

**NATIONS UNIES**  
**HAUT COMMISSARIAT DES NATIONS UNIES**  
**AUX DROITS DE L'HOMME**

**PROCEDURES SPECIALES DU**  
**CONSEIL DES DROITS DE L'HOMME**

**UNITED NATIONS**  
**OFFICE OF THE UNITED NATIONS**  
**HIGH COMMISSIONER FOR HUMAN RIGHTS**

**SPECIAL PROCEDURES OF THE**  
**HUMAN RIGHTS COUNCIL**

**Mandates of the Working Group on Arbitrary Detention; the Working Group on the issue of discrimination against women in law and in practice; and the Special Rapporteur on violence against women, its causes and consequences.**

REFERENCE: UA G/SO 218/2 G/SO 214 (89-15)  
KWT 1/2014

5 February 2014

Excellency,

We have the honour to address you in our capacity as Chair-Rapporteur of the Working Group on Arbitrary Detention; Chairperson-Rapporteur of the Working Group on the issue of discrimination against women in law and in practice; and Special Rapporteur on violence against women, its causes and consequences pursuant to Human Rights Council resolutions 24/7, 23/7, and 23/25.

In this connection, we would like to draw the attention of your Excellency's Government to information we have received concerning the arrest and detention of Ms. [REDACTED].

According to the information received:

In the morning of 21 January 2014, Ms. [REDACTED], a holder of the Kuwait civil identification number [REDACTED], was arrested by the police in the Hawalli neighbourhood outside her place of residence, while walking towards her car to go to work. She was reportedly taken to the Salmiya main branch of the Department of Criminal Investigation where she spent two days. On 23 January 2014, she was reportedly transferred to the Kuwait Central Prison. It is reported that she was charged with "imitation of the opposite sex", which is a criminal offence under Amendment 198 of the Kuwaiti Penal Code.

Ms. [REDACTED] has no known criminal record and there is no indication that she was suspected of committing any criminal offence at the time of the arrest. Rather it would seem that she was arrested solely on the basis of her gender identity and expression. We are informed that transgender persons are an isolated, discriminated and vulnerable group in Kuwait and face daily harassment and threats to their liberty. There are also allegations that transgender persons in

detention are coerced into sexual relationships with prison guards in order to gain access to basic services or even sometimes raped by them.

Concern is expressed at the allegation that Ms. [REDACTED] has been arrested and detained by reason of her gender identity and may be facing discrimination and other violations of her human rights in detention, including acts of violence that may harm her physical and psychological integrity. We are also expressing concern at the decision of the National Assembly of Kuwait to amend article 198 of the Kuwaiti Penal Code, which now reportedly stipulates that anyone “imitating the opposite sex in any way” faces one year in prison with a fine of 1,000 Kuwaiti dinars. This amendment leaves transgender persons in Kuwait vulnerable to discrimination on the basis of their gender, harassment, arbitrary arrest and sexual assault and other forms of violence by law enforcement personnel.

Without expressing at this stage an opinion on the facts of the case and on whether the detention of Ms. [REDACTED] is arbitrary or not, we would like to appeal to your Excellency's Government to take all necessary measures to guarantee her right not to be deprived arbitrarily of her liberty and to fair proceedings before an independent and impartial tribunal, in accordance with articles 9 and 14 of the International Covenant on Civil and Political Rights, and articles 9 and 10 of the Universal Declaration of Human Rights. We would like to recall that the Working Group on Arbitrary Detention considers detention arbitrary “when the deprivation of liberty constitutes a violation of international law for reasons of discrimination based on birth; national, ethnic or social origin; language; religion; economic condition; political or other opinion; gender; sexual orientation; or disability or other status, and which aims towards or can result in ignoring the equality of human rights”.

We also appeal to Your Excellency's Government to take all necessary measures to guarantee to Ms. [REDACTED], the right to be free from any gender-based violence, discrimination and abuse. Towards that end, we would like to draw Your Excellency's attention Article 1 of the United Nations Declaration on the Elimination of Violence against Women which provides that the term "violence against women" means any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life.

We draw your particular attention to the Convention on the Elimination of All Forms of Discrimination against Women (hereinafter “CEDAW”), which was ratified by Kuwait on 2 September 1994. Article 2 of that Convention condemns all forms of discrimination against women and. Article 5 requests the modification of social and cultural patterns of conduct in order to eliminate prejudices based on the idea of the inferiority or superiority of either of the sexes or on stereotyped roles for men and women.

United Nations treaty bodies have consistently held in their jurisprudence, general comments and concluding observations, that sexual orientation and gender identity are

prohibited grounds of discrimination under international law. With regards to gender identity, this includes the Committee on Economic, Social and Cultural Rights<sup>1</sup>, the Committee on the Rights of the Child<sup>2</sup>, the Committee Against Torture<sup>3</sup> and the Committee on the Elimination of Discrimination against Women.<sup>4</sup>

In particular, we note that the Human Rights Committee, in its Concluding Observations on Kuwait, expressed concern about “the new criminal offence of ‘imitating members of the opposite sex’ with regards to compliance with Articles 2 (non-discrimination) and 26 (equality before the law) of the International Covenant on Civil and Political Rights and called upon the Government of Kuwait to repeal this legislation “in order to bring its legislation in line with the Covenant”.<sup>5</sup> Furthermore, paragraph 18 of CEDAW General Recommendation No. 28 underlines the intersectionality of different forms of discrimination against women, including when it is based on gender identity. The Committee emphasizes the need for State parties to legally recognize and adopt policies to eliminate occurrences of intersectionality in discrimination.

Finally, in reference to discriminatory laws and practices and acts of violence against individuals based on their gender identity, the United Nations High Commissioner for Human Rights recommends States to, inter alia, protect persons from transphobic violence and investigate and prosecute perpetrators of such violence; prevent the torture and cruel, inhuman and degrading treatment of transgender persons in detention; ensure that criminal laws are not used to harass or detain people on the basis of their gender identity and expression; enact comprehensive laws that include gender identity as prohibited grounds of discrimination and provide education and training to prevent discrimination and stigmatization of transgender persons; ensure that individuals can exercise their rights to freedom of expression, association and peaceful assembly in safety and without discrimination on the basis of gender identity; and facilitate legal recognition of the preferred gender of transgender persons and establish arrangements to permit relevant identity documents to be reissued reflecting preferred gender and name, without infringements of other human rights (A/HRC/19/41, para 84(a)-(h)).

In view of the urgency of the matter, we would appreciate a response on the initial steps taken by your Excellency’s Government to safeguard the rights of Ms. [REDACTED] in compliance with the above international instruments.

Moreover, as it is our responsibility under the mandates provided to us by the Human Rights Council to seek to clarify all cases brought to our attention, we would be grateful for your observations on the following matters, when relevant to the case under consideration:

1. Are the facts alleged in the summary of the case accurate?

---

<sup>1</sup> CESC General Comment No. 20, para. 32

<sup>2</sup> CRC General Comment No. 13 (2011), para. 60 and 72(g)

<sup>3</sup> CAT General Comment No. 2, para. 21

<sup>4</sup> CEDAW General Recommendation No. 28, para. 18

<sup>5</sup> Concluding observations of the Human Rights Committee on Kuwait (CCPR/C/KWT/CO/2), at para. 30.

2. Please indicate whether Ms. [REDACTED] has been given access to a legal counsel of her choosing or had legal assistance assigned to her.

3. Please indicate what measures have been taken to respect the gender identity of Ms. [REDACTED] and protect her from violence, torture and cruel, inhuman and degrading treatment and discrimination while in detention.

4. Please provide the details, and where available the results, of any investigation, judicial or other inquiries carried out in relation to this case. If no inquiries have taken place, or if they have been inconclusive, please explain why.

5. Please provide the full details of Amendment 198 of the Kuwait Penal Code and explain how it is in accordance with the Government of Kuwait's obligations under international human rights law and standards, particularly with regard to the right to be free from discrimination.

6. Please indicate what measures have been taken by your Excellency's Government to ensure that transgender persons are protected from harassment, violence and discrimination.

We undertake to ensure that your Excellency's Government's response will be available in the report we will submit to the Human Rights Council for its consideration.

Recalling the Human Rights Council resolution 17/19 expressing grave concern at acts of violence and discrimination, in all regions of the world, committed against individuals because of their sexual orientation and gender identity, we urge your Excellency's Government to take all necessary measures to guarantee that the rights and freedoms of Ms. [REDACTED] are respected and that accountability of any person guilty of the alleged violations is ensured. We also request that your Excellency's Government adopt effective measures to prevent the recurrence of these acts.

Please accept, Excellency, the assurances of our highest consideration.

Mads Andenas  
Chair-Rapporteur of the Working Group on Arbitrary Detention

Frances Raday  
Chairperson-Rapporteur of the Working Group on the issue of discrimination  
against women in law and in practice

Rashida Manjoo  
Special Rapporteur on violence against women, its causes and consequences