



Kuwait - Take Concrete Steps to end Suffering of Stateless Bidun

The government should consider the six point plan to end statelessness in Kuwait

30 January 2020 - Beirut / London

Organisations and activists working on the right to nationality and statelessness reject the assertion by a Kuwaiti government representative on 29 January 2020 that the country has no stateless population.

The Institute on Statelessness and Inclusion (ISI), Salam for Democracy and Human Rights (Salam DHR), Rights Realization Centre (RRC), the Gulf Institute for Democracy and Human Rights (GIDHR) and a group of activists and academics working as an informal network on stateless issues in the Middle East and North Africa (MENA) region urge the government of Kuwait to take bold, concrete action to promote and protect the right to a nationality in Kuwait.

Representatives of the Kuwaiti government spoke in the course of the Universal Periodic Review (UPR), a non-binding state-led review of other states' human rights record, held on each state every four years at the United Nations in Geneva.

Representatives of 20 governments from Europe, Asia and the Americas, part of a larger group of government representatives, expressed concern and made recommendations regarding Kuwait's citizenship laws and the stateless Bidun community, widely understood to be mainly indigenous inhabitants of the region. Many called on Kuwait to amend legislation to give women the right to confer nationality. At least two raised the right of education available to stateless Bidun while one, the United States of America, expressed concern over recent suicides of stateless Bidun.

The human rights organisations and informal network of activists urge the government of Kuwait to work with Kuwaiti civil society, its international partners, including the United Nations High Commissioner for

Refugees (UNHCR), the Human Rights Council and its bodies and members in order to create a fair, independent, non-punitive mechanism to which stateless Bidun can present claims for citizenship that can be assessed in accordance with international standards of due process. In line with international practice, such a process would have an equally independent review in the event of rejection. Those found not to be Kuwaiti citizens after the exhaustion of such a process which complies with international standards, should receive a legal status and protection in line with international human rights and humanitarian standards and principles.

Echoing recommendations made by Amnesty International¹, we call on the government of Kuwait to take, immediately, the following concrete steps to promote and protect the right to nationality for all and to:

1. Work with national and international partners to create a truly independent legal mechanism to replace the discredited and unaccountable state body, the Central System to Resolve Illegal Residents' Status (the Central System), in which the successor body will be empowered only to assess nationality claims transparently, including to reject such claims, alongside an appeal process;
2. Develop, through consultation with national and international civil society and intergovernmental bodies, clear, objectively verifiable assessment criteria adhering to international standards, for citizenship;
3. Begin a fair, transparent, swift and thorough adjudication of all pending applications for nationality, including the long-acknowledged 34,000 applications, and initiate a well publicised, time-bound application procedure open to all those who wish to assert their claim to nationality;
4. Pending resolution of cases of statelessness or alleged concealment of 'original' nationality, rescind all regulations that discriminate against stateless Bidun in terms of enjoyment of human rights, in particular, their access to employment and public services including health care and education;
5. Protect and guarantee the rights of peaceful assembly and association in accordance with international standards in respect to every person in Kuwait; to ensure that no one may be detained or criminally charged for exercising the legitimate right to peaceful assembly and association²; and
6. Amend the gender discrimination in the nationality law and ratify the 1954 Convention relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness.

The rights groups and activists decry the absence of any analysis of statelessness in Kuwait's state report for the UPR peer-review process. The government's omission to do so is a brazen denial of the inherent human dignity of many thousands of people whose families have lived in the region from even before the establishment of the State of Kuwait and ignores the growing humanitarian crisis, punctuated by suicides of community members in recent years.

¹ Amnesty International - The Withouts of Kuwait: Nationality for Stateless Bidun Now, 16 September 20123, AI index: MDE 17/001/2013, accessed 27 January 2020 at:

<https://www.amnesty.org/download/Documents/16000/mde170012013en.pdf> These same recommendations are found in Amnesty International: Suggested recommendations to states considered during the 35th session of the Universal Periodic Review, 20-31 January 2020, Index number: IOR 40/1464/2019, 5 December 2019, accessed on 27 January 2020 at: <https://www.amnesty.org/en/documents/ior40/1464/2019/en/>

² The United Nations' Human Rights Committee, in its 11 August, 2016 Concluding observations on the third periodic report of Kuwait, referenced CCPR/C/KWT/CO/3, stated, in paragraph 42, that "*The Committee is concerned about article 12 of Law No. 65 (1979) on public gatherings, as it bars non-Kuwaitis from participating in public gatherings, and about the overly broad prohibition on public gatherings without the prior authorization of the Ministry of the Interior.*" In paragraph 43 it called on Kuwait to "*ensure that the exercise of the right to peaceful assembly is not subject to restrictions other than the ones permissible under the Covenant [...]*" Accessed on 29 January 2020 at <http://bit.ly/HRConFoAssembly2016>

In the course of the 2015 cycle of the UPR, differing states made 19 recommendations in relation to the treatment of the Bidun, and others relating to the recognition of women's equal nationality rights. No substantive progress has been made on those points in advance of this session.

Background: deepening crisis

In the last three decades, the government of Kuwait, which terms the more than around 100,000 stateless community "illegal residents", has repeatedly violated the fundamental human rights of members of the stateless Bidun community. Since mass, community demonstrations held repeatedly throughout 2011 the government has arbitrarily detained scores of activists and individuals who have gathered to peacefully call for citizenship. The authorities have tortured up to ten, and imposed unfair trials on those arbitrarily detained and/or charged, punishing human rights defenders and other members of the stateless Bidun community whose demand is only that their right to citizenship be acted upon.³

Moreover, just as female Kuwait citizens cannot, by law, transfer citizenship to children born to non-Kuwaiti fathers, the child of a Bidun father cannot access Kuwaiti nationality even if their mother is a citizen.

The government has sought to fragment the stateless Bidun into socially-divisive, administratively colour-coded categories hinting at proximity to citizenship; denied them access to state-funded primary and secondary education; imposed conditions that make even access to private education difficult; regularised, legal employment and health services.

These measures, on their own, cause serious bodily and mental harm to members of the community. They limit the socio-economic development of the community; make its reproduction a challenge, since the ability to found and raise a family has become, for many, an impossibility.

The so-called Central System, the unaccountable, autonomous state body established in 2010 by royal decree rather than an act of parliament, governs every aspect of the Bidun community's lives. It presides over the measures outlined above and has coerced stateless Bidun members to renounce links to Kuwait, by forcing them to agree to consent, by way of a signed undertaking, to limitations of their rights.⁴ This has included

³ A selection of violations of civil and political; economic, social and cultural rights are summarised in the Summary of Stakeholders' submissions on Kuwait - Report of the Office of the United Nations High Commissioner for Human Rights. See: Human Rights Council, Working Group on the Universal Periodic Review, Thirty-fifth session, 20–31 January 2020, 6 November 2019, UN ref., A/HRC/WG.6/35/KWT/3, 6 November 2019, accessed 27 January 2020 at the website of UPR Info:

https://www.upr-info.org/sites/default/files/document/kuwait/session_35_-_january_2020/a_hrc_wg.6_35_kwt_3_e.pdf

⁴ Arab Gulf States Institute in Washington - Stateless in Kuwait, 8 November 2019: "*Since then, bidun activists have asserted that it has become harder to obtain or renew the security card they need to work, study, or get a driver's license. Some biduns claim that they have been forced to sign documents admitting that they are citizens of another country in order to get their IDs, thereby surrendering their demands to become Kuwaiti citizens. Without renewed IDs, biduns cannot apply for birth certificates for their newborn babies, their children cannot attend schools, health care is not provided to them, and they are not permitted to work. Recently, the government ordered the central bank to freeze the bank accounts of biduns who do not have their security cards.[...]*". Accessed 27 January 2020 at:

<https://agsiw.org/stateless-in-kuwait/>

being required to accept foreign “economic citizenship” of the Union of Comoros. Such discriminatory measures may amount a method to reduce the size or eliminate the community.⁵

Impact on society and erosion in administration of justice

It is in this context that in February 2018, a 36-year-old man and in July 2019, 20-year old Ayed Hamad Moudath took their own lives. Then, possibly in part in relation to the unveiling of draft legislation (see below), on 4 November 2019, Badr Mirsal al-Fadhli and - separately - Zayed Anithal Zayed (al-Osmi or al-Asami) also took their own lives.⁶

Following the July 2019 death of Bidun Ayed Hamad Moudath (see above), members of the Bidun community, including human rights defenders, gathered in Freedom Square in Tayma, in the Governorate of Jahra, and al-Erada Square, in Kuwait City to protest at the conditions that surrounded his death. Between 11 and 14 July, however, the authorities carried out arrests - of around 15 people - in connection with the demonstrations, including of those who demonstrated peacefully. Following a prolonged, unfair seven month detention, during which they did not have adequate opportunity to seek a review of the detention order, the authorities have tried them.

The authorities reportedly charged them, variously, with spreading false news, insulting (defaming) friendly countries, joining a proscribed organisation, calling for and taking part in (illegal) demonstrations and abuse of the mobile phone. While unconfirmed details were emerging at the time of writing, while one man was reportedly acquitted, eleven appear to have been fined or given a suspended sentence, although reports also indicate that the court have refused to adjudicate on their case. The court handed down 10-year sentences to Hamoud Rabah Hamoud Hamad (also called Hammoud Al-Rabah) and Reda Thamer Gholifs Maqtouf (also called Reda al-Fadhli). At the time of writing, the court also appears to have given suspended sentences to Youssef Al-Bashiq, Abdul Hakim al-Fadhli and Awad Al-Aounan. The authorities convicted Muhammad Khudair Al-Anzi to three years' imprisonment in a separate case. The London-based campaigner, Mohammed al-Anezi received a life sentence.

It is on account of Kuwait's unwillingness to address the decades-old failure to recognise the human dignity of the stateless Bidun community that on 28 January 2020, a lower court handed down these verdicts and

⁵ In October 2012, a government official told members of an international NGO visiting Kuwait that the government could not naturalise the stateless Bidun since most were poorer and a higher proportion of the community are thought to be Shi'a. It is a widely-held view. See: Arab Gulf States Institute in Washington - Stateless in Kuwait, 8 November 2019: "Some people reject naturalizing the biduns because they believe a significant number of them are Shia Muslims or because of concerns that their tribal background will demographically change the country." Accessed 27 January 2020 at: <https://agsiw.org/stateless-in-kuwait/>

⁶ Amnesty International - Kuwait: Rising Sings of Despair among Bidun Highlight Cruelty of Draft Law, AI index MDE 17/1362/2019, 21 November 2019, accessed 27 January 2020 at: <https://www.amnesty.org/download/Documents/MDE1713622019ENGLISH.pdf> It states: *On Monday 4 November, Badr Mirsal al-Fadhli killed himself by hanging on the playground of a public park in the Doha neighbourhood of outer Kuwait City. A video recorded a few months prior and posted on Twitter by a user identifying as another Bidun member of the al-Fadhli lineage shows Badr reciting a poem of lament, making references to "the homeland" and "the departed". On the same day, a second Bidun man, Zayed Anithal Zayed ("al-Osmi"), hung himself at a rest stop for pilgrims along Highway 70 leading to Saudi Arabia, reportedly due in part to his difficult socioeconomic situation as a Bidun. Amnesty International had earlier reported that Ayed Hamad Moudath, 20, committed suicide after reportedly being unable to obtain official documents and eventually losing his job*

that such suicides and ongoing, arbitrary arrests and trials are human rights travesties occur. They must stop immediately.

Flawed draft legislation

We acknowledge the October 2019 draft legislation concerning the Bidun presented by parliamentary speaker, Marzouq al-Ghanem, ostensibly designed to resolve the situation. Regrettably, it does not do so. Its provisions envisage a continuation of the premise that the stateless Bidun are “illegal residents” and continues to empower the fundamentally flawed and corrupt Central System with administration of the lives of the Bidun and their access to legal recognition.⁷ Even its provisions for a ‘super residency’ of 15 years that contains rights accorded to full citizens, do not confer nationality, but rather continue to pre-suppose that recipients will “present their original nationality”.

The Kuwaiti Bar, or Lawyers’ Association, whose current status appears unclear, does depict the Bidun as a community whose nationality has not been resolved and appears to extend education and health services to the Bidun. While it does not provide a pathway for resolution, it nevertheless represents a step toward Kuwait’s international obligations as a state party to the International Covenants on Civil and Political as well as Economic, Social and Cultural Rights.

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⁷ These rights and privileges include: access to free health care, state-sector education, welfare cards, welfare benefits that may include access to subsidised food; government-issued documents including drivers’ licenses, but not the right to work, notably in the public - or, on equal terms, the private - sector.