



WHO WILL BE LEFT TO DEFEND HUMAN RIGHTS?

PERSECUTION OF ONLINE
EXPRESSION IN THE GULF
AND NEIGHBOURING COUNTRIES



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The Gulf Centre for Human Rights (GCHR) is an independent, non-profit NGO that provides support and protection to human rights defenders (HRDs) in order to promote human rights, including but not limited to freedom of expression, association and peaceful assembly. GCHR is based in Lebanon and documents the environment for HRDs in the Gulf region and neighbouring countries, specifically Bahrain, Kuwait, Iran, Iraq, Jordan, Oman, Qatar, Saudi Arabia, Syria, the United Arab Emirates and Yemen. GCHR was founded in 2011.

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Gulf Centre for Human Rights

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DEDICATION

To human rights defenders in the Gulf states and neighbouring countries who, in the face of enormous obstacles, continue to struggle for human rights, and for a more just and equitable world.

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KUWAIT



KUWAIT SCORECARD

Targeted Activism or Expression



Expression re Offline Protests



Criticism of Government



Expression re Minority/ Migrants' Rights



Journalists



Women's Rights and WHRDs

Human Rights Violations



Privacy & Surveillance



Arbitrary Detention



Incommunicado Detention



Enforced Disappearance



Torture



Fair Trial

Problematic Legal Provisions and Institutions



Criminal Defamation



Cybercrime Law



Public Order



Specialised Law Enforcement Units

14

Number of incidents that fit the inclusion criteria of this study

INTRODUCTION

Between 01 May 2018 and 31 October 2020, there were fourteen reported incidents in Kuwait that fit this study's inclusion criteria for violations of the rights to online freedom of expression of human rights defenders (HRDs).¹ Kuwait is a constitutional monarchy led by an emir, who appoints members of the Council of Ministers.² The National Assembly serves a legislative function.³

The reported incidents suggest that during the relevant time period, the government primarily targeted defenders advocating online for Bedoon (stateless) rights. Much of the expression to which the government objected occurred on Twitter. While there is limited information about which domestic laws authorities are utilising, the incidents appear to reflect use of the Kuwaiti cybercrime law and laws criminalising defamation. The incidents show three patterns of government targeting: targeting Bedoon activists on Twitter, arresting HRDs in groups, and arresting those who speak out against corruption in Kuwait. These patterns offer credible evidence that the Kuwaiti government violates the right of HRDs and activists to online freedom of expression by enforcing national laws that violate international standards. While violating the right to freedom of expression, reports indicate that the government commits acts of torture and enforced disappearance. Based on this research, there is credible evidence that the government has violated its obligation to respect online freedom of expression

and additional associated rights of HRDs. These violations also constitute breaches of the duty of the State, pursuant to the United Nations (UN) Charter, "as the main duty-bearer" to ensure "defenders enjoy a safe and enabling environment" and that government institutions and processes "are aligned with their safety and the aim of their activities."⁴

Kuwait is a party to several international human rights treaties protecting the right to freedom of expression, including the International Covenant on Civil and Political Rights (ICCPR).⁵ As a UN member State, Kuwait is also bound by the UN Charter and has pledged to adhere to the principles reflected in the Universal Declaration of Human Rights (UDHR), including article 19, which enshrines the right to freedom of opinion and expression.⁶

LEGAL ENVIRONMENT FOR ONLINE EXPRESSION IN KUWAIT

Kuwait utilises a combination of laws and agencies to target HRDs who express dissent or advocate for human rights online.⁷ Four primary laws restrict online expression: Law No. 63 of 2015 Combatting Cybercrime;⁸ Law No. 3 of 2006 on Press and Publications;⁹ Law No. 8 of 2016 Regarding the Regulation of Electronic Media;¹⁰ and Law No. 37 of 2014 Regulating the Establishment of the Communication and Information Technology Regulatory Agency (CITRA).¹¹ The government has created the Department of Cybercrime as a specialised agency within the Kuwaiti Department of the Interior, and it is instrumental in enforcing these laws.¹² Citizens may anonymously report suspected violations of these media laws to the Cybercrime Department.¹³ This department has been involved in at least one reported incident of a journalist detained during the study period.¹⁴

2015 Cybercrime Law

The Cybercrime Law is specified as the law applied in two of the fourteen reported incidents in our study, making it the most frequently cited of any law. However, because reporting is often unclear about the laws used, there may be as many as thirteen incidents in which authorities applied the Cybercrime Law. Much of the Cybercrime Law extends provisions of the Press and Publications Law to electronic media, thus criminalising online expression in addition to print. In particular, article 6 of the Cybercrime Law restricts freedom of expression online and is the provision most often cited among the incidents in our dataset.¹⁵ In the context of reviewing the government's compliance with its obligations under the ICCPR, the Human Rights Committee in 2016 specifically determined that the Cybercrime Law contained overly "restrictive, vague and broadly worded provisions to prosecute activists, journalists, bloggers, and other individuals for expressing critical views."¹⁶

Under both article 19 of the ICCPR and the UDHR, criminal laws that restrict freedom of expression must be sufficiently precise so as to enable individuals to determine how to comply with the law and to limit the discretion conferred on authorities enforcing it.¹⁷

Article 6 of the Cybercrime Law criminalises online expression that insults Islam, the emir, the Constitution, public prosecution, or public morals.¹⁸ Additionally, the law criminalises online publication of views that "disparage" the judicial system; makes public news about the government without permission from officials; publicises information that "influences" the value of national currency; discloses the contents of secret meetings or documents; or contains views that negatively affect international relations with Kuwait.¹⁹ Violations are punishable by fines of between KWD 3,000-10,000 (USD 10,000-33,000).²⁰ In the provision prohibiting publication of the content of secret meetings or documents, truth is explicitly prohibited as a defence.²¹ This means that HRDs may be prosecuted for online publication of information that authorities deem critical of government, even if that information is true. The UN Human Rights Committee has expressed particular concern about "laws on such matters as, *lese majesty*, *desacato*, disrespect for authority, disrespect for flags and symbols, defamation of the head of State and the protection of the honour of public officials" and laws prohibiting "criticism of institutions, such as the army or the administration."²² Further, the UN Human Rights Committee and the UN Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression (SR on FOE) have cautioned that laws on defamation should be crafted carefully so that they do not restrict freedom of expression, and have recommended the decriminalisation of defamation.²³ The UN Human Rights Committee has interpreted ICCPR article 19

to require that “the application of criminal law should only be countenanced in the most serious of cases, and imprisonment is never an appropriate penalty.”²⁴ Finally, it has stated that defamation laws should include the defence of public interest in the subject matter of the criticism, the defence of truth, and, at least in the case of expression related to public figures, the defence of error.²⁵

2014 Regulating the Establishment of the Communication and Information Technology Regulatory Agency (CITRA) Law

The CITRA Law establishes a legal framework for the regulation and investigation of online expression such as the crimes outlined in the Regulation of Electronic Media Law.²⁶ CITRA works in tandem with the Regulation of Electronic Media Law, which establishes an administrative apparatus to control licenses of web-based publications²⁷ and codifies duties of regulated online media operators to curate the content they disseminate.²⁸ Under CITRA’s provisions, electronic media users that have “intentionally abused” telecommunications may be imprisoned for a maximum of one year.²⁹ The CITRA Law establishes an administrative body to process telecommunications license applications and outlines punishment for related telecommunications crimes.³⁰ The CITRA Law and Regulation of Electronic Media Law are therefore closely intertwined. The Human Rights Committee has found CITRA is likely to “further curb the right to freedom of expression and opinion and extend State control and restrictions on Internet-based expressions.”³¹

Kuwait has promulgated a complement of laws that, together, tightly restrict online freedom of expression. The Human Rights Committee expressed concern that the Cybercrime law was passed to “further curb the right to freedom of expression and opinion,” along with the CITRA Law, and recommended that Kuwait repeal the laws and clarify key terms,³² which the government has not yet done. By prohibiting the media from online publishing of information critical

of the government, Kuwait is violating ICCPR article 19. Criminalising unauthorised online publication of information regarding the government cripples the possibility of a free, uncensored press, which the Human Right Committee has hailed as “one of the cornerstones of a democratic society” and therefore admonished States “to encourage an independent and diverse media.”³³ The SR on FOE has stated that vague language in laws regulating digital content gives “broad discretion to authorities to determine what kinds of online expression would violate their terms. As a result, individuals and businesses are likely to err on the side of caution in order to avoid onerous penalties, filtering content of uncertain legal status and engaging in other modes of censorship and self-censorship.”³⁴

Primary Targets of Enforcement

The reported incidents centre almost exclusively on online expression by HRDs regarding Kuwait’s Bedoon population. “Bedoon” is the term used for the stateless residents in Kuwait. These are individuals to whom the government did not grant citizenship when the country established its independence in 1961, as well as their descendants.³⁵ Thousands of Bedoon children are born in Kuwait without any citizenship rights from other countries.³⁶

The government of Kuwait claims that most Bedoon people are not Kuwaiti, but rather citizens of other States living in Kuwait illegally.³⁷ Bedoon people are often unable to obtain birth and marriage certificates and are unable to receive education or medical care as a result.³⁸ As of the beginning of 2020, there were over 100,000 Bedoons living in Kuwait who were registered with governmental authorities.³⁹ In 2010, Kuwait promised to grant Kuwaiti citizenship to Bedoon who can prove their ancestry as living in Kuwait since 1965, but even this reform would provide relief to only 34,000 Bedoons.⁴⁰ As of 2020, even those 34,000 Bedoons whom the policy should have made eligible for citizenship are not naturalised.⁴¹ Members of the Bedoon community have protested through sit-ins, online advocacy, and non-governmental organisations in support of their

rights against statelessness, which often has led to the arrest of activists and the censorship of human rights organisations.⁴² Amidst the onset of the COVID-19 pandemic in 2020, the Kuwaiti government initiated an enhanced crackdown on non-citizens, by ordering the deportation of an estimated 360,000 migrant workers.⁴³

While Bedoons are the most frequently targeted group among the reported incidents, social media posts are the digital communications most frequently targeted by authorities. Social media use is widespread in Kuwait, with 4.2 million active social media users out of a population of 4.24 million.⁴⁴ A significant number of residents use multiple mobile devices.⁴⁵ Facebook users in Kuwait number 2.7 million, 1.9 million are on Instagram, 1.85 million are on Snapchat, and 2.11 million are on Twitter.⁴⁶ The only private messaging application utilised in the reported incidences is WhatsApp. The identified cases in the reporting period almost uniformly consisted of political expression on Twitter. As Facebook has over 500,000 more users than Twitter in Kuwait, the targeting of Twitter communications suggests that platform may be more popular among political activists and/or more closely monitored by the government.⁴⁷ The widespread use of social media and mobile connections underscores the observation by the SR on FOE that: "Internet companies have become central platforms for discussion and debate, information access, commerce and human development."⁴⁸

TRENDS EMERGING FROM INCIDENTS OF REPRESSION OF ONLINE EXPRESSION IN KUWAIT

The overwhelming majority of reported incidents (12 of 14) involved arrests of HRDs for expressing political views via Twitter. The Twitter posts that reportedly led to arrests have either been deleted or the content was not specified in the reporting. As reported, authorities arrested most of the individuals for posting views critical of Kuwait's treatment of the Bedoon people or alleging corruption within the Kuwaiti government. This online expression is protected by article 19 of the ICCPR, as clarified in General Comment 34.⁴⁹ The charging law is often not specified in the reporting, but where a law is cited, it is generally the Cybercrime Law. While the Kuwaiti government's actions infringe primarily on freedom of expression, there is one reported incident of torture or cruel, inhuman or degrading treatment and one reported instance of an enforced disappearance.

Violations of the Right to Freedom of Expression

Targeting of Bedoon activists

Of the fourteen identified incidents in Kuwait, at least nine cases involve prosecution of Bedoon activists for online expression. The most prominent example during the reporting period is the case of Mohamed Al-Ajmi, a member of the National Committee for Monitoring Violations, an organisation that reports on freedom of expression violations in Kuwait.⁵⁰ Al-Ajmi is also an advocate for Bedoon human rights.⁵¹ In August of 2020, authorities reportedly summoned Al-Ajmi for questioning.⁵² According to Front Line Defenders, the government interrogated Al-Ajmi and detained him for two days before charging him with "insulting religion" and releasing him.⁵³ Al-Ajmi has stated that he believes his most recent arrest is in reprisal for his human rights work.⁵⁴ Charges of blasphemy and insulting religion are not permissible

restrictions to freedom of expression protected by article 19.⁵⁵ The UN Human Rights Committee clarified in its General Comment No. 34 that article 19 specifically protects "religious discourse" in all mediums, including internet-based expression.⁵⁶ Furthermore, the Committee found that blasphemy laws are "incompatible with the Covenant," and article 19 prohibits censorship or punishment for criticism of religious leaders, doctrine, or tenets of faith unless that criticism amounts to incitement to discrimination, hostility, or violence.⁵⁷

This incident was not the first time that officials have arrested Al-Ajmi for his human rights activities. Authorities have charged Al-Ajmi with "defamation, insulting and slandering" at some point in the past three years for his online human rights advocacy, according to Front Line Defenders.⁵⁸ In 2014, officials charged him with "blasphemy" after he tweeted about the Kuwaiti government policy of withdrawing citizenship.⁵⁹ He was detained for ten days in that instance, but authorities ultimately dropped the charge.⁶⁰ In both cases, the original posts that led to the arrests are unknown. While Al-Ajmi is one example, there are others who have faced multiple arrests for similar acts of expression through electronic media, which are protected expression under article 19.⁶¹

Group arrests

Another trend discerned from the reported incidents is the tendency of the government to arrest HRDs in groups. One example of this occurred in September of 2019, when Kuwait issued arrest warrants for sixteen Bedoon activists.⁶² One activist, Mohamed Wali Al-Anezi, avoided arrest because he is currently exiled from Kuwait.⁶³ Authorities charged Al-Anezi with crimes related to national unity, insulting the

Emir, and defamation.⁶⁴ It is unclear what specific online communication led to the arrest, but Al-Anezi describes himself as the “founder of the Kuwaiti Bidun Movement” on his Twitter page.⁶⁵ Authorities charged the other fifteen activists under four laws: The Penal Code for Public Meetings and Gatherings, the Cybercrime Law, the Press and Publications Law, and the CITRA Law.⁶⁶ The Penal Code for Public Meetings refers to live, face-to-face meetings.⁶⁷ The underlying activity authorities prosecuted them for was joining Al-Anezi’s group, using social media to incite others to violate law and order, engaging in unauthorised gatherings, demonstrations, and meeting, misusing communications, and conducting “hostile action” against Saudi Arabia, Egypt, Bahrain, Sudan, and the United Arab Emirates.⁶⁸ The reporting is not clear on what these hostile actions might be. Available information indicates that the government prosecuted these HRDs under arbitrary laws, thereby violating their right to freedom of online expression.

The Gulf Centre for Human Rights reported that on 28 January 2020, the Fourth Circuit Criminal Court of Kuwait issued rulings against the sixteen Bedoon HRDs, describing them as “illegal residents,” and sentenced Reda Thamer Al-Fadhli, and Hammoud Rabah Hamoud (Hamoud Al-Rabah) to harsh sentences of ten years in prison, followed by deportation, and sentenced Al-Anezi, in absentia, to life in prison.⁶⁹ The UN Human Rights Committee has identified “proportionality” as one factor to consider, in determining whether an arrest or detention is arbitrary, regardless of whether domestic law authorises it.⁷⁰ The Committee has explained that “[i]n the case of trials in absentia, article 14, paragraph 3(a) [of the ICCPR] requires that, notwithstanding the absence of the accused, all due steps have been taken to inform accused persons of the charges and to notify them of the proceedings.”⁷¹ It does not appear from reporting that authorities complied with this requirement for Al-Anezi.

Arrest for online expression against corruption

Yet another noteworthy incident is one in which the government targeted defenders who spoke out online

against corruption. Officials arrested journalist and writer Aisha Al-Rasheed in January of 2019. The Office of the Emir filed five formal complaints against Al-Rasheed to the Department of Cyber Crimes, leading to her arrest.⁷² Al-Rasheed was recorded speaking about corruption of various public figures in government, although reports do not specify who recorded her.⁷³ Other Kuwaitis then shared the recordings through WhatsApp and other social media networks.⁷⁴ The government apparently charged Al-Rasheed under article 6 of the Cybercrime Law for “criticising the Emir.”⁷⁵ Al-Rasheed herself does not appear to have used electronic media at all but officials charged her for criticising corruption in the government in a speech that others circulated online. The SR on FOE has emphasised that States cannot limit the freedom of expression to prevent criticism against the government or its officials.⁷⁶

Additional Human Rights Violations

While this report focuses on violations of online freedom of expression, Kuwait has violated other human rights in conjunction with its targeting of online expression. All reported violations of online freedom of expression also involved arbitrary detention of HRDs and one involved an incommunicado detention.

Arbitrary deprivation of liberty is prohibited under article 9 of the ICCPR, customary international law and is a *jus cogens* norm.⁷⁷ A deprivation is arbitrary including when it is without a legal basis as well as when it results from the exercise of freedom of expression.⁷⁸ As the UN Working Group on Arbitrary Detention has reiterated, any measure depriving an individual of liberty must meet strict standards of lawfulness, necessity and proportionality to avoid arbitrariness.⁷⁹ Deprivations may be arbitrary when they are based on discriminatory grounds against HRDs and activists, violating the rights to equality before the law and the right to equal protection under article 26 of the ICCPR.⁸⁰ The government in Kuwait uses arbitrary laws, such as the Cybercrime Law, to arrest HRDs, like Mohamed

Al-Ajmi and Hamoud Al-Rabah, making their detentions arbitrary and in contravention of Kuwait's duties under the ICCPR.

Authorities also subjected Al-Rabah to incommunicado detention. Incommunicado detention "places an individual outside the protection of the law,"⁸¹ in violation of article 6 of UDHR and article 16 of the ICCPR⁸² protecting the right to be recognised as a person before the law.⁸³ The Special Rapporteur on torture has observed that torture is "most frequently practiced during incommunicado detention,"⁸⁴ and it is outlawed by international law.⁸⁵ The UN Working Group on Arbitrary Detention considers incommunicado detention a form of arbitrary detention.⁸⁶

Al-Rabah is a member of the Bedoon community working as a journalist and activist for Bedoon rights.⁸⁷ On 23 July 2019, Al-Rabah posted several statements to his Twitter page in support of Bedoon civil rights and called for the release of Bedoon activists.⁸⁸ That night, while Al-Rabah was at a restaurant with his wife, a group wearing civilian clothes grabbed him, forced him into a vehicle, and drove away with sirens on.⁸⁹ It is unclear how long Al-Rabah was held incommunicado before further investigation revealed that he was in police custody.⁹⁰ Even when that fact became clear, it was not reported under what possible charge he was being held. The SR on Torture has stated that "[i]n all circumstances, a relative of the detainee should be informed of the arrest and place of detention within 18 hours."⁹¹

CONCLUSION AND RECOMMENDATIONS

The government of Kuwait has passed several laws that violate online freedom of expression because they criminalise expressing opposition to government policies, religion, and figures, advocacy for minority groups, and freedom for all to participate in digital media expression. The government most commonly enforces its Cybercrime Law against HRDs, including journalists for their human rights and reporting activities. In particular, Kuwait has targeted defenders advocating for the rights of the stateless Bedoon people, especially on social media such as Twitter.

To address these concerns, we offer the following general recommendations and country-specific recommendations.

General Recommendations

To Governments of Gulf States and Neighbouring Countries:

- * Eliminate laws and articles in national legal frameworks that criminalise online freedom of expression protected under international human rights law, specifically:
 - All laws including anti-cybercrime, anti-terrorism, communications, media, penal, and technology laws that restrict online or offline expression through provisions to protect public order, national security, or the national economy; insults laws; and laws that criminalise fake news, that do not conform to international human rights standards and satisfy the principles of legality, legitimacy, necessity and proportionality;
 - Decriminalise the offense of defamation;
 - Revise anti-cybercrime laws to include affirmative protection for the legitimate online expression of HRDs, including journalists.

- ♦ Cease using deportation and travel bans as tools for targeting HRDs for their online human rights advocacy, and refrain from infringing on their right to freedom of movement.
- ♦ Reform legal institutions, including the criminal legal system, to promote the independence and autonomy necessary for:
 - Investigating human rights violations committed against HRDs by law enforcement, such as engaging in unlawful surveillance of HRDs, enforced disappearances, holding HRDs in unlawful detention, incommunicado, and subjecting them to ill-treatment and torture;
 - Ensuring that HRDs', citizens', and residents' right to freedom of movement is not violated;
 - Ensuring the judiciary upholds international standards guaranteeing the right to fair trial.

To the UN Human Rights Council:

- ♦ Instruct the UN Office of the High Commissioner for Human Rights to undertake a study of the transnational cooperation among governments to affect the apprehension and rendering of foreign HRDs to their countries of origin for prosecution of online expression that is protected under international law.
- ♦ Instruct the UN Office of the High Commissioner for Human Rights to undertake a study to identify and track developments in the surveillance regimes in each State in the region. The governments in question should cooperate in this study. The study should identify third party actors including business enterprises and other States that contribute to advancing the surveillance infrastructure in each State concerned. State and non-State actors complicit in illegal surveillance of HRDs by governments should be held accountable.

To All States:

- Implement an immediate moratorium on the use, acquisition, sale and transfer of surveillance technology. This moratorium should extend until adequate global controls and safeguards against abuse are in place.

Country Recommendations

In addition to the above recommendations, States should revise their domestic laws and institutions to ensure compliance with international human rights standards regarding online freedom of expression as indicated below.

We call on the government of Kuwait to create a safe and enabling environment for HRDs including by taking the following steps:

- Eliminate laws and articles in Kuwait’s legal frameworks that criminalise online freedom of expression protected under international human rights law, or that are inconsistent with the right to due process and a fair trial, including:
 - 2006 Press and Publications Law, articles 19-21, 27(3);
 - 2014 Establishment of the Communication and Information Technology Regulatory Authority, article 61;
 - 2015 Cybercrime Law, articles 2–7;
 - 2016 Regulation of Electronic Media Law, articles 6, 8, 9, 17, 70.

NOTES

- 1 Researchers identified reported incidents of violations of online freedom of expression by conducting searches for cases involving Kuwait between May 2018 and October 2020, from the following international media outlets and human rights organisations that document human rights violations: Amnesty International, Al Jazeera, ARTICLE 19, British Broadcasting Corporation, Committee to Protect Journalists, Front Line Defenders, Gulf Centre for Human Rights, and Human Rights Watch. Researchers also searched for communications from special procedures mandate holders regarding incidents alleging violations of freedom of expression in Kuwait in the UN database of Communications. Researchers supplemented international research by consulting the following domestic media outlets: *Kuwait Times*, *Arab Times*, and *Kuna News Agency* and used the embedded search functions to retrieve news updates using these keywords: freedom of expression, digital expression, digital, online, post, tweet, Twitter, Facebook, arrest, expression, and human rights defender during the relevant period of study. Domestic sources provided no relevant results. After finding cases using international sources, researchers conducted additional searches using the Google search engine of the victim's name (with various English spellings) to find additional case information. See methodology section for more information.
- 2 William L. Ochsenwald et al., *Kuwait: Government and Society—Constitutional Framework*, BRITANNICA (July 8, 2021). This characterisation of the political system of the country is offered for descriptive purposes; a normative evaluation of the political system as such is beyond the scope of this chapter.
- 3 *Id.*
- 4 Michel Forst (Special Rapporteur on the Situation of Human Rights Defenders), *Report of the Special Rapporteur on the Situation of Human Rights Defenders*, ¶ 77, U.N. Doc. A/HRC/31/55 (Feb. 1, 2016); Civil Society Space, Human Rights Council Res. 27/31, U.N. Doc. A/HRC/RES/27/31, ¶ 3 (Oct. 3, 2014); Declaration on the Right and Responsibility of Individuals, Groups, and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, G.A. Res. 53/144, U.N. Doc. A/RES/53/144 (Mar. 8, 1999).
- 5 Kuwait acceded to the ICCPR and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment in 1996. *UN Treaty Body Database: Ratification Status for Kuwait*, OHCHR.ORG.; International Covenant on Civil and Political Rights, *opened for signature* Dec. 16, 1966, 999 U.N.T.S. 171 [hereinafter ICCPR]; Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, *opened for signature* Dec. 10, 1984, 1465 U.N.T.S. 85. Kuwait has also acceded to the Convention on the Elimination of All Forms of Discrimination against Women in 1994 and the Convention on the Elimination of All Forms of Racial Discrimination in 1968. *UN Treaty Body Database: Ratification Status for Kuwait*, *supra*; Convention on the Elimination of All Forms of Discrimination against Women, *opened for signature* Dec. 18, 1979, 1249 U.N.T.S. 13; International Convention on the Elimination of All Forms of Racial Discrimination, *opened for signature* Mar. 7, 1966, 660 U.N.T.S. 195. Kuwait is a party to the Arab Charter on Human Rights. League of Arab States, Arab Charter on Human Rights, May 22, 2004, reprinted in 12 *Int'l Hum. Rts. Rep.* 893 (2005) (entered into force Mar. 15, 2008); *League of Arab States: Key Legal Texts*, INT'L CTR. FOR NOT-FOR-PROFIT L. (Sept. 25, 2021).
- 6 World Conference on Human Rights, *Vienna Declaration and Programme of Action*, pmbl. at 20-21, §§ I(1), I(3), I(8), U.N. Doc. A/CONF.157/24 (Part 1) (Oct. 13, 1993); Universal Declaration of Human Rights, G.A. Res. 217 (III) A, U.N. Doc. A/810, at art. 19 (Dec. 10, 1948) [hereinafter UDHR].
- 7 See JOYCE HAKMEH, CYBERCRIME LEGISLATION IN THE GCC COUNTRIES: FIT FOR PURPOSE? 7-13 (2018); *Kuwait: Cybercrime Law a Blow to Free Speech*, HUM. RTS. WATCH (July 22, 2015); *Kuwait: New Cyber Crimes Law Restricts Free Expression and Targets Online Activists*, GCHR (Jan. 21, 2016); GULF CTR. FOR HUM. RTS., MAPPING CYBERCRIME LAWS AND VIOLATIONS OF DIGITAL RIGHTS IN THE GULF AND NEIGHBOURING COUNTRIES 7 (2018).
- 8 Law No. 63 of 2015 Combatting Cybercrime art. 7 [hereinafter Cybercrime Law] (Kuwait) (official Arabic version; unofficial English translation on file with author).
- 9 Law No. 3 of 2006 on Press and Publications [hereinafter Press and Publications Law] (Kuwait) (unofficial English translation).

- 10 Law No. 8 of 2016 Regarding the Regulation of Electronic Media art. 6 [hereinafter Regulation of Electronic Media Law] (Kuwait) (unofficial English translation).
- 11 Law No. 37 of 2014 Regulating the Establishment of the Communication and Information Technology Regulatory Authority [hereinafter CITRA Law] (Kuwait) (official English translation).
- 12 *Cyber Crime*, STATE KUWAIT MINISTRY INTERIOR.
- 13 *Id.*
- 14 *Kuwait: Journalist and Writer Aisha Al-Rasheed Detained Under Cyber Crimes Law*, GCHR (Jan. 8, 2019). Reports on other incidents in the study contain references to the “Cybercrime Unit” or the “Electronic and Cyber Crime Combatting Department.” *Charge Brought Against Human Rights Defender Mohamed Al-Ajmi*, FRONT LINE DEFS. (Sept. 4, 2020); *Kuwait: Authorities Continue to Target Human Rights Defenders Supporting Bedoon Rights*, GCHR (Feb. 13, 2019). These references may in fact refer to the Cybercrime Department; however, researchers have not been able to confirm this is the case. *Cyber Crime*, *supra* note 12.
- 15 Cybercrime Law, *supra* note 8, at arts. 2-5. In addition to criminalising tampering with electronic media, the law also criminalises forgery, obscenity, theft, and unauthorised access using electronic media.
- 16 Hum. Rts. Comm., *Concluding Observations on the Third Periodic Report of Kuwait*, ¶ 40, U.N. Doc. CCPR/C/KWT/CO/3 (Aug. 11, 2016) [hereinafter *HRC Concluding Observations of Aug. 2016*].
- 17 Hum. Rts. Comm., *General Comment No. 34: Article 19: Freedoms of Opinion and Expression*, ¶ 25, U.N. Doc. CCPR/C/GC/34 (Sept. 12, 2011) [hereinafter *HRC General Comment No. 34*]; David Kaye (Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression), *Report of the Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression*, ¶ 7, U.N. Doc. A/HRC/32/38 (May 11, 2016) [hereinafter *SRFOE Report of May 2016*]; Working Grp. on Arbitrary Det., *Opinion No. 71/2019 Concerning Issa al-Nukhefi, Abdulaziz Youssef Mohamed al-Shubaili and Issa Hamid al-Hamid (Saudi Arabia)*, ¶ 73, U.N. Doc. A/HRC/WGAD/2019/71 (Feb. 14, 2020) (“[V]aguely and broadly worded provisions ... which cannot qualify as *lex certa*, violate the due process of law undergirded by the principle of legality in article 11 (2) of the Universal Declaration of Human Rights.”); UDHR, *supra* note 6, at arts. 11, 19; ICCPR, *supra* note 5, at art. 19.
- 18 Articles 2 through 5 of Law No. 63 of 2015 on Combatting Cybercrime, *supra* note 8, extend to digital media the restrictions on expression in print media that are contained in articles 19 through 21 of Law No. 3 of 2006 on Press and Publications, *supra* note 9. Article 19 of the Press and Publications Law prohibits “meddling, defamation, slander, or mocking” matters of Islam. *Supra* note 9. Article 20 prohibits any “challenge” to the Emir by criticism or attribution of statements to him. *Id.* Article 21 prohibits publishing content that expresses a broad range of criticism of the government, including expression that would “disdain” or be in “contempt” of the constitution; “insult” or “disparage” the public prosecutor or the judicial system; or “insult” public morals. *Id.* It also prohibits publishing leaked communications of the government, or reporting on nonpublic government discussions, even if the information is true. *Id.* Article 21 (5) and (8) prohibit publication of news that would influence the value of national currency or harm to “the relationships between Kuwait and other Arab or friendly countries.” *Id.*
- 19 Cybercrime Law, *supra* note 8, at art. 7.
- 20 *Id.* at art. 6; Press and Publications Law, *supra* note 9, at art 27 (3).
- 21 Press and Publications Law, *supra* note 9; See *Kuwait: Cybercrime Law a Blow to Free Speech*, *supra* note 7 (noting that the Cybercrime Law lacks a defense of truth as required by international law).
- 22 HRC General Comment No. 34, *supra* note 18, ¶ 38.
- 23 *Id.* ¶ 47. See also Frank La Rue (Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression), *Report of the Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression*, Frank La Rue, ¶ 36, U.N. Doc. A/HRC/17/27 (May 16, 2011) (“defamation should be decriminalized”).
- 24 HRC General Comment No. 34, *supra* note 18, ¶ 47.
- 25 *Id.* See also Frank La Rue (Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression), *Report of the Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression*, Frank La Rue, ¶¶ 83-88, U.N. Doc. A/HRC/20/17 (June 4, 2012).
- 26 CITRA Law, *supra* note 11, at art. 61 (providing that CITRA shall inform the Public Prosecution of any potential crimes discovered during inspections).
- 27 Regulation of Electronic Media Law, *supra* note 10, at

- art. 6. Article 8 contains the requirements for license applicants which include they must be of good repute and may not have a conviction of a crime “that violates honor or trust”—the latter terms are not defined.
- 28 *Id.* at arts. 9, 17 (requiring managers of online media sites to be liable for violation of media regulations in published content and to publish free of charge a response by any government official mentioned in any posted content). The International Council Supporting Fair Trial and Human Rights identified the Regulation of Electronic Media Law, among others, as “restrictions on the right to expression that go far beyond those permitted under the International Covenant on Civil and Political Rights.” Hum. Rts. Council, *Written Statement Submitted by International Council Supporting Fair Trial and Human Rights, a Nongovernmental Organization in Special Consultative Status*, U.N. Doc. A/HRC/46/NGO/32 (Feb. 17, 2021).
- 29 See CITRA Law, *supra* note 11, at art. 70.
- 30 *Id.* at arts. 16, 66-82.
- 31 HRC Concluding Observations of Aug. 2016, *supra* note 17, ¶ 40.
- 32 *Id.* ¶ 40; see also Hum. Rts. Council Working Grp. on the Universal Periodic Rev., *Report of the Working Group on the Universal Periodic Review: Kuwait*, ¶¶ 157.49, 157.66, U.N. Doc. A/HRC/44/17 (Mar. 20, 2020) (criticising the Cybercrime Law and the Press and Publication Law on behalf of the United States of America and Iceland).
- 33 HRC General Comment No. 34, *supra* note 18, ¶ 14.
- 34 SRFOE Report of May 2016, *supra* note 18, ¶ 39.
- 35 *Kuwait: Jailed Bidun Activists on Hunger Strike*, HUM. RTS. WATCH (Aug. 30, 2019). See also Hum. Rts. Council, *Written Statement Submitted by International Council Supporting Fair Trial and Human Rights, a Nongovernmental Organization in Special Consultative Status*, U.N. Doc. A/HRC/46/NGO/33 (Feb. 17, 2021); Saad Obaid Jafar Al-Hajiri, *The Rights of the Stateless and Their Problems in State of Kuwait*, 3 J. SHARIAH L. RSCH. 177 (2018).
- 36 ³⁷ HUM. RTS. WATCH, PRISONERS OF THE PAST: KUWAITI BIDUN AND THE BURDEN OF STATELESSNESS 14 (2011). Kuwait is not a party to the Convention on the Reduction of Statelessness, which requires States to grant nationality to those born in the State who would otherwise be stateless and to provide a period in which Stateless residents can apply for citizenship. Convention on the Reduction of Statelessness art. 1, *opened for signature* Aug. 30, 1961, 989 U.N.T.S. 175.
- 37 HUM. RTS. WATCH, *supra* note 37, at 4. See also Working Grp. on the Universal Periodic Rev., *Report of the Working Group on the Universal Periodic Review: Kuwait—Addendum—Views on the Conclusions and/or Recommendations and Voluntary Commitments and Responses by the State Under Review*, ¶ 4, recommendation 157-30, U.N. Doc. A/HRC/29/17/Add.1 (June 4, 2015) (explaining that Kuwait will not ratify the Conventions on Refugees and Stateless Persons because Bedoons are illegal residents, so the definition of stateless does not apply to them).
- 38 HUM. RTS. WATCH, *supra* note 37, at 5-6.
- 39 *Kuwait: Bidoon*, MINORITY RTS. INT’L.
- 40 HUM. RTS. WATCH, *supra* note 37, at 20.
- 41 *Kuwait: Bidoon*, *supra* note 40.
- 42 See HUM. RTS. WATCH, *supra* note 37, at 11; see also *Kuwait: Activists Arrested for Peaceful Sit-In*, HUM. RTS. WATCH (July 19, 2019).
- 43 Dominic Dudley, *Kuwait May Deport 360,000 Foreigners As Gulf’s Expat Exodus Continues*, FORBES (Aug. 11, 2020).
- 44 Simon Kemp, *Digital 2020: Kuwait*, DATAREPORTAL (Feb. 18, 2020).
- 45 See *id.* There are 7.38 million mobile connections in Kuwait, equivalent to 174% of the population.
- 46 *Id.*
- 47 See *id.*
- 48 David Kaye (Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression), *Report of the Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression*, ¶ 9, U.N. Doc A/HRC/38/35 (Apr. 6, 2018).
- 49 HRC General Comment No. 34, *supra* note 18, ¶ 12 (declaring online expression as protected under article 19 of the ICCPR).
- 50 *Charge Brought Against Human Rights Defender Mohamed Al-Ajmi*, *supra* note 14.
- 51 *Id.*
- 52 *Id.*
- 53 *Id.* It can be assumed that the charging law is Law No. 63 of 2015, as this is the only identified law that criminalises online expression insulting religion and government.

NOTES

- 54 *Id.*
- 55 See ICCPR, *supra* note 5, at art. 19(2).
- 56 HRC General Comment No. 34, *supra* note 18, ¶ 11 (specifying political and religious discourse as protected under article 19 of the ICCPR).
- 57 *Id.* ¶ 48.
- 58 *Charge Brought Against Human Rights Defender Mohamed Al-Ajmi*, *supra* note 14.
- 59 *Id.*
- 60 *Id.*
- 61 See *Kuwait: Human Rights Defenders Abdulhakim Al-Fadhli and Hamed Jameel Summoned for Cyber-Crime Investigation*, GCHR (Feb. 11, 2019); *Kuwait: Activists Arrested for Peaceful Sit-In*, *supra* note 43; see also *Kuwait: Human Rights Lawyer Hani Hussain Imprisoned*, GCHR (Feb. 22, 2020).
- 62 *Kuwait: Five Bedoon Activists Released While 10 Others Remain in Prison*, GCHR (Sept. 26, 2019).
- 63 *Id.*
- 64 *Id.*
- 65 Mohamed Alenezi (@kuwbedmov), TWITTER (also known as Mohamed Wali Al-Anezi).
- 66 *Kuwait: Five Bedoon Activists Released While 10 Others Remain in Prison*, *supra* note 63.
- 67 *Id.*
- 68 *Id.*
- 69 *Kuwait: Criminal Court Issues Rulings Against Human Rights Defenders from the Bedoon Community*, GCHR (Jan. 29, 2020). The Court acquitted Abdualhakim Al-Fadhli, Abdullah Al-Fadhli, Hamid Jamil, Ahmed Majeed Al-Onan, Yousif Obaid Al-Bashiq, Khalifa Al-Anezi, Awad Saleh Al-Onan, Jarallah Al-Fadhli, Yousif Badr Al-Osmi, Mutaib Sebhan Al-Onan, Ahmed Shaya Al-Anezi, Mohammad Khudair Al-Anezi and Badr Khudair Matar. *Id.*
- 70 Hum. Rts. Comm., *General Comment No. 35: Article 9 (Liberty and Security of Person)*, ¶ 12, U.N. Doc. CCPR/C/GC/35 (Dec. 16, 2014) [hereinafter *HRC General Comment No. 35*].
- 71 Hum. Rts. Comm., *General Comment No. 32: Article 14: Right to Equality Before Courts and Tribunals and to a Fair Trial*, ¶ 31, U.N. Doc. CCPR/C/GC/32 (Aug. 23, 2007).
- 72 *Kuwait: Journalist and Writer Aisha Al-Rasheed Detained Under Cyber Crimes Law*, *supra* note 14.
- 73 *Id.*
- 74 *Id.*
- 75 *Id.*
- 76 Frank La Rue (Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression), *Report of the Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression, Mr. Frank La Rue*, ¶ 82, U.N. Doc. A/HRC/14/23 (Apr. 20, 2010).
- 77 Working Grp. on Arbitrary Det., *Report of the Working Group on Arbitrary Detention: United Nations Basic Principles and Guidelines on Remedies and Procedures on the Right of Anyone Deprived of Their Liberty to Bring Proceedings Before a Court*, ¶ 11, U.N. Doc. A/HRC/30/37 (July 6, 2015) [hereinafter *WGAD Report of July 2015*]; HRC General Comment No. 35, *supra* note 71, ¶¶ 17, 22-23, 53.
- 78 *WGAD Report of July 2015*, *supra* note 78, ¶ 10; UDHR, *supra* note 6, at art. 19; ICCPR, *supra* note 5, at art. 19.
- 79 *WGAD Report of July 2015*, *supra* note 78, ¶ 11.
- 80 Working Grp. on Arbitrary Det., *Report of the Working Group on Arbitrary Detention*, ¶ 46, U.N. Doc. A/HRC/36/37 (July 19, 2017); UDHR, *supra* note 6, at art. 7; ICCPR, *supra* note 5, at art. 26.
- 81 Working Grp. on Arbitrary Det., *Report of the Working Group on Arbitrary Detention*, ¶ 60, U.N. Doc. A/HRC/39/45 (July 2, 2018) [hereinafter *WGAD Report of July 2018*].
- 82 UDHR, *supra* note 6, at art. 6; ICCPR, *supra* note 5, at art. 6.
- 83 UDHR, *supra* note 6, at art. 6; ICCPR, *supra* note 5, at art. 16. Additionally, incommunicado detention violates the right to be brought promptly before a judge protected by ICCPR article 9(3) and the right to challenge the lawfulness of detention protected by ICCPR article 9(4). ICCPR, *supra* note 5, at arts. 9(3), 9(4).
- 84 Theo van Boven (Special Rapporteur on Torture), *Report of the Special Rapporteur on the Question of Torture Submitted in Accordance with Commission Resolution 2002/38*, ¶ 26(g), U.N. Doc. E/CN.4/2003/68 (Dec. 17, 2002) [hereinafter *SRT Report of Dec. 2002*].
- 85 Manfred Nowak (Special Rapporteur on Torture), *Report*

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of the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Manfred Nowak: Addendum—Study on the Phenomena of Torture, Cruel, Inhuman or Degrading Treatment or Punishment in the World, Including an Assessment of Conditions of Detention, ¶ 156, U.N. Doc. A/HRC/13/39/Add.5 (Feb. 5, 2010) (international law and standards prohibit “all secret and incommunicado detention”); see *Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, G.A. Res. 72/163, U.N. Doc. A/RES/72/163, ¶ 16 (Dec. 19, 2017).

86 WGAD Report of July 2018, *supra* note 82, ¶ 60.

87 *Kuwait: Prominent Activist and Journalist Hamoud Al-Rabah Kidnapped Following Tweet*, GCHR (July 24, 2019).

88 *Id.*

89 *Id.*

90 *Kuwait: Jailed Bidun Activists on Hunger Strike*, *supra* note 36.

91 SRT Report of Dec. 2002, *supra* note 85, ¶ 26(g).

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