



Kuwait Shadow report

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

Alkarama Foundation – 4 July 2016

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1. Introduction

The third report of Kuwait (CAT/C/KWT/3) was submitted to the Committee against Torture on 10 June 2015 and will be reviewed by the Committee at its 58th session on 25 and 26 July 2016.

Alkarama hereby submits this shadow report in which it evaluates the implementation of the Convention against Torture (UNCAT) in Kuwait, highlighting its main concerns and addressing recommendations to the State party. This report is based on Alkarama's documentation of human rights violations in Kuwait since 2011 – including cases of torture – as well as on a review of the State's Replies to the Committee's List of Issues Prior to Reporting (LOIPR) and provides an analysis of the relevant domestic laws and practices.

2. Background

2.1. Political system

In 2011, and with the beginnings of the Arab uprisings across the region, Kuwait entered a new and challenging era driven by regular demands by civil society for governmental reform, transparency and political participation. This reform is particularly concerned with a more representative electoral system, a law permitting the creation of political parties, and wider popular participation in the political sphere. State attempts to control freedom of expression, opinion and assembly have therefore increased exponentially.

Kuwaiti officials have repeatedly invoked vaguely worded provisions of the Penal Code and the National Security Law to suppress freedom of expression, since a political crisis triggered mass protests and ultimately led to the resignation of the government in 2011. Indeed, since then, Kuwait has witnessed political turmoil, largely stirred by a major corruption scandal that surfaced involving bribes and funds allegedly transferred to members of Parliament in return for voting along government lines. In that wake, the parliamentary elections of February 2012 produced a victory for the opposition. In June, the Constitutional Court exclusively composed of the Emir's appointees, annulled February's poll and dissolved the new Parliament. Again in October 2012, the Emir dissolved the Parliament and called for new elections to be held in December. He also issued a decree to change the electoral process¹ that caused opposition groups to boycott the following elections in protest. Opposition groups claimed that the new electoral law favoured pro-government majorities and that the decision itself was in violation of the Constitution since Kuwaiti constitutional law provides that such a change can only be taken by a legislative decision. In 2013, the Constitutional Court invalidated the elections held in December 2013, but confirmed the constitutionality of the amendment to the electoral law.² New elections led to a redistribution of seats in Parliament following a higher rate of participation by the opposition. The success of pro-government candidates in the following election in June 2014 strengthened the government's backing in Parliament. The situation was further intensified by the arrest of opposition figurehead, Musallam Al Barrak on 2 July 2014. The following protests by thousands of supporters were violently dispersed by riot police with tear gas and stun grenades.³

In response to the various waves of protests since October 2012,⁴ the government started using disproportionate force, including excessive use of tear gas, sound bombs, beatings and arbitrary

¹ European Parliament Policy Briefing, *Kuwait's Political Crisis deepens*, 2013, http://www.europarl.europa.eu/RegData/etudes/briefing_note/join/2013/491461/EXPO-AFET_SP%282013%29491461_EN.pdf (accessed on 20 April 2016).

² Nathalie Gillet, RFI, *La Cour constitutionnelle du Koweït invalide les dernières élections législatives*, <http://www.rfi.fr/moyen-orient/20130616-cour-constitutionnelle-koweit-invalidation-elections-legislatives> (accessed on 27 April 2016).

³ BTI project, *Kuwait Country Report*, 2016, https://www.bti-project.org/fileadmin/files/BTI/Downloads/Reports/2016/pdf/BTI_2016_Kuwait.pdf (accessed on 5 May 2016).

⁴ Human Rights Watch, *Kuwait: Rights Setbacks Amid Political Crisis*, 2013, <https://www.hrw.org/news/2013/02/12/kuwait-rights-setbacks-amid-political-crisis> (accessed on 15 April 2016).

arrests, in order to disperse peaceful crowds on several occasions. The excessive use of force was commonly applied in an attempt to crackdown on peaceful assemblies and to silence dissenting opinions and critics. This crackdown has been fostered by new laws adopted in order to curb freedom of expression and to allow a stricter persecution via hefty prison sentences for both Kuwaiti citizens and the "Bidoon" (stateless people) for peacefully voicing critique. Whilst discrimination of the Bidoon persists, the Kuwaiti authorities have since 2014 also resorted to the revocation of citizenship as a means to stifle criticism. Even more worrying is the introduction of compulsory DNA testing in 2015 as part of counter-terrorism measures and to allegedly "strengthen national security".

2.2 Judicial system

The Constitution of Kuwait enshrines in its article 50 the separation of powers. Articles 51 and 52 put the Emir in control of the executive and legislative and article 53 states that justice is rendered by the courts in the name of the Emir.

Article 14 paragraph 1 of the ICCPR states that "all persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law." The Human Rights Committee has explained in its General Comment No. 32 that an independent tribunal entails a body established by law that is independent from the legislative and the executive. The requirements for independence from the executive or legislative refer to, *inter alia*, the procedure of appointing judges.⁵

The Kuwaiti judiciary is organised by Decree No. 23 of the year 1990. Overseeing the judicial process is a Supreme Judiciary Council composed of 10 members including a representative from the Ministry of Justice, which the law states has no right to vote in decisions but is there in an advisory capacity. Nevertheless, seven of the members of the Supreme Judicial Council are, according to article 20 of the Decree, originally appointed as judges by an Emiri decree based on the Minister's suggestion after consulting the Council for its opinion.⁶ These judges are the highest-ranking members of the judiciary, i.e. President and Deputy of Cassation Courts, President and Deputy of Appeals Courts and Attorney General amongst others. It is to be noted that the Supreme Judiciary Council is headed by the president of the Cassation Court. The appointment and promotion to all other judicial functions is made by Emiri Decree based on the suggestions of the Ministry of Justice for judges' nominations; the suggestions need to be approved by the Supreme Judicial Council.

Kuwaiti judges are appointed for life, yet foreign judges, which make up for a considerable percentage with an estimated 300 Egyptian judges in 2011 alone,⁷ are appointed on a contractual basis for a limited period of time.⁸ The independence of foreign judges is compromised as they depend on the executive both for review and extension of their terms. It is also worth noting that foreigners working in Kuwait are subject to the Kafala or sponsorship system which ties the workers' legal existence in the country directly to their employer; in this case the Ministry of Justice,⁹ a branch of the executive. The precarious situation of foreign judges therefore does not allow them to perform their duties calmly and independently and is an obstacle to the principle of irremovability and independence of judges.

Finally, the Human Rights Committee cites in its General Comment No. 32 conditions of suspension and cessation of judges' functions in the requirements for the independence of the judiciary.¹⁰ In Kuwait, administrative inspection is carried out at least once every two years by an administrative body from within the General Court (*Mahkama Al-Kulliyah*).¹¹ The members of the inspection body are nominated by the Supreme Council. Judges are graded by the Justice Inspectorate for their work and

⁵ United Nations Human Rights Committee, *General Comment No. 32*, July 2007.

⁶ Kuwait, *Decree 23/1990, article 20*, 1990.

⁷ Al Jarida, 17 April 2011, <http://bit.ly/24JrB3> (accessed on 8 June 2016).

⁸ United Nations press release, *Human rights committee continues review of Kuwait's report on status of civil and political rights*, 19 July 2000- HR/CT/578.

⁹ Nathan Brown, *Arab Judicial Structures*, <ftp://undp-pogar.org/LocalUser/pogarp/judiciary/nbrown/kuwait.html>

¹⁰ United Nations Human Rights Committee. *General Comment No. 32*, July 2007.

¹¹ Kuwait, *Decree 23/1990, article 31*, 1990.

the Minister of Justice can decide to refer those judges who received an under-average grade to the Council to decide on their dismissal.¹² Furthermore, the Minister can file a disciplinary motion to the disciplinary board against a judge. Indeed, article 35 of Decree No. 23 of 1990 provides the Minister of Justice with the right to supervise the judiciary.¹³

Article 163 of the Constitution further states that “[n]o authority may wield any dominion over a judge in his rendering of justice and in no circumstance shall interference be permissible in its performance. The law shall guarantee the autonomy of the judiciary and define the judges' warranties, the provisions concerning them, and the conditions governing their immunity from dismissal.”¹⁴ However, the law allows the Minister and Ministry of Justice to play a big part in the affairs of the judiciary, therefore effectively compromising the independence of the judiciary by placing it under the control of the executive.

3. Definition, criminalisation and absolute prohibition of torture

3.1 Definition of torture

Kuwaiti law does not clearly define torture despite referring to it in its Constitution, granting the people freedom from “torture or ignominious treatment”.¹⁵ Indeed, the State explains in its Reply to the LOIPR that a number of Criminal Code provisions criminalise murder, assault, battery, abuse and causing injury.¹⁶ The Committee against Torture explains that by “defining the offence of torture as distinct from common assault and other crimes [...] States Parties will directly advance the Convention’s overarching aim of preventing torture and ill-treatment.”¹⁷ Torture is furthermore not defined in Kuwaiti law in a manner compatible with article 1 of the Convention Against Torture as it does not elicit the intentions and purposes for which “severe pain and suffering, whether physical or mental, is intentionally inflicted on a person”. Instead, torture is broken down into different acts and assimilated to different crimes that cause physical or bodily harm but does not include mental and psychological suffering. The Committee further states that ‘serious discrepancies between the Convention’s definition and that incorporated into domestic law create actual or potential loopholes for impunity.’¹⁸

3.2 Criminalisation of torture

The only article of the Penal Code explicitly referencing torture is article 70, which provides that any “official employee found guilty of a misdemeanour of bribery or torture of the accused in order to extract a confession [...] the employee is suspended from his position for no less than a year and no more than five years.”¹⁹ Article 70 explicitly refers to torture as an offence as opposed to a crime and the sanctions provided are merely disciplinary as opposed to criminal. For its part, National Security Law No. 31/1970 states in its article 53:

“Is punished by a prison sentence no longer than five years and a fine of 500 dinars or one of these two sentences, any public official/employee that has himself or through another person, tortured the accused or a witness or an expert to get them to confess a crime or testify and express opinions about the crime. If the act of torture leads to a graver act or amounts to another crime punishable by a harsher sentence then that sentence is to be pronounced. If torture leads to death then the perpetrator is sentenced to death.”²⁰

Article 56 of the same law provides that any public official, who uses force against people and causes them dishonour or bodily harm is sentenced to a prison term no longer than three years and/or a fine of no more than 225 dinars (around 750 dollars).²¹

¹² Kuwait, *Decree 23/1990, article 32*, 1990.

¹³ Kuwait, *Decree 23/1990, article 35*, 1990.

¹⁴ Kuwait, *Constitution of the State of Kuwait*, article 163, November 1962.

¹⁵ Kuwait, *Constitution of the State of Kuwait*, article 31, November 1962.

¹⁶ Kuwait, *Reply to the List of Issues Prior to Reporting (CAT/C/KWT/3)*, 17 August 2015, p.4.

¹⁷ Committee Against Torture, *General Comment No2,(CAT/C/GC/2)*, 24 January 2008, p.3.

¹⁸ *Ibid.*

¹⁹ Kuwait, *Criminal Code, Law 16/1970*, article 70.

²⁰ Kuwait, *National Security Law No. 31/1970 amending dispositions of the Penal Code (16/1960)*, article 53.

²¹ Kuwait, *National Security Law No. 31/1970 amending dispositions of the Penal Code (16/1960)*, article 56.

The Penal Code provides that an offence or misdemeanour is punished by a prison sentence of less than three years and/or a fine.²² Despite the fact that article 53 of Law No. 31/1970 prescribes a prison sentence that may be longer than three years, it also allows for the possible substitution of the prison sentence by a fine. In 2002, the Committee against Torture recommended that prison sentences for acts of torture be set between six and 20 years.²³ It appears that Kuwaiti law falls below this recommendation and does not provide sentences that are commensurate with the gravity of the act.

3.3 Absolute Prohibition

The Kuwaiti Constitution protects in its article 31 all persons from "torture or ignominious treatment";²⁴ article 34 further provides that the accused "shall not be mentally or bodily injured."²⁵ However, article 37 of the Code of Criminal Procedure casts doubt by proclaiming that "any means can be used for the preliminary investigation as long as it does not contravene public morals, liberty and freedoms of the individual." In principle, an individual should be free from torture but the use of a term as broad as "any means" is worrisome.

Recommendations:

1. Define and criminalise torture in the domestic legislation in conformity with article 1 of the Convention;
2. Refer to the absolute character of the prohibition of torture in its definition;
3. Provide prison sentences for the crime of torture that reflect the gravity of the act and that may not be substituted by a fine.

4. Practice of torture

While torture is not a widespread practice in Kuwait, the few cases documented by Alkarama show that it is used predominantly against individuals suspected of terrorism. Patterns and methods of torture have emerged from these cases; the most common of which being the hanging of the detainees by the limbs or by one hand or one foot, subjecting detainees to severe beatings as well as electroshocks and burns with hot irons or cigarettes.

Another aspect of the practice of torture in Kuwait is psychological whereby detainees themselves are threatened with rape and sexual abuse or the abuse of their female family members. Detainees are often blindfolded for prolonged periods of time, frequently insulted and have their religious practices restricted. Extremely humiliating and degrading treatment has been illustrated by the following case:

Mr **Mohammed Al Hussaini**, a Shia cleric, was subjected to specially degrading and inhumane treatment. His faith was repeatedly insulted, he was only allowed to pray with his hands tied behind his back; his religious cap was thrown on the floor, urinated on and the detainee was forced to wear it again. His captors took a picture of him wearing the soiled cap and circulated it on social media. Mohammed Al Hussaini was also forced to watch his brother Abdullah Al Hussaini being tortured.

On 27 May 2016, the Special Rapporteurs on freedom of religion, independence of judges and lawyers, torture, and physical and mental health expressed their concern regarding the arbitrary detention, torture, forced confessions, and acts of religious intolerance perpetrated against eight Kuwaiti citizens, all Shia Muslims. The victims included Mr Mohammed Al Hussaini and Mr Abdulla Al Hussaini. In two cases, Kuwaiti officials prevented the Shia Muslim prisoners from practicing their religion in detention.²⁶

²² Kuwait, *Criminal Code, Law No.16/1970*, article 5.

²³ Committee Against Torture, *Summary Report of the 93rd Meeting of the Committee- CAT/C/SR.93*.

²⁴ Kuwait, *Constitution of the State of Kuwait*, article 31, November 1962.

²⁵ Kuwait, *Constitution of the State of Kuwait*, article 31, November 1962.

²⁶ Human Rights Council, *Communications Report of the Special Procedures (A/HRC/32/53)*, 27 May 2016, p.14

5. Violations of the legal safeguards related to the deprivation of liberty

In its General Comment No. 2 on the implementation of article 2 of the Convention by State Parties, the Committee recommended a non-exhaustive list of guarantees which should be provided to all persons deprived of their liberty in order to prevent torture, in addition to the guarantees provided by the letter of the Convention. These guarantees include, *inter alia*, maintaining an official register of detainees, the right of detainees to be informed of their rights, the right to promptly receive independent legal assistance and to contact relatives, the need to establish impartial mechanisms for inspecting and visiting places of detention and confinement, and the availability for detainees and persons at risk of torture and ill-treatment of judicial and other remedies that will allow them to have their complaints promptly and impartially examined, to defend their rights, and challenge the legality of their detention or treatment.²⁷

Article 31 of the Constitution of Kuwait provides that “no person may be arrested, imprisoned, searched, have his residence restricted or be restrained in liberty of residence or of movement save in conformity with the provisions of the Law.” However, while the Law of Criminal Procedure provides some legal safeguards against arbitrary detention, other guarantees, if existent, are incomplete or contradictory.

In 2012, Kuwait enacted Law No. 3 of 2012 amending certain provisions of the Code of Criminal Procedure. While the amended provisions, when applied, certainly provide for an improvement of the situation of the individuals deprived of their liberty, they nevertheless still raise a number of concerns. Moreover, cases documented by Alkarama illustrate the discrepancies between written legal provisions and their application in practice.

5.1 Right to be informed of the reasons of the arrest and charges

The Code of Criminal Procedure states that a person arrested must be informed of the charges against him or her but will only be shown the warrant if he/she explicitly requests so.²⁸ However, article 48 states that a warrant has to be written but can also be ordered orally in the presence of the decision maker²⁹ in which case searches and arrests may be conducted without a warrant and without proof of any decision. Hence, article 48 of the CCP increases the risk of wrongful or arbitrary arrest.

5.2 Violation of the right to legal counsel

Before its amendment, the Code of Criminal Procedure allowed in article 60 for a detainee to be held in custody for four days without a written order by the investigator. This effectively put the person arrested outside the protection of the law. Act 3 of 2012 amended article 60 and reduced this initial detention period to 48 hours. The Act further added an article 60 *bis* to the Code, which states that “police officers must permit the accused to communicate with his lawyer or to inform a person of his choosing of his situation.” This raises a potential concern should the accused only be allowed to contact either one or the other instead of both.

Furthermore, article 75 of the CCP has been amended to restrict secrecy of investigations, which was extended to the accused and his legal counsel before the reform in 2012. However, article 75 still puts the lawyer under the control of the investigator as he is only allowed to speak if allowed to by the investigator.³⁰ It therefore appears that the right of individuals deprived of their liberty to legal counsel – not just from the onset of the detention but throughout the entire period of investigation – is still not fully guaranteed by Kuwaiti law.

²⁷ Committee against Torture, General Comment No. 2, 23 November 2007, CAT/C/GC/CRP.1/Rev.4, para.13.

²⁸ Kuwait, *Criminal Procedure Code, Law No. 17/1960*, article 63.

²⁹ Kuwait, *Criminal Procedure Code, Law No. 17/1960*, article 47.

³⁰ Kuwait, *Criminal Procedure Code, Law No. 17/1960*, article 75 as amended by Act 3/2012.

5.3 Right to be brought promptly before a judicial authority

Article 9 of the ICCPR provides that “[a]nyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power”. The Human Rights Committee has, in its General Comment No. 35, interpreted that “promptly” may vary depending on objective circumstances but that it should not surpass a few days from the time of arrest. Indeed, according to the Committee, 48 hours are “ordinarily sufficient to prepare for the judicial hearing; any delay longer than 48 hours must remain absolutely exceptional.”³¹ In contrast, Article 69 of the Kuwaiti Criminal Procedure Code as amended by Act 3/2012 provides that if it is necessary for the purposes of the investigation, the investigator can order the detention of the suspect for a period of 10 days. After that, the detainee must be brought before the competent judge to decide on possible extensions of the term of detention for 10 additional days provided that these extensions do not surpass a total of 40 days.³²

Despite article 69 limiting the period of custody to 40 days, article 70 of the amended code is contradictory since it states that should the detention be extended beyond 40 days, a competent court must decide whether to grant the extension for a period of 30 days at a time; limiting the total duration of extensions to three months.³³ The Human Rights Committee has warned against prolonged periods of detention in the custody of law enforcement official without judicial control as it unnecessarily increases the risk of ill-treatment.³⁴

5.4 Practice of *incommunicado* and secret detention

Before the amendment of the Code of Criminal Procedure, the only guarantee against *incommunicado* detention was article 75 that vaguely provided for a detainee’s lawyer to be present during all steps of the investigation. The amendment brought forth by article 60 *bis*, in force since July 2012, makes it the duty of the police to allow the person arrested to communicate with his lawyer or his family. A case documented by Alkarama before the amendment of the CCP, illustrates the use of *incommunicado* detention.

In 2012, Alkarama submitted an urgent appeal to the Special Rapporteur on the Right to Peaceful Assembly and Association on the case of Mr **Abdulhakim Al Fadhli**³⁵, a stateless human rights activist arrested several times because of his participation in peaceful protests. On 1 May 2012, he was arrested on his way to a demonstration and held in *incommunicado* detention for more than nine days.

5.5 Violations of legal safeguards in practice

Alkarama documented a number of cases of members of the Abadaly cell composed of 26 individuals suspected of spying for Iran and Hezbollah and of forming a terrorist cell in Kuwait; 23 of them were arrested in August 2015. The following cases are those of Mr **Mohammed Al Hussaini**, a Shia cleric, and his brother Mr **Abdullah Al Hussaini**. Their case proves violations to the legal safeguards analysed above and shows that the reforms put in place in 2012 are not being implemented. The following information was provided to Alkarama by the family of the Al Hussaini brothers.

Violations to the right to be informed of the reasons of the arrest and charges

On the morning of 13 August 2015, 15 to 20 men, dressed in civilian clothes, raided the Al Hussaini’s home and searched it without a warrant and without identifying themselves. They arrested Mr Mohammed Al Hussaini without informing him of any charges held against him and put him in a car

³¹ United Nations Human Rights Committee. *General Comment No. 35*, 16 December 2014.

³² *Ibid.*

³³ Kuwait, *Act (3) of the year 2012*, Kuwait official Gazette 10 June 2016.

³⁴ United Nations Human Rights Committee. *General Comment No. 35*, 16 December 2014.

³⁵ Alkarama, *Kuwait: Arbitrary detention of Bidun rights activist Abdulhakim Al Fadhli*, 9 May 2012, <http://en.alkarama.org/component/k2/916-kuwait-arbitrary-detention-of-bidun-rights-activist-abdulhakim-al-fadhli?Itemid=> (accessed 22 June 2016)

while taking his pregnant wife and interrogating her in a separate car for 30 minutes. The family was prohibited from entering the house as the men conducted the search.

Three days later on 16 August 2015, at 1am, the men came back to the house to arrest Abdullah. They arrested him from his car, which was parked on the street in front of his house; they then went into the house without a warrant and locked the women up in one room and searched the house unaccompanied.

Practice of incommunicado and secret detention

The brothers were then held in *incommunicado* detention for about three weeks before their family was informed of their whereabouts. They were interrogated without a lawyer present. Their interrogation consisted of severe acts of torture in order to force them to sign written confessions of "spying for a foreign state" and "possession of weapons."

Extraction of confessions under torture

Mr Mohammed Al Hussaini was subjected to the following acts of torture: hanging by the limbs and by one hand or one foot, severe beatings by way of punches and whips, burning with a hot iron, use of electric shocks on different parts of the body. He was also subjected to severe psychological torture and degrading and inhumane treatment. Mr Al Hussaini was blindfolded for the majority of his detention period, he was threatened with rape and they threatened to rape his female relatives, his faith was repeatedly insulted, he was only allowed to pray with his hands tied behind his back, his religious cap which he wore as a symbol of his religious status was thrown on the floor, urinated on and he was forced to wear it again; a picture of him blindfolded and wearing the soiled cap was circulated on social media, it showed him blindfolded with the cap on his head inside the building of the State Security Forces. Finally, he was forced to witness the torturing of his brother Abdullah Al Hussaini.

Abdullah was also subjected to the same pattern of torture. He was blindfolded most of the time, insulted and threatened with rape. He was severely beaten, stepped on and kicked while lying on the floor, he was hung by the limbs and he suffered burns and electric shocks.

Violations to the right to be brought promptly before a judge

Despite several attempts by their lawyers to gain information about the whereabouts of the Al Hussaini brothers and the date and time of their interrogation, the victims were denied the right to legal counsel and were interrogated without their lawyers present. Their detention was first extended by an investigator in the absence of a lawyer. On 2 September 2015 (17 and 15 days after their respective arrest), the brothers were presented to a judge for the first time and their lawyers were finally allowed to see them and attend the extension of detention hearing. As traces of torture were clear on their body, their legal representatives requested that they be examined by a doctor, but his request was denied and their detention was once more extended.

Violations to the right to a prompt and impartial medical examination

On 15 September 2015, at their first court hearing, the brothers, along with 23 other defendants, reported to the judge the torture they had been subjected to and a medical exam was thus ordered with the forensic medical department of the Ministry of Interior. The 23 men were transported together, blindfolded, handcuffed and without being informed of where they were going. Their medical examination took place more than a month after their arrest and interrogation, thus affecting the accuracy in determining whether the injuries suffered were the result of acts of torture. Furthermore, the examination was conducted by a forensic doctor of the Ministry of Interior instead of an independent medical professional. The victims received no treatment and the medical report was inconclusive. The exclusionary rule was violated as no investigation was launched and statements made under torture were admitted into evidence by the court.

Recommendations:

1. Ensure that the arrestee is always informed of the reason for the arrest, the charges held against him/her and is presented with a written warrant at the time of arrest;

2. Guarantee detainees access to and confidentiality of legal counsel from the onset of the arrest;
3. Allow for prompt medical examination following allegations of torture;
4. Ensure prompt and impartial investigation into torture allegations;
5. Exclude as evidence any information acquired under torture;
6. Allow the person to notify both a family member and a lawyer of the arrest;
7. Provide adequate training to police officers on the new provisions of Code of Criminal Procedure.

6. Violations in the context of the fight against terrorism

In its Reply to the LOIPR, Kuwait stated that in its fight against terrorism, it relies on Law 31 of the year 1970 on National Security and on Law No. 106 of 2013 on Anti-Money Laundering and Combating the Financing of Terrorism.³⁶ In July 2015 and as a counter-terrorism measure, Kuwait's national assembly passed a law requiring compulsory DNA collection for all individuals present in the country. The parliament is also currently considering ratifying the Gulf Cooperation Council (GCC) Security Agreement signed in 2012 as well as a draft law on counter-terrorism.

6.1 Compulsory DNA testing

Alkarama is deeply concerned about the passing of the Law No. 78/2015 regarding DNA samples that consists of 13 articles and which provides for general and compulsory DNA collection.³⁷ The law came into force after its publication in the Official Gazette of 2 August 2015.³⁸ Its Article 3 sets a deadline of one year to implement the dispositions of the new law from the date of its publication. The Law is part of the counter-terrorism legal framework and constitutes, according to the authorities, a response to the deadly terrorist attack of 26 June 2015 against the Shia mosque of Imam Sadiq which killed 27 people and wounded 227 in Kuwait-city. Alkarama believes the law constitutes a violation of the right to privacy enshrined in Article 17 of the ICCPR and should be promptly repealed. To date, Kuwait is the only country in the world to require nationwide compulsory DNA testing setting therefore a dangerous precedent in international law.

According to this new law, all Kuwaiti citizens and residents indiscriminately, are under the obligation to provide DNA samples to the authorities. The Law provides in its article 8 for "one year in prison and 10 thousand dinars fine for anyone who deliberately and without any excuse refrains from giving a sample of his DNA". Article 4 recalls the compulsory nature of the measure by stating that individuals subjected to this law are not allowed to refuse to give a sample, within the given deadline when requested to do so by the authorities.

Furthermore, Alkarama also believes the way in which the samples can be used by the Ministry of Interior to be concerning. Indeed, Article 5 of the Law gives to the "competent authorities" the capacity to investigate and use the DNA database in the following matters: to identify the perpetrator of a crime and his relation to the crime; to identify suspects and their families; and to identify unidentified bodies. Lastly, the DNA collecting program and the database will be under direct control of the Ministry of Interior, which can collaborate with the Ministry of Health; the Law does not provide for any independent control of the collecting process of the database management. Local centres for collection will be set up to facilitate the collection of samples throughout the country.

In his recent report, the Special Rapporteur on the right to privacy emphasised that: "Forensic DNA databases can play an important role in solving crimes but they also raise human rights concerns.

³⁶ Kuwait, *Third Periodic report to the Committee Against Torture, (CAT/C/KWT/3)*, 17 August 2015.

³⁷ Original text of the law in Arabic available at: <http://bit.ly/1SKT8Ep> (accessed on 26 March 2016).

³⁸ At the time of writing, no news confirm that implementation of the law has begun.

Issues include potential misuse for government surveillance, including identification of relatives, and the risk of miscarriages of justice”.³⁹

Recommendations:

1. Amend Law No. 78 of 2015 as to limit DNA collection to individuals indicted of serious crimes and only allow for DNA collection on an order of an independent and competent judicial authority;
2. Instate an independent authority to supervise and administer the DNA database as to avoid the inadequate use of data by the Ministry of Interior.

6.2 Broad definition of terrorism

International law does not provide for a unified, comprehensive definition of terrorism or of a terrorism act. The 13 international conventions regarding terrorism only provide for an operational definition confined to the specific subject of the convention such as air safety or maritime navigation.⁴⁰ Kuwaiti Law No. 106 of the year 2013 on Anti-Money Laundering and Combating the Financing of Terrorism defines a terrorist act as:

“Any act or initiation of an act, whether in the State of Kuwait or in any other place, as follows:

- a. An act intended to cause death or serious bodily injury to a civilian, or to any other person not taking part in the hostilities in a situation of armed conflict, when the purpose of such act, in its nature or context, is to intimidate a population, or to compel a Government or an international organization to do or to abstain from doing any act; or
- b. An act which constitutes an offense within the scope of the definitions set forth in any of the following international conventions or protocols: (The article goes on to list 9 of the 13 international conventions relating to terrorism.)”

In his report to the Commission on Human Rights, the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism (SRCT) explains that in the absence of a comprehensive definition of terrorism in international law, any act defined as terrorist should have three cumulative characteristics:⁴¹

- a) Acts, including against civilians, committed with the intention of causing death or serious bodily injury, or the taking of hostages; and
- b) Irrespective of whether motivated by considerations of a political, philosophical, ideological, racial, ethnic, religious or other similar nature, also committed for the purpose of provoking a state of terror in the general public or in a group of persons or particular persons, intimidating a population, or compelling a Government or an international organization to do or to abstain from doing any act; and
- c) Such acts constituting offences within the scope of and as defined in the international conventions and protocols relating to terrorism.

Kuwait’s definition of terrorism in Law 106/ 2013, therefore, does not fulfil the SRCT’s requirement of the cumulative approach.

A broader and more concerning definition is that of the draft law on Counter-terrorism proposed to the Parliament in 2015. The draft proposes adding a number of provisions to the existing law No. 31 of the year 1970 on National Security. Article 1 of the draft provides for a sentence of no less than 10

³⁹ United Nations Human Rights Committee, *Report of the Special Rapporteur on the right to privacy, Joseph A. Cannataci (A/HRC/31/64)*, 8 March 2016, p. 7.

⁴⁰ United Nations Commission on Human Rights, *Report of the special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, Martin Scheinin (E/CN.4/2006/98)*, 28 December 2005, p.9.

⁴¹ United Nations Commission on Human Rights, *Report of the special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, Martin Scheinin (E/CN.4/2006/98)*, 28 December 2005, p.11.

years in prison and up to life in prison for anyone, who establishes, organises, directs, joins, advocates or finances a terrorist organization. A terrorist organisation is defined as:

“viewed by the state as relying in its methods on mass killings or spreading terror or that its principles and acts pose a danger to the internal and external security of Kuwait or that it intends to cause moral or economic or political harm to the society and its institution or that intends to harm public interest or prohibit a governmental institution from carrying out its work or assaulting public freedoms and rights afforded by the constitution or that uses force, violence, threat or terror in the implementation of an individual or collective criminal endeavour that aims to disturb public order or to expose society’s safety and security to danger.”⁴²

Article 2 of the law annuls any provision contrary to the provisions of this draft law thus rendering the definition provided for in article 1 of the Law on Combating the Financing of Terrorism null and void. The definition provided for in the draft law is, first of all, not of a cumulative nature. Terrorism is furthermore defined in overly broad terms and subjects the characterisation of an act to the “views” and interpretation of the State, disregarding the recommendations of the SRCT. Indeed, the definition of the draft law is not restricted to acts of violence, but also to ideas and principles and the harm caused is not restricted to individuals but to morals, economy and politics which can be construed in a variety of ways. This definition makes it for instance easy to define calls for democratic political change as acts of terrorism and peaceful political parties as terrorist organisations, hence subjecting their members and the organisations themselves to counter-terrorism measures, effectively restricting their rights and exposing them to abuses.

On the basis of article 4 of the National Security Law no. 31/1970, Mr **Nawaf Alhendal**, a human rights defender was exposed to arrest as a warrant was issued in his name. Mr Alhendal was charged with “committing a hostile act against a foreign state with the aim of exposing Kuwait to the threat of war and interrupting political relations between the two states.”⁴³ The charges were issued for a Twitter post on Saudi Arabia’s late King Abdullah.

Recommendations:

1. Kuwait’s national Assembly should review the provisions of the draft law amending law 31/1970 on National Security as to guarantee a definition of terrorism limited in scope and containing cumulative characteristics in compliance with the Special Rapporteur’s recommendations;
2. Kuwait should amend the definition of terrorism in Law No. 106/2013 giving it a cumulative rather than alternative character.

6.3 GCC Security Agreement

In November 2012, the members of the Gulf Cooperation Council signed a security agreement aimed at strengthening coordination and cooperation between the GCC States in the area of security. While Kuwait signed the pact, it is the only GCC country that has not ratified it as its entry into force requires the approval of the Parliament as per article 70 of the Constitution.⁴⁴ The agreement contains vaguely worded provisions that can be used to repress a number of freedoms. For instance, article 3 of the agreement calls on ratifying states to prosecute individuals that interfere in another state’s internal affairs;⁴⁵ thus facilitating the prosecution of citizens for criticizing another GCC ruler or policies. Article 4 allows any ratifying State to ask another for any information or documentation on any of its citizens or residents. This provision does not specify any condition or reason for which a state would ask for such information thus seriously infringing on an individual’s privacy.

⁴² Al-Anbaa, *AlFadel: Life imprisonment for anyone that establishes, organizes or directs a terrorist group, or belongs to, or finances it, if the State considers that the group has adopted in its approach mass murder or the spread terror or principles or actions that threaten the security of Kuwait, internally or externally*, 5 October 2015, <http://bit.ly/1tvRfBl> (accessed on 16 June 2016).

⁴³ Kuwait, *National Security Law No. 31/1970 amending dispositions of the Penal Code (16/1960)*, article 4.

⁴⁴ “The Amir shall conclude treaties by Decree and shall communicate them immediately, accompanied by relevant details, to the National Assembly. After ratification, sanction and publication in the Official Gazette the treaty shall have force of law.”

⁴⁵ Gulf Center for Development Policies, *Text of the Gulf Security Agreement*, <http://bit.ly/1XrnPjC> (accessed on 16 June 2016).

The agreement further allows for the extradition of citizens or residents that have been charged or convicted by a competent court in any State party to the agreement,⁴⁶ effectively exposing these individuals to a disproportional risk of torture given the GCC countries' records of torture, in contravention with Article 3 of the Convention against Torture.

Thus, this agreement is detrimental to the basic human rights of citizens and residents of the GCC countries and creates an opportunity for abuse and retaliation against individuals exercising their fundamental rights. Kuwait's parliament has already rejected the text in 2014 but is currently reviewing it again for approval.

Recommendations:

1. Kuwait's National Assembly should reject the ratification of the current Security Agreement as it is detrimental to the fundamental human rights of its citizens;
2. Kuwait should not enact in its national legislation similarly vague provisions.

7. Death penalty and corporal punishment

7.1 Death penalty

While the death penalty is not expressly prohibited by international law, strict limitations are imposed on the sentence such as the right to a fair trial, the limitation that it is only to punish the most serious crimes,⁴⁷ that it should not be imposed retroactively and that the condemned should have the right to seek a pardon or a commutation of his sentence. Indeed, the Special Rapporteur on Torture has stated that the drug related offences do not meet the threshold of "most serious offences" to which the death penalty may be lawfully applied.⁴⁸ According to Kuwait's Reply to the LOIPR, until 28 December 2014, out of the 29 people sentenced to death in Kuwait, 10 had been sentenced for drug-trafficking. Moreover, out of the 21 death sentences commuted to life imprisonment, none was for a drug-related offence.⁴⁹

Moreover, the death penalty should not be pronounced against persons who were under the age of 18 at the time the commission of the offence or against pregnant women or anyone mentally ill at the time of the commission of the crime. Whereas Kuwaiti legislation provides for a pregnant woman's sentence to be commuted and for the prohibition of a death sentence in the case of persons who do not have full mental capacities – a category that does not specify or include mental illness –;⁵⁰ it only prohibits death sentences against minors who have not yet reached the age of 16.⁵¹

In Kuwait, when a crime is punishable by death, the penalty is not mandatory and a sentence of life in prison can be pronounced. For instance, article 148 of the Kuwaiti Penal Code punishes intentional killing with the death penalty or life imprisonment. However, Kuwait's National Security Law No. 31 of 1970⁵² does not explicitly provide for the possibility of life imprisonment for those crimes that touch upon the state sovereignty or the Emir. Indeed, article 1 of act 31 of the year 1970 states the following:

"Shall be punished by death penalty:

⁴⁶ Gulf Center for Development Policies, *Text of the Gulf Security Agreement*, article 16, <http://bit.ly/1XrnPjC> (accessed on 16 June 2016).

⁴⁷ In 1984, the Economic and Social Council published the Safeguards Guaranteeing the Protection of the Rights of Those Facing the Death Penalty, which stipulated that the most serious crimes should not go beyond intentional crimes with lethal or other extremely grave consequences. While these Safeguards are not legally binding, they were endorsed by UN General Assembly, indicating strong international support. Similarly, the Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions has stated that the death penalty should be eliminated for economic crimes, drug-related offences, victimless offences, and actions relating to moral values including adultery, prostitution and sexual orientation.

⁴⁸ Economic and Social Council, *Capital punishment and implementation of the safeguards guaranteeing protection of the rights of those facing the death penalty (E/2010/10)*, 18 December 2009, p.37.

⁴⁹ Kuwait, *Reply to the List of Issues Prior to Reporting (CAT/C/KWT/3)*, 17 August 2015, p. 28-29

⁵⁰ Kuwait, *Reply to the List of Issues (CCPR/C/KWT/Q/3/Add.1)*, 23 February 2016

⁵¹ Kuwait, *Reply to the List of Issues (CCPR/C/KWT/Q/3/Add.1)*, 23 February 2016.

⁵² Kuwait, *National Security Law No. 31/1970 amending dispositions of the Penal Code (16/1960)*.

- Anyone who commits an intentional act which leads to compromising the independence of the country or its unity or territorial integrity.
- Every Kuwaiti who takes up arms against Kuwait or joins the armed forces of a country in a state of war with Kuwait.
- Anyone who seeks a foreign country or communicates with them or with one of those who are working to their advantage to execute a hostile act against Kuwait.
- Anyone who seeks a hostile state or communicates with them or with one of those who are working to their advantage to help them in their war or to harm the military operations of the State of Kuwait.”⁵³

Certain provisions of the National Security Law differentiate between times of war and times of peace whereas a same act⁵⁴ is punished by life imprisonment during peace and by death in times of war,⁵⁵ which is in clear contravention to the non-derogability of the right to life. Moreover, death penalties can only be carried out with the approval of the Emir,⁵⁶ who can, without legal restrictions, issue a pardon or commute a sentence.

Recommendations:

1. Consider a public and permanent moratorium on the death penalty;
2. Prohibit death sentences against minors under the age of 18;
3. Ensure independent review of all death row candidates’ files and immediately halt all executions that do not comply with international law standards and those following an unfair trial;
4. Commute death sentences to prison sentences;
5. Ensure that death penalty is only imposed for those crimes that involve intentional killing and thus only applied to drug related offences if they meet this requirement.

7.2 Corporal punishment

There are no legal provisions for corporal punishment as a sanction in the Kuwaiti Code of Criminal Procedure. However, Kuwait’s Prisons Act provides that a prisoner can be disciplined for misconduct in a variety of ways. One of these disciplinary measures is the use of iron rods for handcuffing or binding of the feet “for no more than a month”.⁵⁷ Prolonged periods of binding can be considered as amounting to torture. The United Nations Standard Minimum Rules for the Treatment of Prisoners for any longer time than is “strictly necessary”⁵⁸ in the following circumstances:

- (a) As a precaution against escape during a transfer, provided that they are removed when the prisoner appears before a judicial or administrative authority;
- (b) By order of the prison director, if other methods of control fail, in order to prevent a prisoner from injuring himself or herself or others or from damaging property; in such instances, the director shall immediately alert the physician or other qualified health-care professionals and report to the higher administrative authority.

The rules further state that “[i]nstruments of restraint, such as handcuffs, chains, irons and strait-jackets, shall never be applied as a punishment. Furthermore, chains or irons shall not be used as restraints.”⁵⁹ Therefore, the use of restraints as provided for in the Prisons Act is in no way admissible as a disciplinary measure.

Recommendations:

1. Refrain from methods of restraint as a disciplinary measures;
2. Apply the Standard Minimum Rules for the Treatment of Prisoners in all prisons and detention facilities.

⁵³ *Ibid*, article 1.

⁵⁴ For instance, destroying or damaging weapons or ships or airplanes is punishable by life in prison during peace and by death during war as per article 8 of Act 31 of the year 1970.

⁵⁵ Kuwait, *National Security Law No. 31/1970 amending dispositions of the Penal Code (16/1960)*, articles 8, 18.

⁵⁶ Kuwait, *Criminal Code, Law No. 16/1960*, article 217.

⁵⁷ Kuwait, Prisons Act 26/1962, article 58

⁵⁸ United Nations, Standard Minimum Rules for the Treatment of Prisoners, 30 August 1955, article 34 available at: <http://www.refworld.org/docid/3ae6b36e8.html> (accessed on 23 June 2016).

⁵⁹ United Nations, Standard Minimum Rules for the Treatment of Prisoners, 30 August 1955, article 33 available at: <http://www.refworld.org/docid/3ae6b36e8.html> (accessed 23 June 2016).

8. Absence of effective measures to prevent torture

The absence of effective measures of prevention of torture can be attributed to the absence of adequate training of State agents on human rights standards; the prohibition of torture; and the absence of independent mechanisms to monitor places of deprivation of liberty.

8.1 Lack of adequate training of law enforcement officers

In its Reply to the LOIPR, Kuwait has listed a number of trainings law enforcement officers undergo, ranging from general human rights trainings to trainings on international humanitarian law as well as treating cases of child abuse and human trafficking. None of the trainings provided specifically target the Convention against Torture and the prevention of torture. Furthermore, law enforcement officers merely receive administrative instructions as opposed to actual training on "how to avoid committing acts of violence against detainees",⁶⁰ which does not include the absolute prohibition of torture posed by the Convention and can therefore be deemed insufficient. The Department of Forensic Medicine also runs workshops on how to deal with cases of torture but its members receive no training themselves according to Kuwait's Reply to the LOIPR. The Institute of Legal and Judicial Studies provides courses for judges on how to perform their duties, but does not target the contents of the UNCAT.

Recommendations:

1. Organise workshops and training courses for all law enforcement officers and personnel involved in the deprivation of liberty specifically targeted to address the rights and duties provided for in the CAT;
2. Provide specific training to members of the Department of Forensic Medicine on how to identify signs of torture and ill-treatment and include the Istanbul Protocol in the training material;
3. Ensure that judges are properly trained on the legal aspects of the Convention and their implementation in a court of law.

8.2 Violations to the principle of non-refoulement

Article 3 of the Convention against Torture states that "No State Party shall expel, return ("refouler") or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture. For the purpose of determining whether there are such grounds, the competent authorities shall take into account all relevant considerations including, where applicable, the existence in the State concerned of a consistent pattern of gross, flagrant or mass violations of human rights."⁶¹

In its Reply to the LOIPR, Kuwait explains that in the context of deportation, "anyone who fears being subjected to torture or inhumane treatment is also given the option of choosing to leave for another country. The Ministry of the Interior is committed to inviting ICRC to visit such persons so that it can hear their views and complaints and to working in coordination with international committees and organizations in making arrangements for travel to other countries."⁶² The Reply further illustrates that since January 2013, 16 people have been resettled in a third country.⁶³ However, the Residence of Aliens Act does not contain a provision foreseeing such an eventuality. Moreover, the Residence of Aliens Act on which Kuwait's Reply was focused only concerns deportation in three cases: conviction by a court and deportation is recommended under its judgment, absence of means of subsistence of the resident and if the presence of the resident on Kuwaiti soil is contrary to public security and public

⁶⁰ Kuwait, *Reply to the List of Issues Prior to Reporting (CAT/C/KWT/3)*, 17 August 2015, p.17.

⁶¹ United Nations, *Convention against Torture*, 1984, article 3.

⁶² Kuwait, *Reply to the List of Issues Prior to Reporting (CAT/C/KWT/3)*, 17 August 2015, p.16.

morality.⁶⁴ These three cases exclude the contingency of the extradition of a person facing charges or convicted by a court in their home country or which would be subjected to bilateral agreements, if any, excluding the possibility of non-refoulement.

In 2015, Alkarama documented the case of Mr **Omar Abdulrahman Ahmed Youssouf Mabrouk**,⁶⁵ an Egyptian student deported from Kuwait to his home country. Despite repeated calls for the respect of non-refoulement on the basis that Egypt has a proven record of gross violations and systematic use of torture, Kuwait sent Mr Mabrouk back to Egypt, where he was disappeared for months and was subjected to severe acts of torture while in detention. Mr Mabrouk was made to confess under torture and now faces 622 criminal charges.

8.3 Lack of independent monitoring mechanisms in places of detention

In its Reply to the LOIPR, the State party explains that places of police custody are monitored by “officials” that carry out unannounced visits and that police stations also “organize and host”, in conjunction with competent authorities, visits conducted by national task forces, committees, associations and international organisations. By refraining from specifying the identity of these officials or task forces, Kuwait casts doubt on the independence of the parties carrying out the monitoring of places of police custody.

Furthermore, with regards to prisons and correctional facilities, monitoring and inspections are carried out by the Director of Prisons who is under the control of the Ministry of Interior.⁶⁶ Monitoring can also be carried out by Kuwait’s National Institution for Human Rights “Diwan Huquq Al Insan”, yet this institution has only recently been established and its independence remains questionable (see below).

Recommendations:

1. Establish an independent national monitoring mechanism to monitor all places of detention; to perform regular and unannounced visits to document, investigate and report cases of torture, inhuman and degrading treatment.

9. Failure to investigate and prosecute acts of torture

State parties are obliged to investigate thoroughly, promptly and impartially any allegation of torture, even if the victim did not complain. Such investigations should be followed by the prosecution of those who committed the acts and other agents who participated in the commission of the crime (e.g. through acquiescence, complicity) as well as their superior according to the applicable standards. It is important to note that the Committee recommends the establishment of an independent body to investigate allegations of torture committed by State agents, such establishment should ordinarily be enacted through legislation.⁶⁷ In the same vein, the prosecuting authorities should be able to provide prompt and fair prosecution and punishment of perpetrators of torture or ill-treatment.

9.1 Lack of independent complaint mechanisms in places of detention

The Convention requires States parties to ensure an effective right to complain to the competent authorities and protect victims and witnesses of acts of torture against reprisals. As such, the State party must ensure that victims can file a complaint with the judicial authorities who in turn must be impartial and take effective steps to promptly and impartially examine the facts, investigate and prosecute those acts. To fulfil this obligation, States parties have to enact legislation to ensure the

⁶⁴ Kuwait, *Residence of Aliens Act 17/1959*, Article 16.

⁶⁵ Alkarama, *Kuwait: Student at High Risk of Torture if Extradited to Egypt*, 27 October 2015, <http://en.alkarama.org/component/k2/1924-kuwait-student-at-high-risk-of-torture-if-extradited-to-egypt?Itemid=> (accessed on 15 June 2016).

⁶⁶ Kuwait, *Prisons Act No 26/1962*, Article 15.

⁶⁷ CAT, General Comment N°3, CAT/C/GC/3, 19 November 2012.

effectiveness of those rights including by establishing an independent body to investigate allegations of torture committed by its agents.⁶⁸

In its Replies to the LOIPR, the State party affirms that the General Department of Monitoring and Inspection is the authority to receive complaints of abuse of power and ill-treatment. Yet, this department is part of the Ministry of Interior and apart from receiving complaints to be forwarded to the competent authorities, one of its functions includes the responsibility to maintain the reputation of the police. The Department's attachment to the MoI and the fact that the police is an agency of the MoI compromise the Department's impartiality and illustrates the lack of an independent complaint mechanism.

As the Supreme Human Rights Committee seized to exist, pursuant to Ministerial Decision No. 208 of 2014, the recently established National Human Rights Institution (NHRI) should now be able to receive complaints of torture and ill-treatment.

We welcome the establishment of Kuwait's National Human Rights Institution "Diwan Huquq Al Insan" by Law No. 67 of 2015, complying with previous recommendation of several member states of the Human Rights Council during its last Universal Periodic Review.⁶⁹ As per its founding text, the Diwan aims at strengthening and promoting human rights, and their respect in light of the Constitution and the international conventions ratified by Kuwait as long as it does not contravene article 8 of the Constitution stipulating that "[t]he State shall preserve the pillars of society and shall guarantee security, tranquillity and equal opportunity to all citizens". The founding law's article 4 provides that the NHRI be composed of 11 individuals appointed by Emiri decree for four years, renewable once. The nominations are made by the Council of Ministers. We are concerned that the appointment of members by the Emir as well as their nomination by government ministers will compromise the Diwan's independence. Article 6 of the law determines the activities of the Diwan, but as it has just recently been established, its members have not yet been appointed and no actual activity carried out.

Recommendations:

1. Set up a monitoring system of prisons and detention facilities that is completely independent from the MoI;
2. Request the Diwan Huquq Al Insan's accreditation by the Sub-Committee on Accreditation of the International Coordinating Committee of NHRIs and consider amending article 4 of its founding Law No. 67 in compliance with the Paris Principles and to guarantee broader consultation and independence in the selection and appointment procedure of its members.

9.2 Failure to investigate and prosecute

Article 70 of the Penal Code provides that any "official employee found guilty of a misdemeanour of bribery or torture of the accused in order to extract a confession [...] the employee is suspended from his position for no less than a year and no more than five years."⁷⁰ Article 70 explicitly refers to torture as an offence as opposed to a crime. For its part, National Security Law No. 31/1970 states in its article 53:

"Is punished by a prison sentence no longer than five years and a fine of 500 dinars or one of these two sentences, any public official/employee that has himself or through another person, tortured the accused or a witness or an expert to get them to confess a crime or testify and express opinions about the crime. If the act of torture leads to a graver act or amounts to another crime punishable by a harsher sentence then that sentence is to be pronounced. If torture leads to death then the perpetrator is sentenced to death."⁷¹

Article 56 of the same law provides that any public official that uses force against people and causes them dishonour or bodily harm is sentenced to a prison term no longer than three years and/or a

⁶⁸ CAT, General Comment N°3, 19 November 2012, CAT/C/GC/3, para. 5.

⁶⁹ United Nations Human Rights Council, *Report of the Working Group on the Universal Periodic Review (A/HRC/29/17)*, 13 April 2015.

⁷⁰ Kuwait, *Criminal Code, Law 16/1970*, article 70.

⁷¹ Kuwait, *National Security Law No. 31/1970 amending dispositions of the Penal Code (16/1960)*, article 53.

fine of no more than 225 dinars.⁷² The Penal Code provides that an offence or misdemeanour is punished by a prison sentence of less than three years and/or a fine.⁷³

In its LOIPR, the Committee requested updated statistical data for the reporting period, disaggregated by sex, age, ethnic origin or nationality and place of detention, on complaints on acts of torture and ill-treatment. The statistics provided by the State party do not differentiate torture and ill-treatment, but only refer to the "abuse of power" by the police. Additionally, the statistics do not cover the reporting period, but only abuses dealt with in 2014. Moreover, these statistics fail to disclose the ethnic origin or nationality, the place of detention of the victim and what kind of torture or ill-treatment the complaint entails.

The statistics offer names, ranks, trial case numbers and decisions of disciplinary sanctions for 61 members of the police force. Yet, there is no mention of the acts of torture or ill-treatment they committed. The majority of cases, i.e. 36 out of 61 are still pending, while 19 cases are placed on file for lack of evidence or expiration of time limit. In only three cases were the perpetrators released from service, while in others they merely faced a reduction of a few days pay. None of the cases mention criminal proceedings or prosecution for the abuse of power by the police force. Apart from the criminal prosecution of those responsible for the death of Mr Mohamed Ghazi Al Mayuni Al Matiri under torture, neither the State party in its Reply to the LOIPR, nor Alkarama has documented cases in which perpetrators of torture faced more than disciplinary sanctions.

Recommendations:

1. Provide statistics and examples of prosecution and punishment of perpetrators of torture;
2. Launch prompt and impartial investigations into all allegations of torture;
3. Prosecute alleged perpetrators of torture, as well as their superior in accordance with international law standards.

10. Absence of redress for victims of torture

Article 14 of the Convention requires States parties to enact legislation recognising the right to redress for victims of torture and cruel, inhuman or degrading treatment or punishment. The Committee has considered that the term "redress" includes the right to effective remedy and the right to reparation and entails as such "restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition and refers to the full scope of measures required to redress violations under the Convention".⁷⁴

The only legal provision that guarantees the right to redress in Kuwaiti legislation is article 11 of the Code of Criminal procedure (Act No. 17/1960), which broadly stipulates the right for every person to reparation for damage caused by an offence. This disposition is insufficient as it does not specify the right to compensation for victims of torture or other ill-treatment in particular. Furthermore, it makes no mention of the different levels of redress.

In its Replies to the LOIPR, the State party provides neither answers to the Committee's questions on compensation measures and means of rehabilitation, nor delivers statistical data on requests for redress, their volume and realisation.

Recommendation:

1. Incorporate the right to redress for cases of torture into the national legislation;

⁷² Kuwait, *National Security Law No. 31/1970 amending dispositions of the Penal Code (16/1960)*, article 56.

⁷³ Kuwait, *Criminal Code, Law No.16/1970*, article 5.

⁷⁴ Committee against Torture, General Comment N°3, 19 November 2012, CAT/C/GC/3, paras. 2 and 5.

2. Ensure that forms of reparation encompass restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition and include families and dependants of victims as well as anyone who suffered harm while assisting the immediate victim.

11. Conclusion

While Alkarama can confirm that torture is no common practice in Kuwait, this report provides a legal analysis illustrating the weaknesses and incompatibilities of domestic law with the Convention against Torture, which in turn create a breeding ground for the abuse of power, torture and other cruel, inhuman or degrading treatment or punishment.

Alkarama hopes that the concerns raised in this report will be addressed constructively during the dialogue between the Committee against Torture and the representatives of the State party in order to put an end to torture and other violations of human dignity.