arabia (as many Kuwaitis did), because they lacked passports and could not enter the country. Instead they escaped to villages and other remote areas in Iraq. Iraq did not require travel documents from those arriving from Kuwait, which the Iraqi government considered its newly annexed "nineteenth province."²² When these Bidun attempted to return to Kuwait following liberation, they were refused entry at the Kuwaiti border.²³ Thousands of Bidun lived in refugee camps along the Iraq-Kuwait border for up to eight months following Kuwait's liberation from occupation.²⁴ In 1991, after the war had ended, official figures placed the number of Biduns in Kuwait at approximately 125,000, half of what it had been prior to the 1990 invasion.

Bidun interviewed for this report say that they experienced a dramatic change in their status in the period following Kuwait's liberation. "[When] the invasion happened, that's when everything changed for the Bidun," Talal O., a Bidun man, told Human Rights Watch. "People started looking at the Bidun suspiciously. There are families back in the day who were

¹⁸ Ibid.

¹⁹ Ibid, p.48.

²⁰ Longva p.51.

²¹ Brad K. Blitz and Maureen Lynch, "Statelessness and the Benefits of Citizenship: A Comparative Study," Oxford Brookes University, UK, June 2009, available at: http://www.udhr60.ch/report/statelessness_papero609.pdf (accessed June 22, 2010).

²² Ibid.

²³ Ibid.

²⁴ Ibid.

friends, then suddenly... there was this lack of trust and... overall xenophobia.”²⁵ Hassan A. told Human Rights Watch that he and his family had gone to Syria during the invasion. When they returned he noticed a change immediately. “When we landed in the airport, there was this [immigration] officer who said, ‘Bidun over there,’ in a very disrespectful manner,” he said. “They squeezed us somewhere in a corner, in the back of the airport. [At that moment], my father felt that he had lost his country again. And he didn’t [ever] regain it.”²⁶

Today’s Bidun population originates from three different categories. First, there are those Bidun who claim citizenship under Kuwait’s Nationality Law, but whose ancestors failed to apply or lacked necessary documentation at the time of Kuwait’s independence.²⁷ Among this group are the descendants of nomadic clans which regularly traversed the borders of modern-day Gulf states but settled permanently in Kuwait prior to independence. This group of Bidun have never held the citizenship of any other country.²⁸ A second group is composed of former citizens of other Arab states (such as Iraq, Syria, and Jordan), and their descendants, who came to Kuwait in the 1960s and 70s, to work in Kuwait’s army and police forces. The Kuwaiti government preferred to register them as Bidun rather than to reveal this politically- sensitive recruitment policy.²⁹ Some of these migrants settled in Kuwait with their families and never left.³⁰ The third category of Bidun is composed of individuals born to Kuwaiti mothers and Bidun fathers.

The Kuwaiti government maintains that the vast majority of Bidun are actually nationals of other countries and that they therefore do not have legitimate claims to Kuwaiti nationality.³¹ In effect the government denies that these people are stateless and therefore no longer publishes statistics on the number of Bidun living in the country. In May 2010, at Kuwait’s Universal Periodic Review before the UN Human Rights Council review in Geneva, the government delegation stated that “the definition of stateless persons in Kuwait ha[d] no legal basis.” According to the delegation the problem was simply one of “illegal residents,” and the law had set up criteria for acquiring Kuwaiti nationality.³²

²⁵ Iraq invaded Kuwait on August 2, 1990.

²⁶ Human Rights Watch telephone interview with Hassan A., August 5, 2010.

²⁷ Anh Nga Longva, *Walls Built on Sand: Migration, Exclusion, and Society in Kuwait* (Oxford: Westview Press, 1997).50-51.

²⁸ Ibid.

²⁹ Ibid.,51.

³⁰ Ibid.

³¹ The home page of the Committee for the Affairs of Illegal Residents states that “a large number of [these residents] do not meet the nationality requirements to amend their status or show their passports, and these [cases] are still in progress.”

³² Report of the Working Group on the Universal Periodic Review: Kuwait, June 16, 2010, A/HRC/15/15, Section I (B), Summary of the Proceedings of the Review Process/Interactive Dialogue and Response by the State under Review, <http://daccess-dds->

Today the Kuwaiti government has files on at least 106,000 “illegal residents” who claim Kuwaiti nationality. In addition, there exist undisclosed numbers of unregistered Bidun whose claims government bodies have either closed or refused to consider. Section II of this report describes hardships faced by unregistered Bidun in greater detail. All of the Bidun interviewed by Human Rights Watch said they and their families had lived in Kuwait for generations and had either lost ties to any other state or had never had such ties in the first place.³³ Today many Bidun live in conditions of poverty and extreme economic uncertainty created by decades of discrimination in access to education, health care, and jobs.³⁴ Nearly all Bidun interviewed by Human Rights Watch described a collective depression or sense of hopelessness. They described how they had been repeatedly frustrated by educational, professional, or personal status restrictions and how they remain unable to promise their children better opportunities.

Given these conditions, the Bidun’s willingness to take to the streets in February and March should have come as no surprise. The instability Bidun described to Human Rights Watch – their inability to make plans for the future, or count upon current conditions remaining the same – leave the Bidun forced to adapt to an ever-changing regulatory landscape. “I have no spirit – my spirit is tired,” Umm Ja’afar said. “Daily, there are problems.”³⁵ The daily hardships of the Bidun’s position have created an unstable – and ultimately untenable – situation inside Kuwait.

ny.un.org/doc/UNDOC/GEN/G10/144/67/PDF/G1014467.pdf?OpenElement (accessed September 12, 2010); see also UN Human Rights Council, “Universal Periodic Review of Kuwait” video report, May 2010, <http://www.un.org/webcast/unhrc/archive.asp?go=100512#am> (accessed July 31, 2010).

³³ Ibid., p.51.

³⁴ Ibid.

³⁵ Human Rights Watch interview with Umm Ja’afar, Sulabiyya, Kuwait, January 26, 2010.

II. National Legal and Policy Framework: Perpetuating Statelessness

Access to Kuwaiti nationality is regulated as a closely-guarded privilege rather than an essential right that serves as the gateway to other human rights. Current laws provide no clear and time-bound path by which individuals may apply for and acquire Kuwaiti citizenship. Statelessness has persisted in part because Kuwaiti nationality comes with a substantial package of economic and social entitlements including virtually guaranteed employment, free education at every level, free health care, housing grants, economic subsidies for food and other everyday commodities, and occasional monetary payouts such as the February 2011 monetary gift granted to all citizens.

Because of the economic benefits attached, granting citizenship has become a controversial and tightly restricted process. In this climate, the Bidun, who if naturalized would increase Kuwait's population by at least eight percent, face an uphill battle in pursuing their claims. Instead, these claims have remained under the review of successive administrative bodies that have processed only a small fraction of applications, while restricting the population's access to essential government documentation and services.

Laws Governing Access to Nationality

Kuwait's 1959 Nationality Law sets forth the criteria for Kuwaiti nationality as well as the rights of "original" and naturalized citizens. Article 1 of the Nationality Law declared as Kuwaiti citizens those who had settled in Kuwait and maintained residence there since 1920.³⁶ These were the members of Kuwait's "founding families" – families from *dakhil as-sur*, that is, inside the walls, of the old fortifications of Kuwait City.³⁷ Under article 4, Arabs resident in Kuwait for at least 15 years (20 years for non-Arabs) could be naturalized provided they were Muslim, knew Arabic, and had lawful means of earning a living.³⁸ However, naturalized Kuwaitis enjoyed fewer citizenship rights than those declared as citizens by article 1: they could not vote for 30 years and could be stripped of their nationality more easily.³⁹ Those eligible for naturalization included children born to a Kuwaiti mother and a stateless father (a provision repealed in 1980), children born to a Kuwaiti

³⁶ Law No.15 art.1.

³⁷ Longva, *Walls Built on Sand*, p.47-48.

³⁸ Article 4 sets out the conditions for naturalization. Law No. 15, art.4.

³⁹ Ibid, art.6.

mother and an unknown father or a father who failed to establish his paternity by law, and individuals recommended by the Minister of Interior.⁴⁰

Upon achieving independence in 1961 the Kuwaiti government formed a committee to register and review claims for nationality, but dismantled this body in 1969.⁴¹ Thereafter, claims relating to citizenship remained matters of administrative determination. In 1981, Law No. 20 concerning the establishment of administrative courts, as amended by Law No.61 of 1982, provided that individuals had no right to appeal administrative decisions pertaining to nationality or to request that decisions regarding their nationality be vacated before the courts.⁴²

In 2000, the National Assembly passed Law No.20, permitting naturalization of individuals registered in the 1965 census and their descendants. But the law limited the number of naturalizations to 2,000 per year. Naturalizations can only take legal effect through ministerial decree. The Bidun committee, the Martyr's Bureau, and other government offices pass recommendations on naturalization to the Council of Ministers. Since Law No. 20 was passed, the yearly maximum of 2000 naturalizations has never been met.⁴³ The government granted citizenship to 1,800 Bidun in 2005, 400 in 2006, 573 in 2007, and 573 in 2008.⁴⁴

The Central System to Resolve Illegal Residents' Status

The Central System to Resolve Illegal Residents' Status, established by ministerial decree in November 2010, is the current administrative body responsible for reviewing Bidun claims to nationality. This body (widely known, like its predecessor, as "the Bidun committee") holds exclusive authority to determine all matters touching upon nationality or official documentation for the Bidun. In its establishing decree the Bidun committee was tasked with "taking all executive procedures to resolve the illegal residents' situation" as well as "proposing drafts of laws and regulations deemed necessary to end the illegal residents' situation."⁴⁵ Yet previous versions of this body have thus far failed to resolve the statelessness of over 106,000 Bidun.

⁴⁰ Ibid., art.3.

⁴¹ The government of Kuwait stated that a total of 928 individuals gained citizenship in 2008. UN Secretary General, Report on the arbitrary deprivation of nationality, 26 January 2009, p.9.

⁴² National Assembly of Kuwait, Studies and Research, "Article II of the Kuwaiti Nationality Law: Between Reality and the Law," <http://www.majlesalommah.net/clt/run.asp?id=654> (accessed August 2, 2010).

⁴³ U.S. State Department Human Rights Reports, 2010, available at <http://www.state.gov/g/drl/rls/hrrpt/2009/nea/136072.htm> (accessed November 13, 2010).

⁴⁴ Ibid.

⁴⁵ Ministerial Decree No. 467 of 2010 Establishing the Central System to Resolve Illegal Residents' Status. Arabic original on file with Human Rights Watch.

Pending individual reviews of their claims, the government does not provide the Bidun with legal residency permits. Instead, the government has broadly deemed the population “illegal residents.” While both Kuwaiti citizens and legal foreign residents receive civil identification cards issued by the government, the Bidun, as “illegal residents,” do not. These ID cards must be presented in order to rent or purchase real estate or cars, open bank accounts, enroll in private universities and some private schools; hold legal employment; and receive birth, marriage, or death certificates. While both government authorities and private entities have created limited exceptions, the requirement of civil ID cards effectively bans the Bidun from many forms of employment and public services.

Despite their status as “illegal residents,” judicial opinions have offered Bidun limited protection from threats of deportation. For example, a 1987 Kuwaiti criminal court held that the state could not convict a Bidun resident of “illegal residence” under the country’s Aliens’ Residence Law. And a 1988 criminal court decision held that the state could not deport a Bidun man because “non-Kuwaiti residents of Kuwait who do not belong to another state and do not hold its citizenship but who are deprived of Kuwaiti citizenship for one reason or another... are treated in a special way that is distinct from the treatment of foreigners.”

The Bidun committee issues Bidun who registered between 1996 and 2000, a cut-off date set by ministerial decree, with security cards (informally known as “green cards”). What security cards entitle holders to and what classification as a security card holder entails remain unclear. The cards display personal data including the registrant’s name, address, and birth date, but state on their reverse side that “this card does not serve as proof of identity, and may be used only for specified purposes.” Bidun interviewed for this report told Human Rights Watch that the security cards establish their holders’ relationship to the committee and are widely recognized throughout the country as being held only by the Bidun. Efforts by Human Rights Watch to obtain legislative provisions concerning security cards were unsuccessful and requests for information about security cards from the government remain unanswered.⁴⁶ What little information is included in this report about these security cards comes primarily from Bidun who hold them.

Security cards must be renewed either yearly or once every two years, depending on the class of card. Some Bidun reported that they could renew their cards, and those of their

⁴⁶ In addition to seeking meetings with both the former and current head of the administrative Bidun committee, Human Rights Watch has looked for such legislation on the Ministry of Interior website and on online legal databases. Lastly, we requested such legislation during a telephone conversation with the Ambassador of Kuwait to the United States, H.E. Ambassador Salem Al-Sabah, on January 13, 2011.

offspring, simply by presenting their previous cards and documents proving their registration in the 1965 census or residence in Kuwait before that time. Other Bidun said that they had to undergo interviews each time they wished to renew their cards. Omar S., a Bidun man, described his past interviews with the committee:

When you want to apply for the green card, they [the security officers at the committee] take you for a private interview. They will start asking questions. They will tell you about your nationality. [They will say] “We have in our system that even your father has Iranian nationality.” They will ask you about your history – your uncle, grandfathers, grandmothers. [They will say] “He is Iraqi, why didn’t you take Iraqi [nationality]? They will say “we will not give you nationality. If you want to fly from Kuwait to Iraq to get that passport, we will help you with that. Then you close your file with us.”

If you have *wasta* [connections], they will issue you a green card immediately. If you don’t have any power, any *wasta*, then they will not do it.⁴⁷

In November 2010 Kuwait’s Supreme Council of Higher Planning announced the results of a study which found that there were 106,000 persons of “unspecified nationality” in the country. Of these, 34,000 remained valid candidates for citizenship while 68,000 had “other origins.”⁴⁸ Those deemed to have other origins would have a limited time in which to “correct their status”, by which officials meant to produce passports or other evidence of citizenship from other countries. Those who failed to do so could face deportation. Officials stated that they based these findings upon information received from schools and government institutions. However, the Council did not announce their methodology or make their report public, nor did they provide a list of the names of those in either category.

⁴⁷ Human Rights Watch telephone interview with Omar Sharif, December 29, 2010.

⁴⁸ “34 Thousand Candidates for Naturalization from 106 Thousand,” al-Qabas, November 5, 2010, <http://www.alqabas.com.kw/Article.aspx?id=649937%20&date=06112010> (accessed November 14, 2010).

Conclusions of a November 2010 Supreme Planning Council Study⁴⁹

Number	Status	Recommendation
34,000	Registered in 1965 census	Eligible for naturalization
42,000	“Already Iraqi citizens”	Have three years to correct status before legal action may be taken
26,000	Other “known origins”	Have 3 years to correct status before legal action may be taken
4,000	Unknown	
106,000	Total number of Bidun registered with various government authorities	

Unregistered Bidun, i.e. those who are not able to renew their security cards, face even greater hardships. Some unregistered Bidun told Human Rights Watch that in the past they had found ways to obtain passports from other countries. At some point, they suspected or discovered these passports to be counterfeit. Those Bidun who presented counterfeit passports in order to keep government jobs or receive birth or marriage certificates, and later discovered that they could not renew these passports, found that their files with the committee had been closed and that they could not renew their committee-issued security cards. Now, they remain illegal residents without even the limited protection of a security card. One Bidun woman, Zahir, told Human Rights Watch:

My father was in the army. In 1994, after the war, [his supervisors] asked him to leave the country or to bring any passport from any other country to give him any salary. So, he was forced to bring a passport. We didn’t know it was a false passport, but after that, we learned the passport is false. [Now], we don’t have any green card. No one in my family works.⁵⁰

Both Refugees International and the local media have previously documented the situation of other unregistered Bidun who found themselves in similar situations after presenting foreign passports, and now lack even the security cards carried by most Bidun.⁵¹ Without any

⁴⁹ Ibid.

⁵⁰ Human Rights Watch interview with Zahir S., Jahra, Kuwait, January 26, 2010.

⁵⁰ Human Rights Watch interview with Zahir S., Jahra, Kuwait, January 26, 2010.

⁵¹ Refugees International, “Less Than Bidoon,” available at: <http://www.refugeesinternational.org/blog/kuwait-less-bidoon> (accessed January 9, 2011); Ahmed Saeid, “Bedoons in Predicament,” Kuwait Times, January 20, 2010, http://www.kuwaittimes.net/read_news.php?newsid=MTI3MDU5MjUzOA== (accessed January 11, 2010).

form of recognized identification, unregistered Bidun live in fear of detention and deportation. “The government says you do not exist, you are not even Bidun,” said Iman, a 25-year-old Bidun woman who said her entire family no longer had security cards after her father presented a false passport in order to keep his job with the Kuwaiti police. “My brothers, if they go out in the street, the police will catch them. The least [most basic] thing we want is to go outside, and nobody will catch us.”⁵²

In order to bypass the civil ID requirement and access government services, including civil documentation (birth, marriage, and death certificates), Bidun must obtain clearance from the Bidun committee. As Dr. Ghanim al-Najjar, an expert on the Bidun and a professor of political science at Kuwait University, put it, “everything that is required – any permission, any privilege that the Bidun should have, has to be approved by the Bidun committee. It is totally under the jurisdiction of the Ministry of the Interior.”⁵³ However, Bidun who requested clearance from the committee to receive civil documentation reported that the committee frequently denied their applications, in some cases citing unspecified “security restrictions”, and in other cases issuing letters stating that the applicant had other citizenship and should “correct their status” by producing evidence of this citizenship.⁵⁴ Thus, while their citizenship claims remain in limbo, the Bidun have faced denial of birth, marriage, and death registration as protected under the International Covenant on Economic, Social, and Cultural Rights (ICESCR) and the Convention on the Rights of the Child (CRC). This practice is further described in Section III of this report, which addresses document-related violations faced by the Bidun.

Potential for Reform

Lawmakers have introduced some attempts to remedy problems faced by the Bidun. In March 2011 government officials announced to the local media that they would granting a package of civil, social, and economic rights to the Bidun, among them the right to civil documentation including birth certificates, marriage registration, and passports, and the right to education and health care. However, the proposed reforms have yet to be implemented and do not address Bidun statelessness per se.

The Bidun issue remains one of the most hotly contested in Kuwait. On the one hand, local activists have condemned the humanitarian consequences of Kuwaiti government policies

⁵² Human Rights Watch interview with Iman H., Kuwait, January 26, 2010.

⁵³ Human Rights Watch telephone interview with Dr. Ghanim al-Najjar, July 27, 2010.

⁵⁴ Human Rights Watch interview with Ahmad al-Tamimi, Ali al-Anazi, Nawaf al-Badr; Human Rights Watch interview with Musa'ed al-Shammari and members of the Kuwaiti Bedoons Congregation, Abasiyya, Kuwait, January 25, 2010

towards the Bidun. On the other hand, some Kuwaiti citizens have protested against naturalizations that have occurred, saying that these have had the effect of bolstering particular tribal constituencies. Bidun activists themselves have actively lobbied members of parliament and government officials to resolve the issue. Several draft laws addressing their situation have been submitted to parliament for consideration.

In 2009 members of parliament reviewed the “Draft Law concerning the Civil, Legal, and Social Rights of Stateless People,” which would grant greater civil and social rights to the Bidun.⁵⁵ The draft (attached as an appendix to this report) covers all individuals registered with the Bidun committee (then known as the Executive Committee for Illegal Residents), the Martyrs’ Bureau, and the Higher Citizenship Committee in the Council of Ministers. It would require authorities to consolidate these registries and grant all registered individuals, as well as their descendants born in Kuwait, a right to permanent residency and identification documents. However, the bill continues to define the Bidun as “illegal residents” of Kuwait. It further fails to provide a mechanism for legal review of Bidun claims to nationality.⁵⁶ This omission reflects the persistent reluctance to take on a large-scale project of naturalization, for fear of the effects on Kuwaiti politics.

Other countries’ experiences resolving situations of protracted statelessness provide valuable examples that should serve as guideposts in a rights-based approach to ending statelessness in Kuwait. The UN High Commissioner for Refugees (UNHCR) estimates that there are over 12 million stateless individuals worldwide. Moreover, this organization has a mandate to protect stateless people worldwide and prevent further statelessness by advocating for legislative change and by helping to integrate stateless people into society. While statelessness remains a pressing global issue, some governments have successfully resolved large-scale situations of protracted statelessness in their territories. In the late 90s, the Ukraine naturalized over 100,000 Crimean Tatars who had been deported from their homeland over 50 years earlier, during World War II. In May 2003 the High Court of Bangladesh recognized as legal citizens over 200,000 Urdu speakers living in the country, who had remained stateless since the country’s independence in 1971. UNHCR has played an important role raising awareness of protracted statelessness – including the situation in Bangladesh and the case of stateless “Hill Tamils” in Sri Lanka. Such efforts send an important message to host governments and help to promote prompt resolutions of these situations.⁵⁷

⁵⁵ Only 26 members of parliament and five ministers attended the session. B. Izzak, “Security measures, absence of MPs abort Bidoun session,” *Kuwait Times*, December 11, 2009, http://www.kuwaittimes.net/read_news.php?newsid=MjI3NTg4NzQ1 (accessed July 22, 2010).

⁵⁶ Ibid.

⁵⁷ “Protracted Stateless Situations,” UNHCR, <http://www.unhcr.org/pages/49c3646c179.html> (last accessed May 16, 2011).

Large populations of stateless persons exist throughout the Gulf region, including in the United Arab Emirates, Qatar, and Saudi Arabia. Many of them became stateless when, like the Bidun in Kuwait, they fell through the cracks of citizenship registration at the time of state formation. The regional nature of this problem suggests opportunities for cooperation among Gulf countries on the issue of statelessness – opportunities that to date remain unrealized. In particular, a regional human rights body under the Gulf Cooperation Council umbrella could investigate violations of stateless persons' rights in the region, and recommend solutions for stateless people across Gulf countries. Second, such a body could suggest model anti-discrimination legislation that addressed discrimination on the basis of national origin (or statelessness) for countries in the region.

International human rights reviews, including the May 2010 review of Kuwait's human rights record at the UN Human Rights Council in Geneva, the annual U.S. State Department Human Rights report, and briefing papers issued by the UN High Commissioner for Refugees, have highlighted the systematic denial of rights faced by Kuwait's stateless population. Yet the government continues to refer to piecemeal grants and charitable donations, rather than firm legal amendments, as an adequate response to the prolonged problem of statelessness.

III. Document-Related Violations

Bidun contend with daily hardships because, as stateless individuals, the state obstructs their access to essential civil documentation. Bidun in possession of security cards told Human Rights Watch that in order to obtain birth, marriage, or death certificates, they had to seek clearance from the Bidun committee. Without these documents they face denial of their right to work, their right to marry and found a family, the right to registration upon birth, and the rights to freedom of movement and travel.

From 1986 onwards the government began restricting Bidun access to passports, granting them only to individuals with official permission to travel abroad for medical treatment, education, or religious purposes, or to Bidun serving in the army and police.⁵⁸ Later that year the authorities started to require that all government employees produce proof of Kuwaiti or foreign citizenship or lose their jobs.⁵⁹ In 1987 the Interior Ministry ceased issuing or renewing drivers' licenses to Bidun except to those in police or military service.⁶⁰ At the same time authorities ceased allowing Bidun to register car ownership in their names.⁶¹

In 1996 Amiri Decree No.58 established the Committee for Illegal Residents' Affairs (the Bidun committee). The decree required all government authorities to refer to the committee and seek its council on any matter relating to "illegal residents," including issuance of official documentation. A 2007 Council of Ministers directive issued to the Minister of Municipal Affairs confirmed that all government authorities must seek the counsel of the committee in all procedures or decisions relating to the situation of "illegal residents."⁶² A 2010 ministerial decree replaced the Committee for Illegal Residents' Affairs with the Central System to Resolve Illegal Residents' Status, but its administrative function remains virtually identical.

Eight Bidun interviewed by Human Rights Watch said that in practice the Bidun committee refused to provide the clearance necessary for them to obtain birth, marriage, and death certificates unless they agreed to forfeit their claims to Kuwaiti nationality.⁶³ Six Bidun said that they had not been able to obtain a birth certificate for their child, two said that they

⁵⁸ Abdel Karim Abu Khadhra, "The National Assembly Approves Nationality Law Amendment," *al-Watan* (Kuwait), July 2, 1986.

⁵⁹ Longva., p.52.

⁶⁰ Human Rights Watch, *The Bedoons of Kuwait*, p.10.

⁶¹ Ibid.

⁶² Arabic original on file with Human Rights Watch.

⁶³ Human Rights Watch group interview with 15 Bidun men, al-Andalus, Kuwait, January 25, 2010.

were unable to obtain a marriage certificate, and three said that they were unable to obtain a death certificate.

Some received letters saying that the committee had information establishing that they were in fact nationals of countries such as Saudi Arabia, Iraq, Iran, and Jordan, and that they must “correct their status” (that is, renounce their claim to Kuwaiti citizenship) before receiving the requested documentation. Bidun activists say that authorities base determinations of an individual’s “true nationality” upon undisclosed intelligence that the applicant may not contest.⁶⁴ “They pressure us to sign that we have one of these nationalities,” Musaed al-Shammari, a member of the Kuwaiti Biduns Congregation, told Human Rights Watch. “They [pick a country based] on your dialect, your name.” “I have more than one nationality in my family [according to the committee],” said Ahmad al-Tamimi, the president of the Committee for Kuwaiti Bidun. Al-Tamimi told Human Rights Watch that he and all of his family were born in Kuwait and considered themselves Kuwaiti. He added that he had never held the nationality of another country.

Article 7 of the Convention on the Rights of the Child (CRC) (ratified by Kuwait on October 21, 1991) states that “the child shall be registered immediately after birth and shall have... the right to acquire a nationality,” and requires that state parties “ensure the implementation of these rights in accordance with their national law and their obligations under the relevant international instruments in this field, in particular where the child would otherwise be stateless.”⁶⁵ However, six interviewees told Human Rights Watch that their children born after 1996 (when the Committee for Illegal Residents’ Affairs was established) did not have birth certificates – a finding unchanged since our 2000 report, which stated that “the majority of the Bidun... face tremendous difficulties in obtaining birth certificates.”⁶⁶

Umm Ahmad, a 40-year-old Bidun woman, told Human Rights Watch that she has ten children – seven girls and three boys. “My four oldest children have birth certificates. The rest, no,” she said.⁶⁷ Ali al-‘Anazi, vice president of the Committee for Kuwaiti Bidun, said

⁶⁴ Ahmad Saeid, “Bedoons in Predicament,” *Kuwait Times*, January 8, 2010, available at: http://www.kuwaittimes.net/read_news.php?newsid=MTI3MDU5MjUzOA== (accessed December 10, 2010).

⁶⁵ CRC art.7.

⁶⁶ Law No.36 of 1969 concerning the System of Registering Births and Deaths, article 2, requires that the nationality of both the mother and father of a child be submitted in an application to the Ministry of Health, in order to officially register that child’s birth. Law No.36 of 1969, art.2, issued by publication in *al-Kuwait al-Youm*, vol.757, Dec.7, 1969. However, Human Rights Watch research in 2000 and 2010 found that authorities did not interpret this law as prohibiting registration of Bidun children until well after the publication of this law.

⁶⁷ Human Rights Watch interview with Umm Ahmad, January 26, 2010.

that of his four children, all born after 1996, none have birth certificates.⁶⁸ Dalal K., a Bidun mother of four, said, “I have a birth certificate, [as do] my father and my mother. But this [younger] generation doesn’t.”⁶⁹ She added, “when children are born, they [only] give them a pink paper [that gives] their name, [and] weight.”⁷⁰

When Kuwait appeared before the United Nations Human Rights Commission in 2000, the Kuwaiti government representative announced that the government issued 1,794 birth certificates to Bidun children during the first six months of that year, but did not establish whether it had granted these children Kuwaiti citizenship, or had required their parents to forfeit their claims to Kuwaiti citizenship by “clearing their status” and accepting that they had another nationality.⁷¹ In June 2010, during Kuwait’s most recent review by the United Nations Human Rights Council (the successor of the Human Rights Commission), the government announced that the authorities issued 300 birth certificates to children of Kuwaiti mothers and Bidun fathers in 2009, but made no mention of children born to two stateless parents.⁷²

Two members of the Bidun community told Human Rights Watch that the government also refused to issue them marriage certificates unless they renounced claims to citizenship.⁷³ Denial of marriage certificates violates article 23(2) of the International Covenant on Civil and Political Rights (ICCPR), which protects the right to marry and found a family.⁷⁴ According to the UN General Assembly Recommendation on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages, “All marriages shall be registered in an appropriate official register by the competent authority.”⁷⁵ However, Human Rights Watch found that, as with birth certificates, Bidun must seek clearance from the Bidun committee before they can be issued a marriage certificate. Those deemed to have other origins and who fail to

⁶⁸ Human Rights Watch interview with Ali al-Anazi, Salmiya, Kuwait, January 25, 2010.

⁶⁹ Human Rights Watch interview with Dalal K., Sulaibiyya, Kuwait, January 26, 2010.

⁷⁰ Ibid.

⁷¹ Jamal K. al-Reesh of the Ministry of Interior’s Executive Committee on Illegal Residents stated that between January 2, 2000, and July 17, 2000, the government issued 1,794 birth certificates to Bidun. 1853rd Meeting of the United Nations Human Rights Committee, July 19, 2000.

⁷² “34 Thousand Candidates for Naturalization from 106 Thousand,” *al-Qabas*, November 5, 2010, <http://www.alqabas.com.kw/Article.aspx?id=649937%20&date=06112010> (accessed November 14, 2010).

⁷³ Human Rights Watch interview with Ahmad al-Tamimi, Ali al-Anazi, Nawaf al-Badr; Human Rights Watch interview with Musaed al-Shammari and members of the Kuwaiti Bedoons Congregation, Abasiyya, Kuwait, January 25, 2010; Human Rights Watch interview Fatima A., Jahra, Kuwait, January 26, 2010.

⁷⁴ ICCPR art.23(2).

⁷⁵ Recommendation on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages, G.A. res. 2018 (XX), 20 U.N. GAOR Supp. (No. 14) at 36, U.N. Doc. A/60141 (1965), <http://www2.ohchr.org/english/law/recommendation.htm> (accessed July 19, 2010).

“correct” their status may not register their marriages. Dalal A. said, “I have a marriage contract because I married in 1995 – just before the law changed.”⁷⁶ Ali al-Anazi, a Bidun activist, said, “My wife and I don’t have a marriage contract.”⁷⁷

Conditioning access to marriage registration upon renouncing claims to Kuwait nationality violates the Biduns’ right to marry and found a family. Some Bidun bring frivolous claims against their spouses simply to establish a legal, judicial record of their marriage. Musaed al-Shammari, a Bidun rights activist, told Human Rights Watch, “When we want to get married, we raise a case against our [prospective] wife, or her father. The judge will ask ‘is this your wife?’ and we say ‘yes’ and then we have an official court document proving the relationship.... This is how I was married.”⁷⁸ “[After the policy changed in 1996] many Biduns went to Bahrain to validate their marriages,” al-Anazi added. “Then, the Bahraini government stopped granting marriage certificates [to Bidun] as well.”⁷⁹

Bidun interviewed by Human Rights Watch also alleged that the government systematically denies them death certificates, which are necessary for families to claim their deceased relative’s remains and to prove claims of inheritance, unless they obtain “clearance” from the committee by renouncing their claims to citizenship. Iman H., a 25-year-old Bidun woman, told Human Rights Watch, “My brother died, [but] we have no death certificate. There is no proof that he even existed.”⁸⁰ Basim A., a Bidun man living in Sulaibiyya, told Human Rights Watch that his father died in a hospital in Kuwait. “[When] I went to the hospital to get my father’s body, I found in the hospital, on the wall, a sign that said to ‘go to the Ministry of Interior’ in order to [receive permission to] claim his body.”⁸¹ Basim added that when he went to the committee an official asked him to sign a paper acknowledging that he had another nationality and renouncing his claim to Kuwaiti nationality. Because he refused to do so, he never obtained a death certificate for his father.⁸²

⁷⁶ Human Rights Watch interview with Dalal K., Kuwait, January 26, 2010.

⁷⁷ Human Rights Watch interview with Ali al-Anezi, Salmiya, Kuwait, January 25, 2010.

⁷⁸ Human Rights Watch interview with Musaed al-Shammari, Mahboula, Kuwait, October 24, 2010.

⁷⁹ Ibid.

⁸⁰ Human Rights Watch interview with Iman H., Kuwait, January 26, 2010.

⁸¹ Human Rights Watch group interview with approximately ten stateless men, Abassiya, Kuwait, January 25, 2010. Basem A. spoke during this meeting.

⁸² Ibid.

Right to Travel: Passports and Travel Documents

We are like prisoners. We cannot go outside Kuwait; we cannot live inside Kuwait.

– Zahir H., stateless woman, 50, Jahra, Kuwait, January 26, 2010.

A major complaint among the Kuwaiti Bidun is the restriction of their right to travel. Article 12 of the ICCPR recognizes the right of an individual “to leave any country, including his own,” and protects against arbitrary deprivation of the right to enter one’s own country.⁸³ General Comment 27 adds that these provisions apply not only to citizens, but also to those with strong ties to a particular country. It also specifies that “the right to leave a country must include the right to obtain the necessary travel documents.”⁸⁴

Pursuant to Article 17 of Law No.11 of 1962 concerning passports (the “Passports Law”), the Kuwaiti government theoretically issues travel documents in the form of “temporary passports” to Bidun who hold security cards. In practice, however, the Passports Authority currently grants Bidun such temporary passports only to travel for education, medical treatment, or religious pilgrimage. Typically these remain valid only for the trip cited in an individual’s application.⁸⁵ Nawwaf al-Badr, a Bidun resident and member of the Committee for Kuwaiti Bidun, told Human Rights Watch, “Our ‘passport’ is a different color. It is only good for one trip.”⁸⁶

Individuals seeking passports must obtain clearance from the Bidun committee. Omar Sharif, a Bidun man with an Article 17 passport said, “When I [was] applying for that [passport], the government [said I had] my father’s citizenship... They said, ‘your father had an Iranian passport, you are Iranian’. In government [records], it says I have Iranian citizenship. [But my father] died in 1993 and I was born in Kuwait. Up to this day, I have no citizenship. We have documentation from the Iranian embassy in Kuwait saying that I am not an Iranian citizen. I married a Kuwaiti citizen. My mother is a Kuwaiti.” While Omar was eventually able to obtain clearance through personal connections, this procedure remains an obstacle to many Bidun passport seekers.

⁸³ ICCPR art.12.

⁸⁴ UN Committee on Civil and Political Rights, General Comment No. 27, Freedom of Movement (Article 12), U.N. Doc. CCPR/C/21/Rev.1/Add.9 (1999), paras. 9,20.

⁸⁵ Human Rights Watch telephone interview with Dr. Ghanim al-Najjar, July 27, 2010.

⁸⁶ Human Rights Watch interview with Nawaf al-Badr, Salmiya, Kuwait, January 25, 2010.

Hassan A. told Human Rights Watch that he had gone to the Ukraine for university education after graduating from high school in Kuwait:

I was studying in the Ukraine from 2001 to 2004. There was a new law in Kuwait that said if you have a grey passport [an Article 17 temporary passport] and you come back to Kuwait they will suspend the passport and not give it back. I had [Bidun] friends who were studying medicine in the Ukraine, with only one year to go, and who came back to Kuwait to visit their families during a holiday. At that time the new law came out and they could not go back [to finish their degree]. I had to stay [in the Ukraine] for four-and-a-half years and not come back.

Bidun who do not hold security cards from the committee cannot receive even temporary passports. Umm Ahmad, a 40-year-old Bidun mother of ten who told Human Rights Watch that her family lacked these cards, said, “My kids ask me, ‘why can’t we travel?’ I say, ‘We can’t. I can’t do anything. You are Bidun – that’s the end of it.’”⁸⁷

In addition to violating individuals’ freedom of movement, unreliable and restricted access to travel documents can lead to the violation of individuals’ right to health, including the right to seek medical treatment, and their right to religious freedom, which includes the right to make religious pilgrimages such as the *Hajj* or *Umra*.

⁸⁷ Interview with Umm Ahmad, 40 years old, al-Jahra, Kuwait, January 26, 2010.

IV. The Rights to Health, Education, and Work

Now that I am [making] other friends, I am ashamed to say I am Bidun. We have no rights to anything.

– Fatima A., 24, Suleibiyya, Kuwait, January 26, 2010

Prior to 1987 all Bidun received free education at government schools and, until 1993, free health care on par with Kuwaiti citizens.⁸⁸ They had freedom of employment and formed a substantial part of Kuwait's army and police forces. At present, however, as stateless individuals, the Bidun face obstacles in their access to employment, education, and health care.

In order to register in government schools or the state university or to legally hold employment individuals in Kuwait must present a civil ID card. These are issued by the state to Kuwaiti citizens and foreign nationals who hold valid residence visas. But because the Bidun do not have legal resident status in Kuwait the government does not issue them civil ID cards. Bidun who register with the Bidun committee and hold security cards can register their children in private schools (for which the government pays fees for some students). They can also receive treatment at government hospitals and clinics. However, Bidun without security cards do not have access to educational funding. Furthermore, they say they are not eligible for treatment at government medical institutions and can only work illegally.

Though Kuwait has ratified the International Covenant on Economic, Social, and Cultural Rights (ICESCR) and the Convention on the Rights of the Child (CRC), and committed to progressive realization of the rights therein, which include the rights to work, health, and education, the government has increasingly restricted and denied Bidun the enjoyment of these rights. Where the government has expanded access to these rights for citizens, it still fails to guarantee the Bidun access to education, basic health care, and legal opportunities for employment.

Education

In interviews with Human Rights Watch some Bidun reported violations of their right to education, including the right to free and compulsory primary education. Article 4 of Law No. 4 of 1987, concerning public education, states that “education of Kuwaitis in government schools shall be free of charge, while it is permissible by ministerial decree, after seeking

⁸⁸ Discrimination Based on Origin and Status: the Bidun, Human Rights Watch, 2000.

the opinion and obtaining the approval of the council of ministers, to collect tuition fees from non-Kuwaitis.”⁸⁹

Article 26 of the Universal Declaration of Human Rights (UDHR) and Article 14 of the ICESCR set forth the right to education. The right to education requires that states provide all children with free and compulsory elementary education as well as available and accessible secondary education. Article 26 states that:

Everyone has the right to education. Education shall be free, at least in the elementary and fundamental stages. Elementary education shall be compulsory. Technical and professional education shall be made generally available and higher education shall be equally accessible to all on the basis of merit.

However Kuwaiti law does not protect the right of all children in its territory to free primary education. Rather, it restricts this right to citizen children, excluding both foreign residents and Bidun children.

International law further requires states to provide education on a non-discriminatory basis. The Convention against Discrimination in Education (CDE), ratified by Kuwait in 1963, prohibits state parties from discriminating in the provision of education, defining discrimination as:

... any distinction, exclusion, limitation or preference which, being based on race, colour, sex, language, religion, political or other opinion, national or social origin, economic condition or birth, has the purpose or effect of nullifying or impairing equality of treatment in education and in particular... [o]f limiting any person or group of persons to education of an inferior standard.

Article 1(c) of the convention specifies that prohibited discrimination includes the practice of “establishing or maintaining separate educational systems or institutions for persons or groups of persons.”

Restrictions on Bidun access to education mean that, at best, children receive inferior education to that of Kuwaiti citizen children at elementary and secondary levels; at worst, some Bidun children fail to receive any education at all, even at the elementary level. Free

⁸⁹ Law No.4 of 1987 concerning public education, art. 4, <http://www.gcc-legal.org/MojPortalPublic/DisplayLegislations.aspx?country=1&LawTreeSectionID=9695> (accessed July 23, 2010).

government-run schools enroll only Kuwaiti citizen children. Expatriate children attend fee-paying schools that provide instruction in English or in a language spoken by their community. Currently many Bidun children attend private schools that provide Arabic-language instruction and serve primarily Bidun students. At these schools annual fees range between KD250 and 450 (US \$860 to \$1550) per child and parents pay extra costs for textbooks and uniforms.

In 2004 the Kuwaiti government established a charitable fund to pay educational expenses for children in need, including but not limited to Bidun children. This fund pays primary and secondary school fees for many Bidun students as well as expatriate children who wish to attend Arabic-language schools. Human Rights Watch sought clarification on the educational support provided by the Charitable Fund for Needy Children in our letter to the government, attached as Appendix A of this report, but as of May 31, 2011 received no reply.

While the government has taken steps towards providing Bidun children access to free elementary education, after removing this right a generation ago, it has failed to guarantee access as a right for all children in its jurisdiction.⁹⁰ Children at the primarily-Bidun schools who fail their exams, as well as those whose parents have security offenses registered in their names, do not receive school funding, including for primary school.⁹¹ Moreover, the government takes no steps to enforce elementary school attendance for Bidun children. Without enforcement mechanisms Bidun girls risk being kept out of school, because when families cannot afford to educate all children they typically choose to educate sons over daughters.⁹² Lack of enforcement also leaves Bidun children at risk of child labor.⁹³

By providing mostly separate educational institutions for citizen and Bidun children, with lower educational standards at primarily Bidun schools, the government also fails to uphold its obligations under the Convention Against Discrimination in Education. Moreover, by restricting free government schools to Kuwaiti citizens only, the government fails to ensure

⁹⁰ The US State Department Human Rights Report for 2009 stated: "Some Bidoon children attended private schools, and some did not attend school at all. The Charity Fund to Educate Needy Children, administered by the MOI, MAIA, and Ministry of Education, paid school fees for more than 11,000 Bidoon children since its creation in 2003." Human Rights Watch interviewed five families with children who did not attend school. 2009 Human Rights Report, Kuwait country chapter, available at: <http://www.state.gov/g/drl/rls/hrrpt/2009/nea/136072.htm> (accessed January 5, 2011).

⁹¹ <http://www.alraimedia.com/Alrai/Article.aspx?id=228620>

⁹² Human Rights Watch interviewed two families that said they had kept girls out of school while educating boys from the family.

⁹³ One Bidun interviewee, Hassan A., said that he knew of cases of child labor in his community. Human Rights Watch e-mail correspondence with Hassan A., on file with author, January 15, 2011.

that Bidun children, including those who lack “security cards,” will have access to free and compulsory primary education, as required by Article 26 of the UDHR.

Six Bidun interviewed by Human Rights Watch said that the private schools that serve their community, meaning those with comparatively low fees for which the charity fund may cover tuition costs, are in poor physical shape, set very low educational standards, and remained inferior to government schools. An administrator at a boys’ high school told Human Rights Watch that Bidun made up more than 80 percent of enrolled students, while a girls’ school administrator said that 85 percent of girls enrolled in that primary school were Bidun.⁹⁴ “In government schools you have a limit of 24 students in each class and every teacher must receive marks of “good” or above,” the boys’ school administrator said. “In our schools, teachers just need to get “acceptable” marks.”⁹⁵

The Committee on the Elimination of Racial Discrimination, in its General Comment on Discrimination Against Non-Citizens, states that governments must “avoid segregated schooling and different standards of treatment being applied to non-citizens on grounds of race, colour, descent, and national or ethnic origin in elementary and secondary school and with respect to access to higher education.”⁹⁶ In addition, Kuwait has signed the Convention on the Elimination of Discrimination in Education, which includes the obligation for state parties to “ensure that the standards of education are equivalent in all public educational institutions of the same level, and that the conditions relating to the quality of the education provided are also equivalent.”

Two Bidun grandparents reported that their grandchildren had to be withdrawn from school, including primary school, in years when the families could not afford the fees, while other parents said that their children stayed home or worked selling vegetables due to financial constraints.⁹⁷ Umm Abdullah said that her son Abdullah had four children, two sons and two daughters. “The two girls don’t study,” she said. “One son’s fees are paid by the... charitable fund. The second, the father must pay out of his [monthly salary, which is just] KD100

⁹⁴ Human Rights Watch interview with boys’ high school administrator, Kuwait, October 25, 2010 (name withheld on request); interview with girls’ primary school administrator, Kuwait, October 25, 2010 (name withheld on request).

⁹⁵ Human Rights Watch interview with boys’ high school administrator, Kuwait, October 25, 2010 (name withheld on request).

⁹⁶ General Recommendation No.30: Discrimination Against Non Citizens, 10/01/2004. available at: <http://www.unhchr.ch/tbs/doc.nsf/o/e3980a673769e229c1256f8d0057cd3d?Opendocument> (accessed December 9, 2010).

⁹⁷ Human Rights Watch interview with Umm Abdulla, Jahra, Kuwait, January 26, 2010; interview with Umm Jafar, Sulaibiyya, Kuwait, January 26, 2010; interview with Umm Ahmad, Jahra, Kuwait, January 26, 2010; interview with Umm Khalid, Jahra, Kuwait, January 26, 2010.

(US\$347).”⁹⁸ Umm Ja’far, a Bidun woman in her 70s, said that her grandchildren had to leave school for a year because of the prohibitive costs. “From 2000 to 2001 all the kids [grandchildren] left school because there was no money. After that there was a charitable fund. Then we paid all the money for [those children who did not get assistance].”⁹⁹

Kuwaiti activists and school administrators interviewed for this report said that the charitable fund does not meet the needs of all children.¹⁰⁰ Four families said they received funding for some, but not all, of their children. Zahra R., a young Bidun woman, said, “I started going to school in 1987. I finished high school in 2006. In our Bidun schools, you pay KD350 (US\$1213) per person. Sometimes for two or three years we stay[ed] home” because there was no money.¹⁰¹ A girls’ primary school administrator responsible for registering students and maintaining their records told Human Rights Watch that fewer Bidun students have received assistance from the educational fund over the past two years, while more children of foreign residents have received funding.¹⁰² “Many students don’t come back because they can’t afford the fees,” she said. A boys’ high school administrator told Human Rights Watch that “before, the fund was paying a lot [of students’ tuition fees]. This year, many Bidun children were not accepted.” He added that while Bidun children whose fathers work in the police or army have their fees paid by the defense ministry and other children can apply for charitable funding, “if any student fails [his exams], neither the charity nor the military will pay his fees the next year.”¹⁰³

Under international law, meaningful protection of the right to education requires that “education has to be affordable to all. This dimension of accessibility [differs] in relation to primary, secondary and higher education: whereas primary education must be compulsory and “free to all,” States Parties are required to progressively introduce free secondary and higher education.”¹⁰⁴

⁹⁸ Human Rights Watch interview with Umm Abdulla, Kuwait, January 26, 2010.

⁹⁹ Human Rights Watch interview with Umm Jafar, Sulaibiyya, Kuwait, January 26, 2010.

¹⁰⁰ Human Rights Watch interview with Dr. Ghanim al-Najjar; interview with Musaed al-Shammari; interview with boys’ secondary school administrator; interview with girls’ primary school administrator, Kuwait, October 2010.

¹⁰¹ Human Rights Watch interview with Zahra R., Jahra, Kuwait, January 26, 2010.

¹⁰² Human Rights Watch interview with girls’ primary school administrator, Kuwait, October 25, 2010 (name withheld on request).

¹⁰³ Human Rights Watch interview with boys’ secondary school administrator, Kuwait, October 25, 2010 (name withheld on request).

¹⁰⁴ Committee on Economic, Social, and Cultural Rights, The right to education (Art.13), 12/08/1999. E/C.12/1999/10. (General Comments), available at: <http://www.unhcr.ch/tbs/doc.nsf/o/ae1aob126do68e868025683c003c8b3b?Opendocument> (accessed November 11, 2010).

However in Kuwait not all stateless children receive free primary education. The government does not provide Bidun children who lack security cards with educational funding. A girls' school administrator told Human Rights Watch, "I have been working in this school for 19 years. The number of students is going down. [The government] is setting more conditions [before they can obtain funding]. Now, [their parents] must have a valid green card." According to a list of documents required for school registration she provided, Bidun children without a parent who works in the army or police force must produce the green cards of both the father and mother to enroll in school.¹⁰⁵

High school graduates' families typically lack the funds to send children abroad for college education or to pay the high tuition fees at private universities in Kuwait. The Ministry of Higher Education sets out conditions for applying to Kuwait University, the higher education institution funded and operated by the state. Condition No. 2 states that the student must be of "specified nationality," as opposed to unspecified nationality, or stateless.¹⁰⁶ The university's admissions page makes it clear that the children of two stateless parents may not register. Young people from the Bidun community interviewed for this report expressed hopelessness and frustration, as even those who did well in school could not enter university. Only Bidun students with Kuwaiti citizen mothers may enroll in universities.¹⁰⁷ Fatima A., 24, told Human Rights Watch, "My [grade] percentage in high school was 96 percent. If you have 96 percent, you can be a doctor... but I can't do anything."¹⁰⁸ State-run universities will not admit individuals who cannot prove their nationality.¹⁰⁹ Hassan A., a 28-year-old Bidun man, told Human Rights Watch that when he was in high school, "many people were so frustrated. They didn't know why [they should make] an effort to gain [better] marks. Many people thought, 'If I get 90 percent or 50 percent, it will be the same.' It was a

¹⁰⁵ "Required Papers for Registration," Arabic original on file with author.

¹⁰⁶ Kuwait's Ministry of Higher Education sets out conditions for applying to Kuwait University. Condition No. 2 states that the student must be of "specified nationality," as opposed to unspecified nationality, or stateless. <http://www.mohe.edu.kw/moheweb/default.aspx?pageid=147> (accessed December 6, 2010).

¹⁰⁷ Kuwait University lists the categories of individuals who may be admitted as: the offspring of:

- Kuwaitis and children of Kuwaiti women of unidentified nationality.
- Kuwaiti couples.
- Children of Kuwaiti women (from unidentified nationality)
- Citizens of GCC countries.

Available at: <http://reg.kuniv.edu.kw/admission/categories-ar.html> (accessed January 11, 2010).

¹⁰⁸ Human Rights Watch interview with Fatima A., Jahra, Kuwait, January 26, 2010.

¹⁰⁹ See note 146.

very big reason for frustration.”¹¹⁰ A boys’ high school administrator said, “[even] the small boy of 11 or 12 years knows he has no future.”¹¹¹

Employment and Property

Under Kuwaiti law only those with legal resident or citizen status can legally hold employment.¹¹² Without the ability to prove either Kuwaiti or foreign nationality the Bidun may not legally hold jobs in Kuwait regardless of their status as security card holders. While the government has carved out limited exceptions and allowed Bidun to hold certain government jobs, Bidun interviewed for this report told Human Rights Watch that their status had created significant hurdles to finding employment. Previously Bidun men constituted a significant percentage of Kuwait’s army and police forces. However these forces ceased accepting new Bidun applicants in 1986. Some Bidun officers already employed were permitted to keep their jobs while others lost their employment at this time.¹¹³

Article 6 of the ICESCR recognizes the right to work and prohibits discriminatory access to employment.¹¹⁴ General Comment 18 explains that the right to work includes “the right of access to a system of protection guaranteeing each worker access to employment,” and “the right not to be unfairly deprived of employment.”¹¹⁵ General Comment 18 further specifies that “States Parties have immediate obligations in relation to the right to work, such as the obligation to ‘guarantee’ that it will be exercised ‘without discrimination of any kind.’”¹¹⁶ National origin counts among the prohibited grounds for discrimination and state parties must protect the right to work for all individuals within its jurisdiction.¹¹⁷

By broadly treating the Bidun as illegal residents rather than providing transparent and timely review of their cases and acknowledging cases of statelessness, the Kuwaiti

¹¹⁰ Human Rights Watch telephone interview with Hassan A., August 5, 2010.

¹¹¹ Human Rights Watch interview with boys’ high school administrator, Kuwait, October 25, 2010 (name withheld on request).

¹¹² According to Law No. 18 of 1960 governing employment in the government sector, and Law No. 6 of 2010 governing employment in the private sector, all employees must be Kuwaiti nationals or hold valid work permits from the Ministry of Social Affairs and Labor. Acquisition of such permits requires proof of foreign nationality and Kuwaiti sponsorship.

¹¹³ Human Rights Watch, *Promises Betrayed*.

¹¹⁴ ICESCR, art.6.

¹¹⁵ UN Committee on Economic, Social and Cultural Rights, General Comment 16: The Right to Work, para.6.

¹¹⁶ *Ibid.*, para. 19.

¹¹⁷ Committee on Economic, Social, and Cultural Rights, General Comment on the Right to Work E/C.12/GC/18

6 February 2006, available at:

[http://www.unhchr.ch/tbs/doc.nsf/898586b1dc7b4043c1256a450044f331/493bee38093458c0c12571140029367c/\\$FILE/Go640313.pdf](http://www.unhchr.ch/tbs/doc.nsf/898586b1dc7b4043c1256a450044f331/493bee38093458c0c12571140029367c/$FILE/Go640313.pdf) (accessed November 16, 2010).

government deprives genuinely stateless individuals of the right of meaningful access to employment, a right they should otherwise enjoy as nationals or legal residents.

In response to public and international criticism, the government has announced that it will waive the requirements of Law No. 19 and allow certain ministries to hire Bidun employees. In addition, local activists report that the government has relaxed enforcement of laws prohibiting private sector employers from hiring illegal residents and that inspections of private companies for Bidun employees have become rare. Thus, private employers have grown increasingly comfortable about hiring stateless persons despite their lack of legal status in recent years.¹¹⁸ However, these limited opportunities, and Bidun workers' ability to find private employers who will look the other way regarding their status, do not change the fact that Bidun have no legal protection for their right to work.

Employed Bidun also face violations of their rights as workers.¹¹⁹ Without formal employment, the Bidun remain excluded from benefits accorded to citizens in permanent positions, such as set salary increases, social security, job security, and end-of-service benefits.¹²⁰ Ahmad al-Tamimi said, "I work as a *mandub* [person running errands]. I found this job through *wasta* [connections]. [But] my salary has stayed the same. I work on a two-year contract. There is no child supplement."¹²¹ He added, "Many Bidun work simple jobs in private companies or charitable societies. There are no contracts. They don't have any rights. Their wages are lower than Kuwaitis, [even] lower than expats."¹²² Umm Abdullah said that, of her six children, the youngest of whom is 18, "only Abdullah, [the oldest,] works. He works at the baker's. He's a driver. He does the deliveries. He makes only 100 dinars (\$347) [per month]."¹²³ Umm Khalid, 37, has nine children. She told Human Rights Watch, "The boys sell vegetables. There is no official job, just things in the streets. Some people give us money."¹²⁴

Hamud R., a 43-year-old Bidun man who needs a walking aid after suffering from polio as a child, said: "My grandfather was a sergeant in the Kuwaiti police... I was [among] the first

¹¹⁸ Human Rights Watch interview with Dr. Ghanim al-Najjar, professor of political science at Kuwait University, considered an expert on the Kuwaiti Bidun, Kuwait, October 2010.

¹¹⁹ The right to work includes both the right of access to employment, and the right to protections in work. These include similar pay and benefits for similarly situated employees, and protection against unwarranted termination. Amnesty International, Briefing Paper on the Right to Work, available at: (accessed January 10, 2011).

¹²⁰ Ibid.

¹²¹ Human Rights Watch interview with Ahmad al-Tamimi, Kuwait, January 26, 2010.

¹²² Ibid.

¹²³ Human Rights Watch interview with Umm Abdullah, Kuwait, January 26, 2010.

¹²⁴ Human Rights Watch interview with Umm Khalid, Kuwait, January 26, 2010.

Bidun who couldn't enter university. I [had] thought of being a veterinarian."¹²⁵ Instead Hamud now works as a car mechanic in his small shop in Suleibiyya, a neighborhood outside of Kuwait City known for its high population of stateless persons. As a Bidun he may not own property in Kuwait, as article 6 of Law No.5 of 1959 governing registration of real estate and property ownership requires that any person seeking to register property ownership must prove their nationality either by producing a passport or through another valid document.¹²⁶ Hamoud told Human Rights Watch that, although he was born in Kuwait, "I [had to take] a certificate from my friend for [registration of] my mechanic shop. He is Kuwaiti."¹²⁷

Restrictions on property ownership affect the Bidun's ability to open and operate their own businesses. Omar S. was born in Kuwait to an Iranian father and a Kuwaiti mother. Because under Kuwaiti law children assume the citizenship of their father, Kuwaiti authorities classified him as an Iranian. "In government [records] it says I am of Iranian citizenship," he told Human Rights Watch. "But we have documentation saying that I am not an Iranian citizen, from the Iranian government." Omar runs his own business and is married to a Kuwaiti citizen. However current requirements prohibit him from owning property or establishing a company in Kuwait. "The company is registered in my mother's and wife's names," he said.¹²⁸

Health Care

Until 1993 Bidun residents of Kuwait received free treatment at public clinics and hospitals. But the government subsequently began requiring them to pay user fees.¹²⁹ In 1999 government-regulated health insurance plans replaced user fees. Bidun who carry security cards can purchase low-cost health insurance through a government-administered program. However several Bidun interviewed by Human Rights Watch said that this insurance did not adequately cover their health care costs and that they could not afford medication or surgery recommended by medical professionals. Bidun without security cards reported that they were denied access to government clinics and hospitals altogether.

The UN Committee on Economic, Social and Cultural Rights, in General Comment 14 expanding on the right to health, requires governments to consider affordability when regulating payment for health care, stating:

¹²⁵ Human Rights Watch interview with Hamoud K., Kuwait, January 26, 2010.

¹²⁶ Law No.5 of 1959 on registration of real estate and property, art.6.

¹²⁷ Ibid.

¹²⁸ Human Rights Watch telephone interview with Omar Sharif, June 15, 2010.

¹²⁹ Promises Betrayed, p.3.

Health facilities, goods and services must be affordable for all. Payment for health-care services, as well as services related to the underlying determinants of health, has to be based on the principle of equity, ensuring that these services, whether privately or publicly provided, are affordable for all, including socially disadvantaged groups.¹³⁰

In addition, the Committee on the Elimination of Racial Discrimination, charged with interpreting the Convention, has called upon States Parties “to respect the right of non-citizens to an adequate standard of physical and mental health by, inter alia, refraining from denying or limiting their access to preventive, curative and palliative health services.”¹³¹ The Committee has further expressed concern regarding rights violations faced by undocumented non-citizens. International law may not require Kuwait to provide the same health care entitlements to citizens and residents, but the government must implement health policy that factors in affordability and accessibility of services to all residents in its territory, including undocumented residents. The current public health system, under which Kuwaitis receive free health care, expatriates and Bidun with security cards receive limited insurance-based care involving fixed user fees (without indigence exceptions), and Bidun without security cards receive nothing at all, fails to ensure adequate access to health care, particularly for the vulnerable Bidun population.

Many Bidun purchase health insurance through the government system which charges a fee of KD 6 (US \$21) for one year of coverage, or KD 11 (US \$39) for two years. In addition, insurance holders pay KD 1 (US \$3.50) for visits to government clinics, and KD 2 (US \$7) for hospital visits.¹³² However, several Bidun we interviewed said that this insurance does not cover all prescription medication and medical testing, such as x-rays and scans; nor does it cover certain types of surgery (requests for information from the Kuwait government about the insurance scheme offered to Bidun and its coverage benefits remain unanswered).

Umm Abdullah, a 58-year-old Bidun woman, said she suffered from chronic health problems but had reduced the prescribed dosage of her medications because she could no longer

¹³⁰ Committee on Economic, Social, and Cultural Rights, “The right to the highest attainable standard of health,” 08/11/2000. E/C.12/2000/4. (General Comments), available at: [http://www.unhcr.ch/tbs/doc.nsf/\(Symbol\)/40d009901358boe2c1256915005090be?Opendocument](http://www.unhcr.ch/tbs/doc.nsf/(Symbol)/40d009901358boe2c1256915005090be?Opendocument) (accessed November 13, 2010).

¹³¹

General Recommendation No.30: Discrimination Against Non Citizens, 10/01/2004. Available at: <http://www.unhcr.ch/tbs/doc.nsf/o/e3980a673769e229c1256f8d0057cd3d?Opendocument> (accessed December 9, 2010).

¹³² United Kingdom Home Office, Operational Guidance Note: Kuwait, 5 March 2009, <http://www.unhcr.org/refworld/docid/49c35db62.html> (accessed 6 August 2010).

afford them. “I have [high] blood pressure and diabetes,” she said. “I had a blood clot and had to buy pills for 20 [Kuwaiti] dinars (US\$70). I [also] need cholesterol medication – I use one and a half bottles per month. I break each pill in half so that it lasts that [much] long[er].”¹³³ Umm Abdullah said that she had received no public assistance for her healthcare needs. “There is a charitable committee that gives us money; the neighbors sometimes help, but not the government,” she said. “When my last child was born, I needed 35 dinars (\$122) for the hospital stay. I had to take money from the neighbors.”¹³⁴

During its May 2010 UPR address at the Human Rights Council in Geneva, the Kuwaiti government described medical fees paid by non-citizens as “nominal.”¹³⁵ In its national report submitted to the council it referenced “a charitable fund... set up for children of irregular migrants in need, serving more than 60,000 beneficiaries.”¹³⁶ However the report made no reference to adults in need of health care and Human Rights Watch interviewed several parents who said their children were denied care. Several Bidun interviewed for this report said the fees currently charged prevent them from seeking treatment or lead them to forgo prescribed medical treatment.

Three Bidun without security cards (unregistered Bidun) said government hospitals and clinics refused to treat them altogether. Instead, they said, they had to seek services from expensive, private hospitals. Iman H., a 25-year-old Bidun woman, interviewed with her mother Zahir, told Human Rights Watch that her mother also lacks access to health care. “For four years, my mother has had diabetes. She goes to the clinics. They say, ‘you don’t have a green [ID] card—you can’t be treated.’” Zahir told Human Rights Watch that her husband’s birth certificate states that he is of “unspecified nationality.” “From 1971 to 1994 he was in the army. He participated in the wars. During the invasion – then – he was Kuwaiti... Now we don’t have any green [ID] cards.”¹³⁷

Umm Ja’far, a Bidun woman in her 70s, also reported that she was refused treatment at a public hospital because she did not hold a security card. “A week ago I went to the doctor. I paid money but they wouldn’t treat me because I didn’t have an ID. I went to the head of the

¹³³ Human Rights Watch interview with Umm Abdullah, Kuwait, January 26, 2010.

¹³⁴ Ibid.

¹³⁵ UN Human Rights Council, “Universal Periodic Review of Kuwait” video report, May 2010, <http://www.un.org/webcast/unhrc/archive.asp?go=100512#am> (accessed July 31, 2010).

¹³⁶ National report submitted in accordance with paragraph 15(a) of the annex to Human Rights Council resolution 5/1, Kuwait, A/HRC/WG.6/8/KWT/1, available at:[missing link] (accessed July 22, 2010).

¹³⁷ Ibid.

hospital. He said, ‘we can’t treat you unless you have an ID.’”¹³⁸ Omar Sharif, a 40-year-old Bidun man, told Human Rights Watch that, while his older son had been born in the U.S. and had American citizenship, his younger son did not even have a security card. “If something is wrong with him, we can’t take him to hospital [right away],” he said. “I have to take him [using] his cousin’s ID.”

Some Bidun suffer from physical disabilities they have been told can be treated, but lack the means to pay for treatment. Umm Khalid, the mother of Abra’a, a partially deaf 20-year-old Bidun woman, said doctors told her surgery could have cured her by removing the obstruction blocking her daughter’s ear. However they lacked the money to pay for an operation.¹³⁹ Because Abra’a was partially deaf she had never gone to school, Umm Khalid said, adding: “For 20 years, she didn’t study. My 14-year-old boy has the same problem. It costs 200 KD (\$700) to fix... for me, the most important things are education and medicine. I have two deaf children. We want to have treatment, studies [education] – ordinary things.”¹⁴⁰

¹³⁸ Human Rights Watch interview with Iman H. and Zahir A., Jahra, Kuwait, January 26, 2010.

¹³⁹ Human Rights Watch interview with Umm Khalid and Abra’a S., Jahra, Kuwait, January 26, 2010.

¹⁴⁰ Ibid.

V. Discrimination Against Women: Another Cause of Statelessness

It is worst for the girls. To be a Bidun, it is hard. But to be a woman and a Bidun, this is the worst thing.

– Hamoud K., 43-year-old Bidun man, Kuwait, January 26, 2010.

Like many of its neighbors in the Gulf region, Kuwaiti law determines that a child's nationality is that of his or her father, not that of the mother or both parents.¹⁴¹ This discrimination against women expands the problem of statelessness, as the children of Bidun men and Kuwaiti women become stateless. Kuwaiti women may pass their nationality on to their children only when the father is unknown or fails to establish legal paternity, when the couple divorces, or upon death of the stateless husband.

Article 9 of the Convention on the Elimination of Discrimination Against Women (CEDAW) states that “States Parties shall grant women equal rights with men to acquire, change or retain their nationality... States Parties shall grant women equal rights with men with respect to the nationality of their children.”¹⁴²

In 2004 the Committee on the Elimination of Discrimination against Women called upon the Kuwaiti government to “undertake a comprehensive review of all existing laws, including the Nationality Act, and to amend or repeal discriminatory provisions so as to ensure compliance with the provisions of the Convention.”¹⁴³ In July 2010 the Interior Ministry submitted to the National Assembly an amendment that would allow Kuwaiti women married to non-Kuwaiti men to sponsor their husbands and children to acquire Kuwaiti nationality provided they have been married for ten years. While an improvement, this proposal still amounts to discrimination against Kuwaiti women in their ability to pass their nationality on to their husband and children, as Kuwaiti men need only be married for five years before their wives gain citizenship, and children of Kuwaiti men gain citizenship at birth.

¹⁴¹ Law No.15 of 1959 on Citizenship, art.1.

¹⁴² CEDAW art.9.

¹⁴³ UN Report of the Committee on the Elimination of Discrimination against Women, Thirtieth session (12-30 January 2004) and Thirty-first session (6-23 July 2004) Supplement No. 38 (A/59/38), available at: <http://www.universalhumanrightsindex.org/documents/826/396/document/en/text.html> (accessed November 2, 2010).

Discriminatory provisions against women with regards to passing on Kuwaiti nationality to children or sponsoring family members to acquire Kuwaiti nationality infringe upon Kuwaiti women's rights to marry and found a family; they also increase Kuwait's stateless population. Kuwaiti women say they receive advice from friends and family that either they should not to marry Bidun men, or that if they have done so, they should divorce them to preserve their children's Kuwaiti nationality.¹⁴⁴

Umm Walid, a 43-year-old Kuwaiti woman, told Human Rights Watch that her marriage to a Bidun man left her children stateless. "I am Kuwaiti," she said. "I married a Bidun, but I divorced him so that my kids could have rights."¹⁴⁵

¹⁴⁴ Human Rights Watch interview with Fatima A., interview with Umm Walid, Jahra, Kuwait, January 26, 2010.

¹⁴⁵ Human Rights Watch interview with Umm Walid, January 26, 2010.

VI. International Law on Statelessness

Drafters of international law have long identified statelessness as a problem that undermines protection of several fundamental human rights. States' discretion to determine who gains citizenship remains circumscribed by international legal principles that require states to consider individuals' "genuine and effective links" with a country including social, cultural, and economic ties. Moreover international covenants ratified by Kuwait require the government to protect the rights of all individuals under its jurisdiction. These treaties specifically prohibit discrimination on the basis of national origin or statelessness. Non-citizens, even those the government deems "illegal residents," still require protections for fundamental rights, including certain civil documentation, free and compulsory primary education, and access to basic health care.

International Legal Protections Against Statelessness

Article 15 of the Universal Declaration of Human Rights (UDHR), adopted in 1948, asserts that "everyone has the right to a nationality," and that "no one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality."¹⁴⁶ While states have the right to decide who may be entitled to citizenship, international law limits this discretion particularly where an individual would otherwise be stateless. Former Special Rapporteur on the Rights of Non-Citizens, David Weissbrodt, writes, "at the very least, a person should be eligible for the citizenship of the country with which she or he has the closest link or connection. A substantial link or connection to a state can be forged by, for example, long-term habitation in a state without a more substantial link to another state, descent from a state's citizen, birth within a state's territory, or citizenship in a country's former federal state."

Article 24 of the International Covenant on Civil and Political Rights (ICCPR), to which Kuwait acceded in May 1996, specifies that state parties must protect children against statelessness, stating that "every child has the right to acquire a nationality."¹⁴⁷ The 1989 Convention on the Rights of the Child, ratified by Kuwait in 1991, affirmed this right, adding that "the child shall be registered immediately after birth," and noted a particular obligation

¹⁴⁶ Universal Declaration of Human Rights (UDHR), adopted December 10, 1948, G.A. Res. 217A (III), U.N. Doc. A/810 at 71 (1948), art. 15.

¹⁴⁷ International Covenant on Civil and Political Rights (ICCPR), adopted December 16, 1966, G.A. Res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 52, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171, entered into force March 23, 1976, art. 24.

on States Parties to ensure implementation of the rights in the convention, including the right to acquire a nationality, “where the child would otherwise be stateless.”¹⁴⁸

The UN Human Rights Committee, charged with interpreting the ICCPR, has also made clear that there must be no discrimination between spouses “in respect of the acquisition or loss of nationality by reason of marriage.”¹⁴⁹ However, as noted, Kuwait still discriminates against women by denying female citizens the right to bestow nationality upon their non-Kuwaiti husbands, while allowing male citizens to bestow nationality upon non-Kuwaiti wives. As a result stateless spouses of Kuwaiti women remain stateless, while children of Kuwaiti women may be stateless if they are not able to adopt their father’s nationality.

In 1954 the UN adopted the Convention Relating to the Status of Stateless Persons, expressing a “profound concern for stateless persons” and “endeavor[ing] to assure stateless persons the widest possible exercise of... fundamental rights and freedoms.”¹⁵⁰ The convention aimed to clarify the rights and international law pertaining to the status of stateless persons while they remained stateless. It prohibited discrimination between citizens and stateless persons in areas including access to courts, primary education, public relief, and labor rights protections.¹⁵¹ In 1961 the Convention on the Reduction of Statelessness took aim at the root cause, calling upon each contracting party “to grant its nationality to a person born in its territory who would otherwise be stateless.”¹⁵²

Although neither Kuwait nor any of its neighbors in the Gulf has ratified these two conventions on statelessness, these instruments show that, while granting nationality remains presumptively a matter of state sovereignty, international law has for the last 50 years recognized limits on the state’s ability to deny nationality to individuals who would otherwise remain stateless within its territory. The International Court of Justice, in the *Nottebohm* case, defined nationality as “a legal bond having as its basis a social fact of attachment, a genuine connection of existence, interests and sentiments.” A “genuine and effective link,” as the “real and effective nationality” has been termed, is determined by considering factors laid out in *Nottebohm*, including the “habitual residence of the individual concerned but also the centre

¹⁴⁸ Convention on the Rights of the Child (CRC), G.A. res. 44/25, annex, 44 U.N. GAOR Supp. (No. 49) at 167, U.N. Doc. A/44/49 (1989), entered into force September 2, 1990, art. 7.

¹⁴⁹ Human Rights Committee, General Comment 19, Article 23 (Thirty-ninth session, 1990), Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies, U.N. Doc. HRI/GEN/1/Rev.1 at 28 (1994).

¹⁵⁰ UN Convention Relating to the Status of Stateless Persons, 360 U.N.T.S. 117, entered into force June 6, 1960, preamble.

¹⁵¹ *Ibid.*, arts. 16, 22, 23, and 24.

¹⁵² Convention on the Reduction of Statelessness, 989 U.N.T.S. 175, entered into force December 13, 1975, art. 8.

of interests, his family ties, his participation in family life, [and] attachment shown by him for a given country and inculcated in his children.”¹⁵³

International standards require states to avoid acts that would render stateless anyone who has a genuine and effective link to that state. A 2009 UN Secretary-General report on human rights and the arbitrary deprivation of nationality states that “regardless of the general rules regulating nationality issues at the domestic level, States should ensure that safeguards are in place to ensure that nationality is not denied to persons with relevant links to that State who would otherwise be stateless.”

Rulings by regional courts of human rights provide increasing support for the rule that states may not arbitrarily deprive individuals of nationality or claims to nationality, and that statelessness results in denial of other fundamental human rights, thus placing a high burden upon national governments to alleviate this problem. In an Inter-American Court of Human Rights case, *The Yean and Bosico Children v. Dominican Republic*, the court recognized the “inherent right” of all human beings to a nationality and stated that the state’s “discretionary authority in this regard is gradually being restricted... in order to ensure a better protection of the individual in the face of arbitrary acts of States.”¹⁵⁴ In its July 2010 ruling on the case *Kuric v. Slovenia* the European Court of Human Rights found that a state’s failure to address cases of statelessness within its territory violated these individuals’ right to privacy and family life under the European Convention on Human Rights. The convention echoes the protection for privacy and family life found in article 17 of the ICCPR, which states that “no one shall be subjected to arbitrary or unlawful interference with his privacy [or] family.” In *Kuric*, the court ruled that, “especially in cases of statelessness... the prolonged refusal of Slovenian authorities to regulate the applicants’ situation comprehensively... [and] in particular the failure to pass appropriate legislation... constitutes a violation of the applicants’ right to private and/or family life.”¹⁵⁵

Despite the protections against statelessness found within international legal instruments, stateless persons remain highly vulnerable within the current global mechanisms for enforcement. Without the advocacy of a state that claims them as nationals, nor governmental recognition within the state of their residence, stateless persons lack

¹⁵³ International Court of Justice, *Nottebohm Case, Liechtenstein vs. Guatemala*, I.C.J. Rep. 4, 1955.

¹⁵⁴ Inter-American Court of Human Rights, *Case of the Yean and Bosico Children*, Judgment of September 8, 2005, Series C, No. 130, http://www.es.cr-net.org/usr_doc/Judgement_Sept_8_05.pdf (accessed July 26, 2010), paras 140-141.

¹⁵⁵ European Court of Human Rights, *Kuric v. Slovenia*, Application no 26828/06, Council of Europe, July 13, 2010, <http://cmiskp.echr.coe.int/tkp197/view.asp?item=1&portal=hbk&action=html&highlight=Kuric&sessionId=57924899&skin=hudoc-en> (accessed July 22, 2010), para 361.

representation at both national and international levels. In 1974 the UN General Assembly designated the United Nations High Commissioner for Refugees (UNHCR) as the organization to which individuals covered by the 1961 Convention on the Reduction of Statelessness should apply when seeking assistance in presenting their claims to state authorities.¹⁵⁶ To date, however, UNHCR has focused primarily on academic and policy research and on advocating for states to accede to the 1954 and 1961 conventions on statelessness.¹⁵⁷ Nonetheless, UNHCR has determined that reduction of statelessness would rank as one of its four global strategic objectives in the future and in March 2010 it announced a “new push” to reduce the number of stateless persons worldwide.¹⁵⁸

The protections cited in the UDHR as well as a growing body of international case law support the proposition that stateless Bidun in Kuwait should be immediately permitted to present their claims for Kuwaiti nationality. Furthermore, as nationality remains an essential component in accessing other human rights, Kuwait should look favorably upon claims of individuals who have long-standing social, cultural, and economic ties to Kuwait and who have lost or never had ties to any other country.

Human Rights Protections While Stateless

The 1954 Convention on the Status of Stateless Persons calls upon states to afford stateless persons who are habitual residents of their territory the same treatment as their own nationals in areas such as access to primary education and health care, and the same treatment as foreign residents in areas such as access to secondary and higher education, the right to legal employment, and the right to own property. The convention reflects the drafters’ intent to protect stateless persons pending resolution of their status. However, to date, only 63 countries worldwide have signed it. As a result stateless persons too often remain in vulnerable legal positions while governments stall on the question of their citizenship.

The Kuwaiti government discriminates against the Bidun of Kuwait because it broadly categorizes this historically-documented stateless population as “illegal residents,” even though it recognized them as part of the local population, and potential citizens, for the first 25 years of Kuwait’s statehood. This discrimination is all the more egregious as many of these individuals may be stateless due to the government’s own inaction. While Kuwait has

¹⁵⁶ United Nations General Assembly, Resolution 3274 (1974), A/RES/3274 (1974), <http://www.unhcr.org/3dc8dca44.html> (accessed June 28, 2010).

¹⁵⁷ Mark Manly and Santosh Persaud, *Forced Migration Review*, Vol.32, 2007, pp 7-10.

¹⁵⁸ Ibid; UNHCR launches new effort to reduce the number of stateless, March 10, 2010, <http://www.unhcr.org/4b97cbo26.html> (accessed July 26, 2010).

not signed the 1954 and 1961 conventions addressing statelessness, the government has ratified international legal instruments that protect the rights of stateless persons, including the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights (ICESCR) and the Convention on the Rights of the Child (CRC). The Committee on Economic, Social, and Cultural Rights, when considering Kuwait's last state report (submitted in 2004) noted with concern "the continuing discrimination against the 'Bedoons' due to the fact that they are denied the possibility of becoming Kuwaiti nationals by the State party," and "recommend[ed] that the State party ensure that all persons in its territory, including Bedoons, enjoy economic, social and cultural rights enshrined in the Covenant and expedite their acquisition of Kuwaiti nationality when possible."¹⁵⁹ International law also protects Bidun rights to civil documentation, including birth, marriage, and death certificates, and passports, and their rights to access to health care, education, and work, as well as the right to own property.¹⁶⁰ Because nationality remains the gateway for access to these other rights – the right to have rights – the Bidun remain particularly vulnerable to their deprivation.

As a state party to the ICESCR and to the CRC, Kuwait must protect the rights of all persons, including non-citizens, to education and health set forth in articles 13 and 12 of the ICESCR, and articles 28 and 24 of the CRC, as well as the right to work set out in article 7 of the ICESCR. Because the Kuwaiti government granted the Bidun access to free health care and enrollment in government schools alongside Kuwaiti children in the past, a particularly strong case exists for their right of continued access to these services pending resolution of their nationality claims. The ICESCR's legal requirements include a strong presumption that governments should not regress in their provision of covenant rights, including health care and education.

In addition to prohibiting revocation of rights once granted, international laws against discrimination require states to take particular care in protecting the rights of vulnerable and marginalized populations, such as stateless persons. In practice, many states discriminate between citizens and non-citizens in their provision of social services. However, international legal experts have repeatedly stressed that governments may make distinctions between citizens and non-citizens only in exceptional circumstances when protecting ICESCR rights.¹⁶¹

¹⁵⁹ <http://www.universalhumanrightsindex.org/documents/827/426/document/en/text.html>

¹⁶⁰ International Covenant on Economic, Social and Cultural Rights (ICESCR), adopted December 16, 1966, G.A. Res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 49, U.N. Doc. A/6316 (1966), 993 U.N.T.S. 3, entered into force January 3, 1976, art. 2; CRC, art. 2.

¹⁶¹ The UN Special Rapporteur on the rights of non-citizens writes, in his final report on the rights of non-citizens, "all persons should by virtue of their essential humanity enjoy all human rights unless exceptional distinctions...serve a legitimate State

Education Rights

The ICESCR and the CRC guarantee a right to education. The Universal Declaration of Human Rights also enshrines such a right. Moreover the ICESCR requires state parties to provide free and compulsory primary education and available and accessible secondary education to all children within their territories, with no exception. According to these instruments the right to education must be enjoyed without discrimination on the basis of race, color, sex, language, religion, national or social origin, property, or birth.

Kuwait became a state party to the Convention against Discrimination in Education in 1963. This convention requires that, if a state maintains separate educational systems, these systems must provide the same standard of education in equivalent conditions. Section IV of this report describes how most Bidun children currently receive education inferior to that provided to Kuwaiti children in government schools.

Health Rights

According to the Economic, Social and Cultural Rights Committee, the ICESCR's monitoring body, states must guarantee certain core, non-derogable obligations as part of the right to health, including an obligation to "ensure the right of access to health facilities, goods, and services on a non-discriminatory basis, especially for vulnerable or marginalized groups," and to provide essential drugs. While the committee notes the progressive nature of the right to health, it also points to the fact that states must immediately take steps to realize the right to health and guarantee the exercise of the right without discrimination of any kind. The Committee further specifies that accessibility includes economic accessibility and affordability of health care. While the government health insurance system provided for expatriates and Bidun goes some way towards this goal, Bidun interviewed for this report cited their inability to afford necessary health care as a major concern. Bidun without security cards reported that government hospitals and clinics denied them access altogether.

The United Nations Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health has explicitly put forth that even those considered "illegal immigrants" must be protected: "States are under the obligation to respect the right to health by, inter alia, refraining from denying or limiting equal access for

objective and are proportional to the achievement of that objective....There is a large gap between the rights that international human rights law guarantees to non-citizens and the realities they must face." Final Report on the Rights of Non-Citizens, E/CN.4/Sub.2/2003/23 (2003), p.1-2.

all persons, including... minorities, asylum seekers and illegal immigrants, to preventive, curative and palliative health services.”¹⁶²

The Rights of Non-Citizens

Countries around the world provide benefits and protections to citizens that they do not allow non-citizens. In particular most countries restrict access to social services and civil documentation for those who have the status of irregular migrants (“illegal residents”). The United Nations High Commissioner for Human Rights, Navi Pillay, stressed the need for governments to better protect irregular migrants on November 10, 2010:

Although States have legitimate interests in securing their borders and exercising immigration controls, such concerns do not trump the obligations of the State to respect the internationally-guaranteed rights of all persons, to protect those rights against abuses, and to fulfill the rights necessary for them to enjoy a life of dignity and security. These rights, such as... the right to health, food, adequate housing, just and favourable conditions of work... are guaranteed by the core international human rights instruments and by customary international law.”¹⁶³

¹⁶² Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of health, Fact Sheet No. 31 on the Right to Health, <http://www2.ohchr.org/english/issues/health/right/> (accessed November 23, 2009). Note that the core obligation to provide access to health services on a non-discriminatory basis includes four overlapping dimensions of access: non-discrimination, physical accessibility, economic accessibility, and information accessibility. UN Committee on Economic, Social and Cultural Rights, “Substantive Issues Arising in the Implementation of the International Covenant on Economic, Social and Cultural Rights,” General Comment No. 14, The Right to the Highest Attainable Standard of Health, E/C.12/2000/4 (2000), [http://www.unhcr.ch/tbs/doc.nsf/\(Symbol\)/40d009901358b0e2c1256915005090be?Opendocument](http://www.unhcr.ch/tbs/doc.nsf/(Symbol)/40d009901358b0e2c1256915005090be?Opendocument) (accessed December 5, 2010).

¹⁶³ Address by Ms. Navi Pillay, United Nations High Commissioner for Human Rights, at the Fourth Global Forum on Migration and Development, November 10, 2010, available at: <http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=10521&LangID=E> (accessed December 14, 2010).

Recommendations

To the Government of Kuwait

- Develop a strategic plan to remedy Kuwait's longstanding problem of statelessness in accordance with international legal standards and in consultation with UNHCR and local civil society organizations. Publish a roadmap and timetable for ending statelessness in Kuwait and dedicate adequate resources to expediting resolution.
- Grant temporary legal residency to stateless individuals pending resolution of their claims to Kuwaiti nationality. Cease treating the Bidun as "illegal residents."
- Grant nationality to children born in Kuwait who would otherwise be stateless.
- Grant nationality to long-term residents with strong claims to nationality, including residents who lack documented ties to other states and whose primary place of residence, familial, economic, and/or social ties are with Kuwait.
- Register all children born in Kuwait upon birth and issue them birth certificates.
- Issue travel documents, marriage registration, death certificates, and drivers' licenses to stateless persons.
- Eliminate discrimination against Kuwaiti women by giving them the same legal right as Kuwaiti men to confer nationality upon their spouses and children, including Bidun spouses and children.
- Collect and publish data on stateless persons in Kuwait, including data on births and deaths, health, education, and employment indicators, and economic conditions.
- Ratify the 1954 Convention relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness.

To the National Assembly

- Create a transparent mechanism for stateless residents to apply for citizenship with the opportunity for judicial review to guard against procedural error or abuse of discretion and to ensure due process in determining citizenship claims. Amend Law No.61 of 1980 concerning the organization of Administrative Courts to remove administrative bodies' exclusive jurisdiction over individual claims to nationality. Update official interpretations of article 2 of Kuwait's Law on the Organization of the Judiciary, Law No.23 of 1990, to permit judicial review of nationality claims.

- Amend Kuwait's Nationality Law to recognize Kuwaiti women's right to confer nationality upon spouses and children, including Bidun spouses and children, on par with the rights enjoyed by Kuwaiti men.
- Pass an anti-discrimination law prohibiting all discrimination on the grounds of nationality. Such a law should specify that any differential treatment of stateless persons due to their statelessness will need to be fully justified if it is not to be classified as discrimination and must take into account the impact of differential treatment. Give stateless persons a clear legal remedy against such discrimination, including the power to have discriminatory laws and policies struck down.
- Pass legislation institutionalizing stateless persons' access to official documentation of birth, marriage, and death.
- Pass legislation reinstituting stateless persons' access to free health care and government educational institutions, pending resolution of their citizenship claims.
- Grant stateless persons temporary legal status that would allow them to legally hold employment and own property on par with the rights granted other legal residents.

To the Ministries of Health, Education, and Labor

- Grant Bidun children the right to enroll in government schools in order to safeguard their right to free and compulsory primary education and available and accessible secondary education as guaranteed under the ICESCR.
- Revise Kuwait's health care system to protect accessibility and affordability as required by the ICESCR. Protect access to health care for Bidun who lack security cards.
- Improve access to higher education for stateless persons in Kuwait to ensure greater access to employment opportunities.

To the Ministry of Justice

- Establish judicial review of determinations relating to citizenship claims. Instruct judges to consider, in issuing opinions, Kuwait's international legal obligations. Specifically, they should consider individuals' personal, economic, and social ties to Kuwait that prove a "genuine and effective link" to the state.

To the Gulf Cooperation Council (GCC) Secretariat

- Establish a regional human rights body that can investigate and seek resolution of human rights complaints, including complaints stemming from violations of

stateless persons' rights against member governments. Ensure that this body can accept complaints from both organizations and individuals.

- Take action to address the problem of statelessness and to alleviate discrimination against stateless individuals throughout the region by setting regional standards that comport with international human rights law.

To the United Nations High Commissioner for Refugees (UNHCR)

- Act upon UNHCR's organizational mandate to prevent statelessness and protect the rights of stateless persons in Kuwait through advocacy and awareness-raising by the organization's offices in Kuwait and Geneva. In particular, develop tools to identify cases of statelessness in Kuwait; raise visibility of rights violations faced by the Bidun in Kuwait.
- Advocate durable legal solutions to the problem of statelessness by consistently raising the issue and making recommendations to government officials in Kuwait. In particular press Kuwait to ratify the 1954 and 1961 conventions relating to statelessness and support judicial review of individual claims to Kuwaiti citizenship.

Acknowledgements

This report was researched and written by Priyanka Motaparthi, researcher in the Middle East and North Africa division of Human Rights Watch.

Christoph Wilcke, senior researcher, and Sarah Leah Whitson, director of the Middle East and North Africa division, edited the report. Joe Amon, director of the Health and Human Rights Division, Zama Coursen-Neff, deputy director of the Children's Rights Division, Bill Frelick, director of the Refugees Division, and Nadya Khalife, researcher for the Middle East and North Africa in the Women's Rights Division, provided specialist reviews. Clive Baldwin, senior legal advisor, conducted legal review. David Segall, associate in the Middle East and North Africa Division, provided editing and production assistance. Mariam bin Ghaith, an intern in the division, contributed valuable research assistance. Grace Choi, Kathy Mills and Fitzroy Hepkins also provided production assistance for this report.

Human Rights Watch wishes to thank Musaed al-Shammari and the Kuwaiti Bedoons Congregation, Ahmad al-Tamimi and the Society for Kuwaiti Bidoun, Adel al-Qallaf from the Kuwait Society for Human Rights, and Maureen Lynch from Refugees International for their assistance in the research process. We also thank Dr. Ghanim al-Najjar, Professor at Kuwait University and member of Human Rights Watch's Middle East and North Africa Division advisory committee. Special thanks go to all the Bidun individuals who agreed to be interviewed for this report.

Appendix: Draft Law Apropos of the Civil, Legal and Social Rights of Stateless People

Article 1

In the application of the provisions of this law, a stateless person is any person who resides in Kuwait in an illegal manner, whether independently or within a family, as long as he is registered at the Executive Committee for Illegal Residents, the Higher Citizenship Committee of the Council of Ministers, or the Martyr Bureau, and their descendents who were born in Kuwait and reside therein.

Article 2

The Ministry of Interior shall consolidate the names of all stateless people whom the provisions of this law address and who are registered at the government departments mentioned in Article 1 of this law within three months after this law is enforceable.

Article 3

Each of the stateless people referred to in Article 2 of this law is given a renewable civil ID valid for five years with his own civil number. He has the right to obtain all the documents that guarantee his legal and civil rights, especially:

1. Permanent residence in the State of Kuwait.
2. Free medical treatment in all its specialties and requirements, in addition to free medication.
3. Treatment of the stateless person with disability and his children with disability on a par with the Kuwaiti citizen with disability regarding the rights and privileges of people with special needs.
4. Obtaining birth and death certificates.
5. Issuing and attesting marriage, divorce, will, and bequeathal contracts in addition to all of those related to personal status.
6. All types of driver's licenses.
7. Obtaining a passport.
8. The right to work at the public, private and oil sectors and being entitled to the severance pay at any of them.
9. The right to own property individually or jointly with others.
10. The right of education at all stages.

Article 4

Without prejudice to any other harsher punishment provided by another law, whoever presents false information or documents to the competent committees mentioned in Article 1 of this law, or states false information before them with the intention to benefit from the provisions of this law, whether for himself or for others, and regardless of his means, shall be fined under this title not more than a 1000 Kuwaiti Dinars and imprisoned for not more than a year, or both.

Article 5

The executive by-laws of this law are issued, based on a presentation by the competent Minister, by a decision of the Council of Ministers within three months after the law is in enforceable.

Article 6

Any provision that conflicts with the provisions of this law is rescinded.