

KUWAIT

PROMISES BETRAYED

Denial of Rights of Bidun, Women, and Freedom of Expression

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ACKNOWLEDGMENTS

This report was researched and written by Clarisa Bencomo, researcher in the Middle East and North Africa division of Human Rights Watch. The report draws on her interviews with members of the Kuwaiti National Assembly, officials of the Ministry of Interior, lawyers, human rights activists, and members of the Bidun community, conducted during a mission to Kuwait in April 2000. Several of those interviewed have asked that their names not be made public.

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I. INTRODUCTION

Human Rights Watch visited Kuwait in April 2000. In meetings with government officials, lawyers, activists, and victims, we collected information on a broad range of human rights concerns in Kuwait. This report focuses, however, on three particular areas that we identified as major concerns during that visit: discriminatory laws and practices affecting the Bidun population¹; discriminatory laws and practices affecting women; and unwarranted restrictions of freedom of expression. In each case there have been major developments in the past twelve months, including new legislation, significant court rulings, and implementation of new government policies. Together, they are the three areas that present the greatest opportunities for human rights improvements, and at the same time the greatest risk that the Kuwaiti government will adopt policies that lead to increased human rights violations.

In critiquing Kuwait's practice in these areas, we have made extensive reference to the standards of the International Covenant on Civil and Political Rights (ICCPR).² As a state party to the ICCPR, Kuwait has a legal obligation both to respect and to ensure the enjoyment of the rights and freedoms guaranteed in that treaty to all people in Kuwait.³ Its fulfillment of those obligations is subject to periodic review by the ICCPR's treaty-monitoring body, the United Nations Human Rights Committee (HRC).⁴ On July 18 and 19, 2000, the Human Rights Committee reviewed Kuwait's first periodic report on its implementation of the International Covenant on Civil and Political Rights. Human Rights Watch attended that review. We raised our concerns regarding Kuwait's human rights record and its reservations to the ICCPR, which seek to limit its implementation of the Covenant's human rights guarantees where they conflict with existing Kuwaiti law.

The Human Rights Committee expressed many concerns during its review of Kuwait, which are reflected in its Concluding Observations.⁵ On Kuwait's treatment of the Bidun, the Human Rights Committee found that Kuwait "must ensure that all persons in its territory and subject to its jurisdiction, including Bedoons, enjoy Covenant rights without discrimination (article 26). The right to remain in one's own country and to return to it must be scrupulously respected (article 12)."⁶ The Committee went on to declare that Kuwait "should confer its nationality on a non-discriminatory basis and ensure that those who are granted Kuwaiti nationality are treated equally with other Kuwaiti citizens with regard to voting rights," amend its laws on naturalization "to ensure that their application does not entail discrimination on any of the grounds enumerated in article 26 of the Covenant," and "ensure the right of all children in Kuwait to measures of special protection pursuant to article 24 and 26 of

¹ The Bidun (also spelled Bedoon or Bedoun) are people resident in Kuwait for decades, even generations, who have never been granted Kuwaiti nationality, although many of them lack any other effective nationality. Until the mid-1980s they received government services and benefits as "potential citizens," but since then they have been stripped of almost all of the rights and benefits they previously received. The government now considers them "illegal residents" subject to prosecution and deportation. Currently there are more than 100,000 Bidun in Kuwait, and more than twice as many living outside of Kuwait.

² Adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI) of December 16, 1966, entry into force March 23, 1976.

³ Kuwait acceded to the International Covenant on Civil and Political Rights in 1996. It is also a state party to the International Convention on the Elimination of All Forms of Racial Discrimination (1968); the Convention on the Rights of the Child (1991); Convention on the Elimination of All Forms of Discrimination against Women (1994); the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1996); and the International Covenant on Economic, Social and Cultural Rights (1996).

⁴ The Human Rights Committee is responsible for monitoring state parties' implementation of the Covenant and its protocols, including reviewing states' periodic reports, receiving individual complaints alleging violations of the Covenant, and providing authoritative interpretations of the scope and meaning of the Covenant. It is composed of eighteen independent experts who serve in their personal capacity, and are elected for a four year term by a secret ballot of the states party to the Covenant.

⁵ See Appendix B.

⁶ Consideration of Reports Submitted by States Parties Under Article 40 of the Covenant, Concluding Observations of the Human Rights Committee: Kuwait, United Nations Human Rights Committee, Sixty-ninth Session, CCPR/CO/69/KWT, issued July 28, 2000, (hereafter, Concluding Observations), para. 15.

the Covenant,” including the right to acquire a nationality.⁷ The Committee also urged Kuwait to “refrain from deporting residents on the basis of classifying them as Bedoons who have failed to regularize their status.”⁸

With regard to women’s rights, the Committee found that “Kuwait must grant women effective equality in law and practice and ensure their right to non-discrimination,” declaring that “[p]olygamy should be prohibited by law,” and that Kuwait “should take all the necessary steps to ensure to women the right to vote and to be elected on equal footing with men” and fully enjoy equal access to public service.⁹ The Committee also urged Kuwait to “consider amending the [penal] law and make provision for the protection of the right to life of pregnant women under article 6 of the Covenant.”¹⁰

On the issue of freedom of expression, the Committee found that Kuwait “should ensure that every person can enjoy his or her rights under article 19 [on freedom of opinion, expression, and information] of the Covenant without fear of being subjected to harassment. The Press and Publications Law and the Penal Code should be brought into harmony with article 19.” In the closely related area of freedom of association, the Committee said Kuwait “should take appropriate measures so as to ensure the right of Kuwaitis to establish ... [political] parties,” and “should amend Law No. 24, encourage the formation of human rights non-governmental organizations in Kuwait and further their activities.”¹¹

Finally, the Human Rights Committee took a strongly critical stance in response to Kuwait’s “interpretative declarations” and reservation which seek to limit Kuwait’s obligations under the ICCPR. The Committee found that “the interpretative declaration regarding articles 2 [non-discrimination in Covenant rights] and 3 [equality between men and women] contravenes the State party’s essential obligations under the Covenant and is therefore without legal effect and does not affect the powers of the Committee.”¹² It urged Kuwait “to withdraw formally both the interpretative declarations and the reservations.”¹³

Human Rights Watch has included the full text of the Committee’s Concluding Observations, as well as a discussion of the review process, as an appendix to this report to facilitate their wide distribution. Our own recommendations follow here:

II. RECOMMENDATIONS

To the Government of Kuwait:

- Withdraw the reservation and interpretative declarations regarding articles 2(1), 3, 23, and 25(b) of the ICCPR and ratify its Optional Protocol, allowing a right of individual petition to the Human Rights Committee by persons who allege that their rights guaranteed by the ICCPR have been violated by Kuwait.
- Take immediate steps to ensure that any person whose rights under the ICCPR have been violated has effective remedy, and that such remedy is enforced by the competent authorities. In particular, judicial, administrative, and legislative authorities should be instructed that the Covenant is “part of the body of national legal provisions applicable in Kuwait and binding at all levels on the authorities and organs of the country.”¹⁴

⁷ Concluding Observations, paras. 16-18.

⁸ Concluding Observations, para. 16.

⁹ Concluding Observations, paras.5-7.

¹⁰ Concluding Observations, para 9.

¹¹ Concluding Observations, paras. 20-21, 23.

¹² Concluding Observations, para. 4.

¹³ Concluding Observations, para. 4.

¹⁴ Consideration of Reports Submitted by States Parties Under Article 40 of the Covenant, Initial Report of State Parties Due in 1997: Addendum, Kuwait, United Nations Human Rights Committee, CCPR/C/120/Add.1, December 3, 1999, (hereafter, Report of the Government of Kuwait), para. 37.

- Take urgent steps to end discrimination against the Bidun, and ensure their full enjoyment of rights guaranteed in the ICCPR. In particular, amend provisions in the Nationality Law which discriminate on the basis of gender, religion, or status, or violate the right to equality of spouses. An independent body should be established to investigate allegations of discrimination in granting nationality or naturalization, and violations of the ICCPR should be judicable before Kuwaiti courts.
- Ensure that all children, including Bidun children, enjoy fully the right to such measures of protection as are required under the ICCPR by their status as minors, including the right to acquire a nationality and the right to be registered immediately after birth. Special care should be taken to alleviate the impact of past discriminatory policies against Bidun children, and to ensure that their former limited or inferior access to medical care or education does not undermine their enjoyment of rights guaranteed in the ICCPR.
- Withdraw the reservation to the Convention of the Rights of the Child, which seeks to absolve Kuwait of its obligation to implement provisions of the Convention “that are incompatible with the laws of Islamic Shari’a and the local statutes in effect.”
- Ensure to all individuals who have a legitimate claim to Kuwait as their “own country” the full enjoyment of their rights to leave and return to Kuwait, including the right to obtain the necessary travel documents. The government should refrain from administratively or judicially deporting Bidun solely on grounds of their status as Bidun or their alleged origin.
- Ensure that the right to marry and found a family is guaranteed to all persons within Kuwait’s territory and subject to its jurisdiction, including families that include one or more Bidun members. In particular, Kuwait should take immediate steps to ensure that couples with one or more Bidun members are able to promptly register marriages, and families with one or more Bidun members are able to live together.
- Ratify the Convention on the Reduction of Statelessness, the Convention relating to the Status of Stateless Persons, and the Convention relating to the Status of Refugees.
- Ensure that women have equality before the law. Amend the Personal Status Law to be consistent with the rights guaranteed in articles 2(1), 3, 23, and 26 of the ICCPR. In particular, revoke those provisions which assign lesser weight to women’s testimony, give lesser rights in inheritance, and assign spouses unequal rights as to marriage, during marriage, and at its dissolution.
- Amend the Penal Code to be consistent with the rights guaranteed in articles 2(1), 3, 6 and 26 of the ICCPR. In particular, revoke provisions which reduce or eliminate penalties for crimes committed against women by men, and provide pregnant women and those who assist them with explicit exemptions from prosecution for inducing abortion when it is medically necessary to preserve the mother’s life.
- Ensure that Kuwaiti law and practice with regard to participation in public service and public affairs is consistent with the rights guaranteed in articles 2(1), 3, 25, and 26 of the ICCPR. In particular, revoke those provisions which restrict women’s full enjoyment of the right to vote, stand for election, and serve at all levels of the judiciary, and refer article 1 of the National Assembly Election Law to the Constitutional Court for constitutional review.
- Prepare and submit Kuwait's initial report (due on October 2, 1995) and second periodic report (due on October 2, 1999) on its implementation of the Convention on the Elimination of All Forms of Discrimination against Women, in accordance with the guidelines of the United Nations Committee on the Elimination of Discrimination against Women.
- Withdraw the reservations to 7(a), 9(2), and 16(1)(f) of the Convention on the Elimination of All Forms of Discrimination against Women, which seek to absolve Kuwait of its obligation to end discrimination against

women in voting, passing nationality to their children, and in their rights and responsibilities with regard to guardianship, wardship, trusteeship and adoption of children.

- Amend the Penal Code and Printing and Publications Law to be consistent with the rights guaranteed in articles 19 and 14 of the ICCPR, including revoking provisions that allow for the criminal prosecution, imprisonment, and fining of authors and journalists for the peaceful exercise of their right to freedom of expression, and that require researchers to prove good intentions.

III. KUWAIT'S RESERVATIONS TO THE ICCPR

When it ratified the ICCPR in 1996, Kuwait entered two “interpretative declarations” and one “reservation” to the terms of the Covenant. These sought to justify its continued application of national laws that discriminate on the basis of sex or religion. In effect, all three statements are reservations to the terms of the treaty, and this is the position of the Human Rights Committee, which has declared that “if a statement, irrespective of its name or title, purports to exclude or modify the legal effect of a treaty in its application to the State, it constitutes a reservation.”¹⁵

Kuwait entered its reservations in regard to articles 2(1), 3, 23, and 25(b) of the ICCPR. With respect to articles 2(1) and 3, Kuwait asserted that “Although the Government of Kuwait endorses the worthy principles embodied in these two articles as consistent with the provisions of the Kuwait Constitution in general and of its article 29 in particular, the rights to which the articles refer must be exercised within the limits set by Kuwaiti law.” This reservation goes to the heart of the Covenant, as articles 2 and 3 are the ICCPR’s first line of protection against discrimination. Article 2(1) requires all states parties to the ICCPR to respect and ensure to all individuals within their territory and subject to their jurisdiction the rights recognized in the Covenant, “without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.” Article 3 requires all states parties to ensure that men and women are equally able to enjoy the civil and political rights set forth in the treaty.

Kuwait’s reservation to article 23 also seeks to provide an opt out when the guarantees contained in the ICCPR conflict with Kuwaiti laws that discriminate on the basis of sex or religion. The reservation asserts “The Government of Kuwait declares that the matters addressed by article 23 are governed by personal-status law, which is based on Islamic law. Where the provisions of that article conflict with Kuwaiti law, Kuwait will apply its national law.” As we detail below, Kuwait’s personal status and nationality laws contain numerous provisions which discriminate on the basis of sex, and Kuwaiti law and practice frequently limit the freedom of women to marry and live with non-Kuwaiti men. Consequently, they contravene article 23 of the ICCPR, which states:

1. The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.
2. The right of men and women of marriageable age to marry and to found a family shall be recognized.
3. No marriage shall be entered into without the free and full consent of the intending spouses.
4. States Parties to the present Covenant shall take appropriate steps to ensure equality of rights and responsibilities of spouses as to marriage, during marriage and at its dissolution. In the case of dissolution, provision shall be made for the necessary protection of any children.

Finally, Kuwait’s reservation to article 25(b) seeks to restrict the Covenant’s right of citizens to vote and to be elected, making it subject to provisions in Kuwaiti law that bar women from voting and standing for office and severely limit the rights of naturalized citizens.¹⁶ The reservation asserts:

¹⁵ U.N. Human Rights Committee General Comment 24, Fifty-second Session, 1994, (hereafter General Comment 24), para. 3.

¹⁶ These provisions are discussed in Chapter V of this report.

The Government of Kuwait wishes to formulate a reservation with regard to article 25(b). The provisions of this paragraph conflict with the Kuwaiti electoral law, which restricts the right to stand and vote in elections to males. It further declares that the provisions of the article shall not apply to members of the armed forces or the police.

Yet, the text of article 25(b) explicitly prohibits restriction of the right to vote and to be elected on the basis of discrimination prohibited in article 2 of the Covenant:

Every citizen shall have the right and the opportunity, without any of the distinctions mentioned in article 2 and without unreasonable restrictions: [...]

b) To vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors [...]

All Kuwait's reservations are subject to the principle, formalized in the Vienna Convention on the Law of Treaties, that a state may not formulate a reservation to a treaty if "the reservation is incompatible with the object and purpose of the treaty."¹⁷ The Human Rights Committee provides authoritative interpretations of the provisions of the ICCPR, which are codified in its General Comments. The Committee stated in General Comment 24 that:

The object and purpose of the Covenant is to create legally binding standards for human rights by defining certain civil and political rights and placing them in a framework of obligations which are legally binding for those States which ratify; and to provide an efficacious supervisory machinery for the obligations undertaken. Reservations that offend peremptory norms would not be compatible with the object and purpose of the Covenant.¹⁸

In applying the object and purpose test, the Committee has specified that it is unacceptable for states to enter "a reservation to the obligation to respect and ensure the rights [of the Covenant], and to do so on a non-discriminatory basis (article 2(1)). Nor may a State reserve an entitlement not to take the necessary steps at the domestic level to give effect to the rights of the Covenant (article 2(2))."¹⁹ Thus, Kuwait's reservation regarding the prohibitions of discrimination contained in article 2(1) and article 3 is *prima facie* unacceptable. The Committee recently made this clear, in its Concluding Observations on Kuwait's first periodic report, stating: "the interpretative declaration regarding articles 2 and 3 contravenes the State party's essential obligations under the Covenant and is therefore without legal effect and does not affect the powers of the Committee."²⁰

All of Kuwait's reservations fail to meet other important conditions on reservations to the ICCPR. The Human Rights Committee has stated that "reservations must be specific and transparent," and "should not systematically reduce the obligations undertaken only to those presently existing in less demanding standards of domestic law," or "seek to remove an autonomous meaning to Covenant obligations, by pronouncing them to be identical, or to be accepted only in so far as they are identical, with existing provisions of domestic law."²¹

Kuwait's "interpretative declarations" and reservation are incompatible with the object and purpose of the ICCPR. They offend the peremptory norm of non-discrimination in enforcement and enjoyment of the rights of the Covenant, lack specificity, and systematically reduce Kuwait's obligations to the less demanding standards of its own domestic law. If allowed to stand they would effectively deny Kuwaiti women, Bidun, and non-Muslims their ability to invoke the full rights which are due to them under the Covenant, and set a dangerous precedent for future attempts to restrict fundamental rights guaranteed in the ICCPR and other human rights instruments.

¹⁷ States are also prohibited from entering reservations when (a) the reservation is prohibited by the treaty; (b) the treaty provides that only specified reservations, which do not include the reservation in question, may be made. Vienna Convention on the Law of Treaties, May 23 1969 (entry into force January 27, 1980), article 19.

¹⁸ General Comment 24 paras. 7, 8.

¹⁹ General Comment 24 para. 9.

²⁰ Concluding Observations, para. 4.

²¹ General Comment 24, para. 19.

IV. DISCRIMINATION BASED ON ORIGIN AND STATUS: THE BIDUN

Bidun in Kuwait face widespread and systematic discrimination on the basis of their origin and status.²² In many instances this discrimination results in violations of civil and political rights protected by the Covenant, such as the right to leave and return to one's own country, the right to marry and found a family, children's right to be registered immediately after birth, and children's right to acquire a nationality. In addition, Kuwaiti laws and practices which discriminate on the basis of sex and religion frequently have a disproportionate impact on Bidun individuals and families, particularly with regard to issues of nationality and naturalization in the case of discrimination based on sex and religion, and with regard to marriage, divorce, and family reunification with regard to discrimination based on sex. Finally, government policies discriminating against the Bidun are also responsible for serious violations of economic and social rights, such as the right to work, the right to education, and the right to health.²³

The Kuwaiti government's failure to take Bidun human rights seriously was reflected recently in the government's first periodic report to the Human Rights Committee on its implementation of the ICCPR. This report, amazingly, made no mention whatsoever of the Bidun. When questioned by the Committee, the government delegation repeatedly sought to justify Kuwait's discriminatory treatment of Bidun by referring to them as "illegal residents" who may in some cases be deserving of a "humanitarian" solution, but who have few if any claims to rights in Kuwait.²⁴

This position contravenes Kuwait's obligations under the ICCPR, which requires all states parties to guarantee effective enjoyment of the rights set out in the treaty "*to all individuals within its territory and subject to its jurisdiction,*" and to do so without discrimination.²⁵ The rights of non-citizens under the Covenant are further specified in the Human Rights Committee's General Comment 15, which states:

In general, the rights set forth in the Covenant apply to everyone, irrespective of reciprocity, and irrespective of his or her nationality or statelessness. Thus, the general rule is that each one of the rights of the Covenant must be guaranteed without discrimination between citizens and aliens. Aliens receive the benefit of the general requirement of non-discrimination in respect of the rights guaranteed in the Covenant, as provided for in Article 2 thereof. Exceptionally, some of the rights recognized in the Covenant are expressly applicable only to citizens (Article 25), while Article 13 applies only to aliens.²⁶

Although discrimination against the Bidun takes many forms, here we focus on those Kuwaiti laws and practices which lead directly to violations of the ICCPR. In addition, as some government policies which do not directly violate the ICCPR may nevertheless undermine Bidun's ability to enjoy rights and freedoms guaranteed in the Covenant, these too are addressed where relevant.

²² For a more extensive discussion of this discrimination, including extensive case studies, see Human Rights Watch/Middle East, *The Bedoons of Kuwait: "Citizens without Citizenship"* (New York: Human Rights Watch, 1995).

²³ Kuwait is state party to the International Covenant on Economic, Social, and Cultural Rights (ICESCR). Article 6 of the ICESCR provides for the right to work; article 12 for the "right to the highest attainable standard of mental and physical health"; and article 13 for the right to education.

²⁴ Comments by Ambassador Dharar A.R. Razzoqi, Permanent Mission of Kuwait to the United Nations (Geneva), 1851st Meeting of the United Nations Human Rights Committee, July 18, 2000.

²⁵ ICCPR, article 2(1), emphasis added. Similar language appears in article 26, on non-discrimination and the right to the equal protection of the law.

²⁶ U.N. Human Rights Committee General Comment 15, *The Position of Aliens under the Covenant*, Twenty-seventh Session, 1986, (hereafter, General Comment 15), paras. 1 and 2.

Background

There are approximately 120,000 Bidun resident in Kuwait.²⁷ An estimated 240,000 are living outside the country, many of whom wish to return to Kuwait but have not been permitted to do so by the government.²⁸ The term Bidun is short for the Arabic phrase meaning “without nationality” (*bidun jinsiya*),²⁹ and in Kuwait refers to longtime residents of Kuwait who, under the terms of Nationality Law 15/1959, should be eligible for Kuwaiti nationality by naturalization but who have not been granted it. This group includes:

- Individuals descended from nomadic groups whose ancestral lands are within the borders of present day Kuwait but who were unable to claim automatic citizenship under the Nationality Law of 1959 because they could not prove continuous settled presence in Kuwait from 1920, as that law requires.
- Individuals who could have registered as citizens under the Nationality Law and earlier citizenship regulations but neglected to do so.
- Individuals who attempted to claim citizenship under the Nationality Law and earlier citizenship regulations and whose applications were accepted for consideration but never acted upon by the Kuwaiti authorities.
- Individuals who migrated to Kuwait from nearby countries to work and over time lost effective links to and effective nationality in their country of origin, as well as children of such migrants who failed to establish nationality in their parents’ country of origin.
- Children of Bidun parents, including notably the children of Kuwaiti mothers and Bidun fathers.

Until the mid-1980s the Kuwaiti government treated Bidun as lawful residents of Kuwait whose claims to citizenship were being considered, a status that distinguished them not only from other foreign residents but also from other groups of stateless residents, such as Palestinians from Gaza. The number of Bidun was included in the total number of Kuwaiti citizens in the Ministry of Planning’s Annual Statistical Abstract, and Bidun were issued with documents identifying them as Bidun. With the exception of voting rights they received the benefits of full citizens, including subsidized housing, education, and health services. Bidun made up the vast majority of the rank and file of all branches of the police and military, and were eligible for temporary passports under article 17 of Passport Law 11/1962. Intermarriage among Bidun and Kuwaiti citizens was and is common, and because of the vagaries of the implementation of the Nationality Law it is not unusual for a single family to have members with different citizenship statuses: original citizenship,³⁰ citizenship by naturalization, and Bidun.

In 1985 the government began applying provisions of Alien Residence Law 17/1959 to the Bidun and issued a series of regulations stripping the Bidun of almost all their previous rights and benefits. In 1986 the government severely restricted Bidun’s eligibility for travel documents.³¹ It also fired government employees not employed by the army or the police who could not produce valid passports, whether issued by Kuwait or another country, and instructed private employers to do the same. In 1987 the government began refusing to issue Bidun new or

²⁷ Ministry of Interior officials’ statements on the Bidun population are often contradictory. During the Human Rights Committee review, Jamal K. al-Reesh of the Ministry of Interior’s Executive Committee on Illegal Residents (also known as the “Bidun Committee”) stated at different times that the Executive Committee had 121,285 persons currently registered; that the number of Bidun had dropped to 102,004 due to changes in the Nationality Law; and that “there are 302,000 people claiming such status as Bidun today.” 1851st and 1853rd meetings of the United Nations Human Rights Committee, July 18-19, 2000.

²⁸ Estimate of population living abroad based on Kuwaiti official estimates of a Bidun population of 260,000 at the time of the 1990 Iraqi invasion, with a 3.5 per cent growth rate per annum.

²⁹ In the 1980s the government also began using the term “of undetermined nationality” (*ghayr muhaddad al-jinsiya*) to refer to this group, and since 1993 it has also used the term “illegal residents” (*muqimun bisura ghayr qanuniya*). Despite the new official terminology, in meetings with Human Rights Watch in April 2000 officials from the Ministry of Interior continued to refer to this group as Bidun and distinguish between Bidun and other “illegal residents” like visa overstayers.

³⁰ Article 1 of Nationality Law 15/1959 creates a category of “original Kuwaiti nationals” who are, by nature of that status, eligible for a higher level of rights and protections in Kuwaiti law.

³¹ In April 1986 the government restricted Bidun’s eligibility for travel documents to long-term employees of the military and police, and to those traveling for officially-sponsored medical treatment. Issuance of travel documents to all others was contingent on their renouncing their right to return to Kuwait. In 2000, for the first time, the government issued a limited number of one-trip only travel documents for Bidun to go on pilgrimage to Saudi Arabia.

renewal driver's licenses or register their cars, and began ending public education for Bidun children and instructing private schools to require valid residency permits. In 1988 the ban on public education was extended to the university, and Kuwaiti clubs and associations were instructed to dismiss their Bidun members. Also beginning in 1988, statistical data on Bidun in the government's Annual Statistical Abstract was transferred from the Kuwaiti category to alien population categories.

Restrictions increased in the aftermath of the 1990-1991 Iraqi occupation of Kuwait. Bidun who fled to Iraq to escape the air war found themselves stranded there when Kuwait refused to allow the reentry of all but a few.³² Bidun government employees were dismissed *en masse*, and only a small portion were later rehired. Beginning in 1993 Bidun were also required to pay fees to utilize health care centers, although those services remained free for Kuwaiti citizens. Bidun not employed by the government found themselves facing serious obstacles when seeking to register births, marriages, divorces, and deaths, because they lacked the required identification and were typically required to go through lengthy security checks before the Ministry of Interior would issue a letter of no objection.

More recently, in May 2000, the Kuwaiti National Assembly passed amendments to the Nationality Law which were intended to be the final statement on which Bidun would be eligible for naturalization, and in June 2000 the Ministry of Interior ended a nine month program during which Bidun who signed affidavits admitting to a foreign nationality and renouncing claims to Kuwait nationality could apply for a five year residency permit and other benefits. Official statements regarding both policies, as well as actions taken by ministries implementing these policies, raise serious concerns about their impact on human rights, and are addressed in the sections which follow.

The Right to Leave and Return to One's "Own Country"

In addition to the broad coverage the Covenant provides to all individuals within a state's territory and subject to its jurisdiction, the ICCPR also recognizes the special rights of individuals who have a strong connection to a country but are not necessarily nationals of that country. Thus, article 12(2) states that "[e]veryone shall be free to leave any country, including his own," while article 12(4) states that "[n]o one shall be arbitrarily deprived of the right to enter his own country." Article 12(3) provides that the right to leave a country may in some circumstances be subject to restrictions "which are provided by law, are necessary to protect national security, public order (*ordre public*), public health or morals or the rights and freedoms of others, and are consistent with the other rights recognized in the present Covenant." There are, however, no allowable restrictions under international law on the right to return to one's own country.

The Human Rights Committee explained the meaning of "his own country" in its General Comment 27, saying the term "embraces, at the very least, an individual who, because of his or her special ties to or claims in relation to a given country, cannot be considered to be a mere alien," and may include "categories of long-term residents, including but not limited to stateless persons arbitrarily deprived of the right to acquire the nationality of the country of such residence."³³ The Committee further noted that the "the right to leave a country must include the right to obtain the necessary travel documents."³⁴

Kuwait refuses to acknowledge the right of return of, and arbitrarily denies re-entry to, many Bidun who can claim Kuwait as their "own country." This is the case particularly with regard to Bidun who became stranded abroad after the 1991 liberation of Kuwait from Iraqi occupation. When the Human Rights Committee recently questioned Kuwait's failure to acknowledge this group's right of return, Kuwait's representative responded: "The state of Kuwait does not prohibit a person who left Kuwait during the invasion from returning to Kuwait if that

³² Although most of Kuwait's citizens left the country via Saudi Arabia during the war, Saudi Arabia rarely allowed Bidun entry and Iraqi authorities required them to surrender passports if they wished to cross to Saudi Arabia. Passports were not required to pass into Iraq, and since most Bidun lacked passports those fleeing the fighting tended to cross into Iraq.

³³ U.N. Human Rights Committee General Comment 27, Freedom of Movement, Sixty-seventh Session, 1999, (hereafter, General Comment 27) para. 20.

³⁴ General Comment 27, para. 9.

person has a valid [foreign] passport and qualifies for a visa according to the law.”³⁵ This response further demonstrates that Kuwait is not fulfilling its obligations to facilitate the right of return, which under the terms of the Covenant cannot be made dependant on a person’s ability to obtain a foreign passport or qualify for a Kuwaiti visa.

In addition to denying reentry to Bidun who have gone abroad, Kuwait has also carried out deportations of Bidun, and then denied them re-entry to what effectively constitutes their “own country.” Under article 16 of Alien Residence Law 17/1959, the Minister of Interior may deport non-Kuwaiti nationals by administrative action if he determines that they have “no recognizable source of livelihood;” if he “believes that the deportation is mandated by public interest, public security, or public morals;” or if a court orders them deported after sentencing them in a criminal case.³⁶ Administrative decisions to deport non-Kuwaitis are explicitly excluded from judicial review.³⁷

Recent statements by Kuwaiti government officials suggest that the government may be considering additional deportations of Bidun. On June 27, 2000, the Ministry of Interior ended a nine-month program during which Bidun were pressured to sign affidavits admitting a foreign nationality and renouncing claims to Kuwait nationality in exchange for the opportunity to apply for a five year residency permit and other benefits.³⁸ Immediately following the June 27 deadline, Ministry of Interior officials announced the Ministry would begin turning over files of Bidun who had not “regularized their situation”³⁹ to the Prosecution Office and seek the deportation of individuals convicted of violations of the Nationality Law or the Alien Residence law.⁴⁰ Prosecutions began on July 8, 2000.⁴¹ Later that month, Attorney General Mohammad al-Zu`abi announced that the Minister of Interior had issued a decree to establish a committee to deal with the cases of Bidun who are ordered to be administratively or judicially deported.⁴²

³⁵ Jamal K. al-Reesh of the Ministry of Interior’s Executive Committee on Illegal Residents, 1853rd Meeting of the United Nations Human Rights Committee, July 19, 2000.

³⁶ The regulations governing implementation of this article allow for deportation “i. When the alien is convicted and sentenced on a criminal charge or on an offense against honor or integrity; ii. When the alien is sentenced in the course of five years to three penalties, one of which is a custodial penalty; iii. When the alien is sentenced to any four penalties in the course of five years; iv. When public interest, public order or morals warrant expulsion.” Ministry of Interior Decision 640/1987, article 26.

³⁷ Formation of a Division of the Court of General Jurisdiction to Review Administrative Cases Law 20/1981, article 1(5).

³⁸ Under the program, which ran from October 1, 1999 to June 27, 2000, Bidun currently employed by the military who admitted to a foreign nationality would 1) continue to receive their pensions; 2) continue to receive subsidized housing; 3) continue to receive subsidies for children in private schools. Civilians would receive five year residency permits and would not be required to have a Kuwaiti sponsor, and civilians and military personnel would 1) receive an amnesty from prosecution for violations of the Foreigners Residence Law (military and civilians); 2) be excused from the conditions in the Foreigners Residence Law for accompanying family members; 3) be allowed to continue in government or private jobs; 4) be allowed to continue to receive subsidized health care; and 5) pay only nominal residency permit fees. These benefits were phased out as the program progressed. Ministry of Interior chart. Arabic original in Human Rights Watch possession.

³⁹ The term “regularize one’s situation” (*ta`dil awdhahi*) is used by the Ministry of Interior in the case of the Bidun to refer to legalizing one’s status in Kuwait by obtaining a foreign passport and registering as a foreign resident. “IDs [for those with] the 1965 Census [Registration], and We Possess Evidence of Their Affiliation: al-Subay`i to al-Watan: This is What is Required of the Bidun,” Nasir al-Hussayni and Faris al-Shamari, *al-Watan Newspaper*, Kuwait City, Kuwait, July 24, 2000. (Arabic)

⁴⁰ See, for example, “Meeting of the Leaders of Interior and Justice after the End of the Bidun Deadline: Immediate Transfer of Document Falsifiers to the Prosecution and One Month for Violators to Rectify Their Situation Before the Trial,” Mohammad al-Sharhan and Husayn `Abdullah, *al-Qabas Newspaper*, Kuwait, June 29, 2000 (Arabic).

⁴¹ By July 12, 2000, of twenty cases the Ministry of Interior had referred for investigation, five had been ordered detained for twenty-one days for questioning, one had been released on KD100 bail because of his age, and fourteen had been issued warrants for their arrest. “Detention 21 Days for 5 [Bidun] Suspected of Forgery and the Investigations [Office] Searches for 14” `Abdullah al-Shamari, *al-Watan Newspaper*, Kuwait City, Kuwait, July 12, 2000 (Arabic).

⁴² Reported in “Punishment is Personal and the Son is Not Punished for His Father’s Offense,” Kuwait News Agency, *al-Qabas Newspaper*, Kuwait City, Kuwait, July 31, 2000. (Arabic)

In addition to preventing Bidun from entering their “own country,” Kuwait also limits their ability to leave their “own country” by placing severe and arbitrary restrictions on the circumstances under which it will grant Bidun travel documents. Thus, Bidun must specify why they wish to travel when applying for travel documents, and those that are provided are typically limited period, single use documents issued under article 17 of Passport Law 11/1962. No documents for travel for pilgrimage to Mecca were issued prior to 2000,⁴³ travel documents for educational reasons are exceedingly difficult to obtain, and persons wishing to travel for medical treatment must submit medical documents attesting that appropriate treatment is not available in Kuwait.⁴⁴ The director general of the Interior Ministry’s General Administration for Nationality and Travel Documents has asserted that the ministry places “no specific conditions” on Bidun applicants for travel documents and that the Minister of Interior himself makes all decisions, while acknowledging that the minister’s policy is to restrict the number of travel documents issued to Bidun.⁴⁵

Based on the Bidun’s long residence in Kuwait, family ties, and integration into Kuwaiti society, Human Rights Watch believes there is a strong presumption that most or all of the Bidun, both those currently inside or outside Kuwait, meet the test of “special ties to or claims in relation to a given country” that make Kuwait their “own country.”

Those Kuwaiti laws and policies which arbitrarily deny Bidun the right to enter Kuwait, including those which allow for judicial and administrative deportations based upon considerations or criminal convictions arising directly from their status as Bidun, violate article 12(4) of the ICCPR. In addition, Kuwait’s severe and arbitrary restrictions on granting Bidun travel documents appear to violate article 12(2) of the ICCPR. Insofar as the Bidun lack an effective nationality, the responsibility to issue Bidun with travel documents must fall on the government of Kuwait. Thus far, Kuwait has not provided any information to show that the restrictions that are currently in existence and applied to the Bidun are necessary for, and proportional to, the purposes specified in article 12(3) of the ICCPR.⁴⁶

In its Concluding Observations to Kuwait’s ICCPR review, the Human Rights Committee stated:

In view of the fact that many of these people are born or have been living in the territory of Kuwait for decades, and some are in the service of the government, the Committee is gravely concerned by the sweeping statement of the Delegation characterizing the Bedoons as “illegal residents”. The Committee is concerned that many Bedoons, long resident in Kuwait, who left the country during the Iraqi occupation in 1990-91 are not permitted to return to Kuwait. The State party must ensure that all persons in its territory and subject to its jurisdiction, including Bedoons, enjoy Covenant rights without discrimination (article 26). The right to remain in one’s own country and to return to it must be scrupulously respected (article 12).

The Committee urged Kuwait “to refrain from deporting residents on the basis of classifying them as Bedoons who have failed to regularize their status,” and said Kuwait “should ensure that all the rights protected under the Covenant are respected” with regard to persons detained awaiting deportation.

⁴³ In an interview on April 10, 2000 Shaykh Mohammad Yusif Al Sabah, Director General of the General Administration for Nationality and Travel Documents of the Ministry of Interior, noted that this was the first year for a long time that Bidun have been issued documents for pilgrimage, and Jamal K. al-Reesh of the Ministry of Interior’s Executive Committee on Illegal Residents asserted that 2,500 such documents were issued in 2000. Human Rights Watch interview, Kuwait City, Kuwait, April 10, 2000; 1853rd and 1854th meeting of the United Nations Human Rights Committee, July 19, 2000.

⁴⁴ Human Rights Watch interviews, Kuwait City, Kuwait, April 2000.

⁴⁵ Shaykh Mohammad Yusif Al Sabah, Director General of the General Administration for Nationality and Travel Documents of the Ministry of Interior. Human Rights Watch interview, Kuwait City, Kuwait, April 10, 2000.

⁴⁶ “3. The above-mentioned rights shall not be subject to any restrictions except those which are provided by law, are necessary to protect national security, public order (ordre public), public health or morals or the rights and freedoms of others, and are consistent with the other rights recognized in the present Covenant.” ICCPR, article 12(3).

Nationality Law 15/1959

“My father had bad luck. He tried to register in the 1960s but when he went to register it had closed the week before. I admit we were lazy, but no one knew it would be important. They gave him an appointment but when he went they told him [the period] for accepting people for registration had ended.”

*-- Bidun born and raised in Kuwait*⁴⁷

In theory, Kuwait's Nationality Law provides numerous means for individuals to acquire Kuwaiti nationality. However, many of its provisions violate the principle of non-discrimination on the basis of gender, religion, or status, and undermine the ability of children to exercise their right to acquire a nationality. In addition, implementation of the naturalization provisions in the Nationality Law has been highly arbitrary and lacking in transparency. In the past the Ministry of Interior has failed to provide applicants with clear, detailed information regarding the criteria used in making decisions; engaged in lengthy and unexplained delays in making decisions; and failed to make public any procedures and mechanisms to allow applicants to submit supporting evidence, challenge evidence supplied by the ministry, and appeal ministry decisions.⁴⁸ Administrative decisions on nationality are not subject to judicial review,⁴⁹ and legislative committees dealing with complaints have failed to ensure effective remedy in cases of abuses.⁵⁰ Although official figures are difficult to obtain, it appears that only a very small number of the individuals eligible for naturalization have been naturalized, and many of those naturalized are not Bidun.

Requirements for Nationality and Naturalization

Article 1 of the Nationality Law creates a category of “original Kuwaiti nationals” who are, by nature of that status, eligible for a higher level of rights and protections in Kuwaiti law.⁵¹ They are defined as “persons who were settled in Kuwait prior to 1920 and who maintained their normal residence there until the date of the publication of the law [May 21, 1959].”⁵² Persons who could not prove settled residence, including many from tribal and nomadic backgrounds who are now Bidun, were excluded from automatic nationality.

With the exception of children born to Kuwaiti fathers (but not to Kuwaiti mothers) and children born in Kuwait to unknown parents, who are considered Kuwaiti by birth, all other Kuwaiti citizens are naturalized. The Nationality Law contains five articles which provide for naturalization, all subject to the discretion of the Ministry of Interior. Article 3 allows naturalization of the child of a Kuwaiti mother and an unknown father. Article 4 allows naturalization of any adult who meets the following conditions:

⁴⁷ Name withheld by request. Human Rights Watch interview, Kuwait City, Kuwait, April 2000.

⁴⁸ Brigadier Mohammad al-Subay'i, the director of the Ministry of Interior's Executive Committee on Illegal Residents, told Human Rights Watch that persons with complaints about Executive Committee actions have “no judicial appeal, but [do have] administrative appeal: [they] can complain to the Minister of Interior, or go to the parliament's Human Rights Committee, or the Complaint Committee in parliament, or the press.” Human Rights Watch interview, Kuwait City, Kuwait, April 8, 2000.

⁴⁹ Article 2 of Kuwait's Judiciary Service Code 23/1990 excludes “sovereign actions of state,” officially interpreted to include matters related to nationality, from consideration by the courts, and article 1(5) of Formation of a Division of the Court of General Jurisdiction to Review Administrative Cases Law 20/1981 excludes administrative decisions on “matters relating to nationality, residency, and deportation of non-Kuwaitis” from that court's jurisdiction.

⁵⁰ As non-citizens, Bidun can only make complaints to the parliament's Human Rights Committee, and not to the Complaints Committee. In a meeting with Human Rights Watch, M.P. Sami al-Manayyes, the chairperson of the National Assembly's Human Rights Committee, said that while the committee had received some complaints from Bidun who alleged that government agencies had overstepped their powers, the committee saw its role as “humanitarian only,” and limited to asking questions. In particular, he stated that the committee does not take a position on whether a person qualifies for nationality or naturalization. Human Rights Watch interview, Kuwait City, Kuwait, April 3, 2000.

⁵¹ Original Kuwaitis are not subject to denationalization under article 13 of the Nationality Law, or the 20 year waiting period prior to gaining the right to vote in Parliamentary elections specified in article 6.

⁵² Nationality Law 15/1959, article 1. The year 1920 was chosen because it was in that year that residents of Kuwait City erected a wall to defend themselves from attacks by nomadic militias.

1. that he has lawfully resided in Kuwait for at least twenty consecutive years or for at least fifteen consecutive years if he is an Arab belonging to an Arab country....
2. that he has a lawful means of earning his living, is of good character and has not been convicted of an honor-related crime or of an honesty-related crime;
3. that he has knowledge of the Arabic language;
4. that he possesses qualifications or renders services needed in Kuwait;
5. that he be an original Muslim by birth, or that he has converted to Islam according to the prescribed rules and procedures and that a period of at least five years has passed since he embraced Islam before the grant of naturalization. Nationality thus acquired is *ipso facto* lost and the decree of naturalization rendered void *ab initio* if the naturalized person expressly renounces Islam or if he behaves in such a manner as clearly indicates his intention to abandon Islam. In any such case, the nationality of any dependant of the apostate who has acquired it upon the naturalization of the apostate is also rendered void.

The number of individuals naturalized according to article 4 is further limited by the requirement that legislation be passed setting the quota for naturalization in a given year. According to one Ministry of Interior official speaking in April 2000, there has been “no naturalization under article 4 for years” because no such quota had been set.⁵³ Indeed, while there were twenty nationality-related laws and decrees passed in the period from December 1959 to September 1997, only one, Law 49/1984, sets a quota for naturalizations under article 4.⁵⁴

Under article 7 of the 1959 law, minor children of naturalized fathers are automatically naturalized, but the foreign wife of a naturalized Kuwaiti man must declare her desire for naturalization within one year of her husband’s naturalization to be eligible for naturalization through him. A foreign wife of a Kuwaiti national may also be eligible for naturalization through her husband under article 8. A wife becomes eligible after the passage of fifteen years after declaring her desire for naturalization, provided she remains married for that full period.⁵⁵ In the case of divorce or death of the husband before the end of the fifteen year period, wives who have a child from that husband and who have maintained their legal residence in Kuwait for the full period are eligible for naturalization. There are no provisions in the law for foreign husbands to acquire nationality through their Kuwaiti wives.

Article 7(bis), added in May 1998, allows naturalization of children of naturalized fathers who were adults at the time of the father’s naturalization, as well as adult grandchildren born to his sons, and any minor grandchildren born to dead sons if the sons had not been naturalized before his death. The law explicitly excludes children and grandchildren of a naturalized man’s daughters, and further specifies that only applications submitted within one year of its passage would be considered. Persons naturalized pursuant to this article must also meet the conditions in articles 4(2), 4(3), and 4(5).

On May 16, 2000, Kuwait’s National Assembly passed legislation intended to allow naturalization under article 5 of the Nationality Law of some Bidun who had proof of long-time residency or were children of Kuwaiti mothers. As amended, article 5 now allows the naturalization of persons who rendered valuable services to Kuwait; children of Kuwaiti mothers and fathers who are prisoners of war, dead, or have irrevocably divorced the mothers; persons resident in Kuwait in and before 1965, as well as their descendants, if the descendants are born and resident in Kuwait, providing the applicants have maintained their Kuwaiti residency until the issuance of a

⁵³ Human Rights Watch interview with Shaykh Mohammad Yusuf Al Sabah, Kuwait City, Kuwait, April 10, 2000.

⁵⁴ Council of Ministers Legal Advice and Legislation Administration, *Guide to Laws and Regulations Issued by the State of Kuwait: From 1954 to the End of 1997*, (Kuwait City: State of Kuwait, 1999), pp. 122-123. (Arabic)

⁵⁵ The law allows the Minister of Interior discretion to shorten the waiting period, and in practice it varies according to the wife’s nationality. In a press conference on July 26, 2000 Director of the Nationality and Passports Administration Shaykh Mohammad al-Yusuf Al Sabah said that the waiting period for nationals from Gulf states was five years, and the period for women with Arab or “foreign” nationalities was ten years. “[Minister of Interior Shaykh Mohammad] al-Khaled [Al Sabah]: Seven Thousand Bidun Admit Falsifying their Data,” `Abd al-Salam al-`Awadi and Kuwait News Agency, *al-Qabas Newspaper*, Kuwait City, Kuwait, July 27, 2000. (Arabic)

decree naturalizing them.⁵⁶ Persons eligible for nationality under article 5 must also meet the conditions in article 4(2), 4(3), and 4(5). As with article 4, no naturalizations based on long-term residence can take place in a given year until legislation is passed setting the quota for naturalization in that year -- such legislation was passed only once in the period from December 1959 to September 1997.⁵⁷ Legislation passed on May 18, 2000 set a quota of 2000 applicants and their families for the year 2000.

Nationality and Equality Before the Law

“Here nationality is granted by connections (wastat) and payments.”
-- National Assembly Member Hussayn al-Qalaf⁵⁸

In addition to the general requirement in article 2 of the ICCPR that its application be non-discriminatory, the ICCPR provides several other guarantees of equality and non-discrimination. Article 26 guarantees everyone equal protection before the law:

All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

Similarly, with regard to gender equality, article 3 of the ICCPR provides for “the equal right of men and women to the enjoyment of all civil and political rights” in the Covenant, while article 23(4) requires states parties to “take appropriate steps to ensure equality of rights and responsibilities of spouses as to marriage, during marriage and at its dissolution. In the case of dissolution, provision shall be made for the necessary protection of any children.” The Human Rights Committee has stressed the applicability of this article to issues of nationality and naturalization, declaring: “With regard to equality as to marriage, the Committee wishes to note in particular that no sex-based discrimination should occur in respect of the acquisition or loss of nationality by reason of marriage.”⁵⁹

In its Concluding Observations on Kuwait’s review, the Human Rights Committee stated that Kuwait “should confer its nationality on a non-discriminatory basis and ensure that those who are granted Kuwaiti nationality are treated equally with other Kuwaiti citizens with regard to voting rights (articles 25, 26 of the Covenant).”⁶⁰ The Committee also expressed concern “about other instances of discrimination, in particular the naturalization of Muslim applicants exclusively,” and said that “the laws on naturalization and nationality should be amended to ensure that their application does not entail discrimination on any of the grounds enumerated in Article 26 of the Covenant.”⁶¹

The provisions of the Kuwaiti Nationality Law which deny Kuwaiti women the right to pass their nationality to their children, and which provide lower levels of rights and protections to naturalized citizens in comparison

⁵⁶ Ministry of Interior officials have said that Bidun applying for based on residence since 1965 must have been registered in Kuwait’s 1965 census, a group which they say includes approximately 36,000 Bidun. However, interviews by Human Rights Watch suggest that many Bidun who were present in Kuwait in 1965 did not register in this census. It is not clear what documents will be required to prove their continued residence after 1965. Many Bidun will undoubtedly face difficulty compiling complete formal documentary evidence of their presence in Kuwait given government policies denying them legal status since 1985, the prevalence of individuals from nomadic and other social backgrounds with low literacy rates, and the destruction of personal property and government files during the 1990 Iraqi invasion.

⁵⁷ Council of Ministers Legal Advice and Legislation Administration, *Guide to Laws and Regulations Issued by the State of Kuwait*, pp. 122-123.

⁵⁸ Human Rights Watch interview, Kuwait City, Kuwait, April 9, 2000.

⁵⁹ U.N. Human Rights Committee General Comment 19, Protection of the Family, the Right to Marriage and Equality of the Spouses, Thirty-ninth session, 1990, (hereafter, General Comment 19), para. 7.

⁶⁰ Concluding Observations, para. 16.

⁶¹ Concluding Observations, para. 18.

with “original” citizens, violate article 26 of the ICCPR. Furthermore, the provisions in the Nationality Law which exclude foreign or Bidun spouses of Kuwaiti women from the opportunity to apply for nationality based on marriage, and which differentiate in the treatment of children of divorced Kuwaiti mothers and non-Kuwaiti fathers depending on the type of divorce, violate the article 23(4) requirement that states ensure equality of rights and responsibility of spouses and make provision for the protection of children after a marriage’s dissolution.

Provisions that discriminate in granting nationality against children born to Bidun parents, and against children born to Bidun fathers and Kuwaiti mothers, violate the right of children to acquire a nationality in article 24(3) of the ICCPR, discussed below.

Other Nationality Law provisions regarding naturalization also violate the guarantee of equality before the law in article 26 of the ICCPR. Of special concern in this regard are provisions requiring that applicants for naturalization be Muslim, and for denaturalizing “apostates” from Islam and their dependants. Denaturalization in this manner also may constitute a violation of the right to freedom of religion set out in article 18 of the ICCPR. In particular, article 18(2) requires that “No one shall be subject to coercion which would impair his freedom to have or to adopt a religion or belief of his choice.”

Finally, Kuwait’s failure to provide effective remedies for ICCPR violations related to nationality and naturalization is a violation of its obligations under article 2(3) of the ICCPR. Article 2(3)(a) requires states to ensure that persons whose rights or freedoms guaranteed in the treaty are violated have an effective remedy, while article 2(3)(b) requires states parties “to ensure that any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy.”

Children’s Entitlement to Protections Based on Their Status as Minors

The ICCPR provides a number of additional protections specific to children. Among these is article 24(1), which states that “Every child shall have, without any discrimination as to race, colour, sex, language, religion, national or social origin, property or birth, the right to such measures of protection as are required by his status as a minor, on the part of his family, society and the State.” The Human Rights Committee has stated that:

such measures, although intended primarily to ensure that children fully enjoy the other rights enunciated in the Covenant, may also be economic, social and cultural. For example, every possible economic and social measure should be taken to reduce infant mortality and to eradicate malnutrition among children and to prevent them from being subjected to acts of violence and cruel and inhuman treatment or from being exploited by means of forced labour or prostitution, or by their use in the illicit trafficking of narcotic drugs, or by any other means. In the cultural field, every possible measure should be taken to foster the development of their personality and to provide them with a level of education that will enable them to enjoy the rights recognized in the Covenant, particularly the right to freedom of opinion and expression.⁶²

Two such measures of protection specified in the Covenant are the right to be registered at birth and the right to acquire a nationality.⁶³ Article 24(3) states that “Every child has the right to acquire a nationality.” The Human

⁶² General Comment 17, Rights of the Child, Thirty-fifth Session, 1989, para. 3.

⁶³ Article 7 of the Convention on the Rights of the Child (CRC), ratified by Kuwait in 1991, provides for similar rights: “1. The child shall be registered immediately after birth and shall have the right from birth to a name, the right to acquire a nationality and, as far as possible, the right to know and be cared for by his or her parents. 2. States Parties shall 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.” The United Nations Committee on the Rights of the Child, the CRC treaty-monitoring body, criticized Kuwait for legislation whereby “nationality may only be obtained by a child from his/her Kuwaiti father,” and recommended amendments to ensure that “Kuwaiti nationality be determined in light of the provisions and principles of the Convention, especially articles 2 [non-discrimination], 3 [best interests of the child], and 7.” Consideration of Reports Submitted by States Parties under Article 44 of the Convention, Concluding Observations of the Committee on the Rights of the Child: Kuwait, United Nations the Committee on the Rights

Rights Committee has said that “the purpose of this provision is to prevent a child from being afforded less protection by society and the State because he is stateless.”⁶⁴ While noting that article 24(3) “does not necessarily make it an obligation for States to give their nationality to every child born in their territory,” the Committee further states that:

States are required to adopt every appropriate measure, both internally and in cooperation with other States, to ensure that every child has a nationality when he is born. In this connection, no discrimination with regard to the acquisition of nationality should be admissible under internal law as between legitimate children and children born out of wedlock or of stateless parents or based on the nationality status of one or both of the parents.⁶⁵

As noted earlier, Kuwait’s Nationality Law contains no provision for the child of two stateless parents to acquire nationality at birth, and only limited opportunities for the child of a stateless father and Kuwaiti mother to acquire nationality through petitioning the Minister of Interior. Nor does the Kuwaiti government appear to have engaged in cooperative efforts with other governments to facilitate Bidun children born in Kuwait claiming non-Kuwaiti nationalities at birth.⁶⁶

Article 24(2) states that “Every child shall be registered immediately after birth and shall have a name,” a provision which the Human Rights Committee has said “is designed to promote recognition of the child’s legal personality.”⁶⁷ The government of Kuwait has asserted that it does issue some Bidun birth certificates.⁶⁸ However, in practice, the majority of Bidun, namely those without fathers employed by the government or Kuwaiti mothers, face tremendous difficulties in obtaining birth certificates and many other basic civil documents, including death certificates, registrations of marriage,⁶⁹ and driver’s licenses. Since Bidun lack proof of nationality, they are unable to obtain the civil identification document (ID) one normally shows as proof of identity when applying for such documents. In the absence of a civil ID, government offices typically require a letter of no objection from the Ministry of Interior’s Executive Committee on Illegal Residents, which the Executive Committee may or may not issue, at its discretion. The policy appears intended as yet another way to pressure Bidun to obtain a non-Kuwaiti nationality, especially as Bidun who do attempt to obtain these letters are subjected to lengthy security checks and their requests may be denied.

Statements by government officials appear to support this analysis. For example, in 1999 Minister of Health Mohammad al-Jarrallah asserted that his ministry would not refuse to issue birth certificates if Bidun met all the conditions in the law, including provisions requiring proof of the parent’s nationality.⁷⁰ Then, beginning in July 2000, the Ministry of Interior reportedly issued instructions to the Ministry of Health not to issue birth certificates to newborns with Bidun fathers unless the fathers had renewed “security ID cards” from the Executive

of the Child, Nineteenth Session, CRC/C/15/Add.96, October 26, 1998, (hereafter, Concluding Observations, Committee on the Rights of the Child), para. 20.

⁶⁴ General Comment 17, para. 8.

⁶⁵ General Comment 17, para. 8.

⁶⁶ Although the government claims that the majority of the Bidun are originally Iraqi, Syrian, or Saudi Arabian, the Director of the Ministry of Interior’s Executive Committee on Illegal Residents asserted that to his knowledge there had been no diplomatic effort to ask these other governments to grant their nationality to Bidun alleged to have come from those countries. Human Rights Watch interview, April 8, 2000.

⁶⁷ General Comment 17, para. 7.

⁶⁸ 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

⁶⁹ The Personal Status Law stipulates individuals must have official documents attesting to a marriage prior to bringing legal claims arising from the marriage. Personal Status Law 51/1984, article 92.

⁷⁰ Reported in “No Health ‘No’ to Bedoun,” Kuwait Times, March 11, 1999, and “Bedouns Restricted,” Arab Times, August 2, 1999.

Committee.⁷¹ The director of the Executive Committee stated in an interview that the Committee would only issue new “security ID cards” to those Bidun registered in the 1965 census, or with official documents proving residence in Kuwait prior to 1965, and that those who were ineligible would have to “regularize their situation.”⁷²

Kuwaiti government policies also limit Bidun children’s access to education and health care.⁷³ Unlike Kuwaiti citizens, since 1993 Bidun have been required to pay for access to government health clinics.⁷⁴ In 1987 the government ended public education for Bidun children and instructed private schools to require valid residency permits, and in 1988 the ban on public education was extended to the university. Bidun who remained employed by the government were issued residency permits and received subsidies for their children’s education.⁷⁵ In the mid-1990s the enforcement of the ban on private education was somewhat relaxed, although it is not clear how many Bidun could afford to take advantage of the change in policy.⁷⁶ In August 1999 the Ministry of Education announced that Bidun children would be allowed to attend private schools during the 2000/2001 academic year if their parents could produce identification cards issued by the Ministry of Interior’s Executive Committee on Illegal Residents in the case of civilians, and identification cards or letters from their supervisors in the case of those Bidun parents employed by the military or police.⁷⁷ As of September 2000 it was still not clear if the Executive Committee’s new policy limiting the issuance of ID cards to those Bidun registered in the 1965 census, or with official documents proving residence in Kuwait prior to 1965, would affect Bidun children’s ability to register for the 2000/2001 school year, or what affect it would have on Bidun’s access to government subsidized health centers.

The Human Rights Committee expressed concern in its Concluding Observations about the impact of Kuwaiti government policies on Bidun children, noting “the lack of information concerning the situation of children of non-Kuwaiti parents living in Kuwait, in particular with regard to education, medical care, and the issuance of birth and death certificates.” The Committee went on to say that it was “further concerned that children who are born in Kuwait and whose parents are stateless or only the mother has Kuwaiti nationality do not acquire any nationality.”⁷⁸ The Committee concluded that “The state party should ensure the right of all children in Kuwait to measures of special protection pursuant to Article 24 and 26 of the Covenant. The State party is

⁷¹ The Ministry of Interior also began requiring Bidun who wished to obtain or renew a driver’s license to present a renewed “security ID card” or proof of a Kuwaiti mother. “Driver’s Licenses and Birth Certificates for Children of Kuwaiti Mothers Only,” Nasir al-Husayni and Faris al-Shamari, *al-Watan Newspaper*, Kuwait City, Kuwait, July 23, 2000. (Arabic)

⁷² “Al-Subay’i to al-Watan: This is What is Required of the Bidun,” Nasir al-Husayni and Faris al-Shamari, *al-Watan Newspaper*, Kuwait City, Kuwait, July 24, 2000. (Arabic)

⁷³ The Committee on the Rights of the Child also cited concern over “laws, regulations or practices which are discriminatory for non-Kuwaitis and girls, especially with regard to education and inheritance,” and recommended Kuwait “take all appropriate measures to safeguard the rights of Bedoon children, migrant children, other non-citizens, and girls, especially with regard to access to education, health and other social services.” Concluding Observations, Committee on the Rights of the Child, para. 17.

⁷⁴ In 1994 an exception has been made for minor children of Kuwait mothers. In April 2000 the Ministry of Health implemented a health insurance scheme that requires non-Kuwaiti citizens to pay an annual fee of 50KD per head of household, 40KD per dependant spouse, and 30 KD per child. After requests from the National Assembly’s Health and Social Affairs Committee the Ministry agreed to reduced fees for Bidun holding security ID cards, non-Kuwaiti wives of Kuwait men, and foreign or Bidun children of Kuwaiti women, who each pay 20KD. “The [Ministry] of Health Asks for a Reduction in the Price of the Health ID to Five or Ten Dinar Per Year,” *al-Watan*, Kuwait City, Kuwait, April 25, 2000, (Arabic); “Kuwait Defends Health Insurance Fees,” *Gulf News*, June 16, 2000.

⁷⁵ According to Jamal K. al-Reesh of the Ministry of Interior’s Executive Committee on Illegal Residents, in 1999 the government subsidized the educational costs of 20,860 children of Bidun employed by the government. 1853rd Meeting of the United Nations Human Rights Committee, July 19, 2000.

⁷⁶ The Committee on the Rights of the Child also expressed concern over “the recent increase in the number of children living and/or working on the streets of the State party, especially among the Bidoon community,” and called on Kuwait to “provide access to school to all children and prevent and combat school drop-out.” Concluding Observations, Committee on the Rights of the Child, para. 25.

⁷⁷ “Re-registration of Bidun in Private Schools,” *al-Anba’ Newspaper*, Kuwait City, Kuwait, August 27, 1999. (Arabic)

⁷⁸ Concluding Observations, para. 17.

under an obligation to respect Article 24, paragraph 3, of the Covenant, in order to ensure that every child has the right to acquire a nationality.”

The Right to Marry and Found a Family

“What future do my children have? There isn’t hope, there isn’t stability. I tell my father, why did you let me marry?”

-- Bidun father⁷⁹

Article 23(2) of the ICCPR states that “The right of men and women of marriageable age to marry and to found a family shall be recognized.” In its General Comment 19 the Human Rights Committee said that:

The right to found a family implies, in principle, the possibility to procreate and live together...[and] the possibility to live together implies the adoption of appropriate measures, both at the internal level and as the case may be, in cooperation with other States, to ensure the unity or reunification of families, particularly when their members are separated for political, economic or similar reasons.⁸⁰

In practice, families with Bidun members face discriminatory laws and policies which undermine both the right to marry and their ability to live together as a family. In some instances the violation stems from the government’s insistence on treating Bidun as foreigners while penalizing them for not providing proof of a foreign nationality; in other instances it reflects discrimination on the basis of sex. Thus, Bidun face difficulty registering marriages between Bidun couples or between a Bidun and a Kuwaiti citizen because the Bidun member(s) of the couple lacks a civil ID and must obtain a letter from the Ministry of Interior and complete a lengthy security check. However, without proof of legal marriage, women lose recourse to the courts in almost all matters involving personal status law, including disputes involving divorce, maintenance, and child custody.⁸¹

Similarly, Bidun families may be split between countries, either as a result of the government’s refusal to allow the re-entry of a Bidun member, or because the government treats the Bidun husband and adult children of Kuwaiti women as foreigners who require a “sponsor.” Kuwaiti women who meet minimum income standards can petition to sponsor a husband or adult child, but only for one year, after which time the husband or adult child must find legal employment in order to maintain legal residency. As “foreigners” a husband and adult child also are subject to annual residency fees.

As indicated above, Kuwait entered a reservation to article 23 when it ratified the ICCPR, seeking to avoid changing any provisions in its domestic laws regarding marriage and the family. It asserted that “the matters addressed by Article 23 are governed by personal-status law, which is based on Islamic law,” to which Kuwait effectively wishes to give precedence over the ICCPR. But this is fundamentally to undermine certain of the key rights contained in the ICCPR, and notably the peremptory norm of non-discrimination in enforcement and enjoyment of the rights of the Covenant. Moreover, the violations of article 23(b) we have described also constitute impermissible violations of the ICCPR’s guarantee of non-discrimination in article 2(1), the guarantee of equal rights between men and women in article 3, and the guarantee of equality before the law in article 26.

V. DISCRIMINATION AGAINST WOMEN

More than four years after ratifying the ICCPR, and six years after ratifying the Convention on the Elimination of All Forms of Discrimination against Women, the Kuwaiti government has made very little effort to modify the numerous provisions in its domestic legislation which discriminate on the basis of sex. Some of these discriminatory laws and practices have already been discussed, including violations stemming from Kuwait’s

⁷⁹ Name withheld by request. Human Rights Watch interview, Kuwait City, Kuwait, April 2000.

⁸⁰ General Comment 19, para. 5.

⁸¹ Personal Status Law 51/1984, article 92.

implementation of its nationality law.⁸² This chapter highlights some of the worst instances of discrimination against women in three major areas: family law, criminal law, and laws and practices regulating voting, public service, and public affairs. In the case of family law, some categories of women face a second layer of discrimination, based on religion, which further reduces their rights and freedoms.

Human Rights Watch argued above that Kuwaiti reservations to the Covenant, which seek to absolve Kuwait of responsibility to implement the prohibition on discrimination on the basis of sex, are unacceptable.⁸³ In its Concluding Observations, the Human Rights Committee reiterated its position that the Covenant's article 2(1) prohibition on discrimination, including discrimination based on sex, and its article 3 guarantee of equality between men and women, are "essential obligations," and thus Kuwait's reservations to them are "without legal effect."

In addition to Kuwait's legal obligations under article 2(1) and article 3, it is also bound to ensure equality before the law, without discrimination. Article 26 of the Covenant states:

All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

These obligations apply to all the rights guaranteed in the Covenant, including those rights which Kuwait has sought to limit through reservations asserting the permissibility of discrimination against women.

Kuwaiti law and practice discriminate against women in violation of the ICCPR. In particular, provisions in the Personal Status Law discriminate against women in relation to inheritance rights, the weight given to their testimony in judicial proceedings, and their rights in contracting marriage, during marriage, and at its dissolution. In addition, provisions of the Penal Code reduce or eliminate punishments for violent crimes committed by men against women, and criminalize abortion even when it is necessary to save a woman's life, and other laws and practices prohibit women from engaging in public affairs and public service, including voting and standing for election. Further, as we have seen, still other laws and practices discriminate against women in relation to passing nationality to their spouses and children, and effectively prevent women in some cases from living legally as a family with husbands and adult children who are not recognized as Kuwaiti nationals.

In its Concluding Observations, the Human Rights Committee declared that "Kuwait must grant women effective equality in law and practice and ensure their right to non-discrimination"; "[p]olygamy should be prohibited by law"; and Kuwait "should take all the necessary steps to ensure to women the right to vote and to be elected on equal footing with men," and ensure that women fully enjoy their right to equal access to public service.⁸⁴ It also urged the government to "make provision for the protection of the right to life of pregnant women under article 6 of the Covenant,"⁸⁵ and to "take all necessary measures to sensitize the population, so as to eradicate attitudes that lead to discrimination against women in all sectors of daily life and society."⁸⁶

Discriminatory Provisions in the Personal Status Law

Disputes involving family law in Kuwait come within the jurisdiction of the personal status divisions in the courts of first instance, appeal, and cassation.⁸⁷ The courts apply Personal Status Law 51/1984 to cases involving Sunni Muslims, or non-Muslims when the parties differ in religion or sect.⁸⁸ The Personal Status Law, based on

⁸² See Chapter IV, above.

⁸³ See Chapter II, above.

⁸⁴ Concluding Observations, paras. 5-7.

⁸⁵ Concluding Observations, para 9.

⁸⁶ Concluding Observations, para. 6.

⁸⁷ Personal Status Law 51/1984, article 345.

⁸⁸ Article 346 states "(a) This law applies to whoever is subject to the school of Imam Malik, and those who are not are subject to the regulations specific to them. (b) If parties in a dispute are non-Muslim and differ in religion or sect the

the Maliki school of Islamic jurisprudence,⁸⁹ discriminates against women in, *inter alia*, giving lesser weight to their testimony,⁹⁰ affording them lesser inheritance rights,⁹¹ and assigning spouses unequal rights and responsibilities as to marriage, during marriage and at its dissolution. Judges have wide discretion in applying many provisions of the law, and are free to base their rulings on Maliki texts and doctrine when faced with personal status issues not directly addressed in the law.⁹²

Among the most discriminatory provisions in the Personal Status Law are those regarding contracting marriage. Under the law, a woman is never free to make a marriage decision on her own. Unlike a man, she is not free to contract her own marriage but must have a male guardian (*wali*) contract on her behalf, regardless of her age.⁹³ Muslim women are prohibited from marrying all non-Muslims, while Muslim men have much greater freedom to choose a spouse.⁹⁴ After the age of twenty-five or upon becoming divorced, widowed, or otherwise not considered to be a virgin, a woman may choose whether to marry, but still may not contract her own marriage.⁹⁵ A woman between 15 and 25 years of age (*fata*) may be prohibited by her guardian from marrying, and while she may appeal to the courts she still cannot marry if the court rules against her.⁹⁶ In addition, the minimum age for registering a marriage is fifteen for women, two years younger than that of men.⁹⁷ Witnesses to the marriage must be Muslim men for the marriage to be valid.⁹⁸

During marriage, the law contemplates different rights and responsibilities for women and men, with a number of articles suggesting that wives owe husbands a duty of obedience which can be enforced by the courts. For example, a wife's mobility can be severely restricted, based on her husband's choices. She must move with her husband except if the court rules that it is not in the family's interest that she do so.⁹⁹ She may only engage in "permissible work" outside the marital home if it is not contrary to the family's interests, and while the law contemplates that a wife going outside the marital house is not in itself a violation of her duty toward her husband (*nashuz*), it must be for "legitimate reasons."¹⁰⁰ In addition, a man may legally have up to four wives simultaneously, while a woman may only be married to one man.

This pattern of discrimination extends to the marriage's dissolution, a process which is ultimately completely out of a wife's control. Under Kuwaiti law, a husband has a unilateral and unconditional right to divorce his wife,¹⁰¹ as well as recourse to judicial divorce.¹⁰² A wife, however, has only a limited ability to initiate divorce, either through asking her husband to divorce her in exchange for her providing him with financial or other compensation (*khul'*)¹⁰³ or through petitioning the court for a judicial divorce. In all cases the decision is in a

provisions of this law apply to them." In practice, this has meant that Shi'i Muslims cases are heard by a separate section of the personal status division of the courts. Personal Status Law 51/1984.

⁸⁹ Sunni Islam recognizes four schools of jurisprudence: Hanafi, Maliki, Shafi'i and Hanbali.

⁹⁰ For example, article 150(b) requires "two men or a male and two women or a notary public (*ishhad rasmi*)" witness an oral revocation of a divorce for it to be valid. Personal Status Law 51/1984.

⁹¹ Personal Status Law 51/1984, articles 288-336.

⁹² Personal Status Law 51/1984, article 343.

⁹³ Personal Status Law 51/1984, articles 8, 30.

⁹⁴ The law also prohibits apostates from Islam from marrying at all. Personal Status Law 51/1984, articles 18, 49.

⁹⁵ Personal Status Law 51/1984, article 30.

⁹⁶ Personal Status Law 51/1984, article 31.

⁹⁷ Personal Status Law 51/1984, article 26. The Committee on the Rights of the Child has expressed concern at "the low legal minimum age for marriage for girls," and recommended that Kuwait "take all appropriate measures to raise the legal minimum age for marriage for girls to at least the same age as that set for boys." Concluding Observations, Committee on the Rights of the Child, para. 15.

⁹⁸ Personal Status Law 51/1984, article 11.

⁹⁹ Personal Status Law 51/1984, article 90.

¹⁰⁰ Personal Status Law 51/1984, article 89.

¹⁰¹ Personal Status Law 51/1984, article 97, 104.

¹⁰² Judicial divorce or annulment may be more advantageous to the husband than unilateral divorce if it releases him from responsibilities to pay maintenance or requires the wife to compensate him for damages or the loss of her services to him or his children.

¹⁰³ Personal Status Law 51/1984, article 111

man's hands – either her husband's or a male judge's. The court will only consider petitions for divorce in a limited number of cases, subject to stringent conditions, with a high standard of proof. Either party can petition for a divorce based on injury, by words or actions, which make continued cohabitation impossible;¹⁰⁴ or based on the husband's testimony that he has not had conjugal relations with his wife for at least four months.¹⁰⁵ In addition, women can petition for a divorce based on the husband's failure to provide maintenance for his wife;¹⁰⁶ the husband's absence for more than a year without a good reason if the wife can prove she was damaged by that absence;¹⁰⁷ or the issuance to the husband of a final sentence of imprisonment for more than three years.¹⁰⁸ The wife can also petition the court to annul a marriage on the basis of a certain physical conditions¹⁰⁹ or on the basis of a difference in religion arising from conversion or the husband's apostasy from Islam after marriage.¹¹⁰ A wife's apostasy from Islam is not a basis for annulment.

In practice, judicial divorce and annulment rulings are difficult for women to obtain, particularly in cases where the wife must prove injury. By law a person claiming injury must provide at least two male witnesses, or a male witness and two female witnesses, who can attest to the injury.¹¹¹ However, the law provides no clear standard of what constitutes injury, leaving the judge with wide discretion to decide what circumstances render cohabitation impossible. In particular, the law does not specify what level of domestic violence must be shown to qualify for divorce based on injury, and rulings in such cases can vary enormously depending on the judge and the social class of the couple.¹¹² Nor does the law explicitly address whether a husband's marriage to another wife can be considered an injury to the other wife or wives, and judges typically require other evidence of injury in such cases. Women who are victims of domestic violence also may be asked to provide medical reports of beatings, or of a husband's drug or alcohol addiction, as proof that cohabitation is impossible. The court can also assign damages to the husband and/or wife responsible for making cohabitation impossible, leaving open the possibility that a battered wife could be required to pay her husband compensation should the judge decides that her behavior had provoked the husband to beat her.¹¹³

In addition to the onerous burden of proof, women wishing a divorce may also face judicial pressure to remain married. Regardless of how well supported a woman's claims of injury may be, the court is required to "exert its efforts to reach a reconciliation between the couple by any means possible."¹¹⁴ Social and family networks frequently also play a crucial role in determining a woman's ability to obtain a divorce. Family pressure may force a divorce on a recalcitrant spouse, while fear of shame may prevent divorce.¹¹⁵

Discriminatory Provisions in the Penal Code

While the Personal Status Law does little to help women who wish to part from violent husbands, several provisions of the Penal Code actually condone male violence against women, including so-called "honor killings," by reducing or eliminating penalties for these crimes.¹¹⁶ Thus, while the Penal Code mandates execution

¹⁰⁴ Personal Status Law 51/1984, article 126.

¹⁰⁵ Personal Status Law 51/1984, article 123.

¹⁰⁶ Personal Status Law 51/1984, article 120.

¹⁰⁷ Personal Status Law 51/1984, article 136.

¹⁰⁸ The wife must wait at least one year after the start of his imprisonment prior before petitioning for divorce. Personal Status Law 51/1984, article 138.

¹⁰⁹ The Arabic term *'ayb*, or defect, is used to refer a variety of conditions preventing sexual intercourse. Personal Status Law 51/1984, article 139.

¹¹⁰ Personal Status Law 51/1984, articles 143, 145.

¹¹¹ Personal Status Law 51/1984, article 133.

¹¹² Professor of Islamic Law Dr. Khaled Abou El Fadl, Human Rights Watch private communication, August 22, 2000.

¹¹³ Personal Status Law 51/1984, article 130.

¹¹⁴ Personal Status Law 51/1984, article 129.

¹¹⁵ Professor of Islamic Law Dr. Khaled Abou El Fadl, Human Rights Watch private communication, August 22, 2000.

¹¹⁶ Kuwait ratified the Convention on the Elimination of All Forms of Violence against Women (CEDAW) in 1994. In its General Comment 19, the CEDAW treaty-monitoring body stated that "Gender-based violence is a form of discrimination that seriously inhibits women's ability to enjoy rights and freedoms on a basis of equality with men." In its recommendations to CEDAW states parties, the Committee named "Legislation to remove the defence of honour in regard to the assault or

or life imprisonment in cases of murder, a husband who murders his wife and/or her sexual partner after apprehending them in an adulterous act is only subject to the penalty for manslaughter, namely not more than three years of imprisonment and/or a fine of up to 225KD.¹¹⁷ The same article also provides for a reduction in punishment should a man kill his daughter, mother, or sister and/or her partner after apprehending them in a sexual act, regardless of whether the sexual act was consensual. Equally disturbing, a man who kidnaps a woman may be excused from all punishments, on the condition that he marries his victim with her guardian's consent and the guardian asks for him not to be punished.¹¹⁸ Women who commit equivalent crimes do not benefit from similar reductions.

Kuwait outlaws abortion in all instances, placing women's lives and health at risk in instances when abortion is medically necessary. The punishment for inducing, or attempting to induce, a woman to abort is up to ten years of prison and a fine of up to 1000KD, and rises to up to fifteen years of imprisonment and a fine of up to 2000KD if the person is a doctor, pharmacist, midwife, or other related professional.¹¹⁹ Although the law allows an exception to this punishment in cases where a person "with the required experience" induces an abortion believing in good faith that it is necessary to save the life of the woman, the burden of proof is so high as to be likely to discourage most health professionals from taking the risk.¹²⁰ Moreover, the law does not exempt a woman who aborts herself or allows someone else to abort her in order to save her life; she is still subject to up to five years of imprisonment and/or a fine of up to 375KD.¹²¹ In recognition of this threat to women's lives, the Human Rights Committee recommended Kuwait "consider amending the law and make provision for the protection of the right to life of pregnant women under article 6 of the Covenant."¹²²

The Right to Participate in Public Service and Public Affairs, and to Vote and Be Elected

Article 25 of the ICCPR guarantees to every citizen "the right and the opportunity, without any of the distinctions mentioned in article 2 and without unreasonable restrictions: (a) To take part in the conduct of public affairs, directly or through freely chosen representatives; (b) To vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors; (c) To have access, on general terms of equality, to public service in his country." Article 22 of the Covenant provides for "the right to freedom of association with others," subject only to those restrictions "which are prescribed by law and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others." The Human Rights Committee has further stated that "the right to form and join organizations and associations concerned with political and public affairs is an essential adjunct to the rights protected by Article 25."¹²³

Kuwaiti women and men both face a variety of restrictions on their right to participate in public service and public affairs, and to vote and to be elected to public office. For example, Kuwaiti law includes extensive restrictions on freedom of expression¹²⁴ and association. Clubs and associations must register with the government, and are prohibited from engaging in political activities,¹²⁵ and political parties are effectively banned

murder of a female family member" as one of five "measures that are necessary to overcome family violence." U.N. Committee on the Elimination of All Forms of Violence against Women, General Comment 19, Eleventh Session, 1992, paras. 1, 24(r)(ii).

¹¹⁷ Penal Code 16/1960, article 153.

¹¹⁸ Penal Code 16/1960, article 182.

¹¹⁹ Penal Code 16/1960, article 174.

¹²⁰ Penal Code 16/1960, article 175.

¹²¹ Penal Code 16/1960, article 176.

¹²² Concluding Observations, para 9. article 6(1) of the ICCPR states "Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life."

¹²³ U.N. Human Rights Committee General Comment 25, The Right to Participate in Public Affairs, Voting Rights and the Right of Equal Access to Public Service, Fifty-seventh Session, 1996, (hereafter, General Comment 25), para. 26.

¹²⁴ See Chapter VI below.

¹²⁵ Community Service Societies Law 24/1962, article 6; and Sports Organizations Law 42/1978, article 7.

because no existing legislation authorizes their formation.¹²⁶ Restrictions in law and practice on women's participation, however, are far more severe than those faced by men, and constitute a violation of the guarantee of non-discrimination in the Covenant's article 2(1).

Kuwait's election law denies all women the right to vote.¹²⁷ It restricts male voting rights to male citizens over twenty-one of years of age, with a further prohibition on voting by naturalized male citizens prior to the passage of thirty years from the date of their naturalization.¹²⁸ Only those with voting rights can stand for parliamentary or local elections.¹²⁹ These restrictions to rights to freedom of expression and assembly, combined with the ban on voting and standing for election, significantly undermine women's ability to "take part in the conduct of public affairs by exerting influence through public debate and dialogue with their representatives or through their capacity to organize themselves,"¹³⁰ a right and opportunity guaranteed every citizen in article 25(a) of the Covenant.

The government of Kuwait has asserted that "[a]ll citizens in the State of Kuwait enjoy equal access to public service."¹³¹ However, Kuwaiti practice limits women's access to public service in violation of article 25(c) of the Covenant. Although women have constituted a majority of graduates of Kuwait universities since the 1970s, and make up almost a third of Kuwait's public sector employees, they hold less than ten percent of management positions.¹³² Women working in the public sector are mainly employed in teaching, nursing, and administrative/clerical support positions. While there is some ambiguity in the Judiciary Service Code regarding women's ability to serve as judges, in practice no women serve as judges in the court of cassation, appeals court, and court of first instance.¹³³

Kuwait's denial of women's voting rights and limitations on access to public service violate the Covenant's requirement in article 26 that domestic legislation prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination. Not only are these provisions discriminatory in themselves, but they leave women in a poor position to challenge the many other Kuwaiti laws and practices which discriminate against them. This vicious circle created by women's disempowerment is evident in the repeated failure of efforts by women and their supporters to overturn the ban on women voting.

Legislative and Judicial Responses to Women's Challenges to the Ban on Voting and Standing for Election

Efforts by legislators and activists to challenge the ban on voting date back to the 1970s, and have been consistently rejected in both political and judicial fora. The most recent legislative push for voting rights began with a May 1999 decree by the Amir, Kuwait's head of state, granting women the right to vote and run for election to public office beginning in 2003. As one of more than sixty decrees the Amir issued in the period after

¹²⁶ "[I]t is well known that there are no political parties in the State of Kuwait. The Annotations to the Constitution state the following, concerning article 43: 'Article 43 establishes the freedom to form associations and unions, but has not provided for the formation of organizations whose general description may put them in the category of political parties as such. The idea is that the constitutional clause is not meant to contain a provision that allows for the formation of parties. On the other hand, the absence of such a provision from the text does not mean the consecration of a constitutional ban that may indefinitely restrict any future action to authorize the formation of such parties, should the law-makers consider it appropriate. Therefore, the constitutional clause neither stipulates nor prohibits the freedom to form parties, but leaves the matter to the normal process of law-making, without specifying a direction for or against any such measure in the future.'" Report of the Government of Kuwait, para. 261.

¹²⁷ National Assembly Members' Election Law 35/1962, article 1.

¹²⁸ Article 6 of Nationality Law 15/1959 contains a similar provision restricting voting rights of naturalized citizens.

¹²⁹ Constitution of Kuwait, article 82.

¹³⁰ General Comment 25, para. 8.

¹³¹ Report of the Government of Kuwait, para. 328.

¹³² Kuwait Women's Issues Network Submission to the United Nations Human Rights Committee, July 2000.

¹³³ Article 19 of Judiciary Service Code 23/1990 does not explicitly require all judges to be male, but subsequent articles on swearing in of judges and on appointment of chief justices and other positions in the court of cassation, appeals court, and court of first instance appear to specify male judges (*rijal al-qadaa*). Judge Waal S. al-Saleh, of Kuwait's Ministry of Justice, acknowledged that no women serve as regular court judges, but asserted that some women did serve as investigating judges, as well as serving as lawyers. 1853rd Meeting of the United Nations Human Rights Committee, July 19, 2000.

he dissolved parliament on May 4, 1999, the voting decree was subject to parliamentary approval after new parliamentary elections were held in July 1999. The government engaged in little lobbying on behalf of the decree, and it was voted down on November 23, 1999. Members of parliament submitted similar legislation, which again received little government support and was voted down on November 30, 1999. New voting legislation, including legislation granting women the right to vote but not to stand for election, is expected to be debated in the parliamentary session beginning in October 2000.

Legal challenges to the ban on women voting have also failed, despite several articles in the Kuwaiti Constitution guaranteeing equality among citizens. The most important of these is article 29, which states in part that “[a]ll people are equal in human dignity, and in public rights and duties before the law.”¹³⁴ The government has consistently taken the position that this article does not prohibit sex-based discrimination because it contains a qualifying clause which the government translates as “without distinction as to race [*al-jins*], origin, language or religion.”¹³⁵ In fact, the more common translation of the Arabic term *al-jins* is sex, not race, and the term is frequently used to mean sex in other Kuwaiti legal documents. *Al-jins* is also the term used for sex in the official translation of the United Nations Universal Declaration of Human Rights, a document cited in the Legal Advice and Legislation Administration’s Explanatory Note to article 29.¹³⁶

Narrow readings of jurisdictional provisions in Kuwaiti law have made it exceedingly difficult to mount constitutional challenges to the electoral law’s ban on women voting. First, the election law requires that complaints regarding election results or procedures be brought by those eligible to vote, and thus prevents women from bringing complaints through that process.¹³⁷ Second, the limited jurisdiction of the administrative courts has made it difficult for women activists to formulate a complaint that falls within that court’s jurisdiction.¹³⁸ Finally, the Constitutional Court does not accept cases brought directly by individuals, but rather hears constitutional challenges brought in the course of resolving other disputes in existing cases.¹³⁹ Although the Council of Ministers or the National Assembly can refer disputes to the Constitutional Court for resolution, the government has not done so, and in July 2000 Kuwait’s Ambassador to the United Nations told the Human Rights Committee that in his opinion, the Government would not do so in the future because it wished to avoid a constitutional conflict and political ill will, adding that “[t]his is a right that has to be taken by persuasiveness.”¹⁴⁰

In February 2000, women activists adopted a new strategy to attempt to break the judicial roadblock. Taking advantage of a ministerial announcement encouraging potential voters to register, women who met the election law’s age and citizenship requirements presented themselves to registrars in their home districts and asked to have their names recorded on the voter’s roll. When they were refused, they went to police stations and registered complaints documenting their failed efforts to register. This step was intended to support their claim that the registrars’ refusal was a form of administrative act, and thus judicable before the administrative courts.¹⁴¹

¹³⁴ Other provisions are article 6, which states that Kuwait is democratic and “sovereignty resides in the people”; article 7 which states that “Justice, Liberty and Equality are the pillars of society,” and article 8, which states that “The State safeguards the pillars of society and ensures security, tranquility, and equal opportunities for citizens.”

¹³⁵ The Constitution of the State of Kuwait and the Explanatory Note, Legal Advice and Legislation Administration, Ministry of Justice, 1997, p. 13. (Arabic)

¹³⁶ The Constitution of the State of Kuwait and the Explanatory Note, Legal Advice and Legislation Administration, Council of Ministers, 1997, pp. 73-74. (Arabic)

¹³⁷ National Assembly Members’ Election Law 35/1962, article 13.

¹³⁸ Although the court’s jurisdiction includes requests by individuals to revoke final administrative decisions, the complaints in these cases must be based on administrative decisions which a) lack proper jurisdiction; b) have a formal flaw; c) violate laws or regulations or improperly implement them; or d) are an abuse of power. Formation of a Division of the Court of General Jurisdiction to Review Administrative Cases Law 20/1981, articles 1 and 4.

¹³⁹ Constitutional Court Law 14/1973, article 4.

¹⁴⁰ Ambassador Dharar A.R. Razzooqi, Permanent Mission of Kuwait to the United Nations (Geneva), 1852nd Meeting of the Human Rights Committee, July 18, 2000

¹⁴¹ “The administrative authorities’ refusal or refraining from taking a decision required by the laws or regulations is considered an administrative decision.” Formation of a Division of the Court of General Jurisdiction to Review Administrative Cases Law 20/1981, articles 4.

The cases all shared several points. In addition to the basic premise that the Ministry of Interior's refusal to register women voters was a negative administrative act; the cases all argued that article 1 of the Election Law violated provisions in the Constitution guaranteeing equality for women, and that the Ministry of Interior's refusal to register women voters was therefore an improper act. Several cases also argued that article 1 was also contrary to Kuwait's international human rights obligations.¹⁴²

Some cases were rejected as non-judicable before the administrative court on the basis that failure to register women voters was not a negative act because the election law had no provision requiring their registration,¹⁴³ while others were suspended pending a decision by the Constitutional Court on whether to hear arguments challenging the constitutionality of National Assembly Members' Election Law 35/1962.¹⁴⁴ On July 4, 2000 the Constitutional Court rejected requests to hear all four cases referred to it by lower courts.

In rejecting the cases, the Constitutional Court took the position that the cases failed to meet the requirements for constitutional review, and that the plaintiffs' cases were actually original, direct challenges to the constitutionality of article 1 of the election law, "dressed, in contradiction to the truth, in the clothing of a subsidiary rebuttal" to another charge.¹⁴⁵ In doing so it relied heavily on arguments, submitted by the Council of Ministers' Legal Advice and Legislation Administration. The core argument was that a constitutional challenge properly "takes the form of defense and not attack."¹⁴⁶ That is to say, the government argued that a constitutional challenge is to be used by a person who is subject to the application of the law in the course of a lawsuit, as a means of defending against the application of that law, and is not meant to be used to demand directly the enforcement of a constitutional principle.

A fifth case, brought by a male registered voter, is expected to be heard sometime after the Constitutional Court reconvenes in September 2000.

¹⁴² See for example defense briefs for Naja Mohammad `Ali Ahmad, Hala Mohammad Ali al-`Abd al Muhsin, Fatima Hajji Khadr Mohammad `Abdali, Nadia `Ali `Abd al-Rahman al-Sharah, Nada Sultan Bilal al-Khamis, Zainab Hassan `Ali al-Harbi, and Badur Ahmad Bin `Issa, which argued that article 1 was contrary to the Universal Declaration of Human Rights, the ICCPR, and CEDAW. (Arabic)

¹⁴³ See for example Dr. Badria `Abdullah Mohammad Hadi al-`Awadhi v. Deputy Minister of Interior, 165/2000 Administrative Department 1. (Arabic)

¹⁴⁴ See for example the ruling on May 29, 2000 in Rola `Abdullah `Ali Hajiya Dashti v. Deputy Minister of Interior, 242/2000 Administrative Department 5. (Arabic)

¹⁴⁵ This text appears in Farida Hamid `Abd al-Rahman al-Dashti v. Ministry of Interior, Constitutional Court case 7/2000; Rola `Abdullah `Ali Hajiya Dashti v. Deputy Minister of Interior, Constitutional Court case 9/2000; and Naja Mohammad `Ali Ahmad, Hala Mohammad Ali al-`Abd al Muhsin, Constitutional Court case 11/2000. (Arabic)

¹⁴⁶ Council of Ministers Legal Advice and Legislation, representing the Government of Kuwait, Brief in Case 7/2000, Farida Hamid `Abd al-Rahman al-Dashti v. Ministry of Interior. (Arabic)

VI. RESTRICTIONS ON FREEDOM OF EXPRESSION

“I told the general prosecutor ‘I don’t think you have the right to discuss this with me. I am a professor and you are not educated in this. Have you read the Quran and the Hadith?’”

-- Dr. Ahmad al-Baghdadi, expert in Islamic law and history, and then-chair of Kuwait University’s department of Political Science, describing his interrogation on charges that his reference, in a student newspaper article, to the Prophet Mohammad’s early failure to spread Islam defamed Islam¹⁴⁷

The Kuwaiti government asserts that “the right to express opinions freely is guaranteed under the Kuwaiti Constitution and legislation.”¹⁴⁸ However, while article 36 of the Constitution guarantees “freedom of opinion and of scientific research,” it restricts the individual’s “right to express and propagate his opinion” to those actions taken “in accordance with the conditions and procedures specified by law.”¹⁴⁹ Article 37 of the Constitution similarly restricts “freedom of the press, printing and publishing,” requiring that it be exercised “in accordance with the conditions and manner specified by law.”¹⁵⁰

In practice, “the conditions and procedures specified by law” are provisions in Kuwait’s Printing and Publications Law and Penal Code which include criminal punishments for a large number of vaguely worded offenses, and provisions for prior censorship. These restrictions on expression far exceed those allowable under the ICCPR.

Article 19(2) of the ICCPR states that “Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.” States are only allowed to restrict freedom of expression in very limited circumstances: the right to freedom of expression may be “subject to certain restrictions, but these shall only be such as are provided by law and are necessary: (a) For respect of the rights or reputations of others; (b) For the protection of national security or of public order (ordre public), or of public health or morals.”¹⁵¹ Even when these conditions are met states do not have unlimited power to impose restrictions on expression, as the Human Rights Committee has made clear: “when a State party imposes certain restrictions on the exercise of freedom of expression, these may not put in jeopardy the right itself.”¹⁵²

In addition some provisions of the Penal Code appear to incorporate a presumption of guilt, creating situations where the accused may be required to prove his or her expression meets “accepted rules of science or art,” or that it was undertaken with “good intentions.” Such requirements violate the ICCPR’s guarantees that all persons facing criminal charges receive a fair hearing by a competent, independent and impartial tribunal established by law.¹⁵³ A fundamental guarantee of the right to fair trial is the presumption of innocence, specified in article 14(2), which states “[e]veryone charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to law.”

As the cases discussed below illustrate, Penal Code and Printing and Publications Law provisions are frequently used to stifle legitimate expression. In particular, journalistic expression deemed to insult the Amir of

¹⁴⁷ Human Rights Watch interview, Kuwait City, Kuwait, April 6, 2000.

¹⁴⁸ Initial Report of the Government of Kuwait to the United Nations Human Rights Committee, CCPR/C/120/Add.1, December 3, 1999, (hereafter Report of the Government of Kuwait), para. 237.

¹⁴⁹ Constitution of the State of Kuwait, article 36.

¹⁵⁰ Constitution of the State of Kuwait, article 37.

¹⁵¹ ICCPR, article 19(3).

¹⁵² U.N. Human Rights Committee General Comment 10, Freedom of Expression, Nineteenth Session, 1983, (hereafter, General Comment 10), para. 4.

¹⁵³ ICCPR, article 14(1).

Kuwait, Islam or Islamic morality, and non-journalistic expression perceived to challenge a conservative interpretation of Islamic orthodoxy and morality are common targets of prosecution. A defendant engaged in research on religion is additionally required to prove his or her “good intentions.” Even without resorting to prosecution, the Council of Ministers has extensive powers to suspend administratively publication of periodicals or revoke their permits under vaguely worded provisions, including having policies that “conflict with national interest.”¹⁵⁴ Such administrative actions are not subject to judicial review.

The provisions of Kuwait’s Penal Code and Printing and Publications Law discussed below violate the right to freedom of expression in article 19(2) of the ICCPR. Furthermore, those provisions that require defendants to prove good intentions or that their expression meet “accepted rules of science or art” contravene the principle of the presumption of innocence in article 14(2) of the ICCPR.

In its Concluding Observations, the Human Rights Committee also expressed concern regarding “the limits imposed on freedom of expression and opinion in Kuwait, which are not permissible under article 19, paragraph 3, of the Covenant.”¹⁵⁵ The Committee was:

particularly concerned about the vagueness of Chapter III of Law No. 3 of 1961 on Printing and Publication (report, para. 240), and about restrictions imposed on academic and press freedom, the temporary closing of a newspaper, the banning of certain books; it is alarmed at the criminal prosecution, imprisonment and fining of authors and journalists in connection with their non-violent expression of opinion, and artistic expression....[and it] is concerned about the implications of penal proceedings against journalists requiring them to prove their good faith and reveal their sources, raising issues not only under article 19 but also with regard to the presumption of innocence guaranteed by article 14, paragraph 2, of the Covenant.¹⁵⁶

Printing and Publications Law 3/1961

In June 2000 Kuwait’s parliament, the National Assembly, began consideration of government-sponsored amendments to Printing and Publications Law 3/1961.¹⁵⁷ Although a final draft was not made public prior to the parliament’s July 2000 recess, press accounts suggest that the amendments will reduce government powers to close newspapers administratively but leave untouched other provisions that previously have been used to restrict peaceful expression. These include several vaguely worded provisions criminalizing expression deemed to offend public morality, disturb peaceful relations between Kuwait and other countries, foment dissent, or criticize God or the person of the Amir.

Section I of the current law defines a publication as any “piece of writing or drawing or musical piece or photograph or any other of the means of expression if it is able to be circulated.”¹⁵⁸ The “sale or distribution in any place of publications is not permitted except with a permit from the Printing and Publications Office.”¹⁵⁹ Violations are punishable by a fine up to KD200 (US\$650) and confiscation of the publication. In cases where the publication “includes anything that opposes the national interest or serves a foreign country or entity, or violates the political or social system in Kuwait,” the law provides for a punishment of up to six months of imprisonment and/or a fine of up to KD200.¹⁶⁰

¹⁵⁴ Printing and Publications Law, article 35(bis).

¹⁵⁵ Concluding Observations, para 20.

¹⁵⁶ Concluding Observations, para 20.

¹⁵⁷ On June 10, 2000 the chair of the National Assembly’s Legal and Legislative Affairs Committee announced that his committee had returned a draft of the legislation to the government for further amendments, and expected to receive a final version in approximately one month. “The Legislative Branch gives the Government a One Month Deadline to Submit to it the Final Text of the Printing and Publications and Law before its Promulgation,” *al-Watan Newspaper*, Kuwait City, Kuwait, June 11, 2000 (Arabic).

¹⁵⁸ Printing and Publications Law, article 4.

¹⁵⁹ Printing and Publications Law, article, article 7.

¹⁶⁰ *Ibid.*, article 8.

The language of Section III of the law, “The Matters Whose Publication is Prohibited,” is similarly vague and open to abuse.¹⁶¹ Article 23 prohibits publications that violate “by allusion, slander, sarcasm, or disparagement God or the prophets or the companions of the prophet Mohammad”; or “subject the person of the Amir to criticism”;¹⁶² or “attribute statements to the Amir without obtaining special written permission from the Printing and Publications Office.” Article 27 prohibits publication of anything that “incites committing a crime or foments hatred or spreads dissension among members of society.”

Article 24 prohibits not only “publication of news about secret official communications,” but also “publication of treaties and agreements undertaken by Kuwait prior to their publication in the Official Gazette except by special permission from the Printing and Publications Office. Also prohibited is the publication of anything touching on heads of state, or disturbing relations between Kuwait and Arab or friendly countries.”

Article 25 prohibits the publication of “news that affects the value of the national currency, or disturbs ideas on the economy. Also prohibited is publishing news of bankruptcies of businesspeople, commercial stores, currency traders, or currency exchanges, except by special permission from the relevant court.”

Article 26 prohibits any “publication that violates public morality or persons’ dignity or personal freedom, as well as any publication that reveals a secret that damages a person’s reputation or wealth or his business name, and the publication of any thing intended to threaten him or force him to pay money or provide a benefit to another or prevent him from working.”

In cases where the materials prohibited by articles 23-27 have appeared in a newspaper, magazine or other periodical, both the editor of the publication and the author of the material in question are subject to imprisonment for up to six months and/or fines up to KD75 (US\$245) for a first offense, and up to one year in prison and a KD150 (US\$490) fine for a second offense. In cases where the editor or author have previous convictions under these articles, the court can order their imprisonment for up to one year and a KD150 (US\$490) fine, suspend the publication for up to one year and confiscate the issue in question, and/or revoke the publication’s permit.¹⁶³

Publications risk judicial suspension and revocation of their permits for a wide variety of transgressions under articles 29-35, which are subject to expansive interpretations and applications that may violate the ICCPR. These range from “incitement to overturn the ruling system in the country” to expression of “opinions that include sarcasm, contempt, or belittling of a religion or a religious school of thought.”¹⁶⁴

Article 35 sets out the principle that no periodical can be suspended or have its permit revoked except in accordance with a final ruling issued by the criminal courts, and any suspension cannot exceed one year.¹⁶⁵ The article makes an exception for “temporary stoppages,” not to exceed three weeks, during a criminal investigation or trial, “when necessary,” if ordered by the head of the court’s Criminal Division after a request from the Prosecution Office. The law does not specify under what circumstances such stoppages might be necessary, but does provide that in cases of suspensions of publication or revocation of permits, the owner and editor of the

¹⁶¹ Section III includes articles 23 to 34.

¹⁶² The prohibition on criticizing the Amir may extend to include other members of the royal family. On February 7, 2000 Foreign Minister Shaykh Sabah al-Ahmad Al Sabah reportedly told editors of seven Kuwaiti newspapers that “Everything related to the post of the crown prince and prime minister is the duty of the emir... We do not accept press infringement on the regime. This is your country and doing any harm to the ruling family will eventually hurt the country.” “Kuwait’s FM Warns Newspapers Off Criticizing Ruling Family,” Agence France Presse, February 8, 2000.

¹⁶³ Printing and Publications Law, article 28.

¹⁶⁴ *Ibid.*, articles 29-31.

¹⁶⁵ The legal status of articles 35 and 35(bis) is disputed. Both were replaced by more restrictive articles by Law 73/1986. Although the government argues that Law 73 remains in force, it is widely considered to be illegitimate because it was issued as a decree by the Amir after he dissolved the parliament in July 1986 and suspended a variety of constitutional guarantees. The opposition position is based on Article 71 of Kuwait’s constitution, which requires that decrees issued in the absence of parliament be confirmed at the first sitting of the next parliament, or retrospectively cease to have the force of law. In 1992 the first parliament to be constitutionally elected since 1985 failed to confirm the Amiri decree.

publication must have been referred to the court as a result of an order by the Prosecutor General, after an investigation by the Prosecution Office based on a complaint referred to it by the Minister of Information.

Article 35(bis) states that:

Without prejudice to the procedures specified in this law or any other law, the Council of Ministers may issue a decision suspending publication of a periodical for a period not exceeding two years or revoking its permit if the Council established that the publication serves the interests of a foreign state or agency, or its policies conflict with national interest, or it is apparent that it obtained aid, help, or benefit from any foreign country or agency in any form or for any reason or according to any pretext or designation it received without permission from the Ministry of Information. Any appeal of the Council of Minister's decision to suspend or stop [publication] or revoke [a permit] must be presented to the Council of Ministers within two weeks of the owner's notification of the decision, and the Council's decision on the appeal is final.

Lastly, article 37 allows the head of the Printing and Publications Office to ban imported publications in order to "protect public order or morals or the sanctity of religions."

Penal Code 16/1960

The provisions in Kuwaiti Penal Code 16/1960 restricting expression are similar to those in the Printing and Publications Law but provide for harsher penalties. Unlike the Printing and Publications Law requirement that prosecutions under Section III be brought within three months of publication, there is no statute of limitations for these Penal Code offenses. In addition, an individual who has been prosecuted for a particular work or utterance under provisions of the Penal Code can be charged again under the same articles if the Prosecution Office decides that a separate phrase or images in the same work also violates the law.

For example, article 111 of the Penal Code provides for the imposition of up to one year of imprisonment and/or a KD75 (US\$245) fine on "anyone who distributes, by any one of the public means specified in article 101, opinions that include sarcasm, contempt, or belittling of a religion or a religious school of thought, whether by defamation of its belief system or its traditions or its rituals or its instructions."¹⁶⁶

The language of article 112 is even more vague, and requires researchers working on religious topics to prove their good intentions: "there is no crime if research on religion or a religious sect is transmitted in a lecture, articles, or scientific books, in a calm, balanced manner without provocative phrases, and the researcher's good intention in conducting pure scientific criticism is proven."

Article 204 sets a punishment up to three years of imprisonment and/or a fine of up to KD3,000 (US\$9,780) not only for "anyone who publicly incites in a public place immoral acts and prostitution," but also for anyone who "prints or sells or distributes or exhibits pictures or drawings or forms or anything immoral." The article also states that "there is no crime [committed] if statements were uttered or books or drawings or pictures published according to the accepted rules of science or art as that is the basis of participation in scientific and artistic advancement." Nevertheless, courts have repeatedly convicted authors of artistic and academic works of violating article 204, without making reference to this provision.¹⁶⁷

Recent Prosecutions

The vagueness of Penal Code and Printing and Publications Law provisions provides judges with wide scope for interpretation, which has resulted in their adopting highly restrictive standards which effectively violate the right to expression contained in the ICCPR. However, even when a sentence is eventually reduced or

¹⁶⁶ Article 101 specifies "speech, shouting, writing, drawing, pictures, or any other means of the means of expressing an idea."

¹⁶⁷ See cases below.

overturned on appeal, the prolonged nature of these prosecutions, and the ever present threat of subsequent prosecutions for the same works, serve to multiply these laws' chilling effect on free expression.

The Cases of Dr. `Aliya Shu`ayb, Laila al-`Othman, and Yahiya al-Rubay`an

On March 26, 2000 the Misdemeanors Appeals Court found prize-winning novelist and short story writer Laila al-`Othman and publisher Yahiya al-Rubay`an to have violated article 204 of the Penal Code and fined them KD1000 (US\$3260) each for distributing al-`Othman's novel, *al-Rahiil* (The Departure). The court also found al-Rubay`an and Kuwait University philosophy professor Dr. `Aliya Shu`ayb guilty of Printing and Publications Law violations for distributing Shu`ayb's collection of poetry, *`Anakib Tarthi Jurhan* (Spiders Bemoan a Wound), without a permit. They were each fined KD100 (US\$326). Both books were ordered banned, although *al-Rahiil* had been published and circulating legally in Kuwait since 1984, and *Anakib Tarthi Jurhan* had been in circulation since 1993.

The March ruling overturned an earlier Misdemeanors Court ruling on January 22, 2000 which had resulted in Dr. `Aliya Shu`ayb, Yahiya al-Rubay`an and Laila al-`Othman being sentenced to two months in prison for writings that the court said "included expressions that violate God, and indecent and shameless expressions." However, the Misdemeanors Appeals Court did uphold the lower court's ruling that al-`Othman's book was immoral. The two rulings did not specify which references constituted illegal expressions. However, during pre-trial questioning prosecutors focused on a description of an apple in feminine terms in Dr. Shu`ayb's collection of poetry; a description of the "lustful" coming together of sea waves in al-`Othman's novel; and a passage in the novel where a male character, in an expression of the depths of his despair, tells his roommates they can rape him. Dr. Shu`ayb believes that the charges against her were brought because of her academic studies on sexuality and lesbianism among students at Kuwait University.¹⁶⁸

The Case of Dr. Ahmad al-Baghdadi

On October 4, 1999 the Misdemeanor Appeals Court sentenced Dr. Ahmad al-Baghdadi, then-chair of Kuwait University's political science department and an expert on Islamic law and history, to one month of imprisonment for disseminating ideas that "contained an extreme insult to and great defamation of the Prophet of God (Praise Be Upon Him)." The ruling overturned earlier court rulings sentencing Dr. al-Baghdadi to six months in prison for writing an article in a student newspaper that was held to have contravened article 111 of the Penal Code.¹⁶⁹

The article, entitled "An Opportunity to Solve the Oppression of Backwardness," had appeared in the July 1996 issue of *al-Sho`ula*, a Kuwait University student newspaper. Dr. al-Baghdadi noted in the article that "The Prophet (Praise Be Upon Him) failed in forcing Islam upon the society of Mecca for a period of thirteen years, whereas Islam entered the hearts of the Companions from the people of Yathrib or Medina before the arrival of the Prophet (PBUH) in Yathrib."¹⁷⁰ He also noted a historical continuity between the politicization of Islam beginning with the wars of apostasy down to the modern Islamist groups, expressed disapproval of legislation to prohibit co-education at the university, and called on students to oppose the Islamic tendencies. The initial charges against Dr. al-Baghdadi were based on complaints by individuals associated with a conservative Islamic movement, who said the Dr. al-Baghdadi had "opposed the religious tendencies in the University and called upon the students to oppose the religious tendencies and that if they did not they would be considered backwards and

¹⁶⁸ Interview with Dr. `Aliya Shu`ayb, "'Aliya Shu`ayb: 'I Don't Strive for Fame and Our Society is Afraid to Face its Problems'," Hamid al-Jasir, *al-Hayat Newspaper*, London, England, November 8, 1999 (Arabic).

¹⁶⁹ On June 2, 1998 the Felonies Court sentenced Dr. al-Baghdadi to six months for the same article. The Higher Court of Appeals then ruled that the lower court lacked jurisdiction because the case did not come under the Printing and Publications Law and should have been heard by the regular Misdemeanor Court as a violation of Penal Code article 111. The court ordered the case turned over to the Prosecution Office to bring charges. The case was then heard before the Misdemeanor Court, which sentenced him on May 25, 1999 to six months imprisonment for violating article 111.

¹⁷⁰ Quoted in the Misdemeanor Appeals Court ruling, Case 213/99, issued October 4, 1999 (Arabic).

[Dr. al-Baghdadi] opposed the matter of forcing Islam on society and said that the Prophet Mohammad (PBUH) had failed in forcing Islam on the society in Mecca for a period of thirteen years.”¹⁷¹

In each of the cases, the courts found Dr. al-Baghdadi’s description of the Prophet Mohammad’s proselytizing in Mecca as a “failure” to be decisive evidence of a violation of article 111. According to the Misdemeanors Appeals Court:

Whereas it is clear to the Court, from reading the whole article and the aforementioned phrases, that it [the article] contained a grave insult and gross defamation to the Prophet Muhammad, peace be upon him, ‘who was sent as a mercy unto mankind’, [and who is] the seal of the prophets and messengers. For it is not proper that he should be described in terms applied to the common people, or be referred to in a manner that derogates from his status as the Messenger [sent by] of the Lord of the Worlds. The Almighty warned the believers that their deeds would come to nothing [would become vain], if they raised their voices above the voice of the Prophet: “Believers do not raise your voices above the voice of the Prophet, nor shout aloud when speaking to him as you do to one another, lest your deeds come to nothing [become vain] without your knowledge.” (al-Hujurat, verse 2)

God Almighty also said, “We have sent you forth as a witness and as a bearer of good news and warnings, so that you (O men) may have faith in God and His apostle and that you may assist and honor Him, and celebrate His praise morning and evening.” (al-Fath, verses 8-9) [If that is so,] how [much worse] would it be in the case of someone who disparages the life of the one who ‘does not speak out of his own fancy’, but [speaks] from an inspired revelation.

The writer of the article was disrespectful to the Prophet, peace be upon him. He also regarded religion as a cause for corruption of mankind, which would necessarily imply discrediting the basic tenets of the Islamic creed. Consequently, the Court is convinced that the defendant has committed the crime attributed to him, which would necessitate punishing him for it. However, given the circumstances of the defendant, the Court is of the view that the punishment should be lessened and the challenged sentence be amended as indicated.... Therefore, the Court has decided: to accept the appeal in terms of procedure; reject the arguments submitted by the defendant; and with regard to the subject of the appeal, to amend the appealed sentence and reduce it to one month imprisonment.

Dr. al-Baghdadi, who was hospitalized during his imprisonment, was pardoned by the Amir after serving fourteen days of his sentence. This was one day before he would have forfeited his right to return to his university position on the grounds that he was absent without permission.

Actions against News Outlets

Actions taken against media outlets and journalists typically involve charges of damaging the national interest or insulting religion, morality, or the person of the Amir. For example:

On February 14, 2000 the Council of Ministers revoked the permit of the daily newspaper *al-Siyassa* and suspended publication of the daily newspaper *al-Watan* for two years after they reported on an Amiri decree raising salaries of members of the military and security forces. The government denied that it had issued the decree, which had been faxed anonymously to the newspapers. After strong criticism by members of parliament opposed to the intervention by the Council of Ministers, the Amir issued a decree revoking the Council of Minister’s actions against the newspapers.

On October 18, 1999 the Council of Ministers suspended publication of the daily newspaper *al-Siyassa* for five days after the paper ran a front-page story quoting conservative Islamist figure Hamad al-Ali. Al-Ali’s comments, which indirectly criticized Kuwait’s Amir, Shaykh Jaber al-Ahmad Al Sabah, for issuing an Amiri

¹⁷¹ From the ruling by the Higher Court, Misdemeanor Section, in Case 8/1996 Misdemeanor 34/1996 Press, Judge Jalal al-Sajji ii presiding, issued May 25 1999 (Arabic).

decree granting women the right to vote, had been widely reported in other Kuwaiti news outlet, but *al-Siyassa* was the only paper to display the story prominently.

On June 19, 1999 Kuwait's Ministry of Information closed the Kuwait office of the Qatari satellite TV station, *al-Jazeera*, and revoked the permits of its staff in response to a live broadcast of a program on women's rights. During the broadcast a caller who identified himself as an Iraqi national criticized Kuwait's Amir. The ban was lifted on July 31 after negotiations with the station.

In January 1999 an appeals court overturned a weeklong suspension of the daily newspaper *al-Qabas* and six-month prison sentences imposed on Egyptian cartoonist Ibrahim Marzooq and the then-editor of *al-Qabas*, Mohammad al-Saqr. The two had been charged with insulting Islam after the newspaper published a cartoon in January 1998 depicting God evicting Adam and Eve from Eden for failing to pay rent. The appeals court fined Marzooq and al-Saqr KD50 (US\$160) each after Kuwait's Constitutional Court had refused to hear their petition challenging the constitutionality of the Printing and Publications Law.

VII. APPENDICES

Appendix A. The U.N. Human Rights Committee Review

The International Covenant on Civil and Political Rights was adopted by the U.N. General Assembly on December 16, 1966 and entered into force on March 23, 1976. It has been ratified by more than 140 states. Kuwait ratified and became a state party to the Covenant on August 21, 1996. Kuwait has not ratified the Covenant's (first) Optional Protocol allowing individuals to submit complaints to the Human Rights Committee, the treaty-monitoring body established under the Covenant, nor its Second Optional Protocol on the abolition of the death penalty.

States parties to the ICCPR must submit reports on the measures they have adopted which give effect to the rights recognized in the Covenant and on the progress made in the enjoyment of those rights. The first report is due within one year of the state becoming a party to the Covenant, and subsequent reports are due by dates specified by the Human Rights Committee. The Human Rights Committee is responsible for reviewing those reports, as well as for monitoring states parties' implementation of the Covenant and its protocols, receiving individual complaints alleging violations of the Covenant (from persons under the jurisdiction of states which have ratified the (first) Optional Protocol), and providing authoritative interpretations of the scope and meaning of the Covenant. It is composed of eighteen independent experts who are, in the words of the Covenant, "persons of high moral character and recognized competence in the field of human rights." Committee members serve in their personal capacity, and are elected for a four year term by a secret ballot of the states parties to the Covenant.

The Human Rights Committee examines the states parties' reports in public meetings, and states parties whose reports are under consideration are encouraged to send representatives who can present the state's position and answer Committee members' questions. On the final day of the session, the Committee adopts concluding observations summarizing its main concerns and making appropriate suggestions and recommendations to the state party.

On July 18 and 19, 2000 Kuwait presented its first periodic report to the United Nations Human Rights Committee. Kuwait's sixty-three page report should have contained detailed information on the measures the government has taken to give effect to the rights guaranteed in the Covenant, and the progress it has made in ensuring enjoyment of those rights. However, according to the Human Rights Committee, "the report and the [Kuwaiti government] Delegation did not sufficiently explain how Covenant rights are enjoyed in practice by the generality of the people within its territory and subject to its jurisdiction."¹⁷² In particular, the report failed to address serious concerns regarding women's rights, minority rights, and the rights of non-citizens resident in Kuwait, including the rights of more than one million migrant workers and more than 100,000 Bidun.

¹⁷² Concluding Observations para. 2.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES
UNDER ARTICLE 40 OF THE COVENANT

Concluding observations of the Human Rights Committee

Kuwait

1. The Committee considered the initial report of Kuwait (CCPR/C/120/Add.1) at its 1851st, 1852nd, 1853rd and 1854th meetings (CCPR/C/SR.1751-54) held on 18-19 July 2000 and adopted the following concluding observations at its 1864th and 1865th meetings (CCPR/C/SR.1864 and 1865) held on 26 and 27 July 2000.

A. Introduction

2. The Committee has examined the initial report of Kuwait and the additional information and statistics furnished by the Delegation. The Committee appreciates the frankness with which the report and the Delegation acknowledged the problems encountered in the implementation of the Covenant, and the State party's undertaking to provide further information and statistics in writing. While welcoming the abundance of laws and tables submitted for examination, the Committee noted that the report and the Delegation did not sufficiently explain how Covenant rights are enjoyed in practice by the generality of the people within its territory and subject to its jurisdiction.

B. Principal subjects of concern and recommendations

3. The Committee notes with concern that the position of Covenant rights in the laws of Kuwait is not clear, due to contradictory constitutional provisions. It remains unclear, notwithstanding the explanation given by the Delegation, whether individuals can invoke the provisions of the Covenant directly before Kuwaiti courts.

The State party should guarantee that all rights provided for in the Covenant are respected and ensured, in order that all individuals within the territory of Kuwait and subject to its jurisdiction have full enjoyment of these rights and are afforded remedies pursuant to article 2 of the Covenant.

4. The Committee, referring to its General Comment No. 24 on Reservations (CCPR/C/21/Rev.1/Add.1), notes that the "interpretative declarations" of the State party regarding article 2, paragraph 1, article 3, and article 23, as well as the "reservations" concerning article 25 (b) of the Covenant raise the serious issue of their compatibility with the object and purpose of the Covenant. In particular, the Committee notes that articles 2 and 3 of the Covenant constitute core rights and overarching principles of international law that cannot be subject to "limits set by Kuwaiti law". Such broad and general limitations would undermine the object and purpose of the entire Covenant.

The Committee finds that the interpretative declaration regarding articles 2 and 3 contravenes the State party's essential obligations under the Covenant and is therefore without legal effect and does not affect the powers of the Committee. The State party is urged to withdraw formally both the interpretative declarations and the reservations.

5. Discrimination against women limit the enjoyment by women of their rights under the Covenant. In particular, pursuant to the Act on Personal Status, women cannot freely marry before they are 25 years of age,

except with the approval of a guardian, who is usually the father or a judge, women's right to marry non-Kuwaiti citizens is restricted, and the age of marriage for men and women is different (17 for men, 15 for women). The Committee is concerned that polygamy is still practised in Kuwait, that men and women who commit adultery are not treated equally, and that toleration of so-called "crimes of honour" add to the existing inequality between the sexes.

Kuwait must grant women effective equality in law and practice and ensure their right to non-discrimination as stipulated in article 26 of the Covenant. Polygamy should be prohibited by law. The Committee refers to its General Comment No. 28 on Equality between Men and Women and urges the State party to take all necessary measures to sensitize the population, so as to eradicate attitudes that lead to discrimination against women in all sectors of daily life and society.

6. The Committee is deeply concerned that, in spite of constitutional provisions on equality, Kuwait's electoral laws continue to exclude entirely women from voting and being elected to public office. It notes with regret that the Amir's initiatives to remedy this situation were defeated in Parliament.

The State party should take all the necessary steps to ensure to women the right to vote and to be elected on equal footing with men, in accordance with articles 25 and 26 of the Covenant.

7. The Committee, while commending the State party for recent progress achieved in granting women access to higher education and positions in public life, including the legal profession, continues to be concerned that the percentage of women in those higher positions remains low and that, while women hold positions as investigative judges, there is not one woman serving as a judge in the Courts.

The State party should ensure that women fully enjoy their rights under article 25(c) of the Covenant.

8. The Committee expresses serious concern over the large number of offences for which the death penalty can be imposed, including very vague categories of offences relating to internal and external security as well as drug related crimes. It also regrets that, according to the Delegation, there are 28 persons currently on death row and that death sentences have continued to be carried out since the Covenant entered into force in Kuwait.

The State party should ensure that the provisions of article 6 of the Covenant are strictly observed, and that the death penalty is not imposed except for crimes that can be seen to be the most serious crimes, following proceedings in which all the guarantees for a fair trial under article 14 of the Covenant are observed. The State party is invited to consider the abolition of the death penalty, in the spirit of article 6, paragraph 6, of the Covenant.

9. The Committee notes that abortion is a crime under Kuwaiti law and that the law makes no provision for exceptions on humanitarian grounds.

The State party should consider amending the law and make provision for the protection of the right to life of pregnant women under article 6 of the Covenant.

10. The Committee is concerned about the number of persons still detained under prison sentences handed down in 1991 by the Martial Law Courts in trials, which did not meet the minimum standards set by article 14 of the Covenant, in particular the principles of equality before the courts, the impartiality of the tribunal, the presumption of innocence, the right to have adequate time and facilities for the preparation of the defence, and other rights of due process under article 14, paragraphs 3 and 5, of the Covenant.

The cases of persons still held under such sentences should be reviewed by an independent and impartial body, and compensation should be paid pursuant to articles 9, paragraph 5, and 14, paragraph 6, of the Covenant, where appropriate.

11. The Committee expresses concern over the many reported cases of persons detained in 1991 who have subsequently disappeared, many of them Palestinians with Jordanian passports, Kurds and other persons formerly residing in Kuwait. While the Delegation acknowledges only one case, other sources suggest that the fate of at least 62 persons, whose names have been communicated to the State party, remains unknown. The Committee notes with appreciation the Delegation's undertaking to receive and investigate this and other lists of names, and in this connection refers to the State party's cooperation with the UN Working Group on Disappeared Persons (see Report of the Working Group on Enforced or Involuntary Disappearances, E/CN.4/2000/64, paras. 113-4).

In accordance with articles 2, paragraph 3, 6, 7 and 16 of the Covenant, the State party should adopt concrete measures to clarify each and every case of disappearance, and inform the Committee in its next report.

12. The Committee is concerned about the fact that a detained person may be held in police custody for a period of 4 days before being brought before an investigating official, and notes that, according to the report and the oral explanations given by the Delegation, it would appear that this period may be extended.

The Committee stresses that the period of police custody before a detained person is brought before a judge should not exceed 48 hours. The State party should ensure that anyone arrested or detained on a criminal charge is brought promptly before a judge or other officer authorized by law to exercise judicial power (article 9, paragraph 3), that all other aspects of its law and practice be harmonized with the requirements of article 9 of the Covenant, and that detained persons have immediate access to counsel and contact with their families. In the next report precise statistics should be provided on the number of persons held in pre-trial detention and the length of such detention.

13. The Committee is concerned about reported cases of abuses by the Kuwaiti police, in contravention of articles 7 and 10 of the Covenant. The Committee notes nevertheless the State party's increased cooperation with international institutions such as the United Nations High Commissioner for Refugees and the International Committee of the Red Cross, which facilitate international monitoring of prison conditions.

All cases of abuse by the police and prison personnel should be investigated by independent authorities, action should be taken against perpetrators, and victims should be granted compensation.

14. The Committee cannot accept the statement of the Delegation that there are no minorities in Kuwait. Given the wide diversity of persons in the State party's territory and subject to its jurisdiction, it is clear that, in fact, there are persons in Kuwait who belong to ethnic, religious and linguistic minorities whose rights under article 27 of the Covenant should be ensured and protected.

The next periodic report should contain comprehensive information on all minority related issues arising under article 27 of the Covenant.

15. The Committee remains gravely concerned about the treatment of the Bedoons (included in the category of stateless persons) in Kuwait, numbering several thousands. In view of the fact that many of these people are born or have been living in the territory of Kuwait for decades, and some are in the service of the Government, the Committee is gravely concerned over the sweeping statement of the Delegation characterizing the Bedoons generally as "illegal residents". The Committee is concerned that many Bedoons, long resident in Kuwait, who left the country during the Iraqi occupation in 1990-91 are not permitted to return to Kuwait.

The State party must ensure that all persons in its territory and subject to its jurisdiction, including Bedoons, enjoy Covenant rights without discrimination (article 26). The right to remain in one's own country and to return to it must be scrupulously respected (article 12).

16. The Committee is further concerned of the fact that the Delegation did not refute allegations that Bedoons have been offered a five year residence permit in exchange of renouncing any claims for naturalization and that the State party seeks to deport Bedoons to countries without any effective link with the person.

The State party should confer its nationality on a non-discriminatory basis and ensure that those who are granted Kuwaiti nationality are treated equally with other Kuwaiti citizens with regard to voting rights (articles 25, 26 of the Covenant). The State party is urged to refrain from deporting residents on the basis of classifying them as Bedoons who have failed to regularise their status.

17. The Committee is concerned about the lack of information concerning the situation of children of non-Kuwaiti parents living in Kuwait, in particular with regard to education, medical care, and the issuance of birth and death certificates. The Committee is further concerned that children who are born in Kuwait and whose parents are stateless or only the mother has Kuwaiti nationality do not acquire any nationality.

The State party should ensure the right of all children in Kuwait to measures of special protection pursuant to article 24 and 26 of the Covenant. The State party is under an obligation to respect article 24, paragraph 3, of the Covenant, in order to ensure that every child has the right to acquire a nationality.

18. The Committee is concerned about other instances of discrimination, in particular the naturalization of Muslim applicants exclusively. It is also concerned that the legal consequence of a conversion from Islam to another religion may result in the loss of Kuwaiti nationality.

The laws on naturalization and nationality should be amended to ensure that their application does not entail discrimination on any of the grounds enumerated in article 26 of the Covenant.

19. The Committee is concerned about the lack of information concerning detention of persons awaiting deportation.

The State party should ensure that all the rights protected under the Covenant are respected vis à vis these persons, in particular article 9, 10, 12 and 13, and provide information on these matters in its second periodic report.

20. The Committee is concerned about the limits imposed on freedom of expression and opinion in Kuwait, which are not permissible under article 19, paragraph 3, of the Covenant, and refers in this connection to its General Comment No. 10. The Committee is particularly concerned about the vagueness of Chapter III of Law No. 3 of 1961 on Printing and Publication (report, para. 240), and about restrictions imposed on academic and press freedom, the temporary closing of a newspaper, the banning of certain books; it is alarmed at the criminal prosecution, imprisonment and fining of authors and journalists in connection with their non-violent expression of opinion, and artistic expression, which in some cases has been deemed to be disrespectful of Islam and in other cases held to be pornographic. The Committee is concerned about the implications of penal proceedings against journalists requiring them to prove their good faith and reveal their sources, raising issues not only under article 19 but also with regard to the presumption of innocence guaranteed by article 14, paragraph 2, of the Covenant.

The State party should ensure that every person can enjoy his or her rights under article 19 of the Covenant without fear of being subjected to harassment. The Press and Publications Law and the Penal Code should be brought into harmony with article 19 of the Covenant. Any restriction on the rights under article 19 must be in strict conformity with paragraph 3 of that article.

21. The Committee is concerned about Kuwait's legislation on associations, in particular Law No. 24 of 1962 on the Organization of Clubs and Community Service Societies, and about the difficulties encountered by

Kuwaitis in exercising their rights under article 22 of the Covenant. In particular, the Kuwaiti Society for Human Rights has not been able to register as an association since 1992.

The State party should amend Law No. 24, encourage the formation of human rights non-governmental organizations in Kuwait and further their activities so as to enable a culture of human rights to flourish and expand.

22. The Committee expresses concern that the right of foreign and domestic workers to form and join trade unions and to take part in their activities is restricted de facto.

The State party should enable all parts of the labour force to join and to engage in the activities of trade unions, for example by informing them of their rights under article 22, paragraph 1, of the Covenant.

23. The Committee is concerned about the absence of political parties in Kuwait.

Bearing in mind that political parties constitute an important component of democracy, the State party should take appropriate measures so as to ensure the right of Kuwaitis to establish such parties, in conformity with articles 22 and 25 of the Covenant.

24. The Committee notes the existence of compulsory military service and that Kuwaiti law does not contain any provision on conscientious objection.

In order to implement article 18 of the Covenant, the State party should reflect in its legislation the situation of persons who believe that the use of armed force conflicts with their convictions, and establish for these cases an alternative civilian service.

25. The Committee, while noting the establishment of a Human Rights Commission in the Ministry of the Interior and of a Human Rights Committee in the National Assembly, encourages the State party to establish a truly independent and effective mechanism to ensure effective remedies as required by article 2, paragraph 3, of the Covenant.

C. Date of examination of second periodic report Dissemination of information

26. The Committee requests that the State party submit its second periodic report by 31 July 2004; this report should be prepared in compliance with the Committee's new guidelines (CCPR/C/66/GUI/Rev.1), provide gender disaggregated data and up to date statistics on the condition of women, and give particular attention to the recommendations made in these concluding observations. The Committee urges the State party to make available to the public the text of the State party's initial report together with the present concluding observations. It further requests that the second periodic report be widely disseminated among the public, including civil society and non-governmental organizations operating in Kuwait.

*Human Rights Watch
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