THE 'IRON FIST POLICY':

Criminalization of peaceful dissent in Kuwait

AMNESTY INTERNATIONAL

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First published in 2015 by
Amnesty International Ltd
Peter Benenson House
1 Easton Street
London WC1X 0DW
United Kingdom

Index: MDE 17/2987/2015
Original Language: English
Printed by Amnesty International,
International Secretariat, United Kingdom

Cover photo: Kuwaitis rally in front of the national assembly to demand the release of opposition leader Musallam al-Barrak on 9 March 9 2015, in Kuwait City. © Getty Images.

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EXECUTIVE SUMMARY

> ***"… there is no doubt that men are free by nature to have their thoughts and opinions, to come and go, individually or congregationally, no matter their number, so long as they do not harm others. The freedoms and rights of human beings have become an integral part of global consciousness and have defined what it means to be human."***
>
> Excerpt from a 2006 ruling by Kuwait's Constitutional Court

Since the 1960s Kuwait has gained a reputation within the Gulf for granting its citizens greater political freedoms than their counterparts in other countries in the region.

The press has been able to operate with a degree of freedom relative to neighbouring countries, and citizens have generally been able to speak, write, comment and even criticize the government without fear of arrest. Kuwaiti women face legal and other discrimination, but have also enjoyed greater rights to political participation than in most other Gulf states, including rights to vote and stand as candidates in elections to parliament. There are still very serious human rights concerns – not least entrenched discrimination against residents of Kuwait not considered citizens, known as the Bidun, and the exploitation and abuse of foreign migrant workers – but holders of Kuwaiti citizenship, at least, have enjoyed freedoms that remain all too rare elsewhere in the Gulf.

But since 2011, in the face of increased criticism and amidst a volatile regional context, the authorities have taken a series of steps which have seriously eroded human rights, with the right to freedom of expression among the main casualties.

Initially, the popular protests that broke out across the Middle East and North Africa in 2011 appeared to have little impact in Kuwait. This changed in 2012, however, when popular opposition to a new electoral law and concern over corruption in government saw thousands repeatedly take to the streets of the capital, Kuwait City in a series of rallies entitled *Karamat Watan* ("Nation's Dignity").

The controversial electoral changes and the government's reaction to the Nation's Dignity rallies, which included the forcible dispersal of peaceful protests, opened up divisions in Kuwaiti society which the government exacerbated by reacting with increasing sensitivity to and intolerance of criticism and dissent. In July 2014, in response to opposition protests, the cabinet pledged "an iron fist policy and a decisive and firm confrontation with whatever could undermine the state, its institutions and constitution".

The government has used existing laws and adopted new ones to target its critics, including human rights defenders and political opponents, and ultimately close down space for dissent. Judicial authorities have ordered the suspension or closure of newspapers and other media platforms. The government has invoked the country's nationality law to strip some of its critics of their citizenship, sending a stark warning to others of the consequences of speaking out. Members of Kuwait's Bidun community, who are denied Kuwaiti nationality, have been among those arrested and imprisoned for peacefully exercising their right to freedom of expression.

A demonstration outside Kuwait Central Prison, calling for the release of opposition politician Musallam Al-Barrak, Kuwait, 31 October 2012. © Private

Amnesty International has visited Kuwait three times in the last four years, interviewing dozens of individuals, including people facing prosecution on charges related to their peaceful exercise of rights to freedom of expression, human rights defenders, journalists and lawyers. Researchers have analysed relevant international and Kuwaiti laws, reviewed UN reports relating to Kuwait and closely monitored media coverage of court cases and other developments affecting the right to freedom of expression. The organization met a senior state prosecutor, members of parliament, and senior members of the Kuwaiti government, including the Prime Minister, and subsequently invited the government to respond to its findings in an April 2015 memorandum. At the time of finalizing this report, the authorities have not responded to this memorandum.

Based on this research, this report documents the deepening erosion of the right to freedom of expression that has occurred in Kuwait during the past four years. It details the authorities' arrest, prosecution and imprisonment of peaceful online and other critics or commentators using laws that breach Kuwait's obligations under international law. Amnesty International considers a number of those prosecuted to be prisoners of conscience, jailed solely for the peaceful exercise of their right to freedom of expression.

The authorities have used vague and sweeping criminal defamation laws to punish and deter criticism of the Amir, other state officials and their policies or conduct, and also to target those who openly criticize leaders of other Arab states with which the government maintains close relations. The use of such laws has increased markedly since 2011. In the last two years, more than 90 cases have been reported in Kuwaiti media of people facing charges in court in relation to such offences.

People accused of these offences have often faced arbitrary detention and court processes in which they frequently spend months waiting for the trials to open or close due to frequent court adjournments.

Many have faced multiple cases simultaneously. At one point in 2014, former parliamentarian Musallam al-Barrak, for many years one of the government's most trenchant critics, speaking out against a perceived lack of government transparency and criticizing the Amir and the judiciary, was facing 94 ongoing separate criminal prosecutions. He is currently serving a two-year jail sentence. Hamad al-Naqi, meanwhile, is serving a 10-year jail sentence for posting comments on Twitter criticizing the leaders of Bahrain and Saudi Arabia and for making comments considered derogatory to the Prophet Mohammad and other religious figures.

A web of laws is used to prosecute critics and opponents of the government. These include articles of the Penal Code and other laws that criminalize expression deemed to insult the Amir or undermine his authority or that of the government or judiciary, or which threaten Kuwait's national security or relations with other states, such as criticism of leaders of other Arab states.

Other laws target online critics of the government – some 75% of Kuwait's population use the internet. Critics can face prosecution under laws that can make it an offence to use modern communications technology – such as mobile phones and the internet – to transmit and disseminate perceived criticism of the Amir, members of the judiciary or public officials.

Such laws undermine the government's obligations to respect, protect, promote and fulfil the right to freedom of expression. Any restriction that governments place on these rights must be shown to be the least restrictive means of doing so possible, and must be demonstrably necessary and proportionate for one of the grounds expressly identified in human rights law. In no case may such restrictions jeopardize the principle of freedom of expression itself.

New laws that would further exacerbate suppression of the right to freedom of expression are in the works. When it comes into force on 12 January 2016, the Cybercrimes Law, drawing on provisions already set out in existing law, will criminalize, in vague terms, a whole swathe of expression, including peaceful expression that might be construed as criticism of government and judicial officials or

religious personages. Moreover, an amendment to the law on public gatherings – which the parliament is considering – would introduce a penalty of three years' imprisonment for gathering in a group of five or more people in front of a court.

Kuwait is at a crossroads. The authorities must halt the seemingly complacent slide towards a fully fledged clampdown on peaceful expression if they want to salvage any reputation that Kuwait previously enjoyed in the Gulf region for relative tolerance and rights protection. Failing to do so would do a gross disservice to all of Kuwait's people and to the cause of human rights in a region wracked by armed conflict and rising sectarianism.

It is not too late to reverse the downward trend on human rights evident since 2011. Kuwait remains a state party to core international human rights treaties whose implementation is regularly examined by independent experts, and in June 2015 the government accepted nine specific recommendations committing the government to uphold international standards relating to freedom of expression, as part of the UN Universal Periodic Review (UPR) of human rights in Kuwait.

Urgent action is now required to ensure that these commitments are delivered. Amnesty International urges the government to immediately and unconditionally release all prisoners of conscience detained or imprisoned for peacefully expressing their opinions or other human rights. It should also repeal or revise laws that allow for the arrest, prosecution and imprisonment of such individuals and bring such laws in line with the government's international human rights obligations and commitments.

Amnesty International urges the Kuwait parliament to review the government's implementation of Kuwait's international human rights commitments. Parliament should work with Kuwait's civil society to hold state conduct to account and ensure that it is in line with international standards.

Kuwait's friends and allies also have a key role to play, including the Western states that assert their broad commitment to the principles of good governance and human rights and which continue to enjoy close and harmonious relations with Kuwait. These international actors, in particular the USA and the UK, Kuwait's key allies, need to do far more to promote positive change in Kuwait and to help prevent a slide into deeper repression and crackdown.

METHODOLOGY

Amnesty International conducted three research visits to Kuwait – in May 2012, October 2012 and April 2014 – to carry out the initial research for this report.

In May 2012, researchers met with, amongst others, Khalid Mubarak al-Sabah, Secretary General of the Central System for the Remedy of Situations of Illegal Residents; Kuwaiti human rights NGOs, including Khatt al-Ensan, or Human Line, the Kuwait Society for Human Rights (KSHR), Group 29, the Kuwait Bar Association, Bidun rights activists, individual lawyers and members of the then parliamentary Law and Legal Affairs Committee as well as a prominent lawyer and advocate of the minority Shi'a community.

In October 2012, the team met with the Prime Minister Sheikh Jaber Mubarak al-Hamad al-Sabah and his aides, former parliamentary speaker Ahmad al-Sa'adoun and a range of lawyers. Amnesty International held an open meeting at the Graduates Society with individual human rights defenders and representatives of around 10 Kuwaiti human rights groups. During the same visit, Amnesty International's Secretary General and delegates met with former parliamentarian Musallam al-Barrak and some of his supporters.

In April 2014, researchers interviewed over 20 people facing prosecution on charges related to their peaceful exercise of rights to freedom of expression and assembly, including political activists, journalists, commentators and people who had publicly expressed their views. Researchers held an open meeting with the Kuwait Bar Association and also met General Counsel Mubarak 'Adnan al-Rifa'ie and Faisal al-Duwaisan, then head of the Human Rights Committee of the National Assembly. During this visit, Amnesty International interviewed two prisoners held at the central prison.

Amnesty International expresses its appreciation to all those who shared their experience and expertise with the organization's researchers and welcomes officials' willingness to meet and engage on human rights issues.

As well as carrying out research in Kuwait, Amnesty International has interviewed around five individuals affected by the issues raised in this report by phone, by Skype or in person outside Kuwait. The organization has also analysed a number of Kuwaiti laws and draft legislation referred to, including particularly the Penal Code. It has reviewed relevant international standards that apply, including international conventions, General Comments by UN treaty bodies, and reports by UN working groups and committees relating to Kuwait. Finally, Amnesty International has reviewed court documents related to individual cases and closely monitored media coverage of court cases and other developments affecting the right to freedom of expression in Kuwait.

In May 2015, Amnesty International wrote to Kuwait's Prime Minister and other senior members of the government, judiciary and parliament setting out its findings and its concerns, seeking factual information and requesting the government's comments and clarification with regard to a number of cases of alleged human rights violations.[1] At the time that this report was finalized, Amnesty International had not received any response to this memorandum from the Kuwaiti authorities.

The scope of this report is limited to Amnesty International's findings and recommendations with regard to the right to freedom of expression in Kuwait. The organization has also raised concerns in other publications on issues relating to the right to freedom of assembly, the rights of the stateless Bidun minority, the rights of women in Kuwait and the rights of migrant workers.

1. Amnesty International sent the memorandum to the Prime Minister, the Deputy Prime Minister and Minister of Foreign Affairs, the Deputy Prime Minister and Minister of the Interior, the Minister of Justice, the Attorney General, the head of the Central System for the Remedy of Situations of Illegal Residents and the Human Rights Committee of the Kuwaiti parliament.

1. THE WEB OF LAWS THROTTLING FREEDOM OF EXPRESSION IN KUWAIT

"I believe that saying words should not lead to prison. It is the right of the people to express their views and no one has the right to take that away. I had a duty to defend those people [who exercised their freedom of expression]. Even if this created problems for my family, I made a conscious decision to continue on this path. And it does not matter what their religion or creed is."

Activist Abdallah al-Rafdi speaking to Amnesty International, 10 April 2014

Human rights defender Abdallah al-Rafdi, April 2014 © Amnesty International

A mesmerizingly complex web of overlapping, vague and broad laws in Kuwait serves to unduly restrict individuals' rights to express themselves freely, and affords the authorities a significant degree of choice in which instrument to use to silence critics.

The government criminalizes comments that it defines as offensive or insulting to the Amir or other government leaders, as well as judges and foreign political leaders. A range of laws also make it a criminal offence to undermine the government or government officials, publish false information, harm national interests, defame religion, or "misuse" a phone, for example to send tweets that the authorities consider illicit. Many of these laws restrict freedom of expression in ways that exceed the limits permitted by international law.

Critics can be prosecuted under long-standing laws dating back to the 1970s, as well as a range of updated legal instruments developed in the last decade to deal with potential criticism of the authorities via new forms of communications.

Some of those arrested in the last four years have been prosecuted on multiple, sometimes overlapping charges under different provisions.[2]

At the UN Universal Periodic Review of Kuwait in June 2015, the government committed to "review existing laws to ensure freedom of expression in accordance with international standards" and to "introduce legislation and institutions to ensure the independence of the media, prevent censorship and promote transparency in public affairs."[3] To Amnesty International's knowledge, at the time this report was finalized, no announcement has been made to indicate whether any such review has taken or is taking place.

2. For example, Article 6 on the 2015 Cyber or Electronic Crimes Law, due to take effect on 12 January 2015, is based on the first three clauses of Article 27 of the 2006 Press and Publications Law. These, in turn, are based on Article 29 of the Law 31 of 1970, Amending some Provisions of the 1960 Penal Code.
3. See UN, General Assembly, Human Rights Council, 29th Session, Universal Periodic Review, Addendum, UN reference A/HRC/29/17/Add.1; accessible at: http://www.ohchr.org/EN/HRBodies/UPR/Pages/KWSession21.aspx (in Arabic)

LACK OF PROTECTION FOR FREEDOM OF EXPRESSION UNDER KUWAIT'S CONSTITUTION

Kuwait's constitution appears at first glance to provide guarantees of freedom of expression and belief, but qualifications to its articles undermine promised freedoms and pave the way for further erosion in criminal law.

- Article 35 declares that "Freedom of belief is absolute" but then qualifies this by providing that the state is to uphold this freedom "in accordance with established customs, provided that it does not conflict with public policy or morals".

- Article 36 declares that "Freedom of opinion… shall be guaranteed" and "Every person shall have the right to express and propagate his opinion verbally, in writing or otherwise" but qualifies these rights by requiring that they are to be exercised "in accordance with the conditions and procedures specified by law".

- Article 37 follows the same pattern, declaring, "Freedom of the press, printing and publishing shall be guaranteed" but subject to "the conditions and manner specified by law."

- Article 54 declares the person of the Amir to be "immune and inviolable", above the law. Kuwaiti legal experts have told Amnesty International that this constitutional provision underpins the criminalization of criticism of the Amir in several of Kuwait's laws.

LAWS RESTRICTING FREEDOM OF EXPRESSION

"INSULT" AND DEFAMATION LAWS

Multiple provisions of the Penal Code and other laws make it a criminal offence punishable by imprisonment to use expression deemed by the authorities to "undermine" or "question" the Amir, other state institutions, the government and judiciary, as well as religion.

- Article 25 of Law 31 of 1970 Amending the Penal Code criminalizes the public **"undermining" or "questioning" the Amir**, and imposes a penalty of up to five years of imprisonment.[4] This provision has been repeatedly used by the authorities to prosecute those deemed to have criticized the Amir or the government in writing, speech or online. At the 2015 UN Universal Periodic Review of Kuwait, the government "noted" but did not accept a recommendation to reform Article 25 of the Penal Code to "protect human rights defenders, journalists and bloggers against persecution and harassment", declaring that Kuwait's Constitutional Court had previously rejected a challenge to the constitutionality of Article 25, and asserting that the authorities prosecuted bloggers and others only "when a violation of the rules of criminal law occurs."[5]

- Article 20 of Law 3 of 2006, the Print and Publications Law, not only prohibits criticism of the Amir; it bans **attribution of any utterance to the Amir** except by special written permission from the Diwan (office) of the Amir. This provision is repeated in Article 11(3) of Law 61 of 2007, the Audio-visual and Media Law.

- Article 29 of Law 31 of 1970, part of the Penal Code, provides for a prison term of up to 10 years for anyone found guilty of "**inciting against**

4. Article 25 of Law 31 of 1970 Amending the Penal Code. It is integrated into the Penal Code.
5. See paragraph 157.176, made by the Czech Republic, in: UN, Human Rights Council – Report of the Working Group on the Universal Periodic Review – Kuwait, Addendum, 4 June 2015, UN index: A/HRC/29/17/Add.1 (in Arabic).

the government or to change it whether in a public place or a place which can be seen or heard by speech, writing or pictorially or any other means of expression of thought".

- Article 1 of Decree Law 19 of 2012 on The Protection of National Unity, drawing on Article 29 of Law 31 of 1970, which amended the Penal Code, prohibits "**acts of hatred or insult targeting any category of society**" and provides for a prison term of up to seven years and/or a fine and expressly says that the means of expression include the internet, blogs and other means of modern communications. The same article also prohibits incitement to hatred. It is unfortunate that a potentially legitimate legislative measure to protect people from incitement to hatred has been mixed in with vague, broad and illegitimate prohibitions on "insult".

- The alleged **"insult" of foreign leaders** can be prosecuted under Article 11(13) of the 2012 Decree Law on the Protection of National Unity, which prohibits the publication or distribution of any material that may damage relations between Kuwait and other Arab or friendly countries.

- Article 147 of the Penal Code makes it an offence punishable by up to two years' imprisonment and a fine to **show disrespect to a judge** "in a way that calls into question his integrity or his interest in his work or in his commitment to the provisions of law". The law qualifies this by allowing for "honest criticism, in good faith".

- Articles 3, 19, 21(2) and 21(7) of the 2006 Print and Publications Law criminalize criticism of the Amir, contain vaguely worded provisions relating to **harming the dignity of others** and forbid newspapers from "belittling" members of the judiciary, on penalty of a fine.

- Articles 11(3), 11(10) and 11(5) of the 2007 Audio-visual Media Law prohibit criticism of the Amir, any broadcast that may cause harm to personal dignity, and the "publication or replication" of anything that "defames or belittles members of the judiciary and **public prosecution**". It is punishable by a variable fine.

Such restrictions on expression go far beyond what are permissible under international human rights law, as the UN Human Rights Committee has made clear:

> *" [T]he mere fact that forms of expression are considered to be insulting to a political figure is not sufficient to justify the imposition of penalties … [A]ll public figures, including those exercising the highest political authority such as heads of state and government, are legitimately subject to criticism and political opposition."*[6]

With regard to defamation, the Human Rights Committee has stated that:

> *[C]onsideration should be given to avoiding penalizing or otherwise rendering unlawful untrue statements that have been published in error but without malice. In any event, a public interest in the subject matter of the criticism should be recognized as a defence. Care should be taken by States parties to avoid excessively punitive measures and penalties… [I]mprisonment is never an appropriate penalty".*[7]

As well as focusing on the "insulting" content of publications and messages, Kuwaiti legislation also concerns itself with the means by which such content is communicated. The 2007 Law on Misuse of Telephones and Communications provides two years' imprisonment and/or a fine for **deliberately "insulting**

6. General Comment No. 34 (para 38), Human Rights Committee, 102nd session, Geneva, 11-29 July 2011.
7. See para 38, General comment No. 34 [on] Article 19: Freedoms of opinion and expression, issued in Geneva 12 September 2011 by the Human Rights Committee; UN reference CCPR/C/GC/34; accessible at: http://www2.ohchr.org/english/bodies/hrc/docs/gc34.pdf

or defaming" through use of a telephone by way of recording images or a video on the device and its subsequent broadcast.

The recently introduced 2014 Communication Law also provides for a year's imprisonment and/or a fine for the "purposeful abuse of telephone telecommunications"; up to two years' imprisonment and/or a fine for the **use of a means of telecommunication to send a threat or "insult";** and up to two years' imprisonment for the use of a telecommunications device to direct "insult" or libel towards others. The law also codifies sweeping powers to block content, cut off access to the Internet, suspend communications services on vague national security grounds, and revoke broadcasting licences without specifying reasons.[8]

NATIONAL SECURITY LAWS

The authorities can significantly restrict peaceful expression in Kuwait on national security grounds under a number of different provisions, using vague and over broad terms that leave it unclear what the legal limits are.

Article 15 of Law 31 of 1971 Amending the Penal Code, imposes a penalty of up to three years' imprisonment for the deliberate publication of "false or malicious" news or information about "the internal situation of the country [which] could weaken confidence in the financial situation [or which] could damage the country's national interests". It is left unclear what would constitute malicious information. Article 14 provides for imprisonment of not less than three years for the publication of "false statements or rumours about military preparations".

Additionally, under two different laws, the publication of government documents or communications without prior permission carries the risk of a fine of between 3,000 and 10,000 Kuwait dinars (the equivalents of approximately US$9,900 to US$33,000).

The UN Human Rights Committee has made clear that governments should not:

> *"invoke [national security] laws to suppress or withhold from the public information of legitimate public interest that does not harm national security or to prosecute journalists, researchers, environmental activists, human rights defenders, or others, for having disseminated such information."*[9]

Finally, under Law 31 of 1970, "publicly inciting the overthrow of the system of government" in Kuwait carries a sentence of 10 years in prison. The same law mandates the death penalty for anyone who deliberately carries out an act which harms the independence of the country, without specifying what this might be.

8. The full name of the law is Law on Establishing the Information and Communication Technology Regulatory Authority
9. See para 30, General comment No. 34 [on] Article 19: Freedoms of opinion and expression, issued in Geneva 12 September 2011 by the Human Rights Committee; UN reference CCPR/C/GC/34; accessible at: http://www2.ohchr.org/english/bodies/hrc/docs/gc34.pdf

KUWAIT'S OBLIGATIONS UNDER INTERNATIONAL LAW

SELECTED INTERNATIONAL HUMAN RIGHTS TREATIES TO WHICH KUWAIT IS A STATE PARTY.

Year of Accession	Treaty
1996	International Covenant on Civil and Political Rights (ICCPR)
1996	International Covenant on Economic, Social and Cultural Rights (ICESCR)
1968	International Convention on the Elimination of All Forms of Racial Discrimination (ICERD)
1996	Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT)
1994	Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)
1991	Convention on the Rights of the Child (CRC)

Kuwait is a state party to the International Covenant on Civil and Political Rights (ICCPR) and other key international human rights treaties, including the International Covenant on Economic, Social and Cultural Rights (ICESCR), the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), the Convention on the Rights of the Child (CRC), the Convention on the Elimination of Discrimination against Women (CEDAW), and the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD). Kuwait is also party to the Arab Charter on Human Rights.

The government of Kuwait has made a range of reservations, or interpretive declarations in respect to the implementation of these international treaties.[10] Nevertheless, in becoming party to these international and regional human rights treaties, the Kuwait government accepted legally binding obligations to respect, protect, uphold and promote and fulfil the rights they set out.[11]

The treaty provisions most directly relevant to this report are Article 19 of the ICCPR, which guarantees the right to freedom of expression, and Article 30 of the Arab Charter on Human Rights, which guarantees "freedom of thought, conscience and religion."

10. Kuwait has lodged sweeping reservations, or "interpretive declarations", in respect to its implementation of the ICCPR and ICESCR. In respect to the CRC, the independent review committee stated in 2013 that it "considers that cultural and religious specificities may be taken into consideration in order to develop adequate means to ensure respect for universal human rights, but they cannot jeopardize the implementation of all provisions of the Convention." Likewise, in relation to its obligations under CEDAW, Kuwait set out specific reservations though in 2011, the independent committee reviewing implementation "reiterate[d] its view that the reservation to article 16, paragraph 1 (f), is contrary to the object and purpose of the Convention and is thus impermissible…"
11. Kuwait has also acceded to the Optional Protocol to the CRC on the sale of children, child prostitution and child pornography, and the Optional Protocol to the CRC on the involvement of children in armed conflict. Kuwait has neither signed nor ratified the International Convention for the Protection of All Persons from Enforced disappearances, the Convention relating to the Status of Refugees, the Convention relating to the Status of Stateless Persons, the Convention on the Reduction of Statelessness, and the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families. Nor has Kuwait acceded to the Optional Protocol to CEDAW or the Optional Protocol to CAT, which allow individuals in the states concerned to submit complaints concerning alleged violations of their rights directly to the relevant treaty monitoring body.

Article 19 of the ICCPR guarantees to "everyone" the "right to hold opinions without interference" and the "right to freedom of expression", specifying that "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 their choice. Exercise of these rights may be "subject to certain restrictions," according to Article 19(3), but only when such restrictions are "provided by law and necessary" to "respect the right or reputations of others" or "for the protection of national security or of public order, or of public health or morals".

In its General Comment No. 34, adopted on 21 July 2011, the UN Human Rights Committee (HRC)[12] provided an authoritative interpretation of Article 19 of the ICCPR as guidance for states on the treaty's application. Noting that freedom of opinion and freedom of expression "are essential to any society" and "constitute the foundation stone for every free and democratic society,", the HRC declared that it is impermissible for states to so restrict the exercise of freedom of expression as to "put in jeopardy the right itself" (paragraph 21), and that laws restricting expression must be formulated with sufficient precision to enable an individual to regulate their conduct accordingly (paragraph 25).

The HRC also makes clear that when invoking a legitimate ground for restricting expression – such as protection of national security – a state party to the ICCPR "must demonstrate in a specific and individualized fashion the precise nature of the threat, and the necessity and proportionality of the specific action taken" by the state, including by "establishing a direct and immediate connection between the expression and the threat." (paragraph 35).

OFFENDING RELIGION

Kuwait's law also imposes unacceptable restrictions on freedom of expression on grounds of religion. While exempting from prosecution "academic and scientific research", the Penal Code imposes a penalty of up to one year of imprisonment and/or a fine[13] for anyone convicted of spreading:

> *"... opinions that include sarcasm, contempt, or belittling of a religion or a religious school of thought, whether by defamation of its belief system, its traditions, its rituals or its instructions."*

At the 2015 UN Universal Periodic Review of Kuwait, the government "noted" but did not accept a recommendation to reform this Article of the Penal Code.[14]

Specifically, it is illegal under Article 19 of the 2006 Print and Publications Law to publish **criticism of God, the Quran, Prophets, the Companions of the Prophet, his wives and the members of Ahl al Bayt** (the daughter of the Prophet Mohammad; her husband and their two children). Such 'criticism' – which is not defined – is punishable by one year's imprisonment and/or a fine.

Under a separate provision, the 2007 Audio-visual and Media Law likewise bans – with the threat of one year in prison - **criticism of the 'personality' of God, Angels, the Quran, and all of the Prophets.**

The International Covenant on Civil and Political Rights does allow for limited restrictions on the "freedom to manifest one's religion or beliefs" when these are "prescribed by law" and "necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others." However,

12. The HRC, comprising 20 independent experts, is the treaty monitoring body established under the ICCPR to oversee its application by states parties and to act as the authoritative interpreter of the ICCPR's provisions.
13. The fine remains denominated in law as 1,000 Gulf Rupees. Issued by the government of India, this was the currency used in Kuwait and other parts of the Gulf and Arabian Peninsula between 1959 and 1966. References to currency in law during this period refer to this currency, which was replaced by the Kuwaiti dinar after independence in June 1961. The current amount is based on a schedule derived from an exchange rate used at the time.
14. Paragraph 157.176, made by the Czech Republic, in: UN, Human Rights Council – Report of the Working Group on the Universal Periodic Review – Kuwait, Addendum, 4 June 2015, UN index: A/HRC/29/17/Add.1 (in Arabic).

the UN Human Rights Committee has clarified that:

> *"[I]t would be impermissible …for such prohibitions [of displays of lack of respect for a religion or other belief system] to be used to prevent or punish criticism of religious leaders or commentary on religious doctrine and tenets of faith."*[15]

2016: THE CYBERCRIMES LAW

In July 2015, Kuwait's National Assembly passed a Cybercrimes, or Electronic Crimes bill. Signed into law as Law 65 of 2015 on Electronic Crimes, it is scheduled to take effect on 12 January 2016.[16] It will further undermine freedom of expression in Kuwait.

The new law covers a wide range of issues related to online offences, including phishing, forgery, online extortion and human trafficking. But drawing on provisions already set out in the 2006 Press and Publications Law[17], the law will criminalize, in vague terms, a swathe of expression that could constitute an exercise of peaceful expression including what might be construed as criticism of government and judicial officials or religious personages.

Most seriously, Article 7 imposes a punishment of up to 10 years in prison for using the Internet to:

> *"…overthrow the ruling regime in the country when this instigation included an enticement to change the system by force or through illegal means, or by urging to use force to change the social and economic system that exists in the country, or to adopt creeds that aim at destroying the basic statutes of Kuwait through illegal means."*

Under international law, the definition of crimes has to be clear and narrowly defined. The language used in this Article, such as "creeds that aim at destroying the basic statutes through illegal means" is so vague and broad that it lends itself to abuse.

The new law flies in the face of the UN's Human Rights Council, which, in a 2014 resolution on the promotion, protection and enjoyment of human rights on the Internet, called upon states:

> *"…to address security concerns on the Internet in accordance with their international human rights obligations to ensure protection of freedom of expression, freedom of association, privacy and other human rights online, including through national democratic, transparent institutions, based on the rule of law, in a way that ensures freedom and security on the Internet so that it can continue to be a vibrant force that generates economic, social and cultural development."*[18]

15. UN Human Rights Committee, General Comment 34, para 48, accessible at: http://www2.ohchr.org/english/bodies/hrc/docs/gc34.pdf
16. Kuwait Times, E-crimes law takes effect January 12: Attorney General, 23 November 2015, accessede at: http://news.kuwaittimes.net/website/e-crimes-law-takes-effect-january-12-attorney-general/
17. See the 2006's Articles 19, 20 and 21: (19) "*It shall be prohibited to meddle in matters related to God, the Holy Quran, Prophets, the Noble Companions of Prophet Muhammad, Wives of the Prophet, peace be upon him, or persons who are part of the Prophet's family, peace be upon them, by meddling, defamation, slander or mocking in any forms of expression…*"; (20) "No challenge may be made to the person of the Country's Amir of the State of Kuwait by criticism, and no statement shall be attributed to him except by a special written permission from the Amiri Diwan"; and (21) "It shall be prohibited to publish anything that would…" show contempt towards the Constitution; jurists or the judiciary; violate public morals or public order; constitute news about secret governmental communications or meetings; be an "infringement on the dignity of the persons or their lives or religious believes, and instigating hatred or disdain of any social sector (or class)" or information about their wealth; encroach upon the private life of a public servant; cause harm to relations between Kuwait and other Arab or friendly states or go beyond the remit of a journal.
18. United Nations, General Assembly, Human Rights Council, Human Rights Council, Twenty-sixth session, Agenda item 3: Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development: The promotion, protection and enjoyment of human rights on the Internet, UN reference: A/HRC/26/L.26, 20 June 2014; accessible at: http://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/26/L.24

LEGAL RESTRICTIONS ON THE RIGHT TO FREEDOM OF ASSEMBLY

Freedom of expression in Kuwait is also curtailed by parallel legal restrictions on the right to peaceful assembly, which limit people's ability to express dissent as part of a protest or rally. Several provisions of the 1979 Law on Public Gatherings and Meetings unduly restrict exercise of the right to peaceful assembly.

The authorities have used the Law on Public Gatherings and Meetings, to ban, declare illegal or disperse rallies and demonstrations, including those organized by stateless Bidun and several Nation's Dignity (*Karamat Watan*) rallies between 2011 and 2014.[19]

Under Article 12, those who do not hold Kuwaiti citizenship – including members of the Bidun minority and foreign migrant workers who make up more than half of Kuwait's 3.5 million population – are prohibited from participating in "processions, demonstrations and gatherings". This prohibition directly breaches Kuwait's obligations under international human rights law.[20]

The law also makes it illegal, under Article 4, to hold demonstrations or other public gatherings without first obtaining a licence issued by the relevant local government body. Organizers of gatherings must also provide their identities to the authorities in advance.[21]

A requirement to give prior notice of demonstration is compatible with international standards. But a requirement to give notification must not amount in practice to a requirement to obtain authorisation or "licence", as is required under Kuwaiti law. The purpose of notification requirements must be to allow the authorities to take reasonable and appropriate measures to guarantee the smooth conduct of any assembly, meeting or other gathering, and while the authorities may use notification requirements to ensure protection of the rights of others or to prevent disorder or crime, these requirements should not represent a hidden obstacle to the freedom of peaceful assembly. So, no authorisation should be required to assemble peacefully. Notice should be subject to a proportionality assessment, and should only be required for large assemblies or those where a certain degree of disruption is anticipated, with a recommended maximum notice requirement of, for example, 48 hours - this should act as a "notice of intent rather than a request for permission".[22]

In 2006, Kuwait's Constitutional Court ruled on a challenge to the law from petitioners who contended that its provisions limiting social freedom violated Kuwait's Constitution. The court expressed the view that prior permission for public meetings and the ability of security forces to disrupt such meetings constituted "arbitrary law-sanctioned repression of opinion" and constituted "a mandate for the security apparatus to control public debate", a "moratorium on the right to public discourse". But the ruling stopped short of striking down these provisions, ruling that restrictions on the right to assembly contained in the law were justified because they met a social need.[23]

19. Mass *Karamat Watan*, Nation's Dignity rallies were held on: 21 October 2012, 4 November 2012, 30 November 2012, 8 December 2012, 6 January 2013, 13 January 2013, 23 January 2013 and 6 July 2014.
20. In particular, Article 21 of the ICCPR, guaranteeing the right of peaceful assembly, and under Articles 3 and 26, which require, respectively, that all state parties "ensure the equal right of men and women to the enjoyment of all civil and political rights set forth in the Covenant," and afford all persons equality before the law and "equal and effective protection against discrimination on any ground," including "political or other opinion, national or social origin, property, birth or other status."
21. Articles 5-11.
22. UN Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, A/HRC/20/27, 21 May 2012, para. 28. See also A/HRC/23/39, 24 April 2013, paras. 28, 51, 52 and 90.
23. The Constitutional Court's 2006 ruling stated that Articles 1 and 4 of the 1979 law contradicted Article 44 of the Constitution, in addition to finding them contradictory to the spirit of Articles 30, 34, and 36. In addition, Articles 2, 3, 5, 6, 8, 9, 10, 11, 16, 17, 18, 19, and 20 of Law 65/1979, which contain regulations and instructions relating to Articles 1 and 4, were found to contain unconstitutional text as applied to public assembly. The Constitutional Court rejected a further challenge to the 1979 law in March 2015, ruling that irrespective of the guarantees of individual freedom contained in the Universal Declaration of Human Rights and Kuwait's Constitution, such rights had to be exercised in accordance with Kuwait's domestic laws, and that the state had an obligation to protect the public interest as well as the rights of individuals. See Annulation by the Constitutional Court of Article 15 of the Law on gatherings: unconstitutional and without prejudice to the freedoms guaranteed by the Constitution, published in the al-Rai al-'Am newspaper on 2 May 2005; accessible at: http://www.mohamoon-kw.com/default.aspx?Action=DisplayNews&ID=6719

The Ministry of Interior subsequently asserted that the ruling had not affected the need for organizers of every "protest or gathering" to seek and obtain official permission to hold it in advance for it to be legal, stating that the law was necessary to ensure stability. The Ministry invoked a list of other "rules", including: "Protests cannot take place before 8am or after 6pm unless there is special permission from the local MP"; "The application for the protest must be submitted a minimum of five days before the date of the protest"; and "Unauthorized protests or gatherings will be broken up".

In keeping with the downward spiral in terms of adherence to international human rights standards, Kuwait's Council of Ministers adopted further restrictive changes to the 1979 law on 20 October 2015. If signed into law by the Amir, this would add a provision for three years' imprisonment and a fine of 3000 Kuwaiti dinars (equivalent to US$9,900) or either of these two for "*all those participating in an assembly [gathering] of no less than five people, in front of Judicial centres, whether courts, prosecutorial offices or the investigative administration.*"[24] [emphasis added]

In April 2015, Kuwaiti government representatives attending the UN Human Rights Council's Universal Periodic Review of Kuwait said that the government accepted to "[g]uarantee in law and in practice, without any abusive restrictions, freedom of peaceful assembly," and to "[g]uarantee the right to freedom of expression, association and peaceful assembly of journalists, activists, human rights defenders and those who take part in demonstrations."[25]

24. Al-Anba: Amendments to the Penal Code adopted by the Council of Ministers / Imprisonment for 3 years for demonstrators and 5 for those who break into places, 22 October 2015; accessible at: http://www.alanba.com.kw/ar/kuwait-news/594877/20-10-2015. The punishment rises to five years' imprisonment and/or 5,000 Kuwaiti dinar ($US16,500) if the gathering resulted in the forced intrusion into the office in question. The penalties rise to seven years' imprisonment and/or a 10,000 Kuwaiti dinar fine ($US33,000) where the intrusion results in damaged property or the verbal or physical abuse of any employee of the office. The punishment also doubles if the person is carrying a weapon.
25. UN, Human Rights Council: Report of the Working Group on the Universal Periodic Review (UPR), 13 April 2015, UN index A/HRC/29/17, accessible at: http://goo.gl/MYd3Wp, in Arabic.

2. THE TARGETING OF OPPOSITION ACTIVISTS, HUMAN RIGHTS DEFENDERS AND JOURNALISTS FOR "CRIMES" OF EXPRESSION

> *'I didn't repeat [Musallam al-Barrak's] speech because I agreed with what was said or who said it, but rather to support people's right to express themselves.'*
>
> Human rights defender Rana al-Sa'adoun

Since 2011, the Kuwaiti authorities have used the array of restrictive laws at their disposal to arrest, prosecute and imprison scores of people for peacefully exercising their right to freedom of expression, including because they criticized the government or its policies.

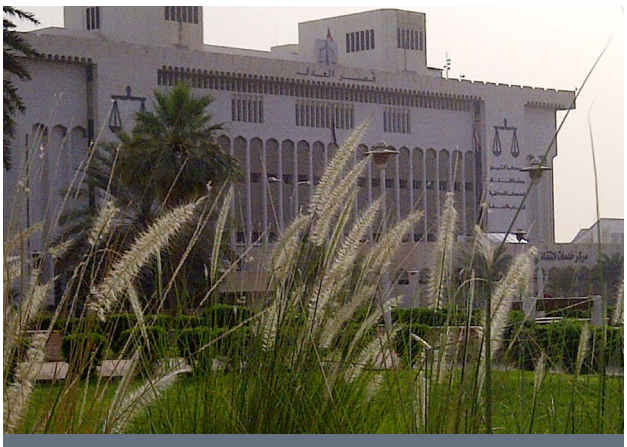
Those targeted include political activists and opposition figures, journalists, human rights defenders, and users of Twitter and other social media. In 2015, they have included senior members of the ruling family and former Ministers. Amnesty International considers a number of these people to be prisoners of conscience, jailed solely for the peaceful exercise of their right to freedom of expression.

The use of laws prohibiting "insult" of state officials, particularly the Amir of Kuwait, and neighbouring countries has increased markedly since 2011. The marked rise in the use of such laws to clamp down on dissent appears to have been at least partly the state's response to popular political challenges to the government, after Kuwait witnessed a series of mass demonstrations from 2012 onwards, sparked by opposition to a new electoral law and concern over corruption in government. A number of these *Karamat Watan* ("Nation's Dignity") rallies were forcibly dispersed. In July 2014, the cabinet pledged "an iron fist policy and a decisive and firm confrontation with whatever could undermine the state, its institutions and constitution."[26] The government's actions in this period have demonstrated its increasing intolerance of criticism and dissent.

Some individuals have faced numerous charges simultaneously relating to a range of different critical statements issued, for which they have faced court proceedings and jail sentences on a repeated, cyclical basis. They endure months awaiting trial and can face delayed hearings due to frequent court adjournments. Those facing such charges have described the toll it takes on their lives and the way in which the burden of continual legal cases constrains their activities.

Amnesty International considers that the use of repeated and multiple charges against activists and opposition figures forms part of a government strategy to muffle dissenting voices and deter others from risking their liberty by speaking out.

This chapter features some of the most serious of these cases that Amnesty International has documented.



The Palace of Justice, Kuwait City, which houses Kuwait's highest courts
© Amnesty International

26. Kuwait Times: Cabinet orders review of citizenship over violence / Government vows 'iron fist', warns NGOs – Opposition outraged, 14 July 2014, accessed at: http://news.kuwaittimes.net/cabinet-orders-review-citizenship-violence-govt-vows-iron-fist-warns-ngos-oppn-outraged/

IMPRISONED FOR INSULTING THE AMIR AND OTHER OFFICIALS

Abdullah Fairouz, 37, a human rights defender and political activist, is serving jail sentences amounting to three and half years at Kuwait Central Prison because of tweets he posted more than two years ago. Amnesty International considers him a prisoner of conscience, imprisoned solely for the peaceful exercise of his right to freedom of expression.

He was arrested by police on 4 November 2013 after he posted tweets expressing his view that no-one should have immunity against prosecution because they reside in a royal palace. Although he denied that his comments were aimed at the Amir, the authorities prosecuted him under Article 25 of the Penal Code on charges of publicly objecting "to the rights and authority of the Amir" and finding "fault" with the Amir.[27]

On 9 January 2014, a court convicted him and sentenced him to five years in jail, to be followed by deportation (the authorities contended that he did not hold Kuwaiti citizenship).[28]

On 30 March 2015, one of his lawyers said that the Court of Cassation ruled that Abdullah Fairouz should be considered eligible for Kuwait citizenship.[29] He received a further two-year prison term on 5 March 2014 after the Court of Misdemeanours convicted him of 'insulting the judiciary' in messages that he had posted on Twitter; in December, an appeal court reduced this second sentence to six months' imprisonment.

Abdullah Fairouz told Amnesty International researchers who visited him in jail in 2014 that he did not regret his tweets.[30]

Musallam al-Barrak, 59, is a former Member of Parliament who is serving a two-year jail sentence at Kuwait Central Prison. Having been elected to Kuwait's National Assembly between 1996 and 2012, he has been for many years one of the government's most trenchant critics. He has spoken out against a perceived lack of government transparency and criticized the judiciary. In March 2014, he formed the People's Action Movement with other opposition members, to campaign for an elected government. He was arrested in late October 2012, two weeks after he addressed a public gathering in Erada Square, next to Kuwait's parliament, railing against government "time-wasting and the squandering of resources" and criticizing the Amir:

> *"Your Highness, in the name of the nation we shall not allow you to engage in autocratic rule … Your Highness, how do you want to go down in history? Do you want it to be recorded that under the rule of Sheikh Sabah al-Ahmed, opinion formers were imprisoned?"*[31]

Since then, the authorities have opened numerous prosecutions against him based on his exercise of his right to freedom of expression – at one point in April 2014, he was facing no less than 94 separate criminal prosecutions.[32]

The high volume of prosecutions is intended to harass and intimidate Musallam al-Barrak, as well as to punish him for criticizing the government and judiciary, and to deter other critics from voicing their views.

27. Interviews with Abdullah Fairouz, in Kuwait's Central Prison; as well as his lawyer, Abeer Haddad, on 15 and 12 April 2014, respectively.
28. Human Rights Watch, Kuwait: Jail, Exile for Insulting Emir, 26 January 2014, accessed at https://www.hrw.org/news/2014/01/26/kuwait-jail-exile-insulting-emir
29. Sabr: "The Prosecutor at the Cassation Court rules in favour of Abdullah Fairouz and demands that he be granted a Kuwaiti passport" (translated from Arabic), 30 March 2015, accessible at: http://www.sabr.cc/inner.aspx?id=94389 ; along with Alaan: "In a new verdict Abdullah Fairouz 'is Kuwaiti'; the Misdemeanours' Appeal Court imprisons him for 6 months on the charge of "insulting the judiciary"" (translated from Arabic), 23 December 2014, accessible at: http://www.alaan.cc/pagedetails.asp?nid=215529&cid=48
30. Interview with Amnesty International researchers, Kuwait, 15 April 2014.
31. See: "Enough vain discourse, the speech for which al-Barrak was imprisoned | Musallam al-Barrak: Your Highness we will not allow you | Full speech" (translated from Arabic), posted to YouTube on 15 October 2012, accessible at: https://www.youtube.com/watch?v=n7nnFUOEmBY. At 09:50 he states "Your Highness, in the name of the nation we shall not allow you to engage in autocratic rule…" and at 22:47, "… Your Highness, how do you want to go down in history? Do you want it to be recorded that under the rule of Sheikh Sabah al-Ahmed, opinion formers were imprisoned?"
32. Interview with Musallam al-Barrak and several of his lawyers, 10 April 2014.

At the time of his initial arrest in 2012, he was charged with "undermining the status of the Amir", under Article 25 of the Penal Code, and released on bail four days later. On 15 April 2013, a court of First Instance convicted him of insulting the Amir and sentenced him to five years in prison; on 22 February 2015, an appeal court reduced the sentence to two years.[33] He turned himself into the authorities on 1 March to begin serving his sentence, but he was released on bail three weeks later.[34]

In one of the many separate cases brought against him, on 28 April 2015, the Court of Misdemeanours fined him and another opposition activist 3,000 Kuwaiti dinars (the equivalent of approximately US$9,845) for insulting the judiciary in comments they made on the Talk Shok television programme broadcast by al-Yawm (also al-Yom) local TV channel.[35]

The Court of Cassation confirmed his conviction and sentence for "undermining the status of the Amir" in May 2015, and he returned to jail on 13 June. When he entered prison, he was initially held in solitary confinement and denied access to his lawyer, until he went on hunger strike in protest.[36]

In a July 2015 letter to the UN Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression his lawyer, Badr Beddah al-Mesh'an, alleged that the former MP faced "inhuman conditions" while imprisoned at the Central Prison.[37]

Amnesty International considers Musallam al-Barrak a prisoner of conscience, imprisoned solely for the peaceful exercise of his right to freedom of expression.

Musallam al-Barrak with documents related to the many legal cases against him, at his office in al-Andalus, Kuwait City, April 2014 © Amnesty International

33. Interview with Musallam al-Barrak and several of his lawyers, 10 April 2014.
34. Al-Anba newspaper: "The Appeal Court issues verdict of imprisonment of Musallan al-Barrak for two years with immediate implementation" (translated from Arabic), http://www.alanba.com.kw/ar/kuwait-news/incidents-issues/539222/23-02-2015 and "al-Barrak handed himself over: this is my decision and the price to pay for maintaining the Constitution", http://alwatan.kuwait.tt/articledetails.aspx?id=421016
35. Sabr: "al-Barrak and al-Wahshi fined 3000 Dinars / In case of "insulting the judiciary"" (translated from Arabic), 23 April 2015, accessed at : http://www.sabr.cc/inner.aspx?id=95154
36. Alaan: "Musallam al-Barrak transferred to the State Security Block" (translated from Arabic), 14 June 2015, accessed at: http://www.alaan.cc/pagedetails.asp?nid=227175&cid=48
37. Sabr: "al-Mesh'an addresses a speech to the United Nation for al-Barrak's release" (translated from Arabic), 23 July 2015, accessed at: http://www.sabr.cc/inner.aspx?id=97361

PROSECUTED FOR SOLIDARITY

The authorities' treatment of Musallam al-Barrak has resulted in other Kuwaitis facing similar charges. The largest group were those who had gathered at Musallam al-Barrak's residence on 17 April 2013 in a peaceful protest to express solidarity with him, with some reciting aloud extracts from his October 2012 speech.

Members of Musallam al-Barrak's family told Amnesty International that the security forces dispersed the gathering using force, including by throwing stun grenades into the house, briefly arresting Musallam al-Barrak's brothers and his secretary, and beating his 11-year-old nephew. A Filipino migrant worker hid in a bathroom during the raid and returned to the Philippines after the incident, traumatized. Members of Musallam al-Barrak's family told Amnesty International that two female members of his family required hospitalisation for smoke inhalation.[38]

67 participants who took part were charged with "insulting the Amir" under Article 25 of the Penal Code. Those charged included several human rights defenders, including Munther al-Habib and Abdullah al-Rafdi, members of the National Committee for Monitoring Violations (NCV), a local human rights group, both of whom attended the rally.

The authorities divided the 67 into five groups for the purposes of prosecution.[39] On 22 October 2014, the Criminal Court convicted 13 of the 67 of "insulting" the Amir by repeating Musallam al-Barrack's speech[40] and sentenced each of them to two years in prison, suspended for three years and a 3,000 Kuwaiti dinar bail (equivalent to approximately US$9,850). A social media account that monitors court developments in Kuwait has suggested that a government appeal of the suspended sentence will be heard on 4 January 2016.[41]

On 15 June 2015, the Criminal Court convicted a further 21 of the 67, sentencing each of them to two-year prison terms, likewise suspended for three years, and a bail of 2,000 Kuwaiti dinars (equivalent to around US$6,570). At the time of writing, the prosecutions of others in this group were ongoing. Some of the 67 were awaiting the outcome of appeals.[42]

Ahmad al-Damkhi, a political activist and Popular Action Movement supporter, also received a five-year prison term for repeating the speech at the protest. An appeal court reduced this to two years on 28 July 2015.[43]

Human rights defender and member of the National Committee for Monitoring Violations (NCV) Rana al-Sa'adoun, who did not take part in the gathering, was sentenced to three years' imprisonment on 21 June 2015 for publishing Musallam al-Barrak's October 2012 speech on YouTube.[44] She was outside the country at the time of her conviction.

In a March 2015 video-blog, she said that she had been defending the right to freedom of expression rather than the content of the speech: *"I didn't repeat the speech because I agreed with what was said or who said it, but rather to support people's right to express themselves."*[45]

38. Interview with Musallam al-Barrak, members of his family and several of his lawyers, 10 April 2014.
39. See the online edition of al-Qabas newspaper: http://www.alqabas.com.kw/node/832991 and the Gulf Center for Human Rights: http://gc4hr.org/news/view/520 .
40. Al-Watan: "The Criminal Court issues its verdict, sentencing 13 citizens who repeated Musallam al-Barrak's speech to a suspended sentence of two years in prison and a 3,000 [Dinars] fine with immediate implementation" (translated from Arabic), 22 October 2014, accessed at: http://goo.gl/anjBCL
41. See a tweet from @mediacourt on 2 November 2015: "The Appeal Court postpones the case in which 4 former MPs are accused of repeating the *#Enough vain discourse* speech of former MP Musallam al-Barrak to 4 January *#security and courts*" (translated from Arabic). The @mediacourt twitter account monitors court developments.
42. See 16 June 2015 articles in al-Watan: "The Criminal Court issues its verdict and sentences 21 citizens to suspended sentences of two years in the case of repeating al-Barrak's speech" (translated from Arabic), at: http://alwatan.kuwait.tt/articledetails.aspx?id=439409&yearquarter=20152 and Sabr, at: http://www.sabr.cc/inner.aspx?id=96497 Those involved were listed as: Jam'an al-Harbash, Falah Sawagh; Mohammad al-Khalifa, Salem al-Namlan, Khaled al-Tahous, Khaled Shukayr, Mubarak al-Wal'an, Faysal al-Muslim, Faysal al-Yahia, Anwar al-Fikr, Abdullah al-Barghash, Fahd al-Zamel, Ziad al-Zeid, Ahmad Sayar, 'Ayedh al-'Otaibi, Mohammad al-'Otaibi, Fahd Mater, Khaled al-Mutairi, Nasser al-Mutairi, Nayef al-Ajmi and Khaled al-Shamari.
43. See the 28 July 2015 statement ANHRI: Appeal Court sentences Ahmad al-Damkhi to 2 years with immediate implementation in case of repeating Musallam al-Barrak's speech, at: http://anhri.net/?p=146584
44. Al-Watan: "The Criminal Court issues its verdict and sentences Rana al-Sa'adoun to three years with immediate implementation" (translated from Arabic), 21 June 2015, accessed at http://alwatan.kuwait.tt/articledetails.aspx?id=440214&yearquarter=20152
45. Gulf News: Kuwaiti activist sentenced to 3 years for insulting Amir, 21 June 2015, accessed at: http://gulfnews.com/news/gulf/kuwait/kuwaiti-activist-sentenced-to-3-years-for-insulting-Amir-1.1538515

Journalist '**Ayad Khaled al-Harbi**, 26, has been in prison since October 2014 in connection with his tweets and articles he wrote for the online journal, Sabr.

Journalist and blogger 'Ayad al-Harbi, April 2014 © Amnesty International

In his tweets he echoed the words of Musallam al-Barrak as well as verses criticizing Arab rulers written by Iraqi poet Ahmed Matar, while his opinion pieces for Sabr, published ahead of Kuwait's December 2012 National Assembly elections, criticized government corruption and restrictions on freedom of expression. In other articles for Sabr, he addressed the consequences of high levels of discrimination, particularly for Kuwait's Shi'a minority, and criticized the government's record on women's rights.[46]

Amnesty International considers him a prisoner of conscience.

'Ayad al-Harbi was first summoned for questioning in November 2012 by The Cybercrimes Unit of the Criminal Investigation Department in Salmiya. He was charged with insulting the Amir under Penal Code Article 25, misusing his mobile phone to post tweets considered illegal, and publishing false information abroad, on the grounds that those following him on Twitter included people residing outside Kuwait.[47]

In January 2013, a court of First Instance convicted him of "insulting" the Amir and sentenced him to two years' imprisonment.[48] He was sentenced in absentia, as he was in Saudi Arabia between January and April 2013, but on return to Kuwait he gave himself up to the authorities and spent three weeks in prison before being released. The authorities re-arrested him in October 2014 to begin serving his sentence, which the Appeal Court had confirmed. He has been imprisoned since, and the Court of Cassation confirmed his prison term on 5 April 2015.[49]

Ahmed 'Abdul'aziz Fadhel, manager of the @el_aldstor or Ila al-Dastour (Only the Constitution) Twitter account, is serving a four-year prison sentence at Kuwait's Central Prison for insulting judicial authorities in tweets. Four judges, including the President of the High Judiciary Council brought the case against Ahmed 'Abdul'aziz Fadhel, on the grounds that he had abused judges, made derogatory remarks against them and insulted them on Twitter.

On 30 October 2014, the Criminal Court convicted and sentenced him to four years in prison and to pay a 5,001 Kuwaiti dinars (US$16,433) fine, and this sentence was confirmed by the Appeal Court on 2 February 2015.[50] Amnesty International considers him a prisoner of conscience.

46. Interview with Amnesty International, 11 April 2014. See also, for example, the 1 December 2014 the embedded image tweet from Ali Hisseh, @h24914, stating: "*#'Ayad _al-Harbi _word_of _promise* – Freedom for the detainee we do not know" (translated from Arabic)
47. Interview with Amnesty International, 11 April 2014.
48. Al-Watan online: "Tweeter "al-Harbi" imprisoned for two years with immediate implementation and acquittal of "al-Munawer" of insulting the person of the Amir" (translated from Arabic), 7 January 2013, accessed at: http://alwatan.kuwait.tt/articledetails.aspx?Id=246100&YearQuarter=20131
49. Sabr online: "The Cassation Court upholds al-Harbi's two years' imprisonment with immediate implementation" (translated from Arabic), 5 April 2015, accessed at: http://www.sabr.cc/inner.aspx?id=94600
50. Al-Watan (online), 30 October 2014, accessed at: http://alwatan.kuwait.tt/articledetails.aspx?Id=395716&yearquarter=20144

School teacher **Sara 'Abdelwahab al-Drees**, 28, was arrested on 14 November 2012, a few weeks after she posted dozens of tweets criticizing the government, including in relation to an October 2012 demonstration that local activists said was met with a violent government response and many arrests.[51]

School teacher Sara 'Abdelwahab al-Drees has faced imprisonment for peacefully expressing her views. April 2014 © Amnesty International

She was charged with "insulting" the Amir, under Article 25 of the Penal Code, and with contravening Article 1 of the Law on the Misuse of Telephones by disseminating her tweets. She was released on bail pending trial but was convicted of "insulting" the Amir and sentenced to two years in prison, which she began serving in July 2013 after the Appeal Court confirmed her sentence. The following month, she was released under an amnesty granted by the Amir (see below).[52]

The trial of the so-called ***al-Fintas* group of 13 people** began on 21 September 2015. The group were referred to the Criminal Court by state prosecutors in August 2015 on charges including insulting the Amir and misusing their mobile phones to communicate unlawful messages.[53]

Named after a town 30km south of Kuwait City, the al-Fintas 13 included four members of Kuwait's extensive ruling family, including Ahmed al-Fahd al-Sabah, a former Deputy Prime Minister and Oil Minister, and his brother, 'Athbi al-Sabah, former head of the government's National Security Office.

Apparently in a context of rivalry and positioning for power within the ruling al-Sabah family, five of the defendants faced charges of insulting the Amir and challenging his authority, "prejudice against the pillars of the Emirate," challenging the judiciary, and misusing mobile phones. The eight others faced charges of challenging the judiciary and misusing mobile telephones.

The case appears to have arisen after police arrested lawyer 'Abdulmuhsin al-'Ateeqi at a peaceful demonstration on 23 March 2015. The demonstration was organized by opposition groups advocating reforms, including respect for constitutional guarantees of freedom of expression and assembly, the release of prisoners of conscience and an end to the withdrawal of citizenship rights on political grounds.

While 'Abdulmuhsin al-'Ateeqi was in custody, security officers seized and examined his mobile phone and found records of private messages on the WhatsApp social network. Some of these messages were between members of a group he had created in the app and labelled "al-Fintas". It aroused the suspicions of the Kuwaiti authorities.

51. Amnesty International interview with Sara al-Drees, 12 April 2014
52. Gulf News: Kuwait blogger offered bail after conviction / Female activist found guilty of tweets undermining status of the Amir, 29 May 2013, accessed at: http://gulfnews.com/news/gulf/kuwait/kuwait-blogger-offered-bail-after-conviction-1.1190113
53. Al-Qabas: "The case of 'al-Fintas group' adjourned to a 24 January session in order to hear the witnesses" (translated from Arabic), 30 November 2015, accessed at: http://www.alqabas.com.kw/Articles.aspx?ArticleID=1112800&CatID=310

On 6 May 2015, the National Assembly recommended that 'Abdulmuhsin al-'Ateeqi and those associated with him should be prosecuted on national security grounds.[54] The following month the authorities banned them from leaving Kuwait – a restriction that was lifted by the Criminal Court in September. On 9 July, state prosecutors ordered their arrest, and they were then detained and questioned for over a week before being released on bail of 10,000 Kuwaiti dinars each (equivalent to US$33,000) except in one case where bail was set at 2,000 Kuwaiti Dinars (US$6,570).[55]

RELEASE OFFERED ON CONDITION OF "REPENTANCE"

In at least nine cases, state authorities informed prisoners sentenced on charges of "insulting the Amir" or their families in May 2013 that if they agreed to express "repentance" during a video-recorded formal audience with the Amir they could obtain early release under an Amiri pardon. One prisoner who had been made such an offer told Amnesty International researchers that he instructed his family to reject the offer on the grounds that accepting it would imply that his imprisonment for peacefully exercising his right to freedom of speech was a legitimate offence. Despite this, he and the eight other prisoners were released on 7 August 2013, before completing their sentences, under a pardon issued by the Amir.[56] Amnesty International is not aware how many of the nine agreed to "repent".

OFFICIALS CRITICIZING FOREIGN STATES AND RULERS, OFFENDING RELIGION

As well as clamping down on internal critics, the Kuwaiti authorities have also targeted peaceful critics of leaders of other Arab states and their policies, using Article 4 of the National Security Law of 1970. In some cases, prosecutors have also introduced charges related to offending religion, on the ground that criticism of neighbouring countries could stoke sectarian tensions.

Kuwaiti Twitter users have sporadically spoken out about regional events and against regional political leaders in recent years, notably following unrest in Bahrain since 2011; the political clampdown in the UAE since 2012; the visit to Kuwait of Egyptian President Abdel Fattah al-Sisi in early January 2015; and following the death of Saudi Arabia's King Abdullah the same month. A number have apparently crossed "red lines", falling foul of Kuwait's vague and broadly worded laws.

Since January 2015, authorities have charged at least 12 people under the National Security Law for tweets deemed critical of Saudi Arabia, the hegemonic power in the Gulf region. In some of these cases, media reports suggest that charges followed requests by officials in Saudi Arabia that certain individuals be prosecuted.

Several prosecutions followed the death of King Abdullah of Saudi Arabia on 23 January. The authorities arrested several people for posting comments on Twitter that they deemed disparaging to the late king.[57] They included journalist **Flayh al-'Azmi** and **Mohammad al-'Ajmi**, a member of Kuwait's Bidun minority and activist with the now-inactive

54. Al-Jarida: "Recommendation to refer the "al-Fintas group" to the Prosecution" (translated from Arabic), 7 May 2015, accessed at: http://goo.gl/Va3zW8
55. Arab Times Online: Probe Ends, 'Fintas Group' Members Over To Prosecutor / Lawyers Among Suspects, 13 May 2015, accessed at: http://www.arabtimesonline.com/probe-ends-fintas-group-members-over-to-prosecutor
56. Amnesty International interview with Saqr al-Hashash, 11 April 2014
57. Amnesty International wrote to Kuwait's Attorney General Hamed al-Othman inquiring about these arrests on 29 January 2015 but received no response. See: *Amnesty International - Kuwait: Clampdown on freedom of expression coincides with UN review of Kuwaiti human rights record*; 13 February 2015, Index number: MDE 17/0003/2015; accessible at: https://www.amnesty.org/en/documents/mde17/0003/2015/en/

National Committee for Monitoring Violations (NCV) who used the Twitter name Abo 'Asam (@Abo3asam).[58] Both were released on bail on 2 February. Trials of both men are ongoing before the Criminal Court on charges of "carrying out a hostile action against the Kingdom of Saudi Arabia and insulting the late King Abdullah bin Abdul Aziz".

Mohammad al-'Ajmi was acquitted by the Court of Misdemeanours on 18 May 2015 for tweets that denounced the withdrawal of nationality from the high-profile preacher, Nabil al-Awadhi.[59] He was nevertheless re-arrested the next day and detained until 9 June, when he was released and banned from leaving Kuwait.[60] His trial is ongoing before the Criminal Court which has set 30 December for its next hearing. If convicted, he faces imprisonment for up to five years and Amnesty International would consider him a prisoner of conscience.

Prominent Shi'a commentator, **Saleh 'Othman al-Saeed** is believed to be free, possibly in hiding, following his conviction to six years' imprisonment for 16 tweets he posted about Saudi Arabia in October 2014. He alleged that Saudi Arabia sought to seize control of land and oil reserves in a neutral zone adjacent to Kuwait's border with Saudi Arabia and criticized Kuwaiti officials for failing to resist. Reports suggest that the Kuwaiti authorities prosecuted him following complaints from the Saudi Arabian government.[61]

A December 2014 news report also quoted him criticizing Saudi Arabian leaders and defending the government of Syria during an interview with a Syrian television channel.[62]

On 20 December 2014, the Criminal Court convicted him of committing a hostile act against a foreign country under Article 4 of Law 31 of 1970, on National Security (forming Articles 92-108 of the Penal Code), and sentenced him to four years in prison, increased to six years' imprisonment by the Court of Appeal on 18 February 2015. The sentence was upheld by the Court of Cassation on 12 June 2015.[63]

'Abdulhamid Dashti, a Shi'a politician and opposition member of the National Assembly, faces charges in relation to peaceful opinions he expressed about both Bahrain and Saudi Arabia through social media and on satellite networks.[64]

In April 2015, following a formal complaint and request for his prosecution lodged by the Saudi Arabian government, Kuwaiti authorities charged him with insulting Saudi Arabia in comments he made on Twitter and in an interview with the Lebanese TV station, Al-Manar, voice of the Hezbollah armed group. In the latter, media reports state that he described the Saudi Arabia-led military campaign against Huthi forces in Yemen, Operation Decisive Storm, as "an ongoing attempt to dominate Yemen and a hostile act", adding that it "will destroy all Gulf countries".[65]

In July 2015, members of the National Assembly voted to strip 'Abdulhamid Dashti of his parliamentary

58. Mohammad al-'Ajmi's mother learned of his arrest when State Security officials arrived at the family's home to collect her son's medicine.
59. Sabr: "Misdemeanour Court acquits 'Abo 'Asam' for contempt of religion" (translated from Arabic), 18 May 2015, accessed at http://www.sabr.cc/inner.aspx?id=95695
60. Alaan: "(Update 2) "Abu Asam released on a 200 Dinars bail" (translated from Arabic), 9 June 2015, accessed at: http://www.alaan.cc/pagedetails.asp?nid=226898&cid=48
61. Al-Marsd: "Imprisonment of the Kuwaiti writer Saleh al-Saeed because of his repeated insults to Saudi" (translated from Arabic), 10 November 2014, at: http://bit.ly/1lemooI. Also see the report dated 18 February 2015 carried on Akhbaar24 - http://akhbaar24.argaam.com/article/detail/203635 and, in relation to the Court of Cassation and the complaint from the Saudi Arabian government, see al-Watan: "He insulted Saudi on "Twitter" / The Cassation brings down the curtain on the case of Saleh al-Saeed and imprisons him for six years" (translated from Arabic), 11 June 2015, accessible at: http://alwatan.kuwait.tt/articledetails.aspx?id=438552
62. Kuwait Times: Kuwaiti jailed for abusing Saudi Arabia, 30 December 2014, accessed at: http://news.kuwaittimes.net/kuwaiti-jailed-abusing-saudi-arabia/
63. Human Rights Watch: Kuwait: Blogger Loses Appeal of 6-Year Sentence / Tweets Criticized Saudi Arabia, 18 June 2015, accessed at: https://www.hrw.org/news/2015/06/18/kuwait-blogger-loses-appeal-6-year-sentence-0
64. Al-Watan: "al-Hajraf released in the "Jabreet Siyassi" case" (translated from Arabic), 1 October 2015, accessed at: http://alwatan.kuwait.tt/article-details.aspx?id=450764 No date is provided for the resumption of the trial and mainly addresses another, unrelated case.
65. Middle East Monitor: Riyadh wants Kuwaiti MP prosecuted over 'insults', 26 April 2015, accessed at: https://www.middleeastmonitor.com/news/middle-east/18273-riyadh-wants-kuwaiti-mp-prosecuted-over-insults . See also al-Arabiya: Saudi Arabia has had enough of Kuwait's Dashti, 5 May, 2015, accessed at: http://english.alarabiya.net/en/views/news/middle-east/2015/05/05/Saudi-Arabia-and-Kuwaiti-MP-Abdul-Hamid-Dashti.html

immunity, opening the way for his prosecution.[66] His trial – believed to relate to statements he made about Bahrain – began on 20 August. On 23 November 2015, the Misdemeanour Court suspended the hearing of this case pending resolution to a delay in appointing a lawyer for 'Abdulhamid Dashti.[67] While the legal situation relating to his statements about Saudi Arabia was not clear at the time this report was finalized, he faced imprisonment if convicted.

On numerous occasions, the authorities have used both Penal Code provisions relating to national security and those criminalizing defamation of religion to prosecute and imprison peaceful critics.

Hamad al-Naqi is serving a 10-year sentence at Kuwait's Central Prison for posting a variety of comments on Twitter from March 2012 onwards, criticizing the Sunni Muslim leaders of Bahrain and Saudi Arabia, and other comments considered derogatory to the Prophet Mohammad and other religious figures. While awaiting trial, he was attacked in prison by another inmate in April 2012.[68]

In the days and weeks after having tweeted a comment seen as derogatory about the third caliph, 'Othman bin Affan, three parliamentarians called for his arrest. On 28 March, 2012 a demonstration was held in Erada Square in front of parliament, attended by 11 parliamentarians who not only called for the speedy prosecution of Hamad al-Naqi, but a change to the law bringing in the death penalty for "insult to the Prophet".

In a statement issued at the time of his arrest, the Ministry of Interior said:

> *"The ministry deeply regrets the abuse by some people of social networks to target religious icons and Islamic spiritual values. The ministry will not hesitate to arrest anyone who attacks religions and religious beliefs and to take the necessary legal measures."*[69]

Prosecuting authorities alleged during the trial that Hamad al-Naqi's Twitter comments threatened to stoke sectarian tension and that his criticism of Bahraini and Saudi Arabian leaders damaged Kuwait's relations with those states and could cause disorder and upheaval in Kuwait.[70]

In June 2012, the Criminal Court convicted Hamad al-Naqi of harming Kuwait's national interest and misusing a mobile telephone. He was sentenced to 10 years' imprisonment.[71] The Court of Cassation confirmed this sentence on 21 July 2014. Amnesty International considers Hamad al-Naqi a prisoner of conscience.

In August 2015, state prosecutors summoned former parliamentarian **Mubarak al-Duwaila** and his brother **Nasser al-Duwaila**, a lawyer and former National Assembly member, as well as well-known Sunni cleric **Tareq al-Suwaidan**, a leading member of the Muslim Brotherhood in Kuwait, for questioning in relation to remarks they had made on Twitter criticizing the al-Sisi government in Egypt. On 17 November 2015, Mubarak al-Duwaila was acquitted by the Criminal Court of "insulting" Egypt. Nasser al-Duwaila and Tareq al-Suwaidan were ordered to sign a pledge of good behaviour for 2 years and payment of a 2,000 Kuwaiti dinar bail (US$6,570).[72]

66. Al-Khaleej affairs: "Kuwaiti Parliamentarian's (Dashti) immunity lifted paving the way for his trial on charge of insulting Saudi" (translated from Arabic), 24 July 2015, accessed at: http://bit.ly/1Nvfcuq
67. Arab Times Online: Hearing suspended, 23 November 2015, accessed at: http://www.arabtimesonline.com/news/kuwaiti-blogger-gets-4-years-in-jail-for-offending-arab-country/
68. Arab Times: Inmate stabs 'blasphemy' twitterer in prison, 19 April 2012; and Reuters: Prisoner attacks Kuwaiti accused of blasphemy - ministry, 19 April 2012, accessed at: http://www.alarabiya.net/articles/2012/04/20/208956.html
69. Gulf News, Kuwaiti tweeter arrested over disparaging posts, 28 March 2012. Accessed at http://gulfnews.com/news/gulf/kuwait/kuwaiti-tweeter-arrested-over-disparaging-posts-1.1000991
70. Interview with Khalid Hussain al-Shatti, lawyer of Hamad a-Naqi, 16 May 2012, Kuwait.
71. BBC News: Kuwaiti jailed for 10 years for Twitter 'blasphemy', 4 June 2014, accessed at: http://www.bbc.co.uk/news/world-middle-east-18322418
72. Al-Ray al-Aam: "Investigation with Mubarak and Nasser al-Duwaila and Tareq Suwaidan on charges of insulting the Egyptian regime" (translated from Arabic), 4 August 2015, accessed at: http://alrayalaam.com/24569/ and Arabi21: "al-Duwaila and al-Suwaidan on trial in Kuwait because of the coup in Egypt" (translated from Arabic), 4 August 2015, accessible at: http://goo.gl/RITHHC and al-Seyassah: "al-Duwaila acquitted and his brother avoids punishment in [the case of] insulting Egypt" (translated from Arabic), 17 November 2015, accessed at: http://goo.gl/0Xg5IA

Police arrested '**Abdulaziz Mohammad al-Baz**, an Egyptian resident of Kuwait, on 31 December 2012 for comments that he had made on his blog about religion and secularism. He told Amnesty International:

> *"They just forced me to go with them. They did not allow me to call anyone or any lawyer. They forced me to admit [to the accusations] and did not permit me to call anyone until 2 January 2013, from jail."*[71]

In February 2013, the Criminal Court convicted him of blasphemy and spreading secularism, under Article 111 of the Penal code, and sentenced him to one year's imprisonment to be followed by deportation. The Court of Appeal subsequently confirmed the sentence, which 'Abdulaziz Mohammad al-Baz served before being deported to Egypt on 14 February 2015.[73]

RESTRICTIONS ON MEDIA FREEDOM

In the past two years, Kuwaiti authorities have on several occasions banned media outlets from broadcasting on vague national security grounds to suppress reporting and discussion of politically sensitive issues.

In April 2014, after video footage emerged that appeared to show two former senior officials secretly discussing plans to remove the Amir from power,[74] Kuwait's Attorney General banned all media and other public reporting and discussion of the video. Two days later, the authorities temporarily closed the *al-Watan and Alam al-Yawm* online news outlets for two weeks for breaching the ban.[75]

In the following days, the Minister of Information imposed four-day bans on specific programmes on *al-Watan*, *al-Rai al-Aam* and two other online media outlets that were deemed to have made reference to the alleged video recording, citing Article 61 of the 2007 Audio-visual Media Law.[76]

On 22 July 2014, the Ministry of Information withdrew the licence to publish of the '*Alam al-Yawm* newspaper and the broadcasting licence of its sister outlet, *al-Yawm* TV, the day after they revoked the citizenship of the two outlets' owner, Ahmad Jabr al-Shamari. The ministry said that it withdrew the licences on "technical" grounds - on the basis that Kuwaiti law does not permit such media ownership by non-Kuwaitis. In August 2014 Ahmed Jabr al-Shamari told Human Rights Watch:

> *"I think the authorities want to send a signal to instil fear into those who express their rights of expression. They are using citizenship as a political tool."*[77]

In January 2015, the Ministries of Commerce and Industry and Information suspended *al-Watan* newspaper on the ground that its parent company lacked sufficient financial reserves.[78] *Al-Watan's* publishers mounted a legal challenge to the authorities' decision but this was denied first by the Court of

73. Email exchange with Amnesty International, 29 July 2014
74. In January 2014, a user of Twitter publicised information about a videotape of a discussion between a former senior government figure and a member of the Al Sabah ruling family. Allegedly filmed at the Geneva villa of the member of the ruling family, in it, the two men are said to plot against the government and current Amir. In response, the authorities arrested and interrogated the individual who published the tweet. He was released shortly thereafter as details of the conversations also emerged to the public.
75. Al-Jazeera: Kuwait papers suspended over coup plot story, 20 April 2014; accessed at: http://www.aljazeera.com/news/middleeast/2014/04/kuwait-papers-suspended-over-coup-plot-story-201442020413598704.html and Gulf News: Kuwait suspends two newspapers on tape scandal, 23 April 2014, accessed at: http://gulfnews.com/news/gulf/kuwait/kuwait-suspends-two-newspapers-on-tape-scandal-1.1321950
76. Case 1241 of 2013 consisted of an order by the public prosecutor ordering all media to refrain from discussing this case. In contrast, according to an article in al-Watan, in 2008 the Ministry of Information had issued a decree, or order, stating that newscasts would not be subject to censorship or suspension. See: http://alwatan.kuwait.tt/ArticleDetails.aspx?Id=363007
77. Human Rights Watch, 10 August, 2014, Kuwait: 5 Critics Stripped of Citizenship, accessed at https://www.hrw.org/news/2014/08/10/kuwait-5-critics-stripped-citizenship
78. On 19 January 2015, the Undersecretary of the Ministry of Commerce and Industry issued Decision No. 34/2015 to withdraw the license of Dar al-Watan Printing and Publishing House – the full name of the company – and an official from the Ministry of Commerce and Industry visited the offices of the company to enforce the decision.

Appeal on 24 May 2015 and then by the Court of Cassation on 7 July.[79] On 16 November, the Court of Cassation upheld the authorities' decision in a final determination.[80] On 3 June, the authorities also suspended the *al-Watan* satellite TV channel, also citing the lack of financial resources on the part of the television station's parent company.[81]

It may be the case that the *al-Watan* media enterprise was suffering financial difficulties. However, Amnesty International believes it is likely that the firm came under particular scrutiny as a result of *al-Watan's* political output and the tone of its criticism of the government and government policies.

79. Al-Watan: "The Cassation refuses to halt the implementation of the closing of 'al-Watan'", 8 July 2015, accessed at: http://alwatan.kuwait.tt/articledetails.aspx?id=441749&yearquarter=20153
80. Al-Watan: "Video: The lawyer Rashed al-Rad'an: "the closing of al-Watan" will be considered by the Cassation and we will push for the invalidation of the Appeal Court verdict" (translated from Arabic), 24 May 2015, accessed at: http://alwatan.kuwait.tt/articledetails.aspx?id=435532&-yearquarter=20152 and al-Watan "Cassation decides to close Al Watan newspaper" (translated from Arabic), 16 November 2015, accessed at: http://www.alaan.cc/pagedetails.asp?nid=235366&cid=48
81. Al-Watan: "French media [AFP]: al-Watan channels shut down after the closure of one of the most important newspapers in Kuwait / after the decision is confirmed by the Appeal Court " (translated from Arabic), 6 June 2015, accessed at: http://alwatan.kuwait.tt/articledetails.aspx-?id=437464&yearquarter=20152

3. REVOCATION OF CITIZENSHIP AND DEPORTATION

> *"They say that we have faked our citizenship when we (the family) have been in Kuwait since before the 1920s. The whole family is now without nationality and cannot study, are you pleased with this?"*
>
> Abdullah Bargash, former parliamentarian, addressing a Kuwaiti court[82]

As well as arrest and prosecution, since 2011 the authorities have used Kuwait's Nationality Law of 1959 to target critics and strip them of their Kuwaiti citizenship and related rights.

A number of interlocutors have told Amnesty International researchers that revocation of citizenship is widely seen as an even more severe punishment than imprisonment, since the government also strips the nationality of dependants of adult males whose citizenship has been revoked.

When it announced its "iron fist policy" in 2014, the Cabinet ordered the Interior Ministry to screen the citizenship of people "who undermine the country's security and stability".[83] The practice of revocation intensified in 2014, apparently in line with the threat perceived by the government, with the authorities withdrawing citizenship from dozens of people.[84]

Several individuals appeared to have been targeted for their peaceful opinions, expression or activities in opposition to the government.

'Abdullah Hashr al-Barghash, a former member of the National Assembly, as well as two of his brothers and one sister, had their citizenship revoked on 21 July 2014. The same day, the authorities said they had stripped **Ahmad Jabr al-Shamari**, owner of the *al-Yawm* TV station and '*Alam al-Yawm* newspaper, of his Kuwaiti citizenship.[85]

Prior to the authorities' revocation of his nationality, 'Abdullah Hashr al-Barghash had frequently criticized the government on Twitter and during media interviews, accusing it of corruption in June 2014 and urging people to reject the arbitrariness of the Interior Ministry[86] in a July 2014 television interview.

Both during and after his role as an MP between 2008 and 2013, 'Abdullah Hashr al-Barghash aligned with Islamist and Salafist views and repeatedly stressed the important role of parliaments in holding governments to public account. He sought to contest the withdrawal of his citizenship before the courts, and said in May 2015 that the authorities had failed to provide reasons for removing his citizenship rights or any documentation.[87]

Like many others involved in court battles after criticizing the authorities, 'Abdullah Hashr al-Bargash has faced prolonged and protracted trial processes. On 21 June 2015, the Administrative Appeal Court postponed further hearing of his case to October 2015 and set 18 October to issue its verdict.[88] On 18 October, the judge withdrew from the case and

82. See @mediacourt tweet on 3 November 2015: "Abdullah al-Barghash to the court: They say that we have faked our citizenship when we (the family) have been in Kuwait since before 1920. The whole family is now without nationality and cannot study, are you pleased with this? (translated from Arabic)"
83. Kuwait Times: Cabinet orders review of citizenship over violence – Government vows 'iron fist', warns NGOs – Opposition outraged, 14 Jul 2014, accessed at: http://news.kuwaittimes.net/cabinet-orders-review-citizenship-violence-govt-vows-iron-fist-warns-ngos-oppn-outraged/
84. New York Times: Kuwait, Fighting Dissent From Within, Revokes Citizenship, 1 October 2014; accessed at: http://www.nytimes.com/2014/10/01/world/middleeast/kuwait-fighting-dissent-from-within-uses-citizenship-as-a-weapon-.html?_r=0
85. Gulf News: Kuwait revokes citizenship of pro-opposition TV owner / This is the first time citizenship is revoked without a court order, says human rights lawyer, 22 July 2014, accessed at: http://gulfnews.com/news/gulf/kuwait/kuwait-revokes-citizenship-of-pro-opposition-tv-owner-1.1362606
86. See, for example, the tweet posted by Abdullah al-Barghash (@ AL_BARGHASH) on 10 July 2014, of a re-tweet by Channel Nine @Ch9kw, reading: "Former MP Abdullah al-Barghash's letter to the authorities: Detainees are from all the categories of the Kuwaiti society and we reject the arbitrariness of the [Ministry of] Interior" (translated form Arabic), or see: Former MP Abdullah Al Barghash message of authority of all detainees in Kuwaiti society and reject the arbitrariness of the Interior [Ministry], accessible at: Goo.gl/w7PZMV
87. Tweet dated 5 May 2015 stating: "The Ministry of the Interior has not presented the reasons and evidence for revoking the nationalities and documents of the #al-Barghash family and it did not implement the Court's decision" (translated from Arabic)
88. Al-Watan: " The Appeal Court defers the lawsuit for revoking the al-Barghash family's citizenship to 4 October for the pleading" (translated from Arabic), 21 June 2015, accessed at: http://alwatan.kuwait.tt/articledetails.aspx?id=440213&yearquarter=20152

the Administrative Appeal Court set 3 November to re-hear the case. On 11 November, the Administrative Appeal Court said that the case was outside its jurisdiction on the grounds that the decision to withdraw the nationality is a matter of sovereignty, and that it should therefore only look into cases where the father in the family was a Kuwaiti citizen.[89] 'Abdullah al-Bargash's father was born outside Kuwait and subsequently gained Kuwaiti nationality.

As detailed in the section above, prior to the revocation of his citizenship, Ahmad Jabr al-Shammari's two media outlets had run afoul of the government by providing a platform for 'Abdullah al-Barghash and other critics. The two outlets had also defied a blackout order issued to them by Kuwait's Attorney General that sought to prevent the publication of details of a video recording purporting to show senior government officials discussing the removal of the Amir.

The authorities said they had revoked Ahmad Jabr al-Shamari's nationality under Article 13 of the Nationality Law, allowing revocation of nationality in cases where it was "acquired by virtue of fraud" or for other reasons, including that an individual "has disseminated opinions which may tend seriously to undermine the economic or social structure of the State."[90]

The authorities' withdrawal of Ahmad Jabr al-Shamari's citizenship rendered him stateless and required him to cease ownership of his Kuwait media outlets, as Kuwaiti law prevents non-nationals owning domestic media outlets. Ahmad Jabr al-Shamari sought to contest the withdrawal of his citizenship before the courts but in September 2014 the Administrative Court ruled that it had no jurisdiction to reinstate Ahmad Jabr al-Shamari's nationality. This verdict was upheld by the Administrative Appeal court on 22 March 2015.[91] On 17 November, the Court of Cassation said it would consider his case on 20 January 2016.[92]

On 29 September 2014, the authorities revoked the citizenship of **Sa'ad al-'Ajmi**, a political activist and advisor to Musallam al-Barrak. Kuwait-born, Sa'ad Al-'Ajmi, was the spokesperson of the Popular Action Movement, a political movement opposed to the government. In reaction, Sa'ad al-'Ajmi told journalists that, "it's clear that they are targeting people with political positions."[93]

On 22 April 2015, the authorities arrested Sa'ad al-'Ajmi and expelled him to Saudi Arabia, claiming he was a national of the country. Sa'ad al-'Ajmi told Amnesty International that he is not a citizen of Saudi Arabia and that the reasons given by the Kuwaiti officials for his deportation stemmed from him being wanted by the Saudi Arabian authorities.[94] Sa'ad al-'Amji told Amnesty International that on arrival in Saudi Arabia, officials told him they had not sought his arrest or deportation from Kuwait.[95] While his family contested his deportation in the courts, on 12 October 2015 the Appeal Court upheld the decision of the Court of First Instance stating that the case fell outside of its jurisdiction.[96]

Bidun minority rights activists are not considered citizens of Kuwait. Currently, over 100,000 Bidun long-term residents of Kuwait are denied citizenship and the rights that flow from it.[97] In January 2012,

89. Al-Jarida: "The Appeal Court sets a new principle: specialists looking into "revocation of citizenship" of citizen born to a Kuwaiti father" (translated from Arabic), 11 November 2015, accessed at: http://bit.ly/1m19FFM
90. The basis of Article 13 of the Nationality Law as the legal grounds is cited in a variety of sources, including Middle East Monitor: Kuwait withdraws citizenship from opposition members, 22 July 2014, accessed at: https://www.middleeastmonitor.com/news/middle-east/12974-kuwait-with-draws-citizenship-from-opposition-members
91. Al-Quds: "The Kuwaiti Appeal Court upholds judgement of its lack of jurisdiction in the case of the revocation of al-Shamari's citizenship" (translated from Arabic), 22 March 2015, accessed at: http://www.alquds.co.uk/?p=314628
92. Al-Aan: "The Cassation Court looks into the revocation of al-Jabr's citizenship on 20 January" (translated from Arabic), 17 November 2015, accessed at: http://www.alaan.cc/pagedetails.asp?nid=235422&cid=48
93. Reuters (Canada): Kuwait revokes citizenship of opposition activist, 29 September 2014, accessed at: http://ca.reuters.com/article/topNews/id-CAKCN0HO26K20140929
94. Gulf News: Kuwait deports opposition figure to Saudi Arabia, 22 April 2015, accessed at: http://gulfnews.com/news/gulf/kuwait/kuwait-deports-op-position-figure-to-saudi-arabia-1.1496868
95. Amnesty International interview with Sa'ad al-'Ajmi, 5 May 2015.
96. Sabr: " The Appeal Court in the case of exiling al-Ajmi: It is not under our jurisdiction" (translated from Arabic), 12 October 2015, accessed at: http://www.sabr.cc/inner.aspx?id=99534
97. The government stated in its 8 December 2014, Third Periodic Report in respect to its implementation of its obligations under the ICCPR, that it nevertheless provides medical, educational and other services to the Bidun community. See from paragraph 50 onward. UN index: CCPR/C/KWT/3. Accessible at: http://goo.gl/AtrECN

as popular protests continued in several Gulf and other Arab states, Kuwait's Central Agency for Illegal Residents warned that Bidun or other stateless persons who participated in demonstrations that "turned violent" would face deportation.[98]

In several cases since, courts have ordered that Bidun convicted of peacefully exercising rights to freedom of expression or assembly should be deported after completing prison sentences. They include **'Abdulhakim al-Fadhli**, who was repeatedly arrested and detained on a range of charges between 2011 and 2014,[99] and **'Abdullah 'Atallah**, who was sentenced on 1 July 2015 to five years in prison, including for "insulting the Amir".[100]

Bidun rights activist, 'Abdulhakim al-Fadhli speaking at a roundtable of Kuwaiti human rights NGOs and activists, October 2012. © Amnesty International

KUWAIT'S NATIONALITY LAW AND INTERNATIONAL HUMAN RIGHTS LAW

Kuwait has steadfastly refused to ratify the 1954 Convention relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness, despite repeated recommendations to do so by UN human rights bodies and other UN member states. International standards of protection are not available to those facing statelessness in Kuwait.

Kuwait's own Nationality Law gives the Ministry of Interior wide powers to revoke the Kuwaiti citizenship of individuals, including on the grounds that they are deemed to have "disseminated opinions which may tend to seriously undermine the economic or social structure of the state," because they are "a member of a political association of a foreign state."

98. Al-Arabiya (citing AFP): Kuwait to deport stateless protesters: report, 17 January 2012, accessed at: http://www.alarabiya.net/articles/2012/01/17/188847.html
99. Al-Khaleej Affairs: "A Kuwaiti court sentences an activist (Bidun) to one year's imprisonment and deportation from the country" (translated from Arabic), 29 January 2015, accessed at: http://alkhaleejaffairs.org/c-13146
100. See the al-'Aalim al-Yawm: "Kuwait: Five years' imprisonment for the Kuwaiti activist Abdullah Atallah on charge of insulting the person of Amir" (translated from Arabic), 1 February 2015, accessed at: http://www.worldakhbar.com/gulf/kuwait/19972.html

This conflicts with international human rights law. Article 19 of the International Covenant on Civil and Political Rights, which Kuwait has ratified, states: "Everyone shall have the right to hold opinions without interference" and Article 22 affirms the right of every individual to "freedom of association with others, including the right to form and join trade unions for the protection of his interests."

Under the Nationality Law, the process for revoking an individual's nationality is an administrative one and those subject to such orders cannot challenge the decision before the courts, only the manner in which the authorities reached the decision to revoke their citizenship.[101]

Further, Article 1(5) of Law 20 of 1981, on The Establishment of Sections within Courts of First Instance for the Consideration of Administrative Disputes, stipulates that courts do not have jurisdiction to examine final administrative decisions in relation to nationality. The constitutionality of this provision has not been examined by Kuwait's courts. Under this law, an appeal can only challenge the manner in which the decision on an individual's nationality was made by the government.

Under international law, as a December 2013 report of the UN Secretary-General made clear, states may legitimately revoke individuals' citizenship rights on certain grounds, such as committing acts "seriously prejudicial to the vital interests" of the state or the "rendering of services to a foreign government or military force."[102]

However, the Secretary-General's report, which set out criteria for determining the lawfulness of revocation of an individual's citizenship, declared that it is a violation of international law for any state to revoke a citizen's nationality for exercising their right to freedom of expression, and that international law imposes strict limits on any deprivation of citizenship that renders an individual stateless. In such circumstances, the report said, states may have an obligation to afford the individual a right of residence.

Earlier, in a resolution that it adopted in July 2012, the UN Human Rights Council urged all states "to refrain from taking discriminatory measures and from enacting or maintaining legislation that would arbitrarily deprive persons of their nationality on grounds of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status, especially if such measures and legislation render a person stateless.[103]

101. Article 26 states that "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."
102. Human Rights and Arbitrary Deprivation of Nationality Report of the Secretary-General, 19 December 2013. UN index: A/HRC/25/28. The report also stipulated that to be legitimate, all citizenship revocation decisions should be subject to administrative or judicial review, and that extending nationality revocations to the dependants of individuals stripped of their citizenship rights is "problematic" in all cases and prohibited by international law when this would have the effect of rendering such dependants stateless.
103. UN, Human Rights Council: Report of the Human Rights Council on its 20th Session, 3 August 2012, containing resolution 20/5, entitled Human Rights and Arbitrary Deprivation of Nationality, of 5 July 2012; UN reference A/HRC/20/2, accessed at: http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session20/A-HRC-20-2_en.pdf

3. CONCLUSION AND RECOMMENDATIONS

> ***'Kuwait believes deeply in the positive impact of human rights on life, individual and collective'***
>
> Alyaa Abdullah Al-Muzaini, Diplomatic Attaché of Kuwait's permanent mission to the UN, October 2015[104]

In June 2015, at the concluding session of the UN Human Rights Council's second Universal Periodic Review of Kuwait, the Kuwait government made a number of undertakings.[105]

These included commitments to [e]nsure the realization of freedom of the press and the media, in line with ICCPR standards," and to "[l]egislate to guarantee the freedoms of expression, of assembly and of opinion" and "allow the use of social media without undue restrictions and limitations." The government also said it would "repeal [the] arrest, trial and imprisonment of persons exercising their freedom of opinion through media and Internet."

Such commitments are welcome. Their implementation would mark a major breakthrough, and apparent reversal of strategy. As this report has detailed, the past four years have seen a significant, ongoing deterioration in human rights in Kuwait, marked by growing government intolerance of criticism and dissent – as well as repeated breaches of the government's obligations under international human rights law and treaties.

The authorities have used existing laws and created new ones to bring criminal charges against and imprison their critics, and to chill free expression. They have stripped Kuwaiti nationals of citizenship, apparently because of their perceived opposition to the government.

RECOMMENDATIONS

Amnesty International urges the Kuwait government to take the measures below in order to reverse this downward trend and restore and guarantee the right to freedom of expression:

- Fully implement international obligations and commitments relating to the rights to freedom of expression by respecting, protecting, promoting and fulfilling this right in particular and all other human rights in general.
- Release all prisoners of conscience – those imprisoned solely for their peaceful exercise of freedom of expression or other human rights – immediately and unconditionally.
- End all prosecutions for peaceful exercise of the right to freedom of expression.
- Review all laws that impinge upon the right to freedom of expression, and amend, and where necessary repeal, these laws to ensure and facilitate the effective exercise of the rights to freedom of expression in accordance with Kuwait's international human rights obligations and commitments. Any restrictions placed on this right must be demonstrably necessary and proportionate for one of the grounds expressly identified in human rights law.
- Decriminalize laws relating to defamation.
- Uphold the right to information – the public's right to know – and incorporate a public interest

104. Kuwait Times: Human rights at the heart of Kuwait policy, 30 October 2015, citing a speech given by the Diplomatic Attaché of Kuwait's permanent mission to UN, Alyaa Abdullah Al-Muzaini; accessed at: http://news.kuwaittimes.net/website/human-rights-at-the-heart-of-kuwait-policy/
105. United Nations: Human Rights Council: Report of the Working Group on the Universal Periodic Review (UPR), 13 April 2015, UN index A/HRC/29/17, accessible at: http://undocs.org/m2/QRCode.ashx?DS=A/HRC/29/17&Size=2 &Lang=E and the Kuwaiti government's 4 June 2015 response, UN index A/HRC/29/17/Add.1, in Arabic.

defence in any laws that limit this right, for example in relation to the dissemination of information that state authorities deem confidential.

- Guarantee media freedom, including by requiring that government decisions to suspend or close media outlets are made subject to judicial challenge and approval.

- Uphold internet freedom in accordance with international standards including those articulated by the UN Human Rights Council 20 June 2014 resolution on "The Promotion, protection and enjoyment of human rights on the Internet."[106]

- Accept the requests to visit Kuwait made by the UN Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, and the UN Special Rapporteur on the situation of human rights defenders[107] and schedule specific dates for such visits.

- Review all cases in which citizenship has been revoked to ensure that the decisions follow due process of law and meet international standards of fairness; and amend the 1959 Nationality Law to ensure that the peaceful exercise of the right to freedom of expression, association and assembly can never be used as an excuse or ground for the revocation of citizenship.

106. The UN's Human Rights Council's Resolution 26/13 on human rights on the Internet, dated 20 June 2014, UN Index A/HRC/26/L.26, accessed at: http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session26/Pages/ResDecStat.aspx
107. The status of country visits made by UN human rights experts can be viewed at: http://spinternet.ohchr.org/_Layouts/SpecialProceduresInternet/ViewCountryVisits.aspx

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Index: MDE 17/2987/2015
December 2015

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