

Kuwait's Compliance with Compliance with International Covenant on Civil and Political Rights: The Death Penalty

Submitted by The Advocates for Human Rights,
a non-governmental organization in special consultative status with ECOSOC since 1996,
Salam for Democracy and Human Rights,
The Cornell Center on the Death Penalty Worldwide,
and
The World Coalition Against the Death Penalty

for the 139 Session of the Human Rights Committee
9 October–3 November 2023

Submitted 12 September 2023

The Advocates for Human Rights (The Advocates) is a volunteer-based nongovernmental organization committed to the impartial promotion and protection of international human rights standards and the rule of law. Established in 1983, The Advocates conducts a range of programs to promote human rights in the United States and around the world, including monitoring and fact finding, direct legal representation, education and training, and publications. In 1991, The Advocates adopted a formal commitment to oppose the death penalty worldwide and organized a death penalty project to provide pro bono assistance on post-conviction appeals, as well as education and advocacy to end capital punishment. The Advocates currently holds a seat on the Steering Committee of the World Coalition against the Death Penalty.

Salam for Democracy and Human Rights (SALAM DHR) is a non-governmental organisation (NGO) whose members are based in the United Kingdom, Germany, France, and Lebanon. Its work focuses, mainly, on Bahrain and the Gulf and the issue of statelessness / deprivation of citizenship. Formally registered in the UK, France and Switzerland, it has supporters in Bahrain, where it is unable to register. As part of its mission, SALAM DHR endeavours to preserve universal principles of dignity and respect by shielding democracy and human rights. The NGO conducts research, produces reports and recommendations. It builds coalitions including through its membership of, amongst others, CIVICUS and World Coalition Against the Death Penalty.

The Cornell Center on the Death Penalty Worldwide is a US-based research, advocacy, and training center focused on capital punishment and international law. It publishes reports and manuals on death penalty issues, provides transparent data on death penalty laws and practices around the world, trains capital lawyers in best practices, and engages in targeted advocacy and litigation. Its staff and faculty advisors have collectively spent more than eight decades representing hundreds of prisoners facing the death penalty. In 2019 it was awarded the World Justice Challenge Award in recognition for its work on behalf of death-sentenced prisoners in Malawi.

The World Coalition Against the Death Penalty (WCADP), an alliance of more than 150 NGOs, bar associations, local authorities, and unions, was created in Rome on 13 May 2002. The aim of the World Coalition is to strengthen the international dimension of the fight against the death penalty. Its ultimate objective is to obtain the universal abolition of the death penalty. To achieve its goal, the World Coalition advocates for a definitive end to death sentences and executions in those countries where the death penalty is in force. In some countries, it is seeking to obtain a reduction in the use of capital punishment as a first step towards abolition.

EXECUTIVE SUMMARY

1. This report addresses Kuwait's compliance with its human rights obligations regarding the death penalty. The Kuwaiti Government lacks transparency regarding the number of people sentenced to death; Amnesty International reported that at least 24 people were under sentence of death at the end of 2022.¹ Despite pausing executions from 2017 to 2022, Kuwait continues to carry out executions,² most recently in July 2023, when Kuwait executed five people by hanging.³ Kuwait is not taking steps toward a de jure moratorium on executions or ratification of the Second Optional Protocol. Kuwait does not ensure that defendants in capital cases have a fair trial. Kuwait's use of torture and the lack of an independent judiciary are continued areas of concern.
2. As Kuwait will take up a seat on the Human Rights Council over the 2024-2026 period, the government should urgently re-assess the use of the death penalty.

Kuwait fails to uphold its obligations under the International Covenant on Civil and Political Rights

I. Kuwait has not abolished the death penalty or acceded to the Second Optional Protocol, and Kuwait has not limited the death penalty to the most serious crimes (List of Issues paragraph 10-11).

3. In its 2016 Concluding Observations, the Committee expressed concern that Kuwait had ended a six-year de facto moratorium on executions by carrying out executions in 2013. The Committee also expressed concern about the number of offenses that may carry the death penalty, including crimes other than the "most serious," and about Kuwait's mandatory imposition of the death penalty for certain crimes.⁴
4. In its State Party Report, Kuwait reported that the death penalty is incorporated into its domestic law since the legal system is based on Islamic sharia, and that abolition of the death penalty would contradict sharia.⁵
5. In its List of Issues, the Committee requested an exhaustive list of offenses eligible for the death penalty and of offenses that carry a mandatory death penalty.⁶ Kuwait responded in its Reply to the List of Issues that "the death penalty is reserved for the most serious crimes

¹ Amnesty International, *Death sentences and executions 2022*, (May 16 2023), ACT 50/6548/2023, Available at <https://www.amnesty.org/en/documents/act50/6548/2023/en/>.

² Amnesty International, *Kuwait: Five hanged as Kuwait continues execution spree into second year*, (July 28, 2023), Available at <https://www.amnesty.org/en/latest/news/2023/07/kuwait-five-hanged-as-kuwait-continues-execution-sprees-into-second-year/#:~:text=Kuwait's%20Office%20of%20Public%20Prosecution,illegal%20resident%E2%80%9D%20and%20convicted%20of>.

³ Nick El Hajj, *Kuwait executes 5 prisoners, including a man convicted in 2015 Islamic State-claimed mosque bombing*, Associated Press, Apr. 17, 2018, <https://apnews.com/article/kuwait-execution-2015-mosque-bombing-elbae9adb1c37b5cc9e68d6354a3e8716>.

⁴ International Covenant on Civil and Political Rights, *Concluding observations on the third periodic report of Kuwait*, (Aug. 11, 2016), U.N. Document, CCPR/C/KWT/CO/3, ¶20-22.

⁵ International Covenant on Civil and Political Rights, *Fourth periodic report submitted by Kuwait under article 40 of the Covenant, due in 2020*, (Nov. 18, 2020), U.N. Document, CCPR/C/KWT/4.

⁶ International Covenant on Civil and Political Rights, *List of issues in relation to the fourth periodic report of Kuwait*, (Nov. 29, 2022), U.N. Document, CCPR/C/KWT/Q/4 ¶10-11.

that endanger the security and stability of society,”⁷ but did not provide an exhaustive list of offenses.

6. Despite multiple periods in which Kuwait observed a de facto moratorium on executions, Kuwait continues to carry out executions and has taken no steps toward an official moratorium. In 2007, Kuwait began a de facto moratorium on the use of the death penalty. The government did not take steps to formalize the moratorium in law, and executions resumed in 2013 and again in 2017. From 2017 to 2022, Kuwait paused executions but again did not institute an official moratorium.⁸ In 2022, Kuwait resumed executions and executed seven people: four Kuwaiti men and three foreign nationals, one of whom was a woman.⁹ Death sentences also increased from five in 2021 to 16 in 2022.¹⁰ In 2022, the Government again voted against the UN General Assembly resolution calling for a moratorium on use of the death penalty.¹¹
7. In July 2023, Kuwait announced that it had executed five people by hanging.¹² This action prompted the OHCHR to issue a written statement condemning the executions.¹³
8. Kuwait’s primary method of execution is hanging. Under specific circumstances, shooting is considered a legal form of execution.¹⁴
9. If found guilty of a capital offense, pregnant women, women with small children, and people under the age of 18 at the time of offense have their sentences reduced to life

⁷ International Covenant on Civil and Political Rights, *Reply to List of Issues*, (May 16, 2023) U.N. Document CCPR/C/KWT/RQ/4.

⁸ Amnesty International, *Kuwait: Five hanged as Kuwait continues execution spree into second year*, (July 28, 2023), Available at <https://www.amnesty.org/en/latest/news/2023/07/kuwait-five-hanged-as-kuwait-continues-execution-spre-into-second-year/#:~:text=Kuwait's%20Office%20of%20Public%20Prosecution,illegal%20resident%E2%80%9D%20and%20convicted%20of>.

⁹ Amnesty International, *Kuwait: Five hanged as Kuwait continues execution spree into second year*, (July 28, 2023), Available at <https://www.amnesty.org/en/latest/news/2023/07/kuwait-five-hanged-as-kuwait-continues-execution-spre-into-second-year/#:~:text=Kuwait's%20Office%20of%20Public%20Prosecution,illegal%20resident%E2%80%9D%20and%20convicted%20of>.

¹⁰ Amnesty International, *Death sentences and executions 2022*, (May 16 2023), ACT 50/6548/2023, Available at <https://www.amnesty.org/en/documents/act50/6548/2023/en/>.

¹¹ The Advocates for Human Rights, *The Compliance of Kuwait with the Convention on the Rights of the Child Alternative Report about the Rights of Children Whose Parents are Sentenced to Death or Executed*, accessed on Aug. 27, 2023, available at: <https://www.theadvocatesforhumanrights.org/Res/Kuwait%20CRC%20Shadow%20Report%20Children%20of%20People%20Sentenced%20to%20Death%20final.pdf>.

¹² Nick El Hajj, *Kuwait executes 5 prisoners, including a man convicted in 2015 Islamic State-claimed mosque bombing*, Associated Press, Apr. 17, 2018, <https://apnews.com/article/kuwait-execution-2015-mosque-bombing-elbaeab1c37b5cc9e68d6354a3e8716>.

¹³ Office of the United Nations High Commissioner For Human Rights, press release, July 23, 2023, *OHCHR condemns executions in Kuwait and Singapore, pushes for global ban*, <https://news.un.org/en/story/2023/07/1139232> (“The death penalty is inconsistent with the fundamental right to life and to the right to be free from torture and other inhuman treatment and should be expunged as a punishment from all laws everywhere,” said Mr. Magango).

¹⁴ Penal code, (Kuwait), Article 58, Available at: <https://web.archive.org/web/20200418035726/https://www.e.gov.kw/sites/kg0Arabic/Forms/QanoonAlJajaa.pdf>

imprisonment. People with psychosocial disabilities are also excluded from the death penalty.¹⁵

10. Since 1995, Kuwaiti legislation has prescribed a death sentence for certain drug-related offenses.¹⁶ Since 1964, Kuwait has executed 11 people for drug-related offenses. One of the five people executed in July 2023 had been convicted of “possessing with intent to traffic and use intoxicating and mind-altering drugs.”¹⁷
11. Women are at heightened risk of human rights violations in capital cases for drug-related offenses. The Executive Director of Harm Reduction International has observed that “[p]eople on death row for drug offences tend to be involved at the lowest level of the drug trade and are generally marginalized in society. Gender, socio-economic position, ethnicity and foreign status in a country add intersectional vulnerability to this context.”¹⁸ She explains that although “some women engage in the drug trade through their own volition, for others, a narrower range of choices, along with poverty, coercion, violence, manipulation, and the survival needs of a family play a significant factor in their involvement.”¹⁹ Research from the Cornell Center on the Death Penalty Worldwide illustrates “the alarming extent to which women sentenced to death for drug offences experienced gender bias in criminal proceedings and violations of their right to a fair trial.”²⁰
12. The Cornell Center’s research has found that foreign nationals are over-represented among women sentenced to death for drug-related offenses.²¹ Rule 66 of the Bangkok Rules specifically addresses the need to take measures to avoid secondary victimization of foreign-national women.²² The Cornell Center’s research also revealed that in many cases, women become involved with the drug trade under the influence or pressure of a male

¹⁵ Penal code, (Kuwait), Available at:

<https://web.archive.org/web/20200418035726/https://www.e.gov.kw/sites/kgoArabic/Forms/QanoonAlJajaa.pdf>

¹⁶ See Amnesty International, *Five Years of Impunity: Human Rights Concerns Since the Withdrawal of Iraqi Forces*, MDE/17/01/96: www.unhcr.org/refworld/docid/3ae6a98c2b.html (last accessed August 31, 2023).

¹⁷ Amnesty International, Kuwait: Five hanged as Kuwait continues execution spree into second year, accessed on July 27, 2023, available at: <https://www.amnesty.org/en/latest/news/2023/07/kuwait-five-hanged-as-kuwait-continues-execution-spreed-into-second-year/>.

¹⁸ Cornell Center on the Death Penalty Worldwide, “No One Believed Me”: *A Global Overview of Women Facing the Death Penalty for Drug Offenses* (Sept. 2021), 5. Available online at: <http://filesserver.idpc.net/library/No-One-Believed-Me.pdf>.

¹⁹ Cornell Center on the Death Penalty Worldwide, “No One Believed Me”: *A Global Overview of Women Facing the Death Penalty for Drug Offenses* (Sept. 2021), 5. Available online at: <http://filesserver.idpc.net/library/No-One-Believed-Me.pdf>.

²⁰ Cornell Center on the Death Penalty Worldwide, “No One Believed Me”: *A Global Overview of Women Facing the Death Penalty for Drug Offenses* (Sept. 2021), 5. Available online at: <http://filesserver.idpc.net/library/No-One-Believed-Me.pdf>.

²¹ Cornell Center on the Death Penalty Worldwide, “No One Believed Me”: *A Global Overview of Women Facing the Death Penalty for Drug Offenses* (Sept. 2021), 6. Available online at: <http://filesserver.idpc.net/library/No-One-Believed-Me.pdf>.

²² Bangkok Rules, Rule 66, (last visited Sept. 29, 2022). Available at: <https://cdn.penalreform.org/wp-content/uploads/2016/07/BangkokRules-Updated-2016-with-renumbering-SMR.pdf>.

partner, and that partner typically experiences fewer criminal consequences than the woman.²³

II. Kuwait continues to place women, including victims of domestic violence, at risk of being sentenced to death (List of Issues paragraphs 8 and 9).

13. Regarding the women executed in 2022, a government spokesperson provided the only official information to the state-run KUNA news agency: “The Ethiopian woman was executed for intentional killing” and the female Kuwaiti was found “guilty of premeditated crime.”²⁴ Regarding the 2017 executions, Human Rights Watch reported that “the Filipina and Ethiopian women, migrant domestic workers, were convicted of murdering members of their employers’ families.”²⁵
14. Women at risk of being sentenced to death in Kuwait face gender bias throughout the criminal legal process. The legal system fails to account for the context in which women commit crimes and often holds them to higher standards than their male codefendants.²⁶
15. Women who face extensive gender-based violence are disproportionately affected by the death penalty, including women who seek to protect themselves against their abusers.²⁷ Long histories of gender-based violence can result in complex trauma and can exacerbate the effects of psycho-social or intellectual disabilities.²⁸
16. In a 2018 study, the Cornell Center on the Death Penalty Worldwide found that, in the global context, women are more vulnerable and most likely to be sentenced to death for criminal offenses committed within the context of gender-based violence²⁹ and manipulative or coercive relationships with male co-defendants.³⁰ Cornell’s data indicate that most women under sentence of death have been sentenced to death for the crime of murder.³¹ These

²³ Cornell Center on the Death Penalty Worldwide, “No One Believed Me”: A Global Overview of Women Facing the Death Penalty for Drug Offenses, (Sept. 2021), 6. Available online at: <http://fileserv.idpc.net/library/No-One-Believed-Me.pdf>.

²⁴ Kuwait prosecution oversees execution of 7 convicts, Kuwait News Agency (Nov. 16, 2022), <https://www.kuna.net.kw/ArticleDetails.aspx?id=3069030&Language=en>.

²⁵ Amnesty International, Kuwait: First Executions in 4 Years (Jan. 26, 2017), <https://www.hrw.org/news/2017/01/26/kuwait-first-executions-4-years>.

²⁶ U.S. State Department, 2021 Country Reports on Human Rights Practices: Kuwait. Available online at: https://www.state.gov/wp-content/uploads/2022/03/313615_KUWAIT-2021-HUMAN-RIGHTS-REPORT.pdf.

²⁷ World Coalition Against the Death Penalty and The Advocates for Human Rights, Detailed Fact Sheet, Women Sentenced to Death: An Invisible Reality, (Oct. 10, 2021).

²⁸ World Coalition Against the Death Penalty and The Advocates for Human Rights, Detailed Fact Sheet, Women Sentenced to Death: An Invisible Reality, (Oct. 10, 2021).

²⁹ Cornell Center on the Death Penalty Worldwide, Judged for More Than Her Crime: A Global Overview of Women Facing the Death Penalty (Sept. 4, 2018). Available online at <https://www.deathpenaltyworldwide.org/wp-content/uploads/2019/12/Judged-More-Than-Her-Crime.pdf>.

³⁰ Cornell Center on the Death Penalty Worldwide, “No One Believed Me”: A Global Overview of Women Facing the Death Penalty for Drug Offenses (Sept. 6, 2021). Available online at: <https://deathpenaltyworldwide.org/publication/no-one-believed-me-a-global-overview-of-women-facing-the-death-penalty-for-drug-offenses/>.

³¹ Cornell Center on the Death Penalty Worldwide, “No One Believed Me”: A Global Overview of Women Facing the Death Penalty for Drug Offenses (Sept. 6, 2021), at 11. Available online at: <https://deathpenaltyworldwide.org/publication/no-one-believed-me-a-global-overview-of-women-facing-the-death-penalty-for-drug-offenses/>.

women have overwhelmingly experienced prolonged domestic violence at the hands of a partner, spouse, or another family member.³² Many women under sentence of death are survivors of gender-based violence and come from disadvantaged socio-economic backgrounds.³³ At a global level, sentencing courts typically fail to take into account a defendant's experience as a survivor of gender-based violence or a victim of a manipulative or coercive relationship (for example in cases where women are pressured or tricked into transporting drugs) as mitigating factors during sentencing.³⁴ Research also indicates that courts also fail to account for power dynamics and tactics of coercive control that may affect a woman's involvement in and culpability for a crime.

17. Cases documented by the Cornell Center have shown violations of women's right to a fair trial. A 2021 follow-up study demonstrated that "fair trial principles dictate that courts should consider all relevant mitigating circumstances before imposing a sentence. In practice, however, many courts neglect gender-specific mitigation."³⁵
18. The Cornell Center also found that women are more likely to receive a death sentence when the adjudicating authority perceives that they are violating entrenched gender norms, being cast as the "female fatale" or the "witch." Women are often put on trial not only for acts they performed but also for allegedly being "a bad wife, a bad mother, and a bad woman."³⁶
19. Women perceived as the perpetrator of the crime are more likely to receive a harsher punishment than men accused of similar offenses.³⁷ The death penalty disproportionately affects those individuals who face "gender stereotypes, stigma, harmful and patriarchal cultural norms, and gender-based violence."³⁸ This discrepancy has an "adverse impact on the ability of women to gain access to justice on an equal basis with men."³⁹

³² Cornell Center on the Death Penalty Worldwide, *Judged for More Than Her Crime: A Global Overview of Women Facing the Death Penalty* (Sept. 2018), 4. Available online at: <https://www.deathpenaltyworldwide.org/wp-content/uploads/2019/12/Judged-More-Than-Her-Crime.pdf>.

³³ Cornell Center on the Death Penalty Worldwide, *Judged for More Than Her Crime: A Global Overview of Women Facing the Death Penalty* (Sept. 2018), 4. Available online at: <https://www.deathpenaltyworldwide.org/wp-content/uploads/2019/12/Judged-More-Than-Her-Crime.pdf>.

³⁴ Cornell Center on the Death Penalty Worldwide, *"No One Believed Me": A Global Overview of Women Facing the Death Penalty for Drug Offenses* (Sept. 20120), 6. Available online at: <https://deathpenaltyworldwide.org/publication/no-one-believed-me-a-global-overview-of-women-facing-the-death-penalty-for-drug-offenses/>.

³⁵ Cornell Center on the Death Penalty Worldwide, *"No One Believed Me": A Global Overview of Women Facing the Death Penalty for Drug Offenses* (Sept. 6, 2021). Available online at: <https://deathpenaltyworldwide.org/publication/no-one-believed-me-a-global-overview-of-women-facing-the-death-penalty-for-drug-offenses/>.

³⁶ Cornell Center on the Death Penalty Worldwide, *Judged for More Than Her Crime: A Global Overview of Women Facing the Death Penalty* (Sept. 2018), 4. Available online at: <https://www.deathpenaltyworldwide.org/wp-content/uploads/2019/12/Judged-More-Than-Her-Crime.pdf>.

³⁷ Emma Milne & Jackie Turton, *Understanding Violent Women*, in WOMEN AND THE CRIMINAL JUSTICE SYSTEM: FALLING VICTIM AND OFFENDERS? 119, 124-25 (Palgrave Macmillan, 2018).

³⁸ OHCHR, *Death penalty disproportionately affects the poor, U.N. rights experts warn* (Oct. 10, 2017), <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=22208&LangID=E>.

³⁹ U.N. Office of the High Commissioner for Human Rights, *Death penalty disproportionately affects the poor, U.N. rights experts warn* (Oct. 10, 2017), <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=22208&LangID=E>.

20. Global trends show that women sentenced to death face intersectional discrimination. According to Cornell’s 2018 report, most women on death row come from backgrounds of severe socio-economic disadvantage and many are not literate, disadvantages that can reinforce unequal access to effective legal representation.⁴² These women are more likely to be unaware of their legal rights.⁴³ Illiteracy and lack of formal education among women from disadvantaged socio-economic backgrounds leave them more vulnerable to discrimination, coercion, and exploitation.⁴⁴ This intersectional discrimination exacerbates the risk that a woman charged with a capital crime will be subjected to an unfair trial.
21. Failure to address domestic violence in Kuwait may lead to victim-survivors of domestic violence committing a death-eligible offense. In Kuwait, the police present a bottleneck for women reporting gender-based violence,⁴⁰ and the law requires two male witnesses.⁴¹
22. Kuwait has made some efforts to combat domestic violence, including the creation of family courts to deal with domestic violence cases and the drafting of a law that: (1) Defines “domestic violence”; (2) Provides for shelters, psychological counselling, and legal assistance to victims; and (3) Establishes a domestic violence hotline for complaints.⁴² The new law, however, does not set out penalties for domestic violence as a crime on its own, and does not include violence perpetrated by former intimate partners. The law fails to protect women engaged in relationships outside of wedlock, including women who are engaged or unofficially married.⁴³ Furthermore, a woman must produce a report from a government hospital describing her injuries, and she must have two male witnesses to the domestic violence. Although a woman may petition for divorce based on injury from domestic violence, the law does not provide a clear legal standard for what constitutes injury.⁴⁴
23. The Government of Kuwait is falling short of its obligation to eradicate gender-based violence, including sexual violence. A 2018 study found that 53.1% of women in the country have experienced gender-based violence.⁴⁵ Women in Kuwait report that police stations do not take seriously reports of domestic violence and sexual assault lodged by both citizens and non-citizens.⁴⁶ As a result of this lack of protection, incidents of gendered violence are significantly under-reported.⁴⁷ In 2021, simmering tensions based on a culture of impunity around gender violence prompted activists to launch a countrywide social-

⁴⁰ U.S. State Department, *2021 Country Reports on Human Rights Practices: Kuwait*, 29-30. Available online at: https://www.state.gov/wp-content/uploads/2022/03/313615_KUWAIT-2021-HUMAN-RIGHTS-REPORT.pdf.

⁴¹ U.S. State Department, *2021 Country Reports on Human Rights Practices: Kuwait*, 29-30. Available online at: https://www.state.gov/wp-content/uploads/2022/03/313615_KUWAIT-2021-HUMAN-RIGHTS-REPORT.pdf.

⁴² Committee on the Elimination of Discrimination Against Women, *Concluding Observations on the fifth periodic report of Kuwait* (Nov. 22, 2017), U.N. Doc. CEDAW/C/KWT/CO/5,

⁴³ *Dignity, Freedom, and Justice For All*, TIMES OF Kuwait, (Dec. 10, 2022), <https://timeskuwait.com/news/dignity-freedom-and-justice-for-all/>.

⁴⁴ U.S. State Department, *2021 Country Reports on Human Rights Practices: Kuwait*, 29-30. Available online at: https://www.state.gov/wp-content/uploads/2022/03/313615_KUWAIT-2021-HUMAN-RIGHTS-REPORT.pdf.

⁴⁵ Fatima Al-Salem, *Fifty-three Percent of Kuwaiti Women are Abused by Men*, AL QABAS, (Nov. 23, 2018), %53 من الكويتيات معنفات من الرجل (alqabas.com).

⁴⁶ U.S. State Department, *2021 Country Reports on Human Rights Practices: Kuwait*, 29-30. Available online at: https://www.state.gov/wp-content/uploads/2022/03/313615_KUWAIT-2021-HUMAN-RIGHTS-REPORT.pdf.

⁴⁷ U.S. State Department, *2021 Country Reports on Human Rights Practices: Kuwait*, 29-30. Available online at: https://www.state.gov/wp-content/uploads/2022/03/313615_KUWAIT-2021-HUMAN-RIGHTS-REPORT.pdf.

media campaign called Lan Asket (“I will not be silenced”).⁴⁸ The campaign documented countless reports of violence and harassment that never gained legal traction, including abuses experienced by female foreign workers seeking to leave abusive employment situations.⁴⁹ In February 2022, women protested the government’s backsliding on the rights of women, including new male-guardianship rules.⁵⁰

III. Kuwait sentences migrant domestic workers to death (List of Issues paragraph 14).

24. Several of the women executed since 2017 were migrant domestic workers, and authorities executed two of them for murdering members of their employers’ families.
25. Despite nominal protections provided under a 2015 domestic workers law,⁵¹ migrant domestic workers continue to face exploitation, forced confinement to their employers’ houses, and physical and sexual abuse. Many domestic workers said they have not been able to claim their rights under the new law, in part because of the *kafala* (sponsorship) system under which they cannot leave or change employers without their employers’ consent. People who flee their employers can be arrested for “absconding.”
26. Human Rights Watch in a 2022 report observed that migrant workers, particularly migrant domestic workers, remain vulnerable to abuse due to the *kafala* system. The organization reports “migrant domestic workers face additional forms of abuse, including being forcibly confined in their employers’ homes, and verbal, physical and sexual abuse. While government shelters and complaint procedures exist for victims, there are serious barriers to accessing them, particularly for abuses like owed or delayed wages.”⁵² Many domestic workers attempt to escape their workplace or die from suicide.⁵³
27. While there is no specific information available regarding Kuwait, the 2018 Cornell study referenced above observed that in other countries in the region, many women on death row are migrant domestic workers.⁵⁴ In many cases, the female domestic worker was accused of killing her employer or a family member of her employer, suggesting a “pattern of female migrant domestic workers sentenced to death in . . . Middle Eastern countries, who

⁴⁸ U.S. State Department, *2021 Country Reports on Human Rights Practices: Kuwait*, 29-30. Available online at: https://www.state.gov/wp-content/uploads/2022/03/313615_KUWAIT-2021-HUMAN-RIGHTS-REPORT.pdf.

⁴⁹ U.S. State Department, *2021 Country Reports on Human Rights Practices: Kuwait*, 29-30. Available online at: https://www.state.gov/wp-content/uploads/2022/03/313615_KUWAIT-2021-HUMAN-RIGHTS-REPORT.pdf.

⁵⁰ Human Rights Watch, *Kuwait: Events of 2022*, <https://www.hrw.org/world-report/2023/country-chapters/kuwait>.

⁵¹ United Nations Committee on the Elimination of Discrimination against Women, *Sixth periodic report submitted by Kuwait under article 18 of the Convention, due in 2021* (Dec. 29, 2021), U.N. Doc. CEDAW/C/KWT/6, ¶103.

⁵² Human Rights Watch, *Kuwait: Events 2022* (accessed Jan. 25, 2022), <https://www.hrw.org/world-report/2023/country-chapters/kuwait>.

⁵³ Human Rights Watch, *Slow Reform: Protection of Migrant Domestic Workers in Asia and the Middle East*, (Apr. 27, 2010), <https://www.hrw.org/report/2010/04/27/slow-reform/protection-migrant-domestic-workers-asia-and-middle-east>.

⁵⁴ Cornell Center on the Death Penalty Worldwide, *Judged for More Than Her Crime: A Global Overview of Women Facing the Death Penalty* (Sept. 2018), 17-18. Available online at: <https://www.deathpenaltyworldwide.org/wp-content/uploads/2019/12/Judged-More-Than-Her-Crime.pdf>.

suffer from intersecting forms of oppression based on class, foreign nationality, precarious immigration status, and gender.”⁵⁵

28. There is no information to suggest that courts in Kuwait take these multifaceted forms of oppression, including sexual harassment and gender-based violence, into account in capital cases against foreign domestic workers.

IV. Kuwait’s violations of the right to due process and the right to a fair trial threaten the right to life.

29. In its 2016 Concluding Observations, the Committee expressed concern about the independence of the judiciary,⁵⁶ particularly the executive branch’s interference in matters such as the appointment, promotion, and disciplining of judges.⁵⁷ International human rights bodies and NGOs have regularly expressed concern about the independence of the Kuwaiti judiciary.⁵⁸ Further, Kuwait does not impose a code of conduct on public prosecutors beyond the provisions provided the Kuwaiti Code of Criminal Procedure. There are reports of executive pressure on the judiciary as well as reports of irregular payments in exchange for favorable decisions.⁵⁹
30. Kuwait does, however, require an automatic appellate review of any death sentence.⁶⁰ The appellate court takes into consideration the crime, the evidence, and the offender’s previous convictions. If the appellate court rejects the appeal, then the case automatically moves to the Court of Cassation (the Kuwaiti Supreme Court) for review.⁶¹ In all cases, authorities suspend the execution of the death penalty until appellate or pardon procedures are resolved.⁶²
31. Authorities cannot carry out an execution until the country’s ruling Amir approves the death sentence. The Amir may confirm the sentence and authorize the execution, reduce the punishment, or grant a full pardon.⁶³
32. The absence of women in the judiciary and the absence training on mitigating circumstances from a gender lens leaves women particularly vulnerable to discrimination

⁵⁵ Cornell Center on the Death Penalty Worldwide, *Judged for More Than Her Crime: A Global Overview of Women Facing the Death Penalty* (Sept. 2018), 28. Available at: <https://www.deathpenaltyworldwide.org/wp-content/uploads/2019/12/Judged-More-Than-Her-Crime.pdf>.

⁵⁶ International Covenant on Civil and Political Rights, *Concluding observations on the third periodic report of Kuwait*, (Aug. 11, 2016), U.N. Document, CCPR/C/KWT/CO/3, ¶30-31.

⁵⁷ The International Covenant on Civil and Political Rights, *as seen on August 31, 2023*, <https://www.ohchr.org/sites/default/files/ccpr.pdf>.

⁵⁸ The International Covenant on Civil and Political Rights, *as seen on August 31, 2023*, <https://www.ohchr.org/sites/default/files/ccpr.pdf>.

⁵⁹ The International Covenant on Civil and Political Rights, *as seen on August 31, 2023*, <https://www.ohchr.org/sites/default/files/ccpr.pdf>.

⁶⁰ Five Years of Impunity: Human Rights Concerns Since the Withdrawal of Iraqi Forces. MDE/17/01/96: www.unhcr.org/refworld/docid/3ae6a98c2b.html (last accessed August 31, 2023).

⁶¹ Five Years of Impunity: Human Rights Concerns Since the Withdrawal of Iraqi Forces. MDE/17/01/96: www.unhcr.org/refworld/docid/3ae6a98c2b.html (last accessed August 31, 2023).

⁶² International Covenant on Civil and Political Rights, *Reply to List of Issues*, (May 16, 2023) U.N. Document CCPR/C/KWT/RQ/4.

⁶³ International Covenant on Civil and Political Rights, *Reply to List of Issues*, (May 16, 2023) U.N. Document CCPR/C/KWT/RQ/4.

in capital cases. Out of fifty elected members of the National Assembly, only two are female. There have never been more than four female members of the National Assembly.⁶⁴ The participation of women in the judiciary remains low. The Sixth State Party report sets out there are currently 55 Kuwaiti female prosecutors. As recently as 2021, only fifteen Kuwaiti judges were women.⁶⁵ The absence of women in key decisionmaking positions in the criminal legal system contributes to the justice system's failure to take into account women's lived experiences.⁶⁶ The exclusion of women from positions of power in the criminal legal system exacerbates the effects of gender bias at every stage of capital proceedings.

33. Trial observation missions have identified significant due process concerns in high profile cases.⁶⁷ For example, in November 2016, a trial observation mission by a coalition of rights groups monitored the trial of Sara Al-Drees. In November 2012, authorities had arrested Ms. Al-Drees, a Kuwaiti political activist and teacher, on allegations that she had insulted the Amir (through tweets) and misused her phone. The report concluded that her trial "fell short of fundamental fair trial standards."⁶⁸
34. Article 31 of the Kuwaiti Constitution prohibits torture; however there are ongoing reports of the use of torture involving members of the Criminal Investigation Department of Kuwait.⁶⁹ Torture is employed in Kuwait to extract confessions and other information in criminal investigations.

V. Suggested Recommendations for the Government of Kuwait:

35. The coauthors suggest the following recommendations for Kuwait:

- Immediately institute a de jure moratorium on executions with a view to abolishing the death penalty and, in the meantime, commute the death sentences of any persons currently under sentence of death and replace them with penalties that are fair, proportionate, and consistent with international human rights standards.
- Collect and regularly publish, on at least an annual basis, disaggregated data on the current number of persons on death row, including sex, age, ethnicity, nationality, offence, relationship to victim or codefendant (if any), and relationship to codefendants (if any).
- Ratify the Second Optional Protocol to the ICCPR.

⁶⁴ *Women return to Kuwait parliament for first time since 2020*, The National UAE (Sep. 30, 2022), <https://www.thenationalnews.com/gulf-news/2022/09/30/women-return-to-kuwait-parliament-for-first-time-since-2020/>.

⁶⁵ United Nations Committee on the Elimination of Discrimination against Women, *Sixth periodic report submitted by Kuwait under article 18 of the Convention, due in 2021* (Dec. 29, 2021), U.N. Doc. CEDAW/C/KWT/6, ¶ 50.

⁶⁶ The Cornell Center on the Death Penalty Worldwide, *Judged for More Than Her Crime - A Global Overview of Women Facing the Death Penalty* (Sept. 2018), 8. Available online at: <https://www.deathpenaltyworldwide.org/wp-content/uploads/2019/12/Judged-More-Than-Her-Crime.pdf>.

⁶⁷ See International Association of Democratic Lawyers, *Independence of the Judiciary in Kuwait*, <https://iadllaw.org/2019/07/independence-of-the-judiciary-in-kuwait/#> (last accessed August 31, 2023).

⁶⁸ International Association of Democratic Lawyers, *Independence of the Judiciary in Kuwait*, <https://iadllaw.org/2019/07/independence-of-the-judiciary-in-kuwait/#> (last accessed August 31, 2023).

⁶⁹ See The Arab Weekly, *Torture problem continues in Kuwait as reforms lag*, <https://the arabweekly.com/torture-problem-continues-kuwait-reforms-lag> (as seen August 31, 2023).

- Amend the Kuwaiti Criminal Code to eliminate any provisions authorizing the death penalty for any crime that does not constitute an intentional killing by the defendant.
- Implement measures to ensure the independence and impartiality of prosecutors and judges by insulating the appointment, review, and discipline of these roles from the influence of the executive branch.
- Ensure that law enforcement, prosecutors, and defense counsel in capital cases receive training on gender sensitivity as it relates to criminal procedure and sentencing outcomes.
- Ensure that all women accused of capital crimes have access to free and effective legal representation by attorneys who specialize in death penalty cases. Ensure access to counsel at all times, from the start of the investigation through any appeals, and ensure that the defense team has sufficient funding to conduct a thorough investigation and to secure relevant expert witnesses, particularly regarding gender-specific defenses.
- Take steps to codify gender-specific defenses and mitigation in capital cases, encompassing women's experiences of trauma, poverty, and gender-based violence.
- Implement measures to ensure that all judicial officers responsible for sentencing in capital cases receive comprehensive training on gender-based discrimination, domestic violence, and tactics of coercive control that may influence or prompt a woman to commit a death-eligible offense.
- Provide a public and documented account of the measures that the government has taken to ensure that the implementation of the death penalty adheres to international standards to members of the National Assembly's Committee on the Defense of Human Rights, which formed in June 2023, and provide quarterly updates to this committee on measures the government has taken to reduce the scope of the death penalty and ensure that its imposition benefits from the safeguards set out in international standards.