

## AMNESTY INTERNATIONAL PUBLIC STATEMENT

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# KUWAIT: RISING SIGNS OF DESPAIR AMONG BIDUN HIGHLIGHT CRUELTY OF DRAFT LAW

New proposed legislation to address the issue of the stateless Bidun community in Kuwait risks entrenching and perpetuating the state's decades-long pattern of discrimination and marginalization, Amnesty International said today. If passed, the new law would in effect compel the Bidun to abandon their long-standing claim to Kuwaiti nationality in order to safeguard their socioeconomic survival in the short term. The Kuwaiti authorities must ensure a long-overdue humane, sustainable, and comprehensive solution to the plight of the Bidun in a manner that guarantees their rights to access employment and state services, particularly health care and education. They must also immediately release all those detained in the context of the protests, and drop all charges brought against those exercising their right to peaceful assembly unless they are charged with a recognizable offence.

### SUICIDES, PROTESTS, & REPRESSION

Increasing signs of despair within the community have come to the fore in recent months, as two Kuwaiti Bidun men killed themselves by hanging in early November, barely four months after another young Bidun man, Ayed Hamad Moudath, also took his own life, reportedly due to despair over his socioeconomic situation. 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.

In July, the news of Ayed Hamad Moudath's suicide sparked protests in public spaces; the Kuwaiti government [responded](#) by cracking down primarily on non-violent Bidun activists and human rights defenders and arresting a number of them. At the time of writing, according to the information available to Amnesty, 11 out of 15 of those detained in July remain in detention. All remain on trial.

The group of 15 protesters are [charged with](#) organizing public demonstrations amongst the Bidun; "rebellion against the ruling system" in Kuwait; spreading false news; endangering Kuwait's bilateral relations with friendly countries by "insulting" them; and "misuse of a phone", referring to the use of mobile phones to discuss and circulate dissident ideas over social media. They are also charged with joining a proscribed organization, the "Kuwaiti Biduns Foundation Council", which is an online initiative begun by Mohamed Waly Mutlaq (also known as Mohamed al-Badry "al-Enezi"), a former Bidun from Kuwait who now lives in the UK, where he has obtained citizenship. Al-Enezi, who is also charged as a defendant in the trial, advocates for secession of the Bidun to form a separate state if Kuwait will not grant them nationality.

One of the protesters detained, Mohamed Khadir Shanan ("al-Enezi"), was filmed making the statement: "Anyone who's going to kill himself, let him take an official... with him." No other protesters are known to have made such statements, and no accusations of actual acts of violence have been raised against any of the defendants. Shanan has been charged in a separate case with incitement based on the recorded remarks, but is also being charged for legitimate exercise of the right to peaceful assembly that is one of the counts raised by the prosecution against the group collectively.

The charges in the group trial are inherently flawed as they violate the rights to freedom of expression and peaceful assembly, which are guaranteed under international human rights treaties such as the International Covenant on Civil and Political Rights. Kuwait acceded to this treaty in 1996 without relevant reservations.

### PUNITIVE NEW DRAFT LEGISLATION

The three suicide cases this year alone and the public mobilization these triggered are clearly signs of a community in distress. On the same day that the latest news of the suicide broke out, the Chairman of Kuwait's National Assembly,

Marzouq al-Ghanim, put forth a new draft law which, if enacted, would continue to treat the Bidun as “illegal residents in Kuwait” and risks perpetuating the pattern of discrimination and marginalization of the Bidun people in Kuwait.

The bill applies only to those registered with the Central System for the Remedy of the Situation of Illegal Residents, the government body tasked with dealing with the Bidun and managing their legal identity since 2010. To date, the Central System has arbitrarily assigned many Biduns who applied for renewed IDs in recent years a false, non-Kuwaiti nationality (typically Iraqi or Syrian), which then appears in both the database records system and on their new official documents.<sup>1</sup> By doing so, the Central System has effectively been pressuring Biduns in need of ID cards into waiving their national rights in exchange for the documentation they need in order to manage their daily lives.

This law, if enacted, would offer “privileged resident” status valid for 15 years and carrying all the legal rights and socioeconomic means necessary to survive, to those who “present their original nationality”,<sup>2</sup> i.e. a false non-Kuwaiti nationality. Because only those registered with the Central System would be eligible for the new “privileged resident” status, the bill appears to be designed to force those who have engaged with the agency in good faith to permanently surrender their claim to Kuwaiti nationality.

Furthermore, the bill gives Biduns a one-year deadline “to correct [their] legal status in accordance with the Residency Law” (Art. 4), after which any who haven’t would be “treat[ed] as foreigners in violation of the law” and declared ineligible for future acquisition of nationality (Art. 6). As such, the bill would put severe pressure on the Bidun to “admit” to holding non-Kuwaiti nationalities, which hold no legal value and are not recognized by the relevant foreign authorities, and thus surrender their claim to original Kuwaiti nationality.

The list of rights and benefits offered to the new “privileged resident” category demonstrates the extent to which Kuwait’s Bidun are currently deprived of the means to live decent lives. “Privileged residents”, like Kuwaiti nationals – and in direct contrast to the current situation of the Bidun – would be granted (under Art. 4):

- Access to the free health care and free comprehensive education offered by Kuwait’s state medical centers and school system;
- Issuance of welfare cards entitling the bearer to government-subsidized food and other provisions;
- “Issuance and recording of all documents relating to personal status and other legal papers”, including driver’s licenses, as well as the ability to “Conduct[ ] governmental transactions of all types”; and
- Authorization to engage in commerce, with the proper licenses

Unlike nationals, however, “privileged residents” would not be able to work in the well-compensated and secure public sector, which employs nearly three-quarters of recognized Kuwaiti nationals, or even the private sector, on an equal basis, but instead would be subject to the rules governing foreign nationals seeking local employment. The fact that Biduns cannot currently obtain legal documents (such as proof of marriage, inheritance, licenses, etc.) or complete other basic transactions with the government demonstrates the extent to which their right even to a legal identity has been denied.

The draft law also traffics in xenophobic rhetoric, alleging that “the legal and social problems” caused by “illegal residents have grown out of control and become a burden on national security”, and seeks to impose the principle that even “the presence of... a group without nationality is not permitted, and its residence in the state of Kuwait is considered unlawful and illegitimate”, expressing outright hostility to the mere presence of stateless people on Kuwaiti soil.

In addition to the bill introduced by al-Ghanim, an alternative piece of legislation has been [proposed](#) by the Kuwaiti Lawyers’ Association, which would address the Bidun issue in a more humane fashion that seeks to bring Kuwait in line with its international human rights obligations. The Association’s draft statute addresses the Bidun problem as one of residents whose nationality has not been recognized, rather than the xenophobic and inflammatory rhetoric of “illegal residents”, and allows Bidun who have been forced to “recognize” their possession of a non-Kuwaiti nationality that they do not actually hold to return to their previous legal status. It also offers access to education and health care to those currently without nationality, without the draconian conditions of the official bill, and would abolish the Central System.

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<sup>1</sup> Amnesty has reviewed documents, which it has on file, showing how in one case authorities declared a Bidun man previously recorded as “non-Kuwaiti” to be “Iraqi” when he had to renew his ID card in 2019. These documents, issued by a domestic Kuwaiti agency, hold no force of law in conferring a foreign nationality, and the states “assigned” the Bidun in this way will not recognize the bearers as their citizens.

<sup>2</sup> The law states that applicants for “privileged residence” must not only declare a non-Kuwaiti nationality, but also present “something confirming their affiliation to a fixed nationality”. If applied, this would reduce the number of eligible applicants drastically, since the defining characteristic of the Bidun is their lack of any documents confirming a nationality. However, given the Central System’s pattern of assigning non-Kuwaiti nationality with no evidence at all, it seems likely that this proviso would be ignored in practice.

Though this bill does not grant nationality to all stateless persons in Kuwait, and thus may not represent a comprehensive solution, it lays out a plan for naturalization that would benefit many Biduns, and grants all other stateless persons in Kuwait permanent residence and treatment on par with Kuwaiti citizens in the socioeconomic sphere.

## AMNESTY INTERNATIONAL'S RECOMMENDATIONS

Amnesty International calls on the Kuwaiti authorities to

1. immediately release all those detained in the context of the protests, and drop all charges brought against those exercising their right to peaceful assembly unless they are charged with a recognizable offence;
2. withdraw the draft bill, which effectively criminalizes the existence of the Bidun in their own country while putting pressure on them into surrendering their right to a nationality in exchange for basic guarantees of livelihood;
3. in consultation with national and international civil society, determine and publish clear, objectively verifiable assessment criteria for naturalization;
4. begin a fair, transparent and swift adjudication of all pending applications for nationality; and
5. provide by law for Biduns' access to the Kuwaiti judiciary so that they can challenge decisions made by executive and administrative authorities affecting their legal status or livelihood, including decisions on their claims to Kuwaiti nationality.

Pending a comprehensive resolution of the Biduns' untenable situation, the Kuwaiti authorities should immediately restore the access to state benefits that they enjoyed until the mid-1980s (see "Background" below), including medical and psychosocial support that might help prevent suicides. The authorities should also enhance the legal framework of protection for stateless people and against the expansion of statelessness by joining the two international conventions of 1954 and 1961 on the subject.<sup>3</sup>

Amnesty International also calls on the United Nations High Commissioner for Refugees (UNHCR), which maintains an office in Kuwait, to step up coordination with the government on drafting of a bill that meets Kuwait's international legal obligations, [in line with](#) UNCHR's "formal mandate to ... prevent and reduce statelessness around the world" and "to protect the rights of stateless people" where they are found. UNHCR's work in this area is already intended to involve "provid[ing] guidance and technical assistance to governments", including advice on the introduction of legislation "recogniz[ing] stateless people and giv[ing] them a legal status along with basic human rights".

## BACKGROUND

The Bidun, or *bidun jinsiya*, meaning in Arabic "without nationality", amount to a tenth or more of Kuwait's indigenous national population. Their precarious legal condition has its origin in the way the modern Kuwaiti state was established in the mid-20<sup>th</sup> century. When Emir Abdullah al-Salim of the ruling Al Sabah family issued Kuwait's nationality law in 1959, it provided that "Kuwaitis, by origin, are those settled in Kuwait before 1920, who have maintained their regular residence in it up to the day of the issuance of this law."<sup>4</sup> At the time, however, many residents of the territory that became the independent state of Kuwait still lived according to the traditional migratory patterns of the Arabian Peninsula and thus were not in a position to prove continuous residence. Even more problematic, however, was the fact that registration of Kuwaiti nationality was required within a limited time period that ended in 1965, and with no prior experience of a national bureaucracy (or even the concept of nationality) and no adequate government outreach to spread awareness and education about the new legal order, the process bypassed tens of thousands of Kuwaitis. The "nationalization" process focused primarily on the urban environment of Kuwait City, leaving many in the hinterland unaware that they had involuntarily forfeited the crucial foundational right – the right of citizenship – in a modern state.<sup>5</sup>

The Bidun issue was less visible for many years because, until the mid-1980s, the Kuwaiti government treated Biduns almost as the equals of recognized Kuwaiti nationals, granting them full access to the comprehensive national welfare system and to state employment (in fact, at that time the Bidun made up the bulk of the rank and file in both the police and the military) and even granting them passports. Because the Bidun had always been part of the Kuwaiti social fabric,

<sup>3</sup> See also Amnesty International, [The 'Withouts' of Kuwait: Nationality for stateless Bidun now](#) (Index: MDE 17/001/2013).

<sup>4</sup> Emiri Decree No. 15 of 1959 on the Law of Kuwaiti Nationality, issued 5 December 1959, Art. 1, paragraph 1.

<sup>5</sup> See Claire Beaugrand, *Stateless in the Gulf: Migration, Nationality and Society in Kuwait* (London: I.B. Tauris, 2018), pp. 2–3, for a brief summary of the nationality-formation process and of the government and the Biduns' competing claims in this regard.

they were widely linked to Kuwaiti society at large, with intermarriage between Biduns and recognized Kuwaitis fairly common; as a result, legally “mixed” families, whether nuclear or extended, are a widespread phenomenon. Thus in the early decades of Kuwait’s independence, the lack of formal Kuwaiti nationality was more an issue of labeling than of effective rights. Starting in 1985, however, and seemingly motivated by fears about the long-term financial viability of Kuwait’s extremely generous petro-welfare system, the government rapidly stripped the Bidun of their socioeconomic rights. By the end of the decade many Bidun had been left in the condition that prevails today, with acquisition or retention of a driver’s license or even a basic ID beyond the reach of whole families.<sup>6</sup>

The most important source for estimation of the number of Biduns is the Kuwaiti government’s *Annual Statistical Abstract*. Through 1989, the *Abstract* counted Biduns in the “Kuwaiti” column in its reporting of the national population.<sup>7</sup> Subsequently, however, the Bidun were shifted to the “Non-Kuwaiti” column, resulting in a sudden, artificial reduction of the Kuwaiti national population. By the time of the 1992 *Statistical Abstract*, Kuwait had reduced the count of its national population by 250,651.<sup>8</sup> This revision of Kuwait’s demographic history was imposed on census results dating back to 1965, so that the number of Kuwaitis was retrospectively reduced by 21–23% in each census year.<sup>9</sup> Within the past decade an estimate of approximately 100,000 Bidun has been more commonly cited,<sup>10</sup> although given the reporting in the *Abstract* and the expectation of natural increase this would appear to be a lower-end estimate.<sup>11</sup> According to the most recent official Kuwaiti statistics, the recognized number of nationals as of 2018 was approximately 1.3 million,<sup>12</sup> which if the figure of 100,000 is correct would make the Bidun about 7% of the non-migrant population. At the higher end of the spectrum of estimates, the Bidun may have comprised close to one-third of the original Kuwaiti population.<sup>13</sup> (All these calculations exclude migrant labourers, who have made up a large majority of the resident population for decades).

Roughly half the resident population fled outside Kuwait’s borders during the Iraqi invasion and occupation of 1990–91, including well over 100,000 Bidun. Unlike recognized Kuwaiti nationals, including the royal family, who had fled but were permitted to return after the occupation was over, the Bidun were excluded from repatriation. The Kuwaiti government now contends that it has no connection to or responsibility for this displaced population, which accounts for the bulk of the reduction in the estimate of Biduns resident in Kuwait today. The fate of the Bidun who fled in 1990–91 has never been adequately investigated.<sup>14</sup>

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<sup>6</sup> “Kuwait’s Stateless Bidoon: Background and Recent Promising Developments,” 3 June 2009, confidential diplomatic telegram from US Ambassador Deborah K. Jones in Kuwait City to Washington, DC, as released by WikiLeaks, [bit.ly/2OnfKwd](https://bit.ly/2OnfKwd).

<sup>7</sup> State of Kuwait, Ministry of Planning – Central Statistical Office, *Annual Statistical Abstract*, vol. XXVI: 1989 ([Kuwait City]: Ministry of Planning, [1989]), p. 27, Tables 11 (“Population by Nationality and Sex in Census Years, 1957–1985”) and 12 (“Estimated Mid-Year Population, 1980–1990”).

<sup>8</sup> Cf. *Annual Statistical Abstract*, 1989, p. 27, Table 12, row for 1989, “Kuwaiti” column (796,389), with State of Kuwait, Ministry of Planning – Central Statistical Office, *Annual Statistical Abstract*, vol. XXIX: 1992 ([Kuwait City]: Ministry of Planning, [1992]), p. 27, Table 12 (“Estimated Mid-Year Population, 1985–1995”), row for 1989, “Kuwaiti” column (545,738). (The attendant increase in the “Non-Kuwaiti” category, standing at 243,190, does not exactly match, but is close enough that 250,000 represents a valid rough estimate for the official, publicly reported figures.)

<sup>9</sup> Cf. *Annual Statistical Abstract*, 1989, p. 27, Table 11, with *Annual Statistical Abstract*, 1992, p. 27, Table 11 (“Population by Nationality and Sex in Census Years, 1965–1988”).

<sup>10</sup> See e.g. “Kuwait’s Stateless Bidoon,” confidential telegram from U.S. Ambassador Jones, 3 June 2009, [WikiLeaks](https://wikileaks.org), paragraphs 1, 2, and 12.

<sup>11</sup> See Beaugrand, *Stateless in the Gulf*, p. 34, Table 1.1 (“Number and Proportion of *Biduns* in Kuwait’s Population, 1957 – 2013”) for attempts to estimate the number taking account of natural population growth. Beaugrand gives a higher-end estimate of 212,421 as of 2010.

<sup>12</sup> State of Kuwait, Central Statistical Bureau, *Annual Statistical Abstract*, vol. 53: 2017 – 2018 ([Kuwait City]: Central Statistical Bureau, 2018), p. 59, Table 32 (“Estimated Beginning of the Year Population by Nationality and Gender (1- Jan)”).

<sup>13</sup> For example, taking the number of “subtracted” Kuwaitis between 1989 and 1992 (250,651), and dividing by the total Kuwaiti (non-migrant) population recorded for 1989 before the government revised its demographic history (796,389), yields an estimate of  $\approx 31.4\%$  of the population being Bidun as of 1989.

<sup>14</sup> Beaugrand, *Stateless in the Gulf*, p. 36.