



KUWAIT: SARAH AL-DREES

TRIAL OBSERVATION REPORT

8 December 2016

Introduction

1. This report follows a Trial Observation mission conducted on behalf of a coalition of rights groups from 20 to 24 November 2016 in Kuwait. The author is a practising barrister, called to the Bar of England & Wales, with experience of criminal defence, media law and human rights.
2. The coalition of rights groups which monitored the trial was composed of the Gulf Centre for Human Rights (GCHR), the Arabic Network for Human Rights Information (ANHRI), International Service for Human Rights (ISHR), and FIDH and the World Organisation Against Torture (OMCT) within the framework of the Observatory for the Protection of Human Rights Defenders.
3. The author attended the hearing of the Defendant, Sarah Al-Drees, in the Court of First Instance in Kuwait City on Thursday 24 November 2016. The analysis of the charges and prosecution has been supplemented by field investigation and consultation with human rights defenders in Kuwait.
4. There is an addendum to the Trial Observation Report which details wider legal issues facing journalists and human rights defenders in the country, which forms part of the context to ongoing prosecutions by the State in 2016.

Background

5. Sarah Al-Drees is a 29-year-old Kuwaiti citizen. She is a teacher, with a history of human rights activism, and a blogger, with a significant following on social media, including 185,000 on Twitter and 57,000 on Instagram.
6. She was first prosecuted by the authorities in 2013, receiving a 20-month sentence for “insulting the Emir”, Kuwait’s hereditary executive ruler, Sheikh Sabah Al-Ahmad Al-Sabah. Four tweets made reference to repression of Kuwait’s then nascent political movements. The Appeal Court upheld the sentence but Al-Drees was subsequently pardoned.

7. An arrest warrant was then issued at the end of 2015 after a tweet which the authorities claimed was insulting to Islam.
8. The current prosecution stems from four tweets posted on 7 September 2016 (see translation below). When (hostile) readers on Twitter began to message her questioning the meaning of the tweets, she sought to explain/justify them, putting the four tweets into one photo-image which she then re-posted on 9 September 2016 and then again on 22 September 2016.
9. She first became aware of a police investigation on 22 September 2016 when the news feed of a Kuwaiti newspaper *Al-Rai* reported that a warrant had been issued.
10. On Friday 23 September 2016, police visited her family home and, in her absence, relayed a message that she should report to the authorities.
11. On Sunday 25 September 2016, she attended the Public Prosecutor's department located within the central Court building where she was informed of the three charges being brought against her. She was permitted to have lawyers present with her.
12. She was then transferred to a Criminal Investigations building where she was detained in a cell from around midday to 8am the following morning. The cell contained only a mattress on the floor, there was no window/natural light, air-conditioning was kept on despite repeated requests by the detainee for it to be turned off, and LED strip-lighting was maintained throughout the night, preventing sleep.
13. She was transferred again to the Public Prosecution Office before a decision was taken to designate her case as one involving "state security" and to detain her on remand for 21 days in Sulaibiya Central prison. The 21-day remand is a provision in Kuwaiti law designed for state security and other serious cases where detention is deemed necessary following charges being brought.
14. On her second day in detention, Al-Drees refused to eat and was relocated to a medical wing for assessment by a nurse before being moved back to the general prison population. She was given a legal disclaimer to sign by the Governor of the prison, which stated that refusal to take food and water was an act of her own volition for which the prison could not be held responsible. Over the next 10 days, she was assessed off the wing at least three times and then transferred back into her cell, which she shared with five other people.
15. On 26 September 2016, Al-Drees' legal team first sought an expedited bail hearing and challenged the application of the 21-day remand in her case.
16. However, it took until 6 October 2016, after 11 days in detention, for a bail hearing to be held.
17. Al-Drees was conveyed to Court for the hearing handcuffed by both the wrist and the legs, with three police cars and armed soldiers in attendance.

18. Bail was granted on condition of 500 Kuwaiti Dinars (approx. USD\$1,640) being paid and a travel ban imposed. She was taken back to the prison, again handcuffed, before being released at around 5pm.
19. A subsequent hearing set for 27 October 2016 was adjourned and therefore the next stage in her trial was on 24 November 2016 in which the Defence wished to call a police officer from the Cyber Crimes Unit who had identified the tweets that were the cause of the prosecution.

The Tweets

20. The four tweets, in order, stated as follows (this is not a translation shared with, or approved by, the Defendant). The pardon is a reference to the post-conviction pardon granted to her in 2013. Musallam Al-Barrak is a former MP and opposition movement leader who is currently serving a two-year sentence for “insulting the Emir.”

Tweet No 1

“When the pardon was issued and I was released from prison, the simple and the naive were telling me ‘you should thank God and be grateful’, and every time I wrote something they told me ‘don't you ever repent?’ Just because of the fact I was pardoned, I was labelled as a person who had done something wrong.”

Tweet No 2

“I should not have been detained in the first place. How can we be justly imprisoned because of an opinion, and then released as if we are guilty?”

Tweet No 3

“Frankly, I think that excluding Musallam Al-Barrak from the general pardon was better for him. For now he is not beholden to anyone the way we are - and I have complete confidence in his strength and patience.”

Tweet No 4

“I am saying this because I was pardoned and I am very familiar with the feeling of being beholden to someone worthless, and because of my affection for Musallam Al-Barrak I consider too good to be put in such a position.”

21. The tweets are, on the Defence’s case, addressed to Al-Drees’ critics on Twitter and are part of a longer conversation between her and her detractors. The reference to السذج (“sadhij”), “the credulous/simple/naive”, in the first tweet is, on her case, directed to those contacting her on Twitter while متردية (“mutaradia”), “worthless” refers to the same.

The Charges Under Kuwaiti Law

22. The Defendant faces three charges, including one brought under the new Cyber Crimes Law, passed in 2015 and in force since January 2016.
23. The District Attorney charge sheet, dated 26 September 2016, reads as follows:

“Having read the papers and the investigations (described) therein, we have decided:

Firstly, the incident will be recorded as an offence and breach of law under Article 25 of Law No. 1970/31 (amending some of the provisions of the Penal Code); and Articles 20, 2-1/27 of law No. 3 of 2006 relating to Printing and Publications; and Articles 15/1 and 1/70 of law No. 37 of 2014 relating to Communications and Information Technology; and Articles 1/6, 8, 9-10, 11 of the Cyber Crimes Law 2015.

1 – Publicly and in a public place challenged the rights of the Emir and his authority and defamed the person of the Emir and insulted the office of the Emir by writing the texts shown in the papers through her social media Twitter account, in the manner stated in the investigations.

2 – (She) deliberately misused one of the means of telephone communications by writing the texts on her Twitter account, in the manner stated in the investigations.

3 – (She) published through the Internet and by a means of information technology texts which included criticism of the Emir’s person through writing the texts stated in the papers via her Twitter account, as stated in the investigations.”

Challenges posed by the substantive law

24. The Kuwaiti authorities in this case, and others, have in recent years used a miscellany of overlapping laws to bring charges restricting freedom of expression. The primary charge, as is common, is Article 25 of the Penal Code, which provides for jail terms of up to five years for anyone who publicly “objects to the authority of the Emir or insults him.”¹ The secondary charges relate to the means of having purportedly done so.

¹ A challenge to the constitutionality of Article 25 was rejected by the Supreme Court in 2013.

25. The provisions of the new Cyber Crimes Law now serve to cast a further shadow over the activities of human rights defenders and private citizens expressing critical opinions. Article 6 of the Cyber Crimes Law extends the scope of the Article 27 of the Printing and Publishing Law to statements made with the use of “information networks” or “information technology”, under which provisions the Emir may not be criticised or quoted without written permission from his office. Violations can be punished with a fine of up to 20,000 KD (approx. USD\$65,555).
26. Article 6 also prohibits Internet-based statements deemed to criticise the judicial system or harm Kuwait’s relations with other states, or that publicise classified information, without exceptions for disclosures in the public interest.
27. The discrete charges brought against Al-Drees under the 2015 law underscore the willingness of the police and prosecution to use a new Cyber Crimes Unit to monitor communications and recommend charges for merely “criticising” the Emir, alongside charges of “insulting or defaming him” under Article 25.
28. The protection afforded to the Emir under the laws is almost blanket and constitutes a severe interference with freedom of expression.
29. The case of Al-Drees is indicative of how wide-ranging the use of Article 25 has become. The tweets themselves, at most, might be said to constitute an indirect reference to the Emir since the writer is commenting upon a pardon granted by him in 2013. But the main thrust of the tweets is on the Defendant’s feelings as regards her former conviction and the pressure she remains under to remain silent. She is making the point that the pardon does not mean she accepts her guilt.
30. Such extreme sensitivity to any mention of the Emir in this sort of context, allied to systematic monitoring of interactions on Twitter, is highly likely to lead to further prosecutions and continues a pattern of the law’s regular use since 2012.
31. The government’s new telecommunications law, adopted in May 2014, imposes severe penalties on people who create or send “immoral” messages, and gives unspecified authorities the power to suspend communication services on national security grounds.
32. Article 19 of the International Covenant on Civil and Political Rights states:

Article 19

1. Everyone shall have the right to hold opinions without interference.
2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.

3. The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:

- (a) For respect of the rights or reputations of others;
- (b) For the protection of national security or of public order (*ordre public*), or of public health or morals.

- 33. While freedom of expression can be restricted by law, that is subject to the principle of necessity and proportionality.
- 34. Relevant laws restricting freedom of expression must meet certain standards of clarity and accessibility. The law must be formulated with sufficient precision that it is possible to foresee in advance what is being prohibited.
- 35. The United Nations Human Rights Committee has stated in a General Comment on Article 19:

The mere fact that forms of expression are considered to be insulting to a public figure is not sufficient to justify the imposition of penalties... [A]ll public figures, including those exercising the highest political authority such as heads of state and government, are legitimately subject to criticism and political opposition... and laws should not provide for more severe penalties solely on the basis of the identity of the person that may have been impugned.²

- 36. Article 25 of the Kuwaiti Penal Code directly offends the principles outlined by the Human Rights Committee.
- 37. Moreover, the accompanying charge under the Cyber Crimes Law adds a further layer to the restriction on freedom of expression.
- 38. Articles 6 & 7 expanded already existing restrictions on print publications to wider dissemination through the internet, in particular targeting social media.
- 39. As Human Rights Watch warned in 2015³, the new law appeared designed to incentivise increased monitoring of Internet use.
- 40. Further, the charges against Al-Drees specifically state that she “defamed the person of the Emir.” The UN Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression has repeatedly called for an end to the use of criminal defamation laws⁴:

² General Comment No 34, Geneva, 2011.

³ *Kuwait: Cyber Crime Law a blow to free speech*, Human Rights Watch, 22 July 2015.

⁴ Report of the Special Rapporteur to the UN Human Rights Council, 2012.

... the Special Rapporteur remains concerned that defamation remains classified as a criminal offence rather than a civil tort in many countries around the world. As he has emphasised on many occasions, criminal defamation laws are inherently harsh and have a disproportionate chilling effect on free expression. Individuals face the constant threat of being arrested, held in pre-trial detention, subjected to expensive criminal trials, fines and imprisonment, as well as the social stigma associated with having a criminal record.

41. It is all the more concerning that defamation is being alleged against a private citizen using social media, with no apparent requirement to prove harm or damage to the purported victim.
42. As such, the various provisions of the law being applied against Al-Drees i) *offend the principle of legality – the offences created by the law – in particular Article 25 - are ill-defined and, in the absence of restrained and judicious interpretation, constitute an inherently disproportionate interference with freedom of expression;* ii) *seek to apply a law of criminal defamation as regards the Emir’s reputation without adequate safeguards* and iii) *introduce a broad subjective evaluation of “insult” against his person and iv) via the new Cyber Crimes Law, prohibit even mere “criticism” of the Emir, with no reference to a standard of accuracy or public interest as a defence to such a charge, rendering the Emir “untouchable” in online discourse, upon the threat of conviction and financial penalties.*
43. As explored below, the “procedural fairness” of Al-Drees’ ongoing trial cannot be evaluated without consideration of the inherently problematic substantive laws being applied against her.

The Hearing of 24 November 2016

44. Al-Drees was represented by defence lawyer Khaled Hajeri at Kuwait’s Central Criminal Court. The hearing was scheduled to begin questioning of a police officer from the Cyber Crimes Unit. Placed in a list of over 40 cases, the Defendant was forced to wait from 9.30am to 2.40pm before being called on by Judge Saoud Al-Sana, who sat with two panel members.
45. According to Kuwaiti procedure, the defence lawyer addresses questions first to the Judge who then relays the enquiry to the witness.
46. Hajeri first sought to ask questions about why an investigation of Al-Drees’ tweets was instigated. The Judge did not permit the question. Hajeri then queried the basis on which the police officer had reached the view that the tweets were mocking the Emir. The officer replied that “the fourth message had a bad word about the Emir” and the response on Twitter from other readers bolstered her view that the tweet had indeed been insulting.

47. Hajeri asked whether the officer had read the other tweets that day which established Al-Drees was engaged in a conversation with other Twitter users which formed part of the context of her own messages. The officer said she had not seen a conversation.
48. The officer was asked whether she had read Al-Drees' explanations and clarifications. The officer said that any such messages were only made after the initial offending messages because Al-Drees knew she was in trouble.
49. After 20 minutes, the hearing was brought to an end. The Defence will reply in writing to the officer's evidence and Al-Drees is likely to herself give evidence before the end of the year in a further hearing.

Fair Trial Standards

50. It is the trial observer's view that in a number of respects the ongoing prosecution and trial of the Defendant falls short of fundamental fair trial standards. Those normative standards include rights embedded within the International Covenant on Civil and Political Rights (ICCPR) (to which Kuwait has been a signatory since 1996), principally within article 14. The various elements of the right to a fair trial codified in the ICCPR are also to be found within the Universal Declaration of Human Rights, customary international law norms and other international treaties, including treaties pertaining to international humanitarian law and international criminal law.
51. In similar (though less detailed) terms to Article 14 of the ICCPR, the right to a fair trial is guaranteed by Article 13 of the Revised Arab Charter on Human Rights which reads:

“Everybody has the right to a fair trial in which sufficient guarantees are ensured, conducted by a competent, independent and impartial tribunal established by law, in judging the grounds of criminal charges brought against him or in determining his rights and obligations. State Parties shall ensure financial aid to those without the necessary means to pay for legal assistance to enable them to defend their rights.”

52. **In the following respects, it is the trial observer's view that the trial of Al-Drees has fallen below international fair trial standards:**
 - a. **Pre-trial detention in September and October 2016 was arbitrary and not necessary; an initial order for 21-day detention was disproportionate in the circumstances; Al-Drees was also forced to wait an unacceptable period of time before she could challenge her detention through a bail hearing – a Defendant has the right to seek judicial redress without “undue delay”;**

- b. Pre-trial detention should not be the general rule: it should only be used in criminal proceedings as a last resort, and for the shortest possible time period, when required to meet the needs of justice or of the investigation of the alleged offence or in order to protect society or the victim⁵;
- c. Conditions of confinement in a police cell on 25-26 September 2016 constituted inhuman and degrading treatment⁶;
- d. Deprivation of liberty is arbitrary when detention, including pre-trial detention, is based on criminal offences that are vaguely or ambiguously defined – in this case, Al-Drees faced an extended period of pre-trial detention on the basis of three such charges⁷;
- e. The right to be presumed innocent until proven guilty according to law is an absolute right, which can never be derogated from, restricted or limited – the presumption of innocence places the burden of proof on the prosecution and guarantees that guilt cannot be found unless proved beyond reasonable doubt⁸; the rules of evidence and conduct of the trial should ensure that the burden of proof rests with the prosecution throughout the trial. The ongoing trial has effectively placed the burden on Al-Drees to show that the tweets were neither insulting to, nor critical of, the Emir;
- f. The principle of legality (*nullum crimen sine lege*) of criminal offences means that, in order to be termed a criminal offence, the specific type of behaviour to be punished needs to be strictly classified in law as an offence and the definition of all criminal offences must be precise and free of ambiguity. Definitions of criminal offences that are vague, ambiguous and imprecise contravene international human rights law and the general conditions prescribed by international law.⁹ The central charges brought against Al-Drees act as a broad and unpredictable suppression of free speech and, by their wording, pose a significant obstacle to any Defendant being able to successfully mount a defence.

⁵ Article 9 (3) of the ICCPR; Principle 36 (2) of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment; and Rule 6 (1) of the United Nations Standards Minimum Rules for Non-custodial Measures (The Tokyo Rules); Human Rights Committee, Views of 5 November 1999, *Aage v. Norway*, Communication No 631/1995, para. 6.3; and Human Rights Committee, General Comment No. 8, Right to liberty and security of persons (Article 9), para 3.

⁶ Human Rights Committee, *General Comment No. 20: Article 7 (Prohibition of torture, or other cruel, inhuman or degrading treatment or punishment)*, para. 6; Committee against Torture Reports A/54/44, paras. 121 and 146; A/53/44, para. 135; and A/55/44, para. 182; and Inter-American Court of Human Rights, Judgment 29 July 1988, *Velasquez Rodriguez v. Honduras*, Series C No. 4, para. 156 and Judgment of 12 November 1997, *Suárez Rosero v. Ecuador*, Series C No. 35, paras. 90-91.

⁷ See: UN Working Group on Arbitrary Detention, *Fact Sheet No. 26: Working Group on Arbitrary Detention*; and UN Special Rapporteur on the Independence of Judges and Lawyers, E/CN.4/1998/39/Add.1, para. 129.

⁸ Human Rights Committee, Views of 24 July 2006, *Francisco Juan Larrañaga v. The Philippines*, Communication No. 1421/2005, para. 7.4.

⁹ UN Special Rapporteur on the Independence of Judges and Lawyers, UN Document E/CN.4/1998/39/Add.1, para. 129. See also, Human Rights Committee: *Concluding Observations of the Human Rights Committee: Portugal (Macau)*, CCPR/C/79/Add.115, 4 November 1999, para. 12; *Algeria*, CCPR/C/79/Add.95, 18 August 1998, para. 11; *Egypt*, CCPR/C/79/Add.23, 9 August 1993, para. 8; *Peru*, CCPR/C/79/Add.67, 25 July 1996, para. 12; *Democratic People's Republic of Korea*, CCPR/CO/72/PRK, 27 August 2001, para. 14; *Belgium*, CCPR/CO/81/BEL, 12 August 2004, para. 24; *Iceland*, CCPR/CO/83/ISL, 25 April 2005, para. 10; *Estonia*, CCPR/CO/77/EST, 15 April 2003, para. 8; and *Canada*, CCPR/C/CAN/CO/5, 20 April 2006, para. 12. See also: the Inter-American Court of Human Rights, Judgment of 30 May 1999, *Castillo Petruzzi et al v. Peru*, Series C, No. 52, para. 121; and the Inter-American Commission on Human Rights, *Annual Report of the Inter-American Commission on Human Rights, 1983-1984*, p.85, para. 7, and the *Second report on the situation of human rights in Peru*, doc. cit. 76, para. 80.

53. The legal framework restricting freedom of expression was subject to significant criticism by the UN Human Rights Committee in the Third Periodic Review (August 2016):

The Committee is concerned about reports of arbitrary arrest, detention, trial, withdrawal of citizenship and deportation of persons who exercise their freedom of opinion and expression.

The Committee is particularly concerned about: (a) the adoption of new legislation to further curb the right to freedom of expression and opinion and extend State control and restrictions on Internet-based expressions under Law No. 37 (2014) on communications and Law No. 63 (2015) on cybercrime; (b) the criminalization of defamation and blasphemy and the application of restrictive, vague and broadly worded provisions to prosecute activists, journalists, bloggers and other individuals for expressing critical views or views deemed to “insult” the Emir or undermine his authority, defame religion or threaten the national security of Kuwait or the country’s relations with other States; (c) amendments made in June 2016 to the electoral law barring persons convicted of defamation or blasphemy from standing for election; (d) the alleged termination of licences for audiovisual and print media critical of the Government; and (e) content control and denial of access to the Internet, and the revocation of service providers’ licences without disclosing the reasons for doing so and without due process (arts. 9, 17-19 and 25).

The State party should: (a) repeal or revise laws containing provisions restricting the right to freedom of expression and opinion and repeal laws criminalizing blasphemy and insulting the Emir, among other acts, with a view to bringing them into conformity with its obligations under the Covenant; (b) clarify the vague, broad and open-ended definition of key terms in those laws and ensure that they are not used as tools to curtail freedom of expression beyond the narrow restrictions permitted by article 19 (3) of the Covenant...

54. Further, the 21-day remand Order, designed for “state security” cases, is an even more severe provision than that which was criticised by the UN Human Rights Committee in its Concluding Remarks on the Third Periodic of Kuwait in August 2016:

“While noting the 2012 amendments to the Code of Criminal Procedure, the Committee is concerned that those who are arrested can be held in police custody for up to 10 days upon a written order of the investigator and may be presented before a judge only after that period (art. 9). The State party should amend its legislation to ensure that anyone arrested or detained on a criminal charge is brought before a judge within 48 hours.”

55. Within the constraints of the Kuwaiti system, it should be noted that certain aspects accorded with international standards.
56. For example, Al-Drees has been represented by an independent lawyer of her choosing. With minor restrictions, and through the auspices of the Judge, that lawyer was able to ask questions of the police witness at the hearing on 24 November 2016.
57. But the fundamental issue of unfairness relates to the substantive content of the laws being applied, which, by their very wording, make a successful defence exceptionally difficult.
58. It is also unclear, from both the laws and the procedure, whether the Court is properly seeking to place the burden of proof on the Prosecution or whether the Judge's own view of the tweets is ultimately determinative.

Conclusion

59. The prosecution of Al-Drees under Article 25 of the Penal Code and the new Cyber Crimes Law is part of a concerning pattern of state action whereby freedom of expression has been gravely eroded in Kuwait since 2011 and continues to come under attack.
60. Al-Drees has already been subject to multiple charges, *prima facie* unlawful detention and faces a maximum penalty of five years' imprisonment for tweets which, on any reasonable view, constitute a legitimate exercise in freedom of expression under international law.
61. The residual independence of the Kuwaiti judicial system, in the face of decisions by state security/the Public Prosecutor, is not adequate to remedy the unfairness created by the laws themselves – Article 25, in particular.

Recommendations:

In view of the above, the Gulf Centre for Human Rights (GCHR), the Arabic Network for Human Rights Information (ANHRI), International Service for Human Rights (ISHR), and FIDH and the World Organisation Against Torture (OMCT) within the framework of the Observatory for the Protection of Human Rights Defenders call on the Kuwaiti authorities to:

- (i) Drop all the charges against Sara Al-Drees, as they seem to merely aim at sanctioning her human rights activities, including the exercise of her right to freedom of expression on social media;
- (ii) Ensure that the process leading to criminal prosecution of those arrested and detained on criminal charges meet the international standards of transparency of investigation, fairness of procedures in prosecution and standards of fair trial;

- (iii) Take all necessary steps to guarantee the competence, independence and impartiality of the judiciary in Kuwait and ensure that the Kuwaiti judiciary acts with full conformity to international human rights standards;
- (iv) Ensure particularly that the courts may not be used for political reasons nor to sanction the legitimate exercise of rights and freedoms universally guaranteed;
- (v) Strengthen the rights of the accused including by ensuring that she is guaranteed a fair trial, including by allowing her to effectively challenge the evidence against her;
- (vi) Guarantee, under all circumstances, the right to be presumed innocent;
- (vii) Take all necessary measures to end all forms of harassment against all Kuwaiti human rights defenders, to enable them to carry out their legitimate human rights activities freely and without hindrance;
- (viii) Comply at all times with the provisions of the Declaration on Human Rights Defenders, adopted by the United Nations (UN) General Assembly on 9 December 1998, in particular:
 - Article 1 which states that “everyone has the right, individually and in association with others, to promote and strive for the protection and realization of human rights and fundamental freedoms” at the national and international levels,
 - Article 5, which states that “For the purpose of promoting and protecting human rights and fundamental freedoms, everyone has the right, individually and in association with others, at the national and international levels: (b) to form, join, and participate in non-governmental organizations; [...]”
 - Article 12.2, which states that the State should take all necessary steps “to ensure the protection by the competent authorities of everyone, individually and in association with others, against any violence, threats, retaliation, de facto or de jure adverse discrimination, pressure or any other arbitrary action as a consequence of their legitimate exercise of the rights referred to in this Declaration.”
- (ix) Comply in all circumstances with the international obligations of Kuwait regarding the protection of human rights and fundamental freedoms.

Addendum – Human Rights Defenders in Kuwait – Protracted Prosecutions and Opposition Decline

62. The active opposition movements which emerged in Kuwait following the Arab Spring encompassed outspoken Parliamentary action, street protests and a burgeoning online political and critical culture. Alliances were formed between liberal Kuwaiti citizens angry with corruption alongside the particular grievances of the “stateless” Bidoon (meaning “without”) community, thousands of whom came out to protest in areas of Kuwait City.
63. As documented by Amnesty International in 2015, the Kuwait government responded with an “iron fist policy,”¹⁰ involving the arrest, prosecution and imprisonment of critics, activists and demonstrators.
64. The situation in 2016 reflects the partial success of that elite strategy. In particular, of course, the two-year imprisonment of leading opposition MP Musallam Al-Barrak (due for release in April 2017) dealt a significant blow. But at lower levels, the ongoing and exceptionally protracted prosecutions of many dozens of other human rights defenders and protestors has served to drain the opposition of both people and energy. With around 90 such cases brought between 2013 and 2015, many remain “in the system” and are yet to conclude.
65. For example, while Al-Barrak is serving his sentence for a speech critical of the Emir delivered in 2012, at least **15 others** (of a larger group of 67) charged with “repeating” the speech (and thereby also “insulting the Emir”) by reciting extracts still have cases ongoing in the Court of First Instance over four years later. Prosecutions over this length of time, subject to delays without legal justification, place a collective stranglehold over attempts to continue political activity.
66. Indeed, on 24 November 2016, the same day of Al-Drees’ hearing, those 15 appeared in Court for yet another adjournment.
67. Of the 67, 13 were convicted in October 2014, a further 21 were convicted in June 2015 and many are still waiting for the results of Appeal Court hearings. The results of those appeals have been mixed: Ahmed Al-Damkhi, a Popular Action Movement supporter, had a five-year sentence reduced to two years on 28 July 2015.
68. A leading human rights defender also charged with “repeating” Barrak’s speech of 2012, though in her case through a YouTube video, is **Rana Al-Sadoun**, whose National Committee for Monitoring of Violations (NCMV) was at the forefront of holding state security to account for protest crackdowns. Al-Sadoun was sentenced to three years’ imprisonment with hard labour *in absentia* on 21 June 2015. Upon her return to Kuwait on 16 April 2016, she was held in custody for one day before being granted bail, on condition of a travel ban. According to Kuwaiti procedure, in order to challenge her *in absentia* conviction, she was required to apply to the First Instance judge. The sentence was overturned on 4 December 2016, and Al-Sadoun was obliged to sign a “pledge of good conduct” and pay a bail of 1,000 Kuwaiti Dinars (approx. USD\$3280).

¹⁰ *The Iron Fist Policy: Criminalisation of peaceful dissent in Kuwait*, Amnesty International, 2015.

69. Other prominent cases in 2016 include the charging of academic **Sheikha Al-Jassem** in connection with an interview she gave on 8 March 2016 in which she addressed questions regarding religious extremism and the sources of constitutional law. On 14 April, the prosecutor charged her for violations under Article 29 of Law 31 of 1970, Amending the Penal Code, and Article 11 of the 2007 Audio-visual Crimes Law.
70. The potency of the protest movements from 2011 to 2014 reflected a sometimes uneasy alliance between Kuwaiti citizens and the Bedoon.
71. The crackdown on the Bedoon has been harsh, with prosecutions pursued against those attending protests. The effect has been plain: protests have effectively stopped. From regular gatherings running into the hundreds and thousands in 2011-13, the last significant protest was in 2015. Again, the charges have taken years to filter through the Court system.
72. However, there have been successful defences brought in both Courts of First Instance and the higher appellate courts, arguably indicative both of the relative independence of the judiciary and, it is argued by some, the Government's diminishing interest in securing convictions in circumstances when the prosecutions have achieved the necessary aim of quelling broader opposition.
73. One leading activist commented that the institutional pressure for regular and protracted prosecutions emerges from the relationship between state security, the police and the public prosecutor. Even if the Courts, in some limited instances, acquit defendants, the process itself serves as a punishment for a significant number of individuals cast into long-term uncertainty.
74. A further peculiarity of the Kuwaiti system is that, even if acquitted in the Court of First Instance, the Public Prosecutor can and does pursue an appeal through the appellate system.
75. **Nawaf Al-Hendal** was acquitted on 1 March 2016, along with 10 other men, of charges including "illegal gathering", relating to a protest in 2015.
76. There was also a large group acquittal confirmed by the Supreme Court in June 2016. Judge Ahmad Al-Ujail upheld the decision of the Court of Appeals and First Instance Court and acquitted **67 Bedoon activists** of unlawful gathering and attacking police in Taima square in 2012.
77. 70 people were acquitted in 2013 of charges relating to the "storming" of Parliament in 2011.
78. **Abdul Hamid Dashti**, while acquitted at the end of September 2016 on a charge of insulting Saudi Arabia and so undermining Kuwait's diplomatic relations, remains abroad having been convicted *in absentia* on a similar charge, including insulting the Emir.

79. On 16 May 2016, the Supreme Court upheld a one-year jail sentence against **Abdulhakim Al-Fadhli** and five others for demonstrating in 2014. The six men were convicted of illegal assembly, defying orders and assaulting police, according to the court ruling which also states they will be deported from the Gulf state after serving the jail term.
80. But the Government's tactics also appear to have changed, with more informal mechanisms of control being pursued. **Bedoon** activists report a concerted attempt to ensure political loyalty through coercive administration. For example, family members of Bedoon activists have found the renewal of essential national identity cards blocked or postponed unless a declaration to cease political activity has been signed. "If you sign, then the documentation is renewed for a full year. If you don't, then you're only given a three-month card which you then have to keep going back to renew," said one Bedoon activist.
81. A further threat now hangs over Kuwaiti nationals who had hitherto been secure in their citizenship rights. Kuwait's Nationality Law gives the Ministry of Interior wide powers to revoke the Kuwaiti citizenship of individuals, including on grounds that they are deemed to have "disseminated opinions which may tend to seriously undermine the economic or social structure of the state" because they are a "member of a political association of a foreign state."
82. Moves made against dozens of Kuwaitis in 2014 has had the desired effect. Individual activists have fallen silent, unwilling to risk the citizenship rights of their family members.
83. Amidst these worrying trends, there has also been a return to opposition engagement with the electoral process after a four-year boycott. In an election on 26 November 2016, half of the discredited Parliament's incumbents were replaced by candidates promising to oppose welfare cuts.
84. But the terms of political debate, which had been on the verge of a new opening after 2011, have been firmly narrowed on all sides – not least through the closure of independent media like *Al-Yawm*. Meanwhile the Bedoon issue remains off the table, the Courts remain full and the Emir himself, as the Al-Drees trial indicates, lies beyond even the mildest of public reproach.