

£KUWAIT

@Cases of "disappearance", incommunicado detention, torture and extrajudicial execution under Martial Law

1. INTRODUCTION

Following the chaos left behind after the withdrawal of Iraqi forces on 26 February 1991, the Amir of Kuwait declared a three-month period of Martial Law. Kuwaiti government forces and armed civilians immediately carried out a campaign of arbitrary arrests, torture and extrajudicial killings of individuals suspected of collaborating with Iraqi forces. Many of those detained subsequently "disappeared" and their fate and whereabouts remain unknown. This continued throughout the Martial Law period, which was extended until 26 June 1991, and gradually died out in the months that followed.

The vast majority of victims were non-Kuwaitis, including Iraqis, stateless Palestinians, Jordanians, Sudanese, Yemenis, Somalis and stateless *Bidun* - many of whom had been living and working in Kuwait for generations prior to the Iraqi invasion. The Kuwaiti authorities have stated that nationality played no part in the arrests, but out of an official list of 546 detainees obtained by Amnesty International in May 1991, only 12 detainees were Kuwaiti. Since the withdrawal of Iraqi forces many non-Kuwaitis have been deported or forced to leave through economic and social pressures applied to them, and few who left during the occupation have been allowed to return. The deadline for non-Kuwaitis to renew their residency reportedly expired on 31 May 1992, after which fines were reportedly imposed for overstayers and the pressure to leave increased.

The Kuwaiti authorities have made little effort to investigate human rights violations committed since the withdrawal of Iraqi forces, and many individuals who "disappeared" in Kuwait remain unaccounted for. As the only way of obtaining information about their cases is to contact individual families, many of whom have now dispersed, the true number may never be known. Amnesty International is calling for investigations into 62 cases about which it has gathered information, but fears that many of them may have died under torture or been extrajudicially executed, while others may have been expelled from Kuwait or possibly still be held in incommunicado detention pending trial by the State Security Court. Anyone found responsible for such human rights violations should immediately be brought to justice and the victims or their families should be compensated.

2. UNRESOLVED "DISAPPEARANCE" CASES

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 victims were simply listed as "unknown". Unless the Kuwaiti government undertakes a full investigation of all such cases, including the exhumation of mass graves, the fate of many "disappearance" victims may never be known.

Families who attempted to make inquiries with the authorities after their relatives "disappeared" have alleged that they were often given the "run-around" from one detention centre or prison to another, and that beatings, threats of arrest or deportation and other forms of intimidation were routinely used to discourage them. One woman who appealed to the authorities about her "disappeared" relative told Amnesty International that several men in civilian clothes came to her home, beat her and then locked her inside the house. Several eyewitnesses have told Amnesty International that they saw their relatives being severely beaten, kicked, or otherwise ill-treated while being taken into custody, and expressed fears that they were being tortured. Others feared that relatives who were suffering from severe medical problems may have been denied medication after their "disappearance".

Appendix A of this document gives details of 62 unresolved "disappearance" cases reported to Amnesty International, including the following:

At the end of February 1991 an Iraqi woman, **'Awatif Qasim Muhammad 'Ali al-Maliki**, "disappeared" after she was arrested in the street by state security forces. Her family searched various police stations and were reportedly informed by police officers at one station that she was in custody and would be held "indefinitely". They were told that she had been taken to hospital, but were not given any details about her "illness". There are fears that she may have been severely tortured.

On 7 March 1991 two Iraqi brothers, **Sabah and 'Abd al-Karim Nuri 'Abd al-Karim Layedh Muhammad**, "disappeared" following their arrest from their home in al-Fahahil by seven or eight men wearing civilian clothes and masks and one in military uniform. The family informed the International Committee of the Red Cross (ICRC) and filled out forms for the "disappeared" at al-Bayan police station. They were informed by the Public Prosecutor's office that the two brothers were not on a list of detainees facing charges. On the night of 29 March 1991, their father **Nuri 'Abd al-Karim Layedh Muhammad** was arrested by an unidentified man who allegedly came to give him information about his sons. His family searched for him at various detention centres, but he too has "disappeared".

On the evening of 16 April 1991 a group of 12 to 14 men in civilian clothes burst into the apartment of a Jordanian man, **Zuhdi Muhammad Zuhdi Munib**, and reportedly said he was

being taken as a "witness". They handcuffed and blindfolded him and proceeded to beat him as they pushed him downstairs. He was then forced into a car and taken away to an unknown location. His parents searched at several police stations and inquired at the Ministry of Interior which allegedly indicated that his name was on a list of people detained at the headquarters of State Security Intelligence. The family was "advised" to stay away from the headquarters, as they might be arrested too. Unconfirmed reports suggest that he may later have been seen in detention in 1992.

On 13 May 1991 eight armed civilians arrested an Iraqi Kurd, '**Aref Habib 'Aziz**, from his home in Hawalli. His home was reportedly searched and US \$20,000 confiscated. His family searched for him at various police stations, but without success.

In July 1991 Amnesty International issued urgent appeals to the Kuwaiti authorities on behalf of a Palestinian doctor, **Nazmi Salim Khurshid**. He had been arrested on 10 March 1991 from his place of work at al-'Ardiyya Hospital, along with several other Palestinian doctors, and had been held at al-'Ardiyya police station for three days before being transferred to the headquarters of State Security Intelligence. On 25 May 1991 his family was informed by two individuals who had access to the prison that he had lost consciousness as a result of beatings to the chest and head and had died on 14 March 1991. However, information received later suggested that he may not have died but was in a coma and in a critical condition. Having received no response about Dr Khurshid from the Kuwaiti authorities, Amnesty International raised its concerns again in August 1991. In November 1991 the authorities responded by saying that they were investigating the circumstances of the "disappearance" of Dr Khurshid, including any crimes that may have been committed against him. They did not say whether he was alive or dead, and so far have not provided Amnesty International with any further information.

3. "DISAPPEARANCE" CASES THAT HAVE BEEN RESOLVED

Some "disappearance" cases dating back to the early days following the withdrawal of Iraqi forces from Kuwait were resolved after it transpired that the victims had been extrajudicially executed. Their bodies had been found in rubbish dumps, in the streets, or in hospital morgues. Other "disappearance" cases were resolved after the victims were brought to trial before the Martial Law Court in May and June 1991 on charges of "collaboration" with Iraqi occupation forces: they had been held in incommunicado detention without access to relatives, lawyers, consular officials or humanitarian organizations. Following the lifting of Martial Law at the end of June 1991, some detainees continued to be held incommunicado and were thought to have "disappeared". However, during an Amnesty International mission to Kuwait in November 1991, several such cases were resolved when the victims appeared before the newly established Review Court (*Mahkamat al-Tajdid*) to have their cases reviewed. Other "disappearance" cases were resolved when Amnesty International learned in June 1992 that the victims in question had been expelled from Kuwait after being held incommunicado. The Kuwaiti

authorities had failed to inform Amnesty International about the expulsions. Below are several examples:

Palestinian **Usama Suhail Hussain** "disappeared" for nearly one month following his arrest at the end of February 1991. His relatives then located him at the Juveniles Prison (*Sijn al-Ahdath*), but they were not allowed to see him and he remained in incommunicado detention until July 1991, after he had been tried and sentenced by the Martial Law Court in June 1991 for working during the occupation at the Iraqi-run newspaper *al-Nida'*. He was sentenced to death but this was later commuted to life imprisonment. He is said to have been tortured with electric shocks, beaten repeatedly and burned with cigarettes, and is alleged to have been threatened with further ill-treatment if he mentioned the torture during his trial. He is currently being held at Kuwait Central Prison.

Thirteen-year-old Palestinian **Iyad 'Aqrabawi** "disappeared" after his arrest along with three young men at Sabhan petrol station at the beginning of March 1991. Armed Kuwaiti civilians were said to have controlled the petrol stations at the time. On about 10 March 1991 he was found dead in the street in al-Khaldiyya, showing signs of having been beaten. His identity card was found on his body. He had been shot through the head.

Palestinian student **Muhammad Shawkat Yusuf** was arrested on 19 May 1991 by armed Kuwaiti civilians and subsequently taken to al-Nugra police station, where he may have been killed. According to reports, his body was taken from the police station to al-Sabah Hospital mortuary on 23 May 1991. His body was discovered on 25 May 1991 in a rubbish dump in al-Jabiriyya. His eyes had been gouged out and there was a bullet hole in his cheek.

On 25 May 1991 Palestinian **Maher Husni Muhammad Mahmud Abu Laila** was arrested by Kuwaiti soldiers in the streets of al-Bayan, reportedly because he did not have any identity papers. He had a broken leg at the time. The next day two soldiers came to his house and allegedly told his family that he was under investigation. The family apparently expressed concern that he was mentally retarded and therefore was incapable of undergoing investigation, but were ignored and allegedly threatened against intervening on his behalf. Unconfirmed reports suggest he was expelled from Kuwait in September 1991.

Elias Jadallah Jirjis, a 62-year-old Jordanian who reportedly suffered a heart attack during the Iraqi occupation, was arrested from his sick bed at home on 25 May 1991, and then "disappeared" for four months. He was reportedly denied adequate medical treatment while in custody and suffered another heart attack on or about 2 July 1991. Despite appeals by the ICRC for his release for reasons of health, he remained in detention until his release on bail on 27 November 1991. His case was referred to the State Security Court on charges of "collaboration".

'Umar Shehadeh 'Abdallah Hamdan Abu Shanab, a Palestinian who worked at al-Razi Hospital before and during the Iraqi occupation, "disappeared" following his arrest at his workplace on or about 28 February 1991. According to information received by Amnesty International, his family knew nothing of his fate, whereabouts or legal status until 16 June 1991, when the authorities informed them that he had been tried and convicted by the Martial Law Court, without a defence lawyer, and sentenced to 15 years' imprisonment. He had been held continuously in incommunicado detention at various locations, including the Deportation Centre (*Markaz al-Ib'ad*) in al-Shuwaikh, and is said to have been severely tortured. He had reportedly been allowed family visits after his trial, and relatives had expressed fears that his torture was continuing. Information received in February 1992 indicated that he was once again being held incommunicado. In April 1992, Amnesty International appealed to the Kuwaiti authorities, urging that he be given immediate access to his relatives, that an impartial investigation into his alleged torture be set up, and that his case be reviewed. The organization has received no response regarding his case from the government. However, in June a letter was received by Amnesty International members from Kuwait's ambassador to Italy. The ambassador made no reference to 'Umar Abu Shanab; below is an extract from his response:

"When you wrote [your letters], you were aware of the serious crimes inflicted by Iraqi soldiers on the defenceless Kuwaiti people... Throughout this traumatic moment in Kuwaiti history, unfortunately, there was a fifth column in Kuwait who collaborated with the occupying troops despite the security, stability, health and education benefits they were guaranteed by the Kuwaiti Government... After liberation the Kuwaiti Government is punishing these people on a legal basis and taking them to court because of their crimes... Human rights are sacred and so is liberty, and when we speak of these good things, it is not just for one particular group but for everyone."

4. ACTION TAKEN BY AMNESTY INTERNATIONAL AND THE KUWAITI AUTHORITIES' RESPONSE

On 19 April 1991 Amnesty International added its voice to the growing international condemnation of Kuwait and publicly appealed for the Amir's personal intervention to end the wave of human rights violations taking place.

On 26 May 1991 the Crown Prince called on officials of the Ministry of the Interior to remove "disillusioned and bad elements" in the Ministry who "do not want security and stability as much as they want to fulfil their desires at the expense of the reputation of the Interior Ministry". He said that residents of Kuwait were living in "the shadow of terror, fear and fright" and that certain elements were detaining them and handing them over to police stations, where they were being "tortured". On 29 May 1991 Amnesty International asked the Minister of the

Interior what steps were being taken to implement the Crown Prince's directive. He responded that he had instructed the police to work "according to the law" and undertook to provide Amnesty International with a copy of the order. To date, no such document has been made available to Amnesty International. Furthermore, the Minister said 40 persons were under investigation for abusing detainees, and that three cases had been referred to the Public Prosecutor's office. When Amnesty International requested details of these cases, the Minister declined to provide them. Reports of torture continued for several months after the Crown Prince's speech, including beatings all over the body, cigarette and acid burns, electric shocks, mock executions and the slashing of skin with knives. As far as Amnesty International is aware, no prosecutions have taken place.

In June 1991 Amnesty International called for a halt to the Martial Law Court trials, on the grounds that proceedings were defective in the pre-trial period, during the hearings themselves, and afterwards in the lack of the defendants' right to appeal to a higher tribunal. It also said that the Kuwaiti authorities did not appear to have taken effective steps to end arbitrary arrests, "disappearances", torture and deaths in custody, which were continuing to occur. The Kuwaiti authorities did not respond to Amnesty International's call for a halt to the trials, which continued without any improvements in the proceedings. Out of the 164 defendants tried by the Martial Law Court, 101 received custodial sentences following trials which fell far short of international standards for fair trial. They are currently serving their sentences in Kuwait Central Prison. Since then, Amnesty International has repeatedly urged that all these cases be reviewed, but to date the authorities have refused to do so.

At the end of July 1991, one month after Martial Law had been lifted, the State Security Law was amended to accord defendants certain rights they had previously been denied. Amendments included the abolition of "indefinite" detention, and the provision of the right to complain against continued detention before a "review court" (*Mahkamat al-Tajdid*), which has the power to release detainees unconditionally or on bail, or to renew their detention for a further period of 30 days. However there remain serious deficiencies in the law. Although "indefinite detention" has been abolished on paper, the law still provides for preventive detention, which in practice can be renewed repeatedly.

In October 1991 Amnesty International submitted to the Kuwaiti authorities a list of 24 individuals believed to be in detention, many of them held incommunicado and reportedly tortured, and requested urgent clarification of their legal status and confirmation of their places and conditions of detention. In November 1991 the Kuwaiti authorities replied that three of these individuals (including Elias Jadallah Jirjis - see above) had been referred to the State Security Court on charges of "collaboration", but that the remaining 21 names could not be found in the Public Prosecutor's records. Amnesty International has since received reports that up to nine of them may have been expelled from Kuwait before their cases had even been raised with the authorities, while a further three had reportedly been released from detention. Another

detainee, Naser Muhammad Shehadeh Salam, was reportedly expelled from Kuwait on 7 January 1992. Appendix B of this document lists six of those cases about which Amnesty International is still seeking information.

Amnesty International also submitted to the Kuwaiti authorities in October 1991 a list of 11 individuals (including Iyad 'Aqrabawi and Muhammad Shawqat Yusuf -see above) alleged to have died in custody as a result of torture, or to have been extrajudicially executed, and requested urgent clarification of their cases. The authorities replied that none of these names could be found in the Public Prosecutor's records. Their cases are listed in Appendix C.

During the November 1991 mission to Kuwait, Amnesty International raised the issue of "disappearances" with government officials and requested a list of all political detainees currently being held. So far this has not been supplied, nor has a report on deaths in custody which the Minister of the Interior undertook to provide in May 1991.

In May 1992 Amnesty International met the Kuwaiti authorities again and asked them to investigate the cases contained in Appendices A, B and C of this report before it was published. However no reply had been received by October 1992.

5. AMNESTY INTERNATIONAL'S RECOMMENDATIONS

All governments have a continuing obligation to investigate human rights violations vigorously, to bring to justice those responsible for the violations, to compensate the victims or their families fairly and adequately and to provide as full a rehabilitation as possible to victims of torture. Investigations should be independent and impartial and consistent with internationally recognized standards, such as the United Nations Principles for the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions and Amnesty International's own Commission of Inquiry standards.

Amnesty International is concerned that many of the 62 "disappearance" victims in Appendix A of this document may have died under torture or been extrajudicially executed, while some may have been expelled from Kuwait. Others may be held in incommunicado detention pending their trial on charges of "collaboration" before the State Security Court, which was convened on 11 April 1992. The organization is urging the Kuwaiti authorities to carry out immediate and thorough investigations into all of these "disappearance" cases, and is also making a further call for investigations into the cases in Appendices B and C of this document, which were raised with the Kuwaiti authorities in October 1991 but have not met with any substantive response.

Amnesty International believes that effective investigations of these cases require at a minimum the examination of all hospital records during the Martial Law period, particularly those

of emergency, surgery and trauma wards, and of records of all police stations, prisons and places where persons were detained. The Kuwaiti authorities should be able to provide:

1. The locations in which each person was detained (including hospitals, medical clinics or other places where the person received medical treatment), the dates of detention in those locations and the legal authority for the detention.
2. Medical records of all medical examinations or treatment the detainee received.
3. Death certificates to the families. Where available, autopsy and inquest reports should also be provided.
4. 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.

Amnesty International also urges that:

5. Any individuals whose cases are listed in Appendices A and B of this document and who are still detained should immediately be acknowledged by the Kuwaiti authorities and allowed to challenge the legality of their detention.