

BRIEFING PAPER

Universal Periodic Review

Third cycle

18 July 2019

THE SITUATION OF HUMAN RIGHTS DEFENDERS IN KUWAIT

Contacts

Salma El Hosseiny
International Service for
Human Rights
s.hosseiny@ishr.ch

Khalid Ibrahim
Gulf Centre for Human
Rights
khalid@gc4hr.org

Taif Alkhudary
MENA Rights Group
taif.alkhudary@menarights.org

Masana Ndinga-Kanga
CIVICUS
Masana.Ndinga@civicus.org



During the second Universal Periodic Review (UPR) cycle in January 2015, Kuwait accepted 182 out of 297 recommendations.¹ The Government accepted 13 recommendations on the space for civil society - civic space: on the situation of human rights defenders (HRDs), and the protection of the rights to the freedoms of association, peaceful assembly and expression. Yet HRDs face severe restrictions, with women HRDs (WHRDs) and activists from the stateless Bedoon minority² facing heightened threats. Legal and policy limitations placed on the rights to the freedoms of association, peaceful assembly and expression put HRDs at a continuous risk of detention, defamation, citizenship revocation and other forms of reprisals as a direct result of their work. This restrictive environment is enabled by repressive legislation such as the 1979 Public Gatherings Act, the 1970 National Security Law, the 2015 Cybercrime Law and the 2006 Press and Publications Law, all of which place undue restrictions on fundamental rights and freedoms.

RISKS FACING HUMAN RIGHTS DEFENDERS

1. HRDs, journalists, bloggers and writers face arbitrary detention, interrogation, judicial harassment, prison sentences (including those imposed by trials in absentia), travel bans, defamation campaigns, torture and other forms of inhumane and degrading treatment, as well as being stripped of citizenship.³
2. In November 2017, the Court of Appeal sentenced 67 people to prison for allegedly “storming the Parliament” during a peaceful protest in 2011. HRD Sulaiman Bin Jassim was among those sentenced. In February 2018, the Court of Cassation issued a decision to release him. The legal process was lengthy and cumbersome, as it involved numerous verdicts that were upheld and overturned, leaving the defendant in legal uncertainty for over seven years.⁴
3. In April 2016, the national police force arrested WHRD Rana Al-Sadoun for reciting a speech originally written by an opposition leader that critiqued the electoral law. She was sentenced *in absentia* to three years in prison with hard labour. In December 2016 she was acquitted on the condition that she sign a “pledge of good conduct” and pay bail of 1,000 dinars (approx. US\$3,280).⁵
4. In December 2017, journalist Abdullah Al-Saleh was sentenced *in absentia* to five years’ imprisonment and hard labour for “abusing Saudi Arabia and insulting the United Arab Emirates (UAE)” under the Cybercrime Law. After a separate trial in January 2018, he was given a further 10-year sentence for “insulting Bahrain, Saudi Arabia and the UAE.”
5. On 2 January 2019, journalist Aisha Al-Rasheed was arrested under the 2015 Cybercrime Law following online posts in which she denounced the corruption of government officials. She was released on bail four days later, but charges against her were not dropped.⁶
6. In June 2018, the Kuwait Al-Huriah (Liberal) Society was dissolved without prior notification or justification, and one of its members was imprisoned. The organisation works to defend the freedoms of opinion and expression. One month later, on 2 July 2018, blogger Anwar Dashti, a member of the organisation, surrendered himself to the Central Prison Administration in order to serve a six-month prison sentence for a tweet he posted to support the “#tweeting is not a crime” campaign,⁷ which began after some bloggers were arrested in February 2018.⁸

RESTRICTIONS IN LAW ON THE SPACE FOR HUMAN RIGHTS DEFENDERS

7. The right to peaceful assembly without prior authorisation or notification is guaranteed by Article 44 of the Constitution. However, the 1979 Public Gatherings Act has been arbitrarily used to ban public assemblies. Unauthorised gatherings have been dispersed by the police using excessive force, including the indiscriminate use of teargas and sound bombs against peaceful protesters.
8. Law No. 24 of 1962 on Clubs and Public Welfare Societies gives the executive excessive powers to restrict the work of civil society organisations (CSOs). CSOs must register with the Ministry of Social Affairs and Labour, but the ministry has full discretionary power to deny registration, without prior motive, to CSOs considered to be “critical” of the state.
9. The 2015 Cybercrime Law restricts the freedom of expression and online activism. Article 7 provides for up to 10 years in prison for “the publication of incitement to overthrow the regime in the country.” Article 13 allows the authorities to close down news and media outlets and cybercafes if any of the acts criminalised under the law are found to have been committed there.

It also denies bloggers and other internet users the means to disseminate opinions or access information.⁹

10. The 2006 Press and Publications Law criminalises the publication of information deemed “offensive to God or Islam” and “calling for the overthrow of the regime,” as well as the release or dissemination of “secret material” and “criticism of the Emir.”¹⁰
11. Under Article 4 of the 1970 National Security Law, anyone convicted of “committing a hostile act against a foreign country that disrupts Kuwait’s political relations with that country or exposes Kuwait to a risk of war” is liable to at least three years in prison.

INTIMIDATION AND REPRISALS FOR ACCESSING INTERNATIONAL MECHANISMS

12. HRD Nawaf Al-Hendal, founder of Kuwait Watch, has been relentlessly targeted since he began his human rights activities in 2008.¹¹ In January 2015, an arrest warrant was issued against him due to a tweet he posted criticising Saudi Arabia. At the time, Al-Hendal was in Geneva to attend the UPR of Kuwait. He was detained and interrogated upon his return to Kuwait.¹² In March 2015, Al-Hendal delivered a statement at the 28th session of the UN Human Rights Council, two months after Kuwait’s UPR, condemning the arrest and imprisonment of HRDs. After his return to Kuwait, he was assaulted and detained in connection with a peaceful protest that he was monitoring and documenting. On 26 March 2015, Al-Hendal was released but a travel ban was imposed against him (which was later lifted).¹³ Al-Hendal continued to face harassment by the authorities for his activism, including police summons of his family members. He has also been subjected to harassment at his workplace, where he was given a lower salary than his peers and denied promotion.
13. As a result, Kuwaiti HRDs are hesitant to engage with UN mechanisms due to fears of reprisals.

HUMAN RIGHTS DEFENDERS FACING PARTICULAR RISKS

14. Bedoon rights defenders face targeting and discrimination by the authorities, including the blocking or postponement of renewal of essential national identity documents unless activists and

their families declare, in writing, that they will cease political activities.¹⁴ Abdulhakim Al-Fadhli was arrested, detained and tortured on a number of occasions.¹⁵ In 2016, Al-Fadhli was arrested and later expelled from Kuwait on allegations of taking part in an “illegal gathering.”¹⁶ In February 2019, he and HRD Hamed Jameel were summoned by the Electronic and Cybercrime Combatting Department to investigate their Twitter comments. Al-Fadhli called for a demonstration in front of the Central Apparatus for Illegal Residents’ Affairs, and Jameel was accused of setting up a fake Twitter account to attack supporters of the government. The two HRDs were released on a bail of 200 dinars (approx. US\$657) each on the same day.¹⁷

15. Two of Kuwait’s leading human rights groups, the Kuwaiti Bedoon Gathering and the Kuwaiti Bedoon Committee, are regularly subjected to harassment and intimidation.
16. WHRDs face increased risks as a result of their work, such as defamation, stigmatisation, social pressure and gender and sexual-based violence, as well as marginalisation and discrimination.¹⁸ In October 2018, the Twitter account of WHRD Abeer Al-Haddad was hacked due to a tweet she published about her plans to sue the head of the Central Apparatus for Illegal Residents Affairs.¹⁹ She is still targeted for her ongoing defence of the human rights of the Bedoon community.²⁰
17. On 10 April 2019, academic and human rights defender Dr Ebtehal Al-Khateeb delivered a speech at a symposium organised by the Kuwait Democratic Forum on Bedoon rights. As a result, she was the target of a defamatory Twitter campaign that published personal information about her and her family.²¹

THE RESPONSE OF THE STATE REGARDING THE PROTECTION OF HUMAN RIGHTS DEFENDERS

18. Kuwait established a National Human Rights Institution (NHRI) by Act No. 67 of 2015. However, Act No. 15 of 2018 subsequently restricted the NHRI’s powers. The NHRI is currently not in line with the Paris Principles (on the functioning and responsibilities of national human rights institutions) and has been granted Status B by the Sub-Committee on Accreditation of the Global Alliance of National Human Rights Institutions.²²

RECOMMENDATIONS TO THE GOVERNMENT OF KUWAIT:

- Refrain from restricting and criminalising the legitimate activities of HRDs, including WHRDs and Bedoon HRDs.
- Ensure a safe and enabling space for civil society and HRDs by ending all forms of harassment against defenders, including judicial and administrative harassment, and put an end to all acts of reprisals against those who engage or seek to engage with UN human rights mechanisms.
- Repeal all laws and policies that restrict HRDs' activities online and offline, including the Cybercrime Law of 2015 and the Press and Publications Law of 2006.
- Amend the National Security Law of 1970 to guarantee fully the rights to the freedoms of expression and opinion, in line with international standards.
- Amend the 1979 Public Gatherings Act and the 1962 NGO Law to guarantee fully the rights to the freedoms of association and peaceful assembly, in line with international standards.
- Immediately and unconditionally release all HRDs detained in relation to the exercise of their rights to the freedoms of association, peaceful assembly and expression, whether online or offline, in line with international standards.
- Demonstrate strong, high-level political support for HRDs through public statements by state officials that recognise and support their vital and legitimate work.
- Publicly recognise the legitimate role of WHRDs and those working on women's rights and adopt measures to ensure their full protection from violations by state and non-state actors.
- Facilitate visits by the UN Special Rapporteur on the situation of HRDs, the Special Rapporteur on freedom of opinion and expression, and the Special Rapporteur on the rights to freedom of peaceful assembly and of association.
- Take all necessary measures to bring the National Human Rights Institution into full compliance with the Paris Principles.

ABOUT THIS BRIEFING PAPER

ISHR, GCHR, CIVICUS and MENA Rights Group encourage states to consult UPR submissions by local activists and make recommendations to Kuwait regarding the protections of HRDs. This paper is based on direct contact with HRDs and experience in their protection, and publicly available information. Readers should consult sources provided for additional information.

¹ 'UPR of Kuwait - Second Cycle Thematic list of recommendations', UN Office of the High Commissioner for Human Rights, <https://bit.ly/2XNSy1R>.

² Bedoon people are a stateless Arab minority in Kuwait who were not included as citizens at the time of the country's independence or shortly thereafter. The government characterises them as "illegal residents" and they face systematic discrimination, including in access to education, work and healthcare. See 'Kuwait: Bidoon', Minority Rights Group, <https://minorityrights.org/minorities/bidoon>.

³ 'Kuwait: Association', CIVICUS Monitor, 1 January 2017, <https://monitor.civicus.org/newsfeed/2017/01/01/association-kuwait>.

⁴ 'Kuwait: Court of Cassation releases human rights defender Sulaiman bin Jassim among dozens of prisoners', GCHR, 19 February 2018, <https://www.gc4hr.org/news/view/1789>.

⁵ 'Kuwait: Prison sentence overturned for human rights defender Rana Al-Sadoun', GCHR, 8 December 2016, <https://www.gc4hr.org/news/view/1438>.

⁶ 'Journalist and writer Aisha Al-Rasheed detained under Cyber Crimes Law', GCHR, 8 January 2019, <https://www.gc4hr.org/news/view/2028>.

⁷ 'Kuwait: Gulf Centre for Human Rights expresses solidarity after Al-Huriah Society closed and Anwar Dashti arrested', GCHR, 4 July 2018, <https://www.gc4hr.org/news/view/1902>.

⁸ 'Twitter is not a crime', https://twitter.com/Tweet_notAcime?lang=en.

⁹ Ibid.

¹⁰ 'Kuwait: Expression', CIVICUS Monitor, 1 January 2017, <https://monitor.civicus.org/newsfeed/2017/01/01/expression-kuwait>.

¹¹ 'Kuwait: Discrimination of Bedoon Community', GCHR, 28 July 2017, <https://www.gc4hr.org/news/view/1654>.

¹² 'Secretary-General Ban Ki-moon condemns continuing reprisals against civil society engaging with the UN', UPR info, 23 September 2015, <https://bit.ly/2Jlr2sx>.

¹³ 'Ending reprisals against those who cooperate with the UN in the field of human rights', International Service for Human Rights, May 2018, <https://bit.ly/30xepHC>.

¹⁴ 'The Situation of Women Human Rights Defenders in Kuwait', GCHR, 31 January 2017, <https://www.gc4hr.org/news/view/1486>.

¹⁵ 'Kuwait: Discrimination of Bedoon Community', op. cit.

¹⁶ 'Kuwait: Peaceful Assembly', CIVICUS Monitor, 1 January 2017, <https://monitor.civicus.org/newsfeed/2017/01/01/peaceful-assembly-kuwait>.

¹⁷ 'Human rights defenders Abdulhakim Al-Fadhli and Hamid Jameel summoned for cyber-crime investigation', GCHR, 11 February 2019, <https://www.gc4hr.org/news/view/2061>.

¹⁸ Ibid.

¹⁹ 'Twitter account of human rights lawyer Abeer Al-Haddad hacked after she sued the head of the Central Apparatus for Illegal Residents' Affairs', GCHR, 6 October 2018, <https://www.gc4hr.org/news/view/1966>.

²⁰ 'Human rights lawyer Abeer Al-Haddad faces threats due to her ongoing defense of Bedoon rights', GCHR, 20 August 2018, <https://www.gc4hr.org/news/view/1930>.

²¹ 'Prominent advocate of Bedoon rights, Dr. Ebtehal Al-Khateeb, targeted by twitter campaign', GCHR, 23 June 2019, <https://www.gc4hr.org/news/view/2157>.

²² 'Kuwait', MENA Rights Group, <https://menarights.org/en/countries/kuwait>; 'Report and Recommendations of the Session of the Sub-Committee on Accreditation (SCA), Geneva, 9-13 MAY 2016', Global Alliance of National Institutions for the Promotion and Protection of Human Rights, <https://bit.ly/2xMI8jI>.

KUWAIT Annex: Assessment of implementation of civic space recommendations under the 2nd cycle

<i>Right or area: 5.2. Institutions & policies</i>				<i>Status of implementation</i>
157.61. Establish an independent national human rights institution in accordance with the Paris Principles which complements the role of civil society organizations (Hungary); Source of position: A/HRC/29/17/Add.1	Hungary	Supported	5.2. Institutions & policies Affected persons: - general	Not implemented. Kuwait established a National Human Rights Institution (NHRI) by Act No. 67 of 2015. However, it was later amended by Act No. 15 of 2018, which restricted the NHRI's powers. It is currently not in line with the Paris Principles and has been granted Status B by the Sub-Committee on Accreditation of the GANHRI
<i>Right or area: 6. Human rights education and training</i>				
157.52. Strengthen training on human rights for non-governmental organizations (Morocco); Source of position: A/HRC/29/17/Add.1	Morocco	Supported	6. Human rights education and training Affected persons: - general	Not implemented. Legal and policy limitations placed on the rights to the freedoms of association, peaceful assembly and expression put HRDs at a continuous risk of detention, defamation campaigns, citizenship revocation and other forms of reprisals as a direct result of their work.
<i>Right or area: 7.1. Context, statistics, budget, cooperation with civil society</i>				
157.88. Enhance the cooperation with civil society (Austria); Source of position: A/HRC/29/17/Add.1	Austria	Supported	7.1. Context, statistics, budget, cooperation with civil society Affected persons: - general	Not implemented. See above.
<i>Right or area: 14.3. Freedom of opinion and expression</i>				
157.174. Guarantee the right to freedom of expression and allow the use of social media without undue restrictions and limitations (Italy); Source of position: A/HRC/29/17/Add.1	Italy	Supported	14.3. Freedom of opinion and expression Affected persons: - general	Not implemented. HRDs, journalists, bloggers and writers face arbitrary detention, interrogations, judicial harassment, prison sentences (including in absentia), travel bans, defamation campaigns, torture and other forms of inhumane and degrading treatment, as well as stripping of citizenship. The Cybercrime Law adopted in June 2015 restricts the freedom of expression and online activism. In April 2016, the national police force arrested WHRD Rana Al-Sadoun for reciting a speech by opposition leader containing a critique of the electoral law. She was sentenced in absentia to three years in prison with hard labour. In December 2016 she was acquitted on the condition that she sign a "pledge of good conduct" and pay bail of 1,000 dinars (approx. US\$3,280).
157.181. Ensure the realization of freedom of the press and the media, in line with ICCPR standards (Mexico); Source of position: A/HRC/29/17/Add.1	Mexico	Supported	14.3. Freedom of opinion and expression Affected persons: - media - general	Not implemented. See above. Additionally, in December 2017, journalist Abdullah Al-Saleh was sentenced in absentia to five years' imprisonment and hard labour for "abusing Saudi Arabia and insulting the United Arab Emirates (UAE)" under the Cybercrime Law. After a

				separate trial in January 2018, he was given a further 10-year sentence for “insulting Bahrain, Saudi Arabia and the UAE.”
157.177. Ensure that media and internet laws fully comply with Kuwait’s obligations to protect freedom of expression under international agreements (United States of America); Source of position: A/HRC/29/17/Add.1	United States of America	Supported	14.3. Freedom of opinion and expression 5.1. Constitutional & legislative framework Affected persons: - general - media	Not implemented. The Cybercrime Law adopted in June 2015 restricts the freedom of expression and online activism. Article 7 provides for up to 10 years in prison for “the publication of incitement to overthrow the regime in the country.” Article 13 allows the authorities to close down news and media outlets and cybercafes if any of the acts criminalised under the law are committed there. It also denies bloggers and other internet users the means to disseminate opinions or access information.
157.179. Review existing laws including the Law on Press and Publication to ensure freedom of expression in accordance with international standards (Austria); Source of position: A/HRC/29/17/Add.1	Austria	Supported	14.3. Freedom of opinion and expression 5.1. Constitutional & legislative framework Affected persons: - general - media	Not implemented. See above regarding the Cybercrime Law. In addition, in 2016, the 2006 Press and Publications law was amended to also cover online publications.
157.180. Protect and respect the right to freedom of expression and introduce legislation and institutions to ensure the independence of the media, prevent censorship and promote transparency in public affairs (Norway); Source of position: A/HRC/29/17/Add.1	Norway	Supported	14.3. Freedom of opinion and expression 5.1. Constitutional & legislative framework Affected persons: - general - media	Not implemented. See above.
157.175. Fully guarantee the right to freedom of expression online/offline by revising relevant laws, including by repealing arrest, trial and imprisonment of persons exercising their freedom of opinion through media and Internet (Estonia); Source of position: A/HRC/29/17/Add.1	Estonia	Supported	14.3. Freedom of opinion and expression 13.3. Arbitrary arrest and detention 5.1. Constitutional & legislative framework Affected persons: - general - media	Not implemented. See above.
157.173. Legislate to guarantee the freedoms of expression, of assembly and of opinion (Australia); Source of position: A/HRC/29/17/Add.1	Australia	Supported	14.3. Freedom of opinion and expression 14.4. Right to peaceful assembly Affected persons: - general - human rights defenders - media	Not implemented. See above on the freedom of expression. The right to peaceful assembly without prior authorisation or notification is guaranteed by Article 44 of the Constitution. However, the 1979 Public Gatherings Act has been arbitrarily used to ban public assemblies. Unauthorised gatherings have been dispersed by police forces using excessive force, including with the indiscriminate use of teargas and sound bombs against peaceful protestors.
157.182. Guarantee in law and in practice, without any abusive restrictions, freedom of peaceful assembly and freedoms of opinion and expression, on the internet and in the traditional media, in line with the International Covenant on Civil and Political Rights ratified by Kuwait (France); Source of position: A/HRC/29/17/Add.1	France	Supported	14.3. Freedom of opinion and expression 14.4. Right to peaceful assembly Affected persons: - general - media	Not implemented. See above.

<p>157.183. Guarantee the right to freedom of expression, association and peaceful assembly of journalists, activists, human rights defenders and those who take part in demonstrations (Uruguay); Source of position: A/HRC/29/17/Add.1</p>	Uruguay	Supported	<p>14.3. Freedom of opinion and expression 14.4. Right to peaceful assembly 14.5. Freedom of association Affected persons: - general - media - human rights defenders</p>	<p>Not implemented. See above. Law No. 24 of 1962 on Clubs and Public Welfare Societies gives the executive excessive powers to restrict the work of CSOs. CSOs must register with the Ministry of Social Affairs and Labour, but the Ministry has full discretionary power to deny registration without reason to CSOs considered to be “critical” of the state.</p>
<i>Right or area: 42. Follow-up to UPR</i>				
<p>157.87. Engage civil society in the implementation process of the accepted UPR recommendations (Poland); Source of position: A/HRC/29/17/Add.1</p>	Poland	Supported	<p>42. Follow-up to UPR Affected persons: - general</p>	Not implemented.