



STATE-SPONSORED HOMOPHOBIA

2019

13th Edition

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ilga.org



KUWAIT

Provisions in force

- ▶ **Penal Code** (Law No.16 of 2 June 1960) (as amended in 1976 and 2007).

Consensual intercourse between men

Article 193.

Consensual intercourse between men of full age (from the age of 21) shall be punishable with a term of imprisonment of up to seven years.

Lewd signals / Legal barrier to freedom of expression

Article 198

Whoever makes a lewd signal or act in a public place or such that one may see it or hear it from public place, or appears like the opposite sex in any way, shall be punished for a period not exceeding one year and a fine not exceeding 1000 Dinar or one either of these punishments”.

- ▶ **Law On Press and Publications** (Law No.3 of 2006).

Insulting public morals

Article 21(3).

It shall be prohibited to publish anything that would: [...] insult the public morals or instigate to violate the public order or to violate the laws or to commit crimes, even if the crime did not occur.

Legal barrier to freedom of expression

Article 27(3).

Without prejudice to any severer penalty which is stipulated in another law, the chief editor and article writer or the author shall be penalized if he published in the newspaper what was prohibited under article 21, he shall be penalized by fine which shall not be less than 3,000 Dinar and not more than 10,000 Dinar.

- ▶ **Law regarding the regulation of electronic media** (Law No. 8 of 2016)

Legal barrier to freedom of expression

Article 18.

The sites and electronic media sites governed by the rules of this law, cannot publish, broadcast, rebroadcast, send or quote any content that contains any of the forbidden material mentioned in articles (19, 20, 21) of law no. 3 of 2006, and article 11 of law no. 61 of 2007, and punishments are mentioned in those two laws in case of violations.

Human rights situation

In 2007, Article 198 of the Penal Code was amended to criminalise cross-dressing and non-normative gender expression. In 2012, Human Rights Watch reported that this legislative development resulted in greater discrimination and persecution of transgender women in the country.¹

In 2013, the government also banned gay men and transgender persons from entering the country.² The director of public health announced that the country had developed “the technology” to detect such persons to prevent them from entering the country.³ When criticised by Amnesty International, politicians hit back with one claiming that the organisation should “take care of lofty and noble goals for which it was established, leave aside homosexuality and deviations and stop defending delinquents”.⁴

In May 2014 it was reported that vice police raided a “sex party” and arrested 32 people, both men and women (“tomboys”).⁵ Such raids also took place in 2012 and 2013.⁶ Hostilities towards the LGBT community persisted in subsequent years as well, with 41 men arrested in a raid of a male massage parlour in April 2016.⁷

In 2017, the Ministry of Information’s censorship department ordered cinemas to stop screening the Disney’s film “Beauty and the Beast” which contained a same-sex kiss.⁸

In July 2017, the government’s inter-ministry morals committee ordered the deportation of 76 gay men and the closure of 22 massage parlours.⁹

Statements by public officials

In a news report, the head of the Inter-Ministry Morals Committee, Mohammad Al Dhufairi said, “We have a zero-tolerance policy towards any

morally objectionable activities, and we will not be lenient with anyone who breaks the rules or puts the health of Kuwaiti citizens and residents at risk.”¹⁰

National Human Rights Institution

Kuwait does not have a National Human Rights Institution in accordance with the Paris Principles.

UN voting record

In 2011, Kuwait was not a member of the Human Rights Council and, therefore, did not participate in the vote for the adoption of Resolution 17/19, the first SOGI resolution adopted by the Human Rights Council, which requested the OHCHR to produce the first report on SOGI.¹¹

In 2014, it voted against the adoption of Resolution 27/32, the second SOGI resolution adopted by the Human Rights Council, which requested the OHCHR to update the report produced in 2011.¹²

In 2016, Kuwait was not a member of the Human Rights Council and, therefore, did not participate in the vote for the adoption of Resolution 32/2 which created the mandate of the independent Expert on protection against violence and discrimination based on sexual orientation and gender identity.¹³

At the session of Third Committee of the UN General Assembly held in November 2016, Kuwait voted against the LAC amendment to remove Operative Paragraph 2, and in favour of the African oral amendment to block the IE SOGI at the UNGA Plenary Session on 19 December 2016. Additionally, Kuwait voted in favour of the

¹ Human Rights Watch, *They Hunt Us Down for Fun: Discrimination and Police Violence Against Transgender Women in Kuwait* (2012).

² “Deputies support the rejection of the establishment of the “third sex”: we will prevent them from entering Kuwait by force of law”, *Alrai Media*, 8 October 2013.

³ Alexander Abad-Santos, “Kuwait Thinks Its Gaydar Is Good Enough to Ban Gays from the Country”, *The Atlantic*, 7 October 2013.

⁴ Felicity Morse, “‘Gays are delinquent deviants who destroy humanity’: Kuwait MPs attack Amnesty International for protecting LGBT community”, *Independent UK*, 16 October 2013.

⁵ “Kuwait police raid ‘gay’ party, arrest 32”, *Erasing 76 Crimes*, 11 May 2014.

⁶ J. K. Trotter, “Kuwaiti Police Sweep Cafes, Arrest 215 People for Being Gay”, *The Atlantic*, 14 May 2013.

⁷ Habib Toumi, “41 arrested in raid on homosexual massage parlour in Kuwait”, *Gulf News*, 17 April 2016.

⁸ Mohamed Rashed, “Beauty and the Beast too ‘gay’ for Kuwait?”, *Albawaba*, 22 March 2017.

⁹ Habib Toumi, “Kuwait deports 76 gay men in crackdown”, *Gulf News*, 7 August 2017.

¹⁰ Habib Toumi, “Kuwait deports 76 gay men in crackdown”, *Gulf News*, 7 August 2017.

¹¹ Human Rights Council, *Resolution 17/19: Human rights, sexual orientation and gender identity*, A/HRC/RES/17/19, 14 July 2011.

¹² Human Rights Council, *Resolution 27/32: Human rights, sexual orientation and gender identity*, A/HRC/RES/27/32, 2 October 2014.

¹³ Human Rights Council, *Resolution 32/2: Protection against violence and discrimination based on sexual orientation and gender identity*, A/HRC/RES/32/2, 15 July 2016.

amendment which tried to block financial resources allocated to the IE SOGI.¹⁴

International advocacy and supervision

Universal Periodic Review

Kuwait 'noted' (rejected) a recommendation from Brazil to decriminalise same-sex acts between consenting adults at its 1st cycle UPR in 2010.¹⁵

At its 2nd UPR in January 2015, Uruguay and Iceland recommended Kuwait decriminalise same-sex sexual acts, and the Netherlands also iterated this and a call for non-discrimination in the country's law. This call for non-discrimination was echoed by Argentina and Chile. Without alluding to SOGI, at para. 29 of the State's formal acceptance of the report of the Working Group, the delegation justified that looking after public morals does not contravene Article 21 of the ICCPR (peaceful assembly).¹⁶

Kuwait's next UPR session is in early-2020.

Treaty Bodies

In August 2016, the Human Rights Committee reiterated its 2011 recommendation for Kuwait to decriminalise consensual same-sex sexual acts between consenting adults and to repeal the offence of "imitating members of the opposite sex", in order to bring its legislation into line with the Covenant.¹⁷ It also urged the implementation of measures to put an end to the social stigmatisation of SOGI and the harassment, discrimination and

violence perpetrated against persons based on their real or perceived sexual orientation or gender identity.¹⁸

In 2011, the **Committee against Torture (CAT)** expressed concern about the discrimination and ill-treatment suffered by LGBT people. It called on the State to investigate crimes related to discrimination directed towards all vulnerable groups and pursue ways in which hate crimes can be prevented and punished; promptly, thoroughly and impartially investigate all cases of discrimination and ill-treatment of these vulnerable groups, and punish those responsible for these acts; and conduct awareness-raising campaigns for all officials who are in direct contact with victims of such violence, as well for the population at large.¹⁹ There was no mention of LGBT issues in the 2016 Concluding Observations.²⁰

Special Procedures

In 2014, several mandates²¹ expressed concern at the allegation that a transgender woman was arrested under Article 198 of the Penal Code for "imitation of the opposite sex" and faced discrimination and other violations of her human rights in detention, including violence.²²

In 2017, the **Working Group on the issue of discrimination against women in law and in practice** reiterated its concern about Article 198, and noted that it has received reports of discrimination against women on the basis of their gender identity and expression.²³ It added that "according to the information received, transgender people in Kuwait are an isolated, discriminated and vulnerable group who face harassment and threats".²⁴

¹⁴ Operative Paragraph 2 was an attempt by the Africa Group to defer consideration and action on HRC Resolution 32/2 under the pretext that further consultations were needed to determine the legal basis upon which the IE SOGI would operate on. For more information, see: Out Right, ISHR, ILGA and ARC International, *Defending the independent expert on protection against violence and discrimination based on sexual orientation and gender identity at the 71st Session of the United Nations General Assembly* (2017), 4.

¹⁵ *Draft report of the Working Group on the Universal Periodic Review: Kuwait*, A/HRC/WG.6/8/L.14, 14 May 2010.

¹⁶ *Draft report of the Working Group on the Universal Periodic Review: Kuwait*, A/HRC/WG.6/21/L.14, 30 January 2015, para. 29.

¹⁷ *Concluding observations on the third periodic report of Kuwait*, CCPR/C/KWT/CO/3, 11 August 2016, para. 13; *Concluding observations on the second periodic report of Kuwait*, CCPR/C/KWT/CO/2, 18 November 2011, para. 30.

¹⁸ *Concluding observations on the third periodic report of Kuwait*, CCPR/C/KWT/CO/3, 11 August 2016, para. 13.

¹⁹ *Concluding observations on the second periodic report of Kuwait*, CAT/C/KWT/CO/2, 28 June 2011, para. 25.

²⁰ *Concluding observations on the third periodic report of Kuwait*, CAT/C/KWT/CO/3, 5 September 2016.

²¹ The mandates were 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.

²² UA G/SO 218/2 G/SO 214 (89-15) *KWT 1/2014*, 5 February 2014.

²³ *Report of the Working Group on the issue of discrimination against women in law and in practice on its mission to Kuwait*, A/HRC/35/29/Add.2, 24 May 2017, para. 35 and para. 91.

²⁴ *Ibid.*