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KUWAIT

Five years of impunity: human rights concerns since the withdrawal of Iraqi forces

1. Introduction

Since the end of the Iraqi occupation in February 1991, Kuwait has embarked on a series of political and human rights reforms. Parliament has been reconstituted, a committee has been established to look into complaints of human rights violations, and steps have been taken towards the ratification of several international human rights treaties. However, the government has failed to address many human rights violations relating to the period of Martial Law immediately after the occupation. These include the detention of prisoners of conscience; torture and ill-treatment; unresolved extrajudicial executions and “disappearances”; manifestly unfair trials; and the increased scope of the death penalty. Although the human rights situation has now improved considerably, the fundamental rights, usually of foreign nationals and stateless people continue to be violated.

Amnesty International has investigated cases of extrajudicial executions, “disappearances” and torture in Kuwait and has followed the trials of political prisoners and prisoners of conscience. The organization has sought clemency for prisoners on death row. It has repeatedly urged the Kuwaiti authorities to investigate fully all human rights violations and has raised with them its concerns about the unfairness of trials in the Martial Law Court and the State Security Court. However, the Kuwaiti authorities have made little effort to investigate human rights violations, particularly those relating to the Martial Law period, or to bring those responsible to justice, and have failed to address the substance of Amnesty International’s concerns or to respond to requests for information.

Amnesty International is calling on the Kuwaiti authorities to investigate and redress all outstanding cases of human rights violations and to take steps to ensure the full protection of the human rights of everyone in Kuwait. This document, written in December 1995, outlines Amnesty International’s main concerns in Kuwait and includes a number of recommendations to the Kuwaiti Government.

2. Background: the Martial Law period and its consequences

In February 1991 the Amir of Kuwait, Shaikh Jaber al-Ahmad al-Sabah, declared a three-month period of Martial Law following the withdrawal of Iraqi forces, which was subsequently extended until 26 June 1991. During the Martial Law period, Kuwaiti Government forces and armed civilians, often acting with the knowledge or acquiescence of government officials, carried out a campaign of arbitrary arrests, torture and extrajudicial executions of individuals suspected of “collaboration” with Iraqi forces. Many of those detained “disappeared” and their whereabouts remain unknown. The victims were mainly non-Kuwaitis, including Iraqis, Palestinians, Jordanians and members of the *bidun* community (stateless

Arabs). Close to 1,000 people were arbitrarily detained and of these at least 70 “disappeared” between February and June 1991.¹

The cases of 164 alleged “collaborators” were tried by the Martial Law Court, a temporary special court, before its dissolution on 26 June 1991. Trials before this court were manifestly unfair. All the cases before the Martial Law Court which had not been tried, possibly more than 450, were transferred to another special court, the State Security Court. Amnesty International had long-standing concerns about unfair trials before this court prior to the Iraqi occupation.

In September 1991, following the introduction of procedural amendments, at least 150 defendants were released. Amnesty International welcomed these amendments but publicized the continuing violations of the right to fair trial at every stage of the court’s proceedings. The State Security Court tried cases, mostly of alleged “collaborators”, between April 1992 and September 1995. Over 160 people, including prisoners of conscience, are believed to be serving sentences after conviction in unfair trials before these two courts.²

3. Positive developments

On 5 October 1992 elections were held for the 50-seat National Assembly (parliament) which had been dissolved in 1986 by the Amir of Kuwait. A parliamentary Committee for the Defence of Human Rights (CDHR) (*Lajnat al-difa' 'an huquq al-insan*) was created, which has the power to investigate complaints from members of the public and to make non-binding recommendations to the authorities. The work of the CDHR has reportedly led to improvements in some prison conditions. In April 1995, according to newspaper reports, the Minister of the Interior agreed to the CDHR’s proposal to establish a permanent working group in his Ministry to look into complaints received by the committee. In addition, human rights sections have been set up in the Ministries of Foreign Affairs and Justice.

¹ Sixty-two of these cases were documented in a previous report: *Kuwait: Cases of “disappearance”, incommunicado detention, torture and extrajudicial execution under Martial Law* (AI Index: MDE 17/02/92).

² In addition to raising its concerns with the Kuwaiti authorities, Amnesty International has expressed its concern about Kuwaiti nationals who were transferred from Kuwait to Iraq by Iraqi forces during the occupation of Kuwait. In September 1993 Amnesty International published a report naming 140 Kuwaitis and third-country nationals who were believed to be held in secret detention in Iraq and urged the Iraqi Government to clarify the fate of these individuals (see *Iraq: Secret detention of Kuwaitis and third-country nationals*, AI Index: MDE 14/05/93). Early in 1995 the Ministry of Justice of Kuwait provided Amnesty International with 625 names of Kuwaiti and other nationals believed to be still in Iraq. According to press reports in late 1995, the International Committee of the Red Cross (ICRC) has said that 609 of these cases were awaiting clarification. The Iraqi Government also has a continuing obligation to investigate vigorously these “disappearances”, to release all prisoners of conscience, to bring to justice those responsible for violations of human rights, to compensate the victims or their families, and to provide rehabilitation to victims of torture.

The Kuwaiti Government has also taken steps towards ratifying a number of international human rights treaties. Kuwait acceded to the Convention on the Prevention and Punishment of the Crime of Genocide on 7 March 1995. In July 1995 the Council of Ministers announced that it had approved draft laws relating to Kuwait's accession to the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights, and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. These draft laws were then reportedly sent to the Amir, before being submitted to the National Assembly for approval.

On 1 August 1995 the National Assembly approved a bill abolishing the State Security Court and transferring all cases to ordinary criminal courts. The bill was later ratified by the Amir and entered into force in mid-September 1995.

Amnesty International welcomed the abolition of the State Security Court and urged the Government of Kuwait to set up a judicial review of the cases of all political prisoners sentenced after manifestly unfair trials by the Martial Law Court and the State Security Court. However, no such judicial review is under way.

Despite these positive steps, in the same period the Kuwaiti authorities have taken measures against freedom of expression. Censorship of newspapers was lifted in 1992, but since then several journalists have reportedly been arrested and detained briefly in connection with offences under the press law, including writing and publishing articles critical of government policies and officials. Most were later fined.

The authorities have also curtailed the activities of non-governmental organizations in Kuwait. In August 1993 the Council of Ministers issued a decree ordering the dissolution of all unlicensed organizations, including one of the country's leading human rights groups, *al-Jami'a al-Kuwaitiyya lil-difa' `an Dahaya al-Harb*, the Kuwaiti Association to Defend War Victims (KADWV). The decree effectively ignored a resolution adopted by the National Assembly in December 1992, calling for non-governmental groups working on behalf of Kuwaitis missing in the aftermath of the Gulf conflict to be legalized. The Hostages and Missing Committee (*Lajnat al-raha' in wal-mafqudin*), a seven-member parliamentary committee responsible for following up cases of Kuwaitis held in Iraq, condemned the government's decision to close down these organizations. Its members resigned in protest at the National Assembly's failure to support their efforts to have the government's decision overturned. As a result of the decree, and after fruitless efforts to obtain government registration, the KADWV had to vacate its premises in October 1994. Unlicensed organizations may face difficulty in carrying out their work, and the authorities have sometimes banned public meetings, including those concerned with human rights.

4. Human rights violations since the end of the occupation

4.1 'Disappearances' and extrajudicial executions

The campaign of arbitrary arrests, torture and extrajudicial killings by Kuwaiti Government forces and armed civilians -- often acting with the knowledge or acquiescence of government officials -- during the Martial Law period was directed in the main at Palestinians, Jordanian and Iraqi nationals, and members of the *bidun* community. Many of those who were arrested subsequently "disappeared" in custody and their fate and whereabouts remain unknown. In 1992 Amnesty International documented the cases of 62 non-Kuwaiti nationals who "disappeared" in custody between February and June 1991. However, the true number of those who "disappeared" will probably never be known. The Kuwaiti authorities have made little effort to investigate human rights violations in the aftermath of the Iraqi withdrawal, and the only way to obtain information about the "disappeared" is to contact their families, many of whom have moved to other countries.

Reports of other "disappearances" from this period have continued to reach Amnesty International. For example, in 1995 the organization received details of eight people who "disappeared" in 1991. **'Isam Muhammad Saleh al-'Udwani**, a Palestinian with Syrian nationality, was arrested on 8 May 1991 by at least three members of the Kuwaiti security forces. His family has not seen him since or been able to obtain any official information about him, although at various times unconfirmed reports have suggested he was held in the State Security Prison in the Civil Defence Building, Talha Deportation Centre and Kuwait Central Prison.

'Isam Muhammad Saleh al-'Udwani, a Palestinian with Syrian nationality, who "disappeared" in 1991.

Six Palestinians with Jordanian nationality also "disappeared". They are **Samer George Habib 'Azar, Tha'er Jum'ah Jibril; Bilal Mahdawi** and his brother **Jalal; 'Adnan Hakawati;** and **Muhammad 'Adnan Barakat.** Unconfirmed reports suggest they may have been held with 'Isam al-'Udwani in the Talha Deportation Centre in early 1992. Samer George Habib 'Azar, Tha'er Jum'ah Jibril and Bilal Mahdawi were all reported to have been tortured during detention.

In December 1995 Amnesty International received details of the "disappearance" of **Mazen Sharif al-'Azawi**, an Iraqi national aged 34. He was reportedly arrested on 7 March 1991 from his home in al-Salmiyya by a group of men in civilian clothes, one of whom identified himself as an officer in the security forces. Mazen al-'Azawi was reportedly held for about a week in Salwa police station, after which he was taken to Biyan police station, where he was reportedly seen with blood on his face by detainees who were later released. Since then, unconfirmed reports have suggested that he was held in the Military prison and later in the State

Security prison. His family, who have now left Kuwait, have never received any official information about his fate.

The “disappeared” whose cases Amnesty International has already documented include **George Victor Salsa**, a Palestinian with Jordanian nationality. A bank officer from al-Salmiyya, he was arrested at his home by two State Security policemen on 9 May 1991 and subsequently “disappeared”. In January 1992 the organization received information that he was being held incommunicado at Kuwait Central Prison. Later reports suggest that he was held for a time with 'Isam al-'Udwani (see above). He was later allegedly tortured and held in Kuwait Military Hospital.

Also among the “disappeared” are **'Awatif Qasim Muhammad 'Ali al-Maliki**, a young Iraqi woman who was last seen at the

George Victor Salsa, who “disappeared” in 1991.

of February 1991; and **Khalid Rashid Muhammad Agha-Mir**, an Iraqi Kurd born in Kuwait, who worked as a cashier at al-Salam Gynaecological Hospital before his arrest in April 1991 by soldiers and armed civilians. He was reportedly seen at al-Salmiyya police station and was subsequently moved to an unknown destination.

Khalid Rashid Muhammad Agha-Mir, an Iraqi Kurd born in Kuwait, who “disappeared” after arrest in April 1991.

While some of the people listed as “disappeared” may have been brought to trial, fled or been expelled from Kuwait, Amnesty International is concerned that others may have died in custody or may have been extrajudicially executed. This fear is heightened by the outcome of some cases where “disappearances” were resolved. For example, **Muhammad Shawkat Yusuf**, a Palestinian student, was arrested on 19 May 1991 by armed Kuwaiti civilians. He was later killed, possibly in al-Nugra police station where he was taken. On 23 May 1991 his body was reportedly taken to the al-Sabah hospital mortuary. On 25 May 1991 his body, with

the eyes gouged out and with a bullet hole in the cheek, was found on a rubbish dump in al-Jabiriyya.

A 13-year-old Palestinian boy, **'Iyad Aqrabawi**, was found dead in the street in al-Khaldiyya on or about 10 March 1991. He had “disappeared” after being arrested with three other young men at the Sabhan petrol station at the beginning of March 1991. Armed Kuwaiti civilians were said to have controlled the petrol stations at the time.

4.1.1 Investigations into ‘disappearances’ and extrajudicial executions

The Kuwaiti authorities, while repeatedly giving assurances that extrajudicial executions and “disappearances” during the Martial Law period were being investigated, have failed to conduct adequate investigations to resolve these cases. Amnesty International knows of only one case where an alleged perpetrator of an extrajudicial execution was brought to justice. A Kuwaiti police investigator was convicted of the murder in March 1991 of a Lebanese man and his son, and of the attempted murder of his daughter. He was sentenced to life imprisonment in December 1993, which was reportedly reduced to 15 years’ imprisonment in June 1994 because of “mitigating circumstances”.

In March and April 1991, an Amnesty International delegation visiting Kuwait examined the burial records at al-Rigga cemetery, which showed that scores of unidentified bodies had been buried since 26 February 1991. The bodies were simply listed as “unknown”. Unless a full investigation is carried out, including the exhumation of mass graves, the fate of many of the “disappeared” may never be known.

Where investigations have been carried out, they do not appear to have fulfilled the requirements of independence and thoroughness, as set out by internationally recognized standards, such as the UN Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions. For example, Amnesty International has repeatedly sought information on the case of George Victor Salsa (see above) and for details about any investigation carried out into his fate. In January 1994 the Kuwaiti Minister of Information, Saud Nasir Al-Sabah, stated that a thorough investigation had been conducted into the “disappearance” of George Victor Salsa. The Minister invited Amnesty International to inspect the relevant official documents and records. In February 1994 Amnesty International welcomed this offer and requested information on the following issues: who conducted the investigation; whom did the investigators interview; which places of detention, prisons and hospitals were visited and on what dates; and what references to George Victor Salsa were found in the prison or hospital records. Amnesty International has not received any reply. The lack of response casts serious doubts on the adequacy of the investigation procedures.

In a letter to the Belgian Section of Amnesty International in May 1994, the Kuwaiti Ambassador in Belgium took issue with the organization’s criticism of the Kuwaiti Government’s approach to human rights violations after the occupation, pointing out that two Kuwaiti officials had been brought to justice for violations during that period. In its response

in September 1994, Amnesty International said that in 1991 it had sought details of all those tried for human rights violations, but had never received any details from the Kuwaiti authorities. The organization also said that “[g]iven the hundreds of reports of violations during the Martial Law period, including torture, the failure to publish a single report of any investigations of these reports of violations and the figure of two convictions for these crimes suggests that the Kuwaiti authorities are not taking their obligations to investigate reports of violations and to bring to justice those responsible seriously”. Amnesty International also pointed out in its response that, despite repeated requests for the information, the Kuwaiti authorities had never provided the organization with a complete list of those convicted by the State Security Court. Such information could help to clarify the fate of some of those who reportedly “disappeared”.

The Kuwaiti Government has a continuing obligation to investigate all reports of “disappearance” and extrajudicial executions, to bring to justice anyone found responsible, and to compensate the families of victims of extrajudicial executions. Investigation into “disappearances” and extrajudicial executions should be independent and impartial and consistent with internationally recognized standards such as the UN Declaration on the Protection of All Persons from Enforced Disappearance; the UN Principles for the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Execution, and Amnesty International’s own Commission of Inquiry Standards. To comply with these principles and with its own 14-point program for the prevention of “disappearances”,³ Amnesty International believes that effective investigations of these cases require as a minimum the examination of all hospital records during the Martial Law period and of records of all police stations, prisons and places where people were detained. Relevant medical records should be made available to those concerned. The Kuwaiti authorities should provide copies of the investigation reports, including details of any cases in which officials have been the subject of disciplinary procedures or been referred to the Public Prosecutor. Death certificates should be issued to families where “disappeared” individuals are found to have died.

4.2 Torture and ill-treatment

Reports of torture were common during the Martial Law period and some victims appear to have died in custody as a result. For example, **Khalil Salim Bahhur**, a Palestinian head teacher with Jordanian nationality, died in al-’Addan hospital after his arrest on 1 April 1991. He had been kept in incommunicado detention for at least 10 days. His body allegedly had multiple stab wounds and his ears and nose were said to have been cut off.

³ See Appendix A for the 14-point program, published in 1992 as part of Amnesty International’s worldwide campaign against “disappearances” and political killings.

In October 1991 Amnesty International submitted to the Kuwaiti authorities the names of 11 people alleged to have died in custody as a result of torture, or to have been extrajudicially executed.⁴ The communication remains without response.

Many of those detained during the Martial Law period have alleged that they were tortured. For example, **Usama Suhail Hussein**, a Palestinian prisoner of conscience currently held in Kuwait Central Prison, was said to have been tortured during incommunicado detention, including repeated beatings, electric shocks and cigarette burns. He was allegedly threatened with further ill-treatment if he mentioned the torture during his trial before the Martial Law Court in June 1991. He was sentenced to death, later commuted to life imprisonment, for working for the Iraqi newspaper *al-Nida'* (see 4.3.1 below).

Reports of torture and ill-treatment have declined considerably since the end of the Martial Law period. However, occasional reports have been received by Amnesty International. For example, a Sudanese man, **Ahmad al-Mubarak**, alleged he was tortured during interrogation in a police station in January 1992.

In May 1992 a Sri Lankan national, **Colompurage Asoka Pathmakumara**, died on his way to a hospital, apparently after being tortured at Jlaib al-Shuyukh police station. Also in 1992, **Hisham ben Sultana**, an airline steward of dual British and Tunisian nationality, was reportedly tortured in July while held for over two weeks at Messila civil defence centre. After his release, he said that he had been beaten repeatedly on the chest and stomach and burned with cigarettes while in custody, and had been denied access to consular officials, a representative of his airline and a lawyer.

In 1993 the body of a young Iraqi national, **Ma'add Zahir**, was found near the Iraqi border, reportedly with head injuries and signs of torture on his body. He had reportedly been abducted by Kuwaiti police with three companions, who were also said to have been tortured. The three others were apparently returned to Iraq after three days. The Kuwaiti police reportedly denied involvement in this case.

Amnesty International has repeatedly called on the Kuwaiti authorities to investigate allegations of torture and to bring anyone found responsible for torture or ill-treatment to justice.

4.2.1 Investigations of torture

⁴ These names can be found as Appendix C in the 1992 report entitled *Kuwait: Cases of "disappearance", incommunicado detention, torture and extrajudicial execution under Martial Law* (AI Index: MDE 17/02/92).

Allegations of torture and ill-treatment during the Martial Law period remain, almost without exception, uninvestigated.⁵ Many defendants in trials before the Martial Law Court and the State Security Court alleged that they were tortured and often had injuries consistent with their claims. Investigations into these claims were frequently cursory and defendants were often convicted on the basis of confessions which they said had been extracted under torture.⁶ Even where complaints of torture during State Security Law trials were sent to a government doctor for examination, these examinations often took place more than a year after the alleged torture, so signs of torture would have been extremely difficult to detect in many cases. Qualified independent experts were not invited to examine defendants and independent observers were not present during examinations. In the absence of independent experts or observers watching the government doctors, it is difficult to assess the quality of the examinations.

For example, in the trial of 11 Palestinians of Jordanian nationality charged with belonging to the military wing of *Jabhat al-Tahrir al-'Arabiyya*, the Arab Liberation Front (see 4.3 below), some of the defendants said in a State Security Court hearing in May 1992 that they had been beaten and that their "confessions" were the result of torture. **Muhammad 'Ali Ahmad Daifallah** and his brother **Basil 'Ali Ahmad Daifallah** showed the court burns and scars. The court sent all the defendants to the *Idarat al-Adilla al-Jana'iyya*, Criminal Investigation Department in the Ministry of the Interior, for an investigation of their injuries. According to the court summary, the Chief Forensic Doctor of the Criminal Investigation Department said in his testimony to the State Security Court on 5 July 1992 that with the exception of one person, all of the injuries were slight and their date was difficult to determine. He said they could have been self-inflicted or caused by friends of the deceased. Instead of placing the burden of proof on the prosecution to show that the "confessions" were voluntary, the State Security Court concluded that the "injuries were not proved to have been caused by beatings" and could not have led to confessions. According to one of the lawyers, a medical report on one of the defendants, indicating that he had injuries which could have been inflicted in custody, was not discussed by the court.

Since Martial Law, there have been occasional reports of torturers being brought to justice. However, this has usually only been after repeated complaints and publicity about the alleged torture or ill-treatment.

After Amnesty International sought information about the circumstances of the death of Colompurage Asoka Pathmakumara, the Ministry of Justice replied in December 1992 that his interrogators had said that he had jumped from the top floor of the police station, and that

⁵ Amnesty International is aware of only one prosecution for violations of the rights of detainees leading to a conviction. On 1 December 1993 the Kuwaiti Ambassador to the United States of America informed Amnesty International that "not long ago a state security officer was stripped of his rank and sentenced to prison for the death of a defendant while in custody", but provided no further information about the case.

⁶ Article 12 of the Torture Declaration prohibits the use as evidence of any statement established to have been made as a result of torture or ill-treatment.

a forensic doctor had testified that his death resulted from injuries sustainable from a fall from a height. The response added that the inquiry had found that Colompurage Asoka Pathmakumara had been beaten “lightly” during his interrogation in connection with a theft, and that his body had bruises on the upper arms and feet consistent with such a beating, but that these injuries were not connected to the cause of death. According to the Ministry of Justice, seven policemen were charged with torturing Colompurage Asoka Pathmakumara in order to force him to confess.

Amnesty International welcomed this step and sought details of the names of those arrested and the precise charges against them. It also sought a copy of the forensic doctor’s report on the death and his testimony to the Public Prosecutor. No response to this request has been received.⁷

A detective was also reportedly arrested in 1994 in connection with the torture of Ahmad al-Mubarak in January 1992 (see 4.2 above), and charged with aggravated assault. The detective was reported to have previously been convicted of torture, but had not served his sentence. Amnesty International sought details of the investigation and the outcome of the case. No response had been received by the time of writing, nor had any response been received concerning any of the other allegations of torture or ill-treatment raised with the Kuwaiti authorities.

Amnesty International is deeply concerned at the failure of the Kuwaiti authorities to provide information regarding action taken on complaints of torture both during and after the Martial Law period. Proper investigation of torture requires a careful and thorough investigation in accordance with accepted medical practice. The methods and detailed findings of investigations should be made public. The failure of the Kuwaiti authorities to provide Amnesty International with any such reports increases fears that the authorities may be permitting human rights violations to be committed with impunity. In addition, victims of torture or their families should be able to seek redress and compensation.

4.3 Unfair trials

Amnesty International has serious concerns about the fairness of trials that occurred before the Martial Law Court and the State Security Court.⁸ These were both special courts. The State Security Court had been established under Law 26 of 1969 to try state security offences. The

⁷ According to reports in 1993, three police officers were convicted of the murder of a Sri Lankan in January 1993, and were each sentenced to five years’ imprisonment with hard labour. This was reduced on appeal to two-year suspended sentences after the payment of “blood money” to the family. Amnesty International has sought clarification as to whether these convictions relate to the same case.

⁸ These concerns have been raised in a previous document, *Kuwait: Three years of unfair trials* (AI Index MDE 17/01/94), published in February 1994.

Martial Law Court was created as a temporary replacement for ordinary courts, as well as that of the State Security Court. The Martial Law Court was dissolved on 26 June 1991 and the State Security Court took over the trials of hundreds of defendants accused of “collaboration” and other crimes. The State Security Court was itself abolished in September 1995 (Law No. 55 of 1995), and all the cases before it were transferred to ordinary courts.

Many of those convicted after unfair trials by the Martial Law Court and the State Security Court are still serving lengthy prison sentences. They include prisoners of conscience and at least eight political prisoners still on death row.

4.3.1 Flaws in trials before the Martial Law Court and State Security Court

Trials before the Martial Law Court and the State Security Court did not meet international standards for fair trial, including Article 14 of the ICCPR which reflects universally accepted minimum standards for fair trial. Neither court satisfied international requirements that criminal courts be independent and impartial. They violated the prohibition on displacing the jurisdiction of ordinary courts by the creation of special tribunals which do not use established legal procedures. The crimes with which defendants were charged were based on legal provisions which are vague. Defendants were not informed at the time of arrest of the charges against them or of their rights. Defendants were denied family visits and non-Kuwaiti detainees were not given access to a consular representative. During the Martial Law period in particular, lawyers were often not permitted to see their clients, nor did they have access to the files and documents needed to prepare their defence. In addition, the failure of the Martial Law Court to issue judgments or explanations of its decisions⁹ in all but a handful of cases makes it difficult, if not impossible, to determine to what extent the court relied on “secret sources”, hearsay evidence and evidence which was not shown to the defendants or their lawyers.

The courts also failed to investigate thoroughly claims of torture, even when the defendants showed scars that were consistent with the methods of torture they described. Many detainees said that they “confessed” after torture and ill-treatment, and a large proportion of them were subsequently convicted. Many detainees may have been reluctant to make complaints to the prosecutor fearing further torture and ill-treatment when returned to detention.

Those convicted by the Martial Law Court and the State Security Court are still denied the fundamental right to appeal against their conviction and sentence to a higher court, as recognized by Article 14 (5) of the ICCPR, even though both courts have now been abolished.

⁹ Article 14(1) of the ICCPR requires that “any judgment rendered in a criminal case...shall be made public”.

Martial Law Court decisions are subject only to a limited review by a panel of judicialcounsellors. Since the Martial Law Court rarely produced written judgments explaining the reasons for the verdicts and sentences, it is unclear how the reviewing panels were able to carry out the reviews. The reviews were held *in camera*, apparently without defendants or their lawyers being present, and the panel could only make non-binding recommendations to the Crown Prince who, as the Martial Law Governor, could reduce, confirm or even increase the sentence.¹⁰

Defendants convicted by the State Security Court are also denied the full right to appeal. The amendments of September 1991 granted those convicted by the State Security Court a limited right to review, which was restricted to a review of legal errors by cassation. Kuwaiti lawyers, however, have said the right to appeal against judgments of the State Security Court was, in practice, interpreted very narrowly.

**Walid Jassem Mahdi, an Iraqi
serving
a 15-year sentence after his
death
sentence imposed by the State
Security Court of Cassation**

The flaws in the Martial Law Court trials are illustrated by the trial of 24 employees of the newspaper *al-Nida'*. Shortly after the Iraqi invasion of Kuwait in August 1990, the Kuwaiti newspaper *al-Qabas* was closed down by the Iraqi authorities and was replaced by *al-Nida'*, which was the only newspaper allowed to be published during the occupation. The 24 employees of the newspaper were charged with "collaborating" with Iraqi occupation forces. The trial took place in one day on 2 June 1991. Defendants were denied the

**Balqis Hafez Fadhil, a 29-year-old Iraqi
woman
serving a 10-year sentence after conviction
in the
al-Nida' newspaper case in the Martial Law
Court.**

¹⁰ This violates the ban on revision of court decisions in Principle 4 of the UN Basic Principles on the Independence of the Judiciary.

right to cross-examine the key prosecution witness, a “secret source” who never appeared in the courtroom. Defendants and their lawyers did not always have an opportunity to examine documentary evidence before it was shown to the judge and they were questioned about it. Many of these defendants are reported to have been tortured while under investigation.¹¹

Six of the 24 defendants were sentenced to death, 10 were sentenced to prison terms and eight were acquitted. The death sentences were subsequently commuted to prison terms by the Crown Prince. Amnesty International considers the 15 people still held to be prisoners of conscience and is calling for their immediate and unconditional release.

In cases before the State Security Court lawyers generally had access to files before trials and could re-examine witnesses who had testified in the hearing before the prosecutor, but many violations of the right to a fair trial which had occurred in the Martial Law Court continued. Flaws in State Security Court trials are illustrated by the case of 11 Palestinians of Jordanian nationality. **’Imad al-Din Mahmud Nimr, Muhammad ’Ali Ahmad Daifallah, Basil ’Ali Ahmad Daifallah, Akram Shaker Ahmad, Al-Mu’taz Billah Muhammad Saleh, Muntasir Muhammad Saleh, Hussain Rashed Hussain, Mu’ayyed Yassir Hussain, Iyad Muhammad ’Issa, Bassem Hassan Muhammad** and a minor, **Hussam Muhammad Rashed**, were all accused of belonging to *Jabhat al-Tahrir al-’Arabiyya*, the military wing of the Arab Liberation Front, and assisting the Iraqi occupation forces in Kuwait. They were also charged with illegal possession and use of weapons and with receiving salaries from Iraq during the occupation. In this trial the court permitted the investigator to give testimony based on “secret sources”. Pieces of evidence were withheld from the defendants and their lawyers. Defendants were not always warned of their right to remain silent before being questioned by the court and at least one defendant was questioned after his lawyers had left the room. During a hearing on 4 May 1992 the defendants said that they had been beaten and that their “confessions” were the result of torture.¹²

Hussam Muhammad Rashed was sentenced by the State Security Court to four

Fatima Ramez Tafla, a Lebanese woman serving a 10-year prison sentence after the death sentence passed by the Martial Law Court was commuted, despite the unanimous recommendations of three review counsellors appointed by the Crown Prince that her sentence be suspended for lack of substantial evidence against her.

¹¹ See, for example, the case of Usama Suhail Hussein above.

¹² See above for the failure of the authorities to investigate their allegations of torture adequately.

years' imprisonment and the other 10 were all sentenced to death. On 6 June 1994 the Court of Cassation reduced the death sentences against the 10 men to prison. 'Imad al-Din Mahmud Nimr was sentenced to life imprisonment and the death sentences against the other nine were reduced to 15 years' imprisonment.

The flaws in judicial procedures were not limited to trials of people alleged to have "collaborated" during the Iraqi occupation. Eleven Iraqis and three Kuwaitis appeared before the State Security Court on 5 June 1993, charged with participation in an alleged Iraqi Government plot to assassinate the former United States (US) President, George Bush, during his visit to Kuwait in April 1993. The defendants were not allowed access to lawyers before the trial. The right to be presumed innocent until proven guilty was seriously jeopardized by statements made by Kuwait's Public Prosecutor at a press conference on 16 May 1993. He stated that the defendants were "criminals who allied with the devil and conspired with him to try to assault Kuwait's honoured guest ... [and that] investigations proved without doubt that it was the Iraqi intelligence service which moved this rotten group of accused persons to execute the plans of the evil Iraqi regime...". In addition, statements made by the US Government justifying an air strike on Baghdad on 26 June 1993 on the grounds that there existed "compelling evidence" of an Iraqi intelligence assassination plot, and the subsequent statement of the Kuwaiti authorities welcoming the air strike, further undermined the defendants' presumption of innocence. On 4 June 1994 the State Security Court sentenced six of the accused -- five Iraqis and one Kuwaiti -- to death. On 20 March 1995 the Court of Cassation upheld the death sentences on two of the convicted, **Ra'ad 'Abd al-Emir 'Abbud al-Asadi** and **Wali 'Abd al-Hadi 'Abd al-Hassan al-Ghazali**, both Iraqi nationals. The Court of Cassation reduced the death sentences of the Iraqis **Salem Nasser Subaih Rumi al-Shummari** and **Bandar 'Ujail Jaber al-Shummari** to life imprisonment while another Iraqi, **'Adel Isma'il 'Issa al-'Utaibi**, had his sentence reduced to 15 years' imprisonment. In the case of the Kuwaiti national, **Badr Jiyad Thamer Mutlaq al-Shummari**, the Court of Cassation overturned the conviction of attempted assassination but upheld a sentence of five years' imprisonment for smuggling alcohol.

Amnesty International delegates visited Kuwait several times in 1991 and 1992 to observe trials of alleged "collaborators" before the Martial Law Court and the State Security Court. They concluded that the trials were manifestly unfair. Since 1991, Amnesty International has repeatedly asked for detailed information regarding the trials, verdicts and sentences passed by the Martial Law Court and the State Security Court. Such information has, however, not been provided by the Kuwaiti authorities who have consistently denied that the trials were unfair. They said that trials were held in public and that international organizations and international and local media were allowed to follow the proceedings. However, such openness is not in itself a guarantee that all the rights of defendants were respected or that all proceedings were conducted in accordance with international standards on fair trial.

4.4 The use of the death penalty

Executions were resumed in 1993 after a period of three years during which there were no judicial executions. Death sentences were passed on some of the defendants convicted for state

security crimes in unfair trials before the Martial Law Court and the State Security Court, thereby denying the rights laid down in Paragraph 5 of the UN Safeguards guaranteeing protection of the rights of those facing the death penalty. The death penalty is also imposed by ordinary courts.

In May 1993 **'Abd al-Rahman Hassan Khafi**, an Iraqi national, was executed after his death sentence had been upheld by the Court of Cassation and ratified by the Amir. He had been convicted after an unfair trial of membership of the Arab Liberation Front, and of killing a Kuwaiti border guard.

Kamal Matar, a member of the *bidun* community, was executed in December 1993 following his conviction for murder in an ordinary court. Executions continued in 1994: **Muhammad 'Ali Qulaib al-Rashidi** was hanged on 7 August 1994 following his conviction for leading a gang-rape of a 10-year-old Egyptian girl. Three executions were reported in 1995. **Muhammad Najib**, a Filipino national, was executed in April following a conviction for murder. **Ahmad al-'Azmi** was hanged in July after his conviction for murder. He had stormed into a wedding and shot dead the bridegroom and one other person. In September **Muhammad Rifa'**, a Turkish national, was executed. He had been convicted of murdering a woman he had hoped to marry.

Several people are at the moment on death row. They include six men convicted by the State Security Court in 1992 and 1993: **Muhsin Shawkat Taher Hussain, Jassem Hassan Sabhan, 'Abd al-Khalid Mankhi Naji, 'Abd al-Wahed Hamid 'Abd al-Shah, Amjad Ibrahim Hamad al-Shikhaiti** and **'Abd al-Salam 'Abd al-Karim Sa'ud**, all Iraqi nationals, were convicted as "collaborators" and are now believed to be awaiting a review of their sentences by the Court of Cassation. Several others have been sentenced to death *in absentia*. Finally, **Ra'ad 'Abd al-Emir 'Abbud al-Asadi** and **Wali 'Abd al-Hadi 'Abd al-Hassan al-Ghazali** were sentenced to death in the trial of those accused of taking part in the assassination plot against George Bush. Their death sentences were upheld by the Court of Cassation in March 1995 (see above). Before execution the sentences have to be ratified by the Amir.

At least five people convicted of crimes before ordinary courts are also believed to be on death row. In December 1993 a man identified in press reports as "S.J." was sentenced to death for breaking into a woman's house and threatening to kill her. An unnamed Kuwaiti man was reportedly sentenced to death in September 1994 for murdering his wife. In October 1995 the Court of Appeal reportedly confirmed the death sentence passed on a Kuwaiti man accused of killing a Syrian woman. In December 1995 three Egyptian nationals, one *in absentia*, were sentenced to death for murdering their Kuwaiti employer. After review by the Court of Appeal, death sentences in ordinary criminal cases are referred to the Court of Cassation before being sent to the Amir for ratification.

While recognizing the seriousness of crimes such as murder and rape, Amnesty International opposes the death penalty unconditionally as a violation of the right to life and the right not to be subjected to cruel, inhuman or degrading punishment as proclaimed in Articles 3 and 5 of the Universal Declaration of Human Rights. When death sentences are imposed after

unfair trials where the risk of error is obvious, such as those before the State Security Court and the Martial Law Court, the enforcement of such an irrevocable penalty is totally unacceptable.

On 25 April 1995 the National Assembly approved amendments of the Law on the Combat of Drugs (No. 74 of 1983). The amendments widen the application of the death penalty with respect to several drug-related crimes. Amnesty International has expressed its regret to the Kuwaiti authorities over the expansion of the scope of the death penalty, particularly as the death penalty has not been shown to have any special deterrent effect against drug trafficking. The UN Special Rapporteur on extrajudicial, summary or arbitrary executions recently stated:

*“In view of the irreparability of loss of life, the impossibility of remedying judicial errors and, indeed, the well-founded doubts expressed by a wide range of experts in criminology, sociology, psychology, etc. as to the deterrent effect of capital punishment, the Special Rapporteur once again calls on the Governments of all countries where the death penalty still exists to review this situation and make every effort towards its abolition”.*¹³

4.5 Expulsion of people without due process

International law prohibits states from sending people to any country where they would be at risk of serious human rights violations. Such expulsion contravenes the internationally recognized principle of *non-refoulement*, which is binding on all states.

After the end of the Iraqi occupation, the Kuwaiti authorities reportedly expelled hundreds of people, mostly Iraqis, Palestinians and members of the *bidun* community, from Kuwait. Many were sent to Iraq. Many of the expulsions, particularly during the Martial Law period, were said to have been summary, with individuals denied their rights to legal representation, to seek asylum or to appeal against rejection of asylum claims. After June 1991, people were said to be permitted interviews with ICRC delegates to determine whether or not they were willing to be sent to Iraq. Amnesty International appealed to the Kuwaiti Government to halt the forcible expulsion to Iraq of Iraqis and others at risk of serious human rights violations there, and to establish fair and impartial procedures to identify those at risk.

After 1991, there were few reports of forcible expulsions. However, in July 1995 reports were received that a large group of Iraqi nationals (between 150 and 200) was arrested and summarily deported by the Kuwaiti authorities, possibly to Iran, without being given any access to an asylum determination procedure. There was apparently no examination of their claims and representatives of the UN High Commissioner for Refugees (UNHCR) were denied access to the group.

¹³ UN Doc. E/CN.4/1995/61, page 118

Amnesty International sought clarification from the Kuwaiti Government in August 1995 about these reports, but had not received a response by the time of writing. The organization remains concerned that Kuwait may have breached international standards which require that asylum seekers be provided with access to a full and fair asylum procedure, by which people in need of protection can be identified so that they are not returned to countries where they would be at risk of human rights violations. Amnesty International also urged the Kuwaiti Government to cooperate fully with the UNHCR on all refugee protection matters.

In addition, over 600 people are said to be detained in places such as the Talha Deportation Centre under deportation orders. Deportation orders in Kuwait are usually issued administratively and are rarely subject to any kind of judicial review. Many of those held are members of the *bidun* community and some are believed to have been held for several years. They include people who were acquitted by the State Security Court and who have been detained since their acquittal. For example, **Huwaidi Khalaf al-'Udwani Muharib**, a *bidun* born in Kuwait and who served in the Kuwaiti armed forces before the Iraqi occupation, has been held in Talha since his acquittal on charges of "collaboration" by the State Security Court on 30 June 1993.

Amnesty International fears that at least some of the detainees held under deportation orders are detained for political reasons, such as their suspected or perceived support for Iraqi forces during the occupation. Any such people would be prisoners of conscience who should be released.

In November 1992 there were reports that detainees in the Talha Deportation Centre, a converted school lacking basic facilities, where detainees were held in overcrowded conditions, had been tortured or ill-treated. Members of the CDHR have visited the detention centre. One member, an opposition member of parliament, reportedly said of the centre in June 1995 that "we want to get rid of that black spot in the white robe of human rights".¹⁴

5. Recommendations

Amnesty International recognizes that the Kuwaiti Government has taken some steps to improve the human rights situation in Kuwait. However, it believes that the implementation of the following recommendations will help close the door on the human rights violations committed in the period after the Iraqi occupation and establish Kuwait's commitment to the protection and promotion of human rights in the future.

5.1 Carry out immediate and thorough investigations into all cases of extrajudicial executions and "disappearances". The investigations should be carried out by a body which is independent of those allegedly responsible and has the necessary powers and resources to carry out the investigation. The investigation reports should be made public and should include

¹⁴ Arab Times, 8 June 1995.

information regarding the locations in which each person was detained, the dates of detention and the medical records of any examination or treatment the detainee received. If the “disappeared” person died, the family should receive a death certificate, as well as autopsy and inquest reports where available. Anyone found responsible for “disappearances” or extrajudicial executions should be brought to justice, and the families of victims compensated.

5.2 Investigate promptly and impartially all reports of torture and ill-treatment. The methods and results of the investigations should be made public. All those responsible for human rights violations should be brought to justice. Victims of torture should be given fair and adequate compensation, and access to full rehabilitation. “Confessions” obtained as a result of torture should be excluded as evidence before the courts.

5.3 Release all prisoners of conscience immediately and unconditionally.

5.4 Retry all other people convicted by the Martial Law Court and the State Security Court. The trials before both courts were manifestly unfair and, therefore, all defendants convicted by them should be retried by ordinary criminal courts in accordance with international fair trial standards.

5.5 Commute all death sentences. Amnesty International also appeals to the Amir to exercise clemency in all cases.

5.6 Provide effective protection for asylum-seekers. The authorities should follow full and fair asylum procedures which would effectively ensure that no one is expelled to a country where they would be at risk of human rights violations such as imprisonment as prisoners of conscience, torture, execution or “disappearance”.

5.7 Amend legislation to be consistent with international standards. In particular, legislation concerning state security crimes should be reviewed so that the crimes are narrowly and precisely defined to give clear notice of what conduct is prohibited.

5.8 Ensure that all detainees are always given prompt, regular and confidential access to lawyers at all stages of the proceedings. All detainees should be brought without delay before a judge empowered to assess the legality and necessity of their detention, and should be provided with access to a doctor of their choice, if necessary.

5.9 Review legislation regarding the death penalty. Now that almost half the countries in the world have abolished the death penalty, Kuwait should consider reducing the number of offences punishable by death and act towards its abolition.

5.10 Ratify human rights treaties. Kuwait should expedite its steps to ratify human rights treaties, including the International Covenant on Civil and Political Rights and its Optional

Protocols, and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.