



“They Hunt Us Down for Fun”

**Discrimination and Police Violence Against
Transgender Women in Kuwait**

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Glossary of Terms

Gender Expression: external characteristics and behaviors that societies define as “masculine” or “feminine,” including features such as dress, appearance, mannerisms, speech patterns, and social behavior and interactions.

Gender Identity: a person's internal, deeply felt sense of being male or female, or something other than or in-between male and female.

Gender Identity Disorder (GID): the formal diagnosis that psychologists and physicians use to describe persons who experience significant gender dysphoria (discontent with their biological sex and/or the gender they were assigned at birth). The International Statistical Classification of Diseases and Related Health Problems (ICD-10 CM) and Diagnostic and Statistical Manual of Mental Disorders (DSM-IV TR) classify GID as a medical disorder. The new version of the DSM due in May 2013 will likely replace this category with "Gender Dysphoria." Some authorities do not classify GID or gender dysphoria as a mental illness, describing it instead as a condition for which medical treatment is sometimes appropriate. In Kuwait, GID is a disorder recognized by the Ministry of Health, and the state hospital has issued formal diagnoses to individuals.

Sexual Orientation: often conflated with gender identity, the term refers to a person's sexual and emotional attraction to members of the same gender (homosexuals, gay men, and lesbians), the opposite gender (heterosexuals), or both genders (bisexuals).

Transgender: someone whose gender identity or gender expression differs from the physical characteristics (or “sex”) with which they may have been born. Understanding their experiences entails recognizing that gender is not the same as biological sex. *Biological sex* is the classification of bodies as male or female on the basis of biological factors, including hormones, chromosomes, and sex organs. *Gender* describes the social and cultural meanings attached to ideas of “masculinity” and “femininity.” In this report “transgender” is used as an umbrella term to include transsexual and transgender people.

Transsexual: a transgender person who has undergone, or is undergoing, hormone therapies and/or the complex of cosmetic and reconstructive procedures usually known as sex reassignment surgery (SRS) so their physical sex corresponds to their subjectively experienced gender identity. Not all transgender individuals seek to undergo SRS, but for those who wish to, a formal GID diagnosis is usually necessary.

Transgender women: persons designated male at birth but who identify and may present themselves as women. Transgender women are referred to with female pronouns.

Transgender men: persons designated female at birth but who identify and may present themselves as men. Transgender men are referred to with male pronouns.

Map of Kuwait



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Summary

They hunt us down for fun. They don't want me to dress like a woman so I don't. I wear a *dishdasha* (traditional Kuwaiti male garment) now. I cut my hair short. After all that I was still arrested, beaten, and raped for having a smooth, feminine face. What can I do about my face?

–Amani, 24, Kuwait City, February 8, 2011

The role and behavior of women in public has long been a fraught issue in Kuwait, where conservatives have anxiously sought to maintain traditional gender roles and there is growing social anxiety regarding “proper” gender comportment.

Transgender women—persons designated male at birth but who identify and present themselves as women—have never fitted easily into this framework. Nonetheless, many transgender women, who constitute a visible and tightly networked community in this country of approximately 2.5 million people (including non-nationals), told Human Rights Watch they had for many years generally been able to circulate freely, secure employment, access public health care, and live with minimal interference from police. While harassment from the general public was not uncommon, they could access channels of redress, including from police, although the seriousness with which their complaints were handled depended on the individual officer.

That began to change in May 2007, when Kuwait's National Assembly voted to amend article 198 of the country's penal code. A previously generic public decency law now stipulated that anyone “imitating the opposite sex in any way” would face one year in prison, a 1,000 Kuwaiti dinar fine (approximately US\$3,600), or both.¹ The amendment did not criminalize any specific behavior or act, but rather physical appearance, the acceptable parameters of which were to be arbitrarily defined by individual police.

These provisions have created a sea-change in the lives of Kuwaiti transgender women. Many have become the most recent victims of abuse by police, who often take advantage of the amendment to article 198 to harass, sexually assault, and arbitrarily arrest them.

¹ Kuwaiti Penal Code, No. 16 of 1960, art. 198.

This report documents the physical, sexual, and emotional abuse and persecution that transgender women face at the hands of police, and it documents the discrimination that transsexual women face on a daily basis—including in public more generally—due to the law, which in itself constitutes a human rights violation.² This fuels a climate of inconsistency towards transgender people, which is accentuated by divided Islamic opinion on the matter of sex reassignment and gender correction. The report also looks at obstacles that transgender women face accessing health and employment, and the lack of protection and redress available to transgender people who experience abuse.

For example, transgender women—who were previously often seen in malls, coffee shops, and other public spaces, particularly the city’s social center Salmiya—have since 2008 been the main focus of police arrests for allegedly violating the amendment to article 198. Although many began dressing in male garb and presenting themselves as men to avoid persecution, police have been undeterred, basing arrests on “a soft voice,” “smooth skin,” or some other physical trait beyond the women’s control. Thirty-nine of the 40 transgender women whom Human Rights Watch interviewed said they were arrested, some as many as nine times. In most cases (54 out of 62) the court either acquitted or failed to reach a verdict, although transgender women claim that police forced them, threatening or engaging in physical violence, to sign a declaration stating they would “never again imitate the opposite sex” before releasing them. Only 2 of the 62 cases resulted in convictions (between six months to a year’s imprisonment).

All the women interviewed described some form of police abuse, at times rising to the level of torture, degrading and humiliating treatment, and sexual assault or harassment—although police deny mistreatment.³

Kuwaiti media have reported on the arrest of a small number of transgender men, although Human Rights Watch found these arrests happen significantly less frequently than those of transgender women. One possible reason is that women generally enjoy more flexibility in their dress and presentation, and it is more difficult to define what constitutes gender

² Gay Kuwaiti men enjoy a relative margin of state and societal tolerance as long as they are discreet about their behavior and relationships, and police generally do not disturb the venues known to be frequented by gay men. Despite male homosexual sex carrying a much harsher sentence than imitating the opposite sex (a maximum of seven years imprisonment, according to article 193 of the Penal Code, as opposed to one year according to amended article 198), authorities have rarely prosecuted gay Kuwaitis for engaging in homosexual sex. Homosexual sex between women is not expressly criminalized.

³ Human Rights Watch interview with Col. Adel Hashash, Kuwait City, Kuwait, February 7, 2011.

transgressive dress for women than for men. According to several lawyers and transgender women and men interviewed, transgender men and *boyat*—a term common in the Gulf to describe masculine women—generally escape police scrutiny because police fear accusations of sexually harassing women, charges that are taken very seriously in Kuwait.

Among the abuses transgender women report suffering at the hands of police are beatings and physical abuse with fists and cables, verbal taunts, and humiliation that includes forcing them to clean toilets and being paraded naked inside the police station. Sexual harassment is also a common complaint. In some cases transgender women reported that police had blackmailed them for sex, threatening them with arrest if they did not comply, an act that constitutes sexual assault. Several transgender women have told Human Rights Watch that police use the law and vulnerability of transgender individuals as a way to have easy, consequence-free sex.

Transgender women interviewed said they rarely report the police mistreatment, abuse, and sexual assault they encounter for fear of re-arrest, retaliation, and direct threats by the perpetrators, whether civilian or police. These fears are not unfounded; many transsexuals told Human Rights Watch they were arrested simply for going to the police station to report an unrelated crime. According to Ghadeer, a 22-year old transgender woman:

Before the law we had no problems, we would come and go as we pleased and be out in public safely.... When we were stopped at checkpoints and the police would ask us for our IDs and see that we were male they would just smile or even find us cute and let us pass. In the worst of cases they would try to take our numbers to arrange for a date. So there was harassment, but rarely was it as violent as it is now. After the law came out, I started hearing that X was in prison, Y was in prison. I lived in fear and terror. I felt like I couldn't move, but it is my right to go out, to go to the souk, to go to the doctor.⁴

In early 2011 the minister of interior resigned in response to several scandals involving police torture. The most notorious case involved the death of Mohammad al-Muteiry, who was detained on suspicion of possessing alcohol and tortured for six days at the Ahmadi Criminal Investigation Department.

⁴ Human Rights Watch interview with Ghadeer, Kuwait City, Kuwait, February 14, 2011.

In addition, transgender women reported a host of due process and procedural violations connected to their arrest and detention. Many said that police arrested them even though they had done nothing to “imitate” the opposite sex and forced them to dress in women’s clothes at the police station to justify the charge against them; others said that they faced arrest even when reporting other crimes. Police often detained them well beyond the four day pre-charge detention period permitted by Kuwaiti law, they said, and typically failed to inform their families of their whereabouts or did not allow them to meet with their lawyers.

Article 198 has not just led to arrests and police abuse, it has permeated every aspect of transgender lives. It does not criminalize any specific behavior or act, but mere physical appearance, the acceptable parameters of which are arbitrarily defined by individual police.

Transgender women have reported that ordinary citizens in public spaces report them to police, encouraged by an unrelenting vilification campaign in Kuwaiti media that portrays them as a destructive force and a threat to the fabric of Kuwaiti society. They also said that hospital doctors have reported them to police after noting the gender on their government-issued IDs, which they are required to present, does not match their appearance and presentation—effectively limiting their access to health care. Even driving around the city can be perilous, with transgender women reporting that they risk police picking them up at numerous checkpoints on main highways and side streets. Indeed, the situation has become so dire that many transgender women said they live under what amounts to self-imposed house arrest to avoid the dangers that police and the broader public pose.

Adding to the difficult circumstances that Kuwaiti transgender people face is the lack of any law governing sexual reassignment surgery (SRS), a procedure that some transgender people turn to in order to align their physical characteristics with their gender identity. While there has only been one court decision in Kuwait to date granting a transsexual woman permission to change her gender in her legal identity papers from male to female, which was quickly overturned by a court of appeals, there is also no explicit legislation banning the procedure. In the absence of any law governing sex-change cases, judges base their decisions on personal conviction. However, conservative MPs are pushing a bill regulating plastic surgery that includes articles explicitly banning both SRS and gender correction, a dire prospect for many transgender individuals who medically require the procedure as treatment for Gender Identity Disorder.

Unlike most people, whose internal, deeply felt sense of belonging to a particular gender corresponds to the sex they were assigned at birth based on their external sex organs, transgender people have a gender identity that differs from their birth sex—known as Gender Identity Disorder, or GID. While the Kuwaiti medical establishment formally recognizes GID as a medical condition, the law continues to criminalize transgender women who suffer from the disorder, including those who have obtained documentation from the Ministry of Health certifying their disorder.

The police abuse and torture that is at the center of this report is itself a grave violation of human rights, irrespective of the law allegedly broken. The amendment to article 198 and its consequences violate fundamental principles of human rights enshrined in international conventions to which Kuwait is a signatory. By criminalizing an individual's gender expression and identity, the law violates the right to non-discrimination, equality before the law, free expression, personal autonomy, physical integrity, and privacy. The consequences of the amendment further violate the right to health and accessible health care without discrimination. The law adds to the vulnerability of an already marginalized population, making redress for egregious police abuses against them, including sexual assault and torture, difficult due to fear of reprisal.

Kuwait should take immediate steps to investigate allegations of torture, prosecute those responsible, and implement working mechanisms to curb future abuses. In order to comply with its obligations under international law, Kuwait should impose an immediate moratorium on arrests under amended article 198 and repeal the amendment, which in and of itself is vague and overbroad, failing to define the elements of the crime with any specificity, and as a result has been applied in an arbitrary manner. Furthermore, the law constitutes discrimination against transgender individuals. The state should allow those diagnosed with GID to change their gender in their legal identification papers.

The lives of transgender women have been made miserable as a result of the law and the police abuse that has accompanied it—an untenable situation that can, and must, be remedied by repealing the legislation.

Key Recommendations

To the Police

- Investigate all allegations of torture, sexual assault, and ill-treatment of detainees and prosecute those responsible in accordance with the law.
- Put in place workable mechanisms to ensure the protection of detainees and other individuals who wish to file a complaint against the police for abuse or mistreatment.
- Investigate all arrests under the amendment to article 198 for procedural violations, including arrests in the absence of evidence, arrests without warrants, and forced confessions; and prosecute those responsible in accordance with the law.

To the Ministry of Justice

- Investigate all convictions under article 198 for procedural violations, including convictions in the absence of evidence, arrests without warrants, and forced confessions; and overturn all convictions that do not fulfill procedural requirements.

To the Ministry of Interior

- Issue a directive at all levels of the police force to refrain from active investigation or pursuit of charges against transsexuals for “imitating the opposite sex.”

To the Ministry of Health

- Seek assurances from the Ministry of Interior that would ensure that, until its repeal, amended article 198 is not applied to anyone who has been diagnosed with gender identity disorder.
- Issue official cards for transgender individuals identifying them as such that prevent arrest by the police.
- Adopt internationally recognized standards of health care for transgenders such as the World Professional Association for Transgender Health’s *Standards of Care for the Health of Transsexual, Transgender, and Gender Nonconforming People*.
- Ensure that training in accordance with recognized international standards of health care and human rights is available to health service professionals, including

psychologists, psychiatrists and general practitioners, as well as social workers, with regard to the specific needs and rights of transgender persons and the requirement to respect their dignity.

- Ensure that transgender people have access to the medical and psychological assistance and support they require, and that such support and assistance is available to transgender individuals within a reasonable time.

To the National Assembly

- Instate an immediate moratorium on arrests of individuals under the amendment to article 198 of the Penal Code, which criminalizes “imitating the opposite sex.”
- End discrimination against transgender individuals by repealing the amendment to article 198.
- Allow individuals diagnosed with Gender Identity Disorder (GID) to undergo sex reassignment surgery.
- Allow individuals diagnosed with GID to change their gender in all legal documents.

Methodology

This report is based on a two-week field visit to Kuwait City in February 2011 and a follow up visit in December 2011. Two Human Rights Watch researchers conducted in-depth interviews with 40 male-to-female transgender persons, all but one of whom had been arrested at least once for “imitating a member of the opposite sex,” as well as lawyers, doctors, health care workers, civil society activists, academics, a representative of the Kuwaiti police force, and elected members of Kuwait’s National Assembly.

On December 5, 2011, Human Rights Watch sent a letter to the Ministry of Interior outlining the concerns described in this report, but we received no response. The letter can be found in the annex of the report.

Research also included reviewing local newspapers, TV shows, and nongovernmental organization (NGO) reports.

This report focuses on transgender women, since the vast majority of arrests for “imitating the opposite sex” have targeted that population. However, Human Rights Watch also spoke with several gay men, lesbians, *boyat* (a term common in the Gulf to describe masculine women), and female-to-male transgender persons, who face similar and equally serious problems.

The interviewees were identified primarily through word-of-mouth networking with members of the transgender community in Kuwait. Interviews were conducted individually and in Arabic.

This report employs pseudonyms in order to keep confidential the identities of transgender interviewees, and in some cases withholds other identifying information to protect their privacy and safety.

While the research presented in this report is not comprehensive or exhaustive, the similarity of the stories and the frequency with which certain experiences, such as sexual assault, were repeated indicate that the violations described in this report extend beyond isolated incidents and constitute a broader pattern of abuse.

I. Background

Kuwait is a constitutional monarchy with a parliamentary system of government—the 50-seat parliament is known as the National Assembly. Although political parties are formally banned, several political groups act as de facto parties to which members of parliament (MPs) are affiliated, such as Bedouins, merchants, and Sunni and Shi'ite groups, as well as Islamists and secular leftists and nationalists.⁵

The National Assembly may set up standing and ad-hoc committees whose members are selected from within the assembly. In 2006 Islamist MP Waleed Al-Tabtabai formed an ad-hoc parliamentary committee for the “Study of Negative Phenomena Alien to Kuwaiti Society.” Although the committee was originally established only to study what its members deem to be “negative social phenomena,” it also proposes bills to the National Assembly. One such bill was the amendment to article 198.

The committee raised much controversy, particularly during the 2008 term when the Islamists comprised a majority of the parliament. While its proponents claim that the committee’s mandate is to uphold traditional Kuwaiti values, others see it as a precursor to a Saudi-style Committee to Promote Virtue and Prevent Vice, an authorized law enforcement agency tasked with upholding public morality. Critics accuse the Kuwaiti committee of attempting to impinge on constitutionally guaranteed freedoms, citing its record of trying to impose strict controls on private parties and gatherings, challenging the legal definition of “privacy” in order to further regulate people’s personal lives and conduct, opposing TV shows and concerts that they consider immoral.

These opposing views highlight the increasing rift between Islamists and liberals in Kuwait’s National Assembly. However, while some laws that the committee proposed faced considerable opposition (such as banning “revealing” swimwear for women), the amendment that Tabtabai tabled criminalizing “imitating the opposite sex” was passed unanimously by the 40 MPs present. The issue was seen as insignificant in the larger political battle.

⁵ Current political groupings include the Islamic Constitutional Movement (ICM) and the Islamic Popular Group (of the Salafi tendency), two Sunni organizations; the Islamic National Alliance, the main faction for Shia Muslims; the Kuwait Democratic Forum (KDF), a loose association of groups with Nasserist and pan-Arab roots; and the National Democratic Group, composed of generally secular progressives with liberal tendencies. The remaining parliamentarians are independents or from tribal confederations.

The National Assembly, and its passing of the amendment to article 198, cannot be seen in isolation from these wider social and political trends. As visible symbols of gender transgression who challenge gender norms by presenting as what appears to be the “opposite sex”, transgender persons serve as easy targets against whom the state can flex its moral muscle.

While it is primarily transgender women who face criminal punishment, the social control of transgender women and *boyat* takes the form of a whole gamut of religious arguments that cast them as sinners who “reject God’s creation,” in addition to “medical” and “biological” arguments that regard them as victims who need to be healed or treated.⁶ The two discourses sometimes overlap, and religious dogma and traditional mores rather than science and modern medicine inform much medical practice on the issue.

In religious arguments against gender transgressive behavior and presentation the notion of *al-fitra* (natural constitution) figures quite prominently, resting on the assumption that men imitating women (or vice-versa) violates the natural constitution of human beings. Effeminate men, *boyat*, and transgender people are thought to contribute to the spread of corruption and the disintegration of society by upsetting this balance.⁷

Many health care professionals and Kuwaiti religious leaders suggest that “treatment” and “correction” options for transsexual individuals should aim to restore them to their “natural state.”⁸ One psychologist suggested injecting testosterone into male to female transsexuals, forcing them to live as men for a period of time: if that doesn’t work, she said, they might be allowed to transition into women.⁹

However, several prominent doctors have advocated for the rights of transgender people, including Dr. Hasan Al-Mousawi, a professor of psychiatry at Kuwait University and Dr. Haya Al-Mutairi, head of the psychiatry department at the Psychological Medicine Hospital, both of whom oppose criminalization.¹⁰

⁶ “Interview on the boyat phenomenon,” online video clip, *YouTube*, April 15, 2009, http://www.youtube.com/watch?v=_k5lp4WjbcM (accessed July 2, 2011).

⁷ Amelia Naidoo, “Shedding light on the ‘Boyat’ phenomenon: Conference separates fact from fiction on the issue”, *Gulfnews.com*, April 21, 2011, <http://gulfnews.com/news/gulf/uae/general/shedding-light-on-the-boyat-phenomenon-1.796816> (accessed December 21, 2011).

⁸ Human Rights Watch interview with Dr. Naima Taher, Kuwait City, Kuwait, February 12, 2011.

⁹ *Ibid.*

¹⁰ Human Rights Watch interview with Dr. Haya Al-Mutairi, Kuwait City, Kuwait, February 12, 2011.

The following sections examine the broader socio-political environment and climate of gender regulation in which the amendment to article 198 was passed. The law is analyzed through a human rights perspective, followed by a discussion on debates within Islamic jurisprudence on the issue of SRS and legal gender change in identity.

Policing Gender

Gender and sexuality often become foci for broader anxieties in times of rapid social and political change.¹¹ The criminalization of “imitating the opposite sex” in Kuwait is one element of a broader regime of gender regulation that began to take hold after 1992, when tensions between “liberal” and “traditionalist” Kuwaitis after the Gulf War intensified as each tried to establish their status as influential political entities.¹²

The battle over women’s rights and role in society constituted one of this conflict’s most prominent arenas, and presented an opportunity for traditionalists and Islamists to join forces.¹³ According to Kuwait scholar Mary Ann Tétreault:

While tribalists were anxious to keep their daughters obedient and marriageable, Islamists hoped to diminish female competition for jobs available to new graduates during a slow economy. Their shared vision of the globalization threats presented by women whose credentials and skills, including foreign language proficiency, generally exceeded those of men, contributed to ad hoc violence in policing the behavior of women unwilling to submit to conservatives’ demands and expectations.¹⁴

¹¹ Gayle Rubin, “Thinking Sex: Notes for a Radical Theory of the Politics of Sexuality,” in Carole Vance, ed., *Pleasure and Danger: Exploring Female Sexuality* (London: Pandora Press, 1993), pp. 267-293.

¹² Mary Ann Tétreault, “Globalization and Islamic Radicalism in the Arab Gulf Region,” unpublished paper on file with Human Rights Watch.

¹³ Ibid.

¹⁴ Mary Ann Tétreault, “Contending Fundamentalisms: Religious Revival and the Modern World,” in Mary Ann Tétreault and Robert Denemark, *Gods, Guns, and Globalization: Religious Resurgence and International Political Economy* (Colorado: Lynne Rienner, 2004).

The events outlined below trace some of the major legislative milestones in the social and political regulation of gender in Kuwait:

1992-1996: Towards the end of the term of the first legislature elected after the Kuwait's liberation from Iraq, the battle over women's roles left their rights so undermined that Islamists in the National Assembly were able to pass a law requiring gender segregation in universities. It remains in effect to this day, despite opposition from liberals.

2005: Tensions flared after the National Assembly's landmark decision to grant women the right to vote and run for office in local and parliamentary elections, a time of dwindling of Islamist influence in the National Assembly. Conservatives opposed the decision, and inserted a last-minute rider that "women as voters and MPs" must follow Sharia without specifying precisely where or how. Islamist and tribal MPs had previously successfully fought off women's suffrage proposals. Responding to the new law, Islamists tried to enact further legislation to restrict women's roles in the political sphere and tighten control over "subversive" or "immoral" gendered behavior.

Women's political participation grew steadily. Then-Prime Minister Sheikh Sabah al-Ahmad Al Sabah appointed the first female cabinet minister, Massouma Mubarak, as minister of planning and administrative development.

2007: Kuwait's second female cabinet member, Nouria al-Sbeih, caused an uproar when she took the oath of office after refusing to wear the hijab (headscarf or veil) worn by many Kuwaiti women. Although it is not mandatory, conservative MPs attempted to use this refusal to discredit female politicians.

2008: Twenty-seven of the 275 candidates in the parliamentary elections were women. None win.

2009: Kuwait held parliamentary elections for the third time in three years. Of 16 female candidates who ran, four won, becoming Kuwait's first female lawmakers.

Two female MPs, Dr Rola Dashti and Aseel Al-Awadhi, appeared in the assembly without wearing the hijab. Three Islamist MPs immediately protested, citing the Sharia rider that was passed with the electoral law. As a result, Dashti tabled an amendment demanding the rider be dropped. The Constitutional Court ruled that the rider in the election law is not specific and so can be interpreted in different ways. The court dismissed a case brought by a Kuwaiti man to have Dashti and Al-Awadi dismissed from the assembly for violating the election law.¹⁵

2010: Islamist parliamentarians who cater to a mainly conservative, tribal constituency with proposals for “morality” legislation, introduced two laws. The first, commonly known as the “bikini law,” sought to criminalize revealing swimwear for women. The second aimed to regulate plastic surgery, with specific articles banning sex reassignment surgery, and formally introduced a ban on gender correction in legal papers.

2011: In January, a parliamentary committee rejected the “bikini law,” arguing it is unconstitutional.¹⁶ The plastic surgery bill has not yet passed at this writing.

Media have taken an active role in policing gender. Since 2007 several national talk shows and TV programs have discussed the issue of the “third sex” and the “fourth sex” (references to gender non-conforming men and women respectively) as a social vice that needs to be eliminated.¹⁷ Some journalists, lawyers, parliamentarians, and doctors have opposed this demonization.

¹⁵ James Calderwood, “Court rules hijab optional for MPs,” *The National*, October 29, 2009, <http://www.thenational.ae/news/worldwide/middle-east/court-rules-hijab-optional-for-mps> (accessed May 2, 2011).

¹⁶ Habib Toumi, “Kuwait committee rejects motion to ban bikinis,” *Gulf News*, January 31, 2011, <http://gulfnews.com/news/gulf/kuwait/kuwait-committee-rejects-motion-to-ban-bikinis-1.754915> (accessed July 14, 2011).

¹⁷ For example, Al-Rai TV has aired several shows discussing the phenomenon, from social talk shows such as *Wara'a Al-Abwab* (Behind Closed Doors), to regular religious education programming that tackle different issues.

An early critic of the amendment to article 198 was Hussein al-Abdallah, a columnist for the Kuwait daily *Al-Jareeda*, who wrote that the elasticity in the wording of the bill would “violate personal freedoms under the pretext of upholding the law.”¹⁸ MP Adnan Abdulsamad, a member of the National Assembly’s Human Rights Committee, told Human Rights Watch that imprisoning transsexuals was unjust, and they should receive appropriate treatment rather than be sent to prison.¹⁹ Dr. Aseel Al-Awadi, one of the four female parliamentarians and a staunch advocate of women’s rights, also spoke out against imprisonment of transgenders under amended article 198, calling it “a superficial handling of the issue,” and advocated treatment instead.²⁰ She told *Al-Rai* newspaper:

In terms of [transsexuals’] rights as citizens, we need to separate between our opinions of their behavior and our professional duties. A doctor should not deny treatment to a person because he or she appears to be “imitating.” Likewise, a police officer must listen to citizens’ complaints even if he disagrees with their dress or behavior.²¹

Given this long-running controversy within government and society over the appropriate roles of men and women, it is not surprising that parliament would turn its attention towards those who visibly challenge these gender roles, such as transgender women, by passing a law criminalizing gender non-conforming appearance, the victims of which have almost invariably been transgender women.

Problems with the Law

The amendment to article 198 is problematic for several reasons. First, it is arbitrary in its application, because it fails to define concrete, specific criteria for what constitutes the offense of “imitating” the opposite sex, effectively allowing police absolute discretion in determining the criteria for arrest. Second, it fails to protect even those who have undergone full SRS, because there is no provision for allowing those who have undergone SRS to change their legal identity. Third, it effectively criminalizes transgender people even

¹⁸ Hussein al-Abdallah, “Imitating the opposite sex ... a legal conundrum,” *Al-Jareeda*, July 14, 2007.

¹⁹ Human Rights Watch interview with MP Adnan Abdulsamad, Kuwait City, Kuwait, February 14, 2011.

²⁰ Bashayer Abdallah, “Aseel Al-Awadi to Al-Rai: We should not deal with ‘imitators of women’ by passing a law to shave their heads... this is a superficial handling of the issue,” *Al-Rai*, June 15, 2010, <http://www.alraimedia.com/Alrai/Article.aspx?id=209703&date=15062010> (accessed July 15, 2011).

²¹ *Ibid.*

though the Kuwaiti Ministry of Health recognizes Gender Identity Disorder as a legitimate medical condition. Fourth, it constitutes clear discrimination against transgenders as the law directly targets individuals whose gender identity and presentation does not correspond with the gender assigned to them at birth.

The amendment to article 198 does not state what constitutes “imitating a member of the opposite sex,” giving the police and the courts complete discretion in determining whether someone’s appearance or actions constitutes “imitation of the opposite sex.” Human Rights Watch spoke with transgender women and biological males who identify as men who say police have arrested them for such arbitrary things as “having a smooth face,” wearing “a feminine watch,” and having “a soft voice.” Many transgender women reported they had started dressing as men to avoid arrest, but even with *dishdashas*, baggy sweatshirts, long hair tucked under caps, or jeans and sneakers, they were still unable to avoid arrest. Police suspicious of “feminine-looking” males would sometimes go so far as to check whether an individual was wearing female underwear and arrest them on that basis. For Kuwaiti police, it seems there is no way for transgender women *not* to break the law.

The amendment’s author, MP Waleed Tabtabai, claimed that it was designed to target “members of the third sex.”²² However, Human Rights Watch has documented cases where police have also arrested male-identified biological men under the article. Ahmad, a 19-year-old man, told Human Rights Watch:

I don’t know why I was even arrested; I am a man, I even had a full beard at the time! In June 2010, I was ordering some food from a drive-through and a police patrol stopped me. They beat me in the street in broad daylight and then took me to the station where they cursed me and beat me. I was finally released three days later after I was forced to sign a confession and promise that I wouldn’t imitate women again. How many women do you know have beards?²³

Sout al Kuwait, a Kuwaiti human rights group that has criticized the law, asked:

²² “Al-Tabtabai: Imprisoning third sex and boyat is a law I am proud of,” online video clip, *YouTube*, April 25, 2010, <http://www.youtube.com/watch?v=unAV4mkk3Jg> (accessed June 20, 2011).

²³ Human Rights Watch interview with Ahmad, Kuwait City, Kuwait, February 19, 2011.

Is a man's long hair an imitation of women? What about dyeing the hair or the beard with henna? Wearing *kohl* (a black eye cosmetic)? A lot of these practices are part of Arab heritage and some of them were even practiced by the prophet.²⁴

On July 14, 2010, *Al-Jareeda* daily newspaper reported that the public prosecutor, Hamed al-Othman, urged members of the National Assembly's legislative committee to clearly define the parameters of what constitutes "imitating the opposite sex." The newspaper reported that committee members promised to take al-Othman's recommendations into consideration, either by altering the text of the amendment or in an explanatory memorandum.²⁵ Neither has happened, and as al-Othman predicted, the misapplication of the law has led to many human rights violations.

Furthermore, the law allows the prosecution of individuals who have undergone SRS because there are currently no legal provisions in Kuwait that allow individuals to change their legal identities. Many transsexuals in Kuwait have had partial SRS in other countries such as Thailand, Syria, and Lebanon, while others have undergone complete sex reassignment surgery. Between article 198 and the refusal of Kuwaiti courts to recognize SRS, these individuals are left in a state of legal limbo. There is virtually nothing they can do to avoid arrest, because although they are now physically female, their identity cards continue to identify them as male. Rola, a 32-year old transsexual woman who had undergone complete sex reassignment surgery in 2004, was arrested five times since the law was passed. The first time she was arrested, on July 23, 2008, she spent two months in pre-trial detention before being declared innocent by a Kuwaiti court. Despite this ruling, police arrested her another four times and released her after humiliating her at police stations.²⁶

MP Tabtabai, author of the amendment to the law, recognizes the contradictions of this law:

The decision to legally change one's gender in one's identity papers in cases of complete transition should be based on a complete examination

²⁴ Sout al Kuwait, "Unconstitutional Laws," undated, <http://www.soutalkuwait.com/booklets/unconstitutionallaws.pdf> (accessed November 16, 2011).

²⁵ "Othman asks legislative committee to specify imitation," *Al-Jareeda*, July 14, 2007.

²⁶ Human Rights Watch interview with Rola, December 8, 2011, Kuwait City, Kuwait.

and report by a doctor.... In those cases, they should be referred to mental health professionals rather than be imprisoned.²⁷

In one case that Human Rights Watch documented, police arrested a transgender woman who had undergone complete sex reassignment surgery but had not been able to change her legal documents for “imitating the opposite sex.” Although she was never brought to court, the police shaved her head and forced her to sign a declaration stating that she would never imitate the opposite sex again.²⁸

In April 2004 a landmark ruling by a lower court in Kuwait allowed Amal, a Kuwaiti transsexual woman who had undergone complete sex reassignment surgery in Thailand, to change her legal documents from male to female. The verdict was based on a number of medical reports and a forensic examination carried out on the complainant as well as religious edicts of Al-Azhar in Cairo allowing for sex reassignment surgery in specific cases.²⁹ In October 2004 the government filed an appeal, supported by a group of Islamist lawyers and Amal's father, who told the court the verdict brought “shame to his family,” and the initial decision was overruled and Amal continues to be identified as male in her legal documents.³⁰ As there is no law in Kuwait governing sex-change cases, judges base their verdicts on personal conviction.

GID is the formal diagnosis that psychologists and physicians use to describe persons who experience significant gender dysphoria (discontent with their biological sex and/or the gender they were assigned at birth). The International Statistical Classification of Diseases and Related Health Problems (ICD-10 CM) and Diagnostic and Statistical Manual of Mental Disorders (DSM-IV TR) classify GID as a medical disorder. Some authorities do not classify GID or gender dysphoria as a mental illness, describing it instead as a condition for which medical treatment is sometimes appropriate.

²⁷ “Al-Tabtabai: Imprisoning third sex and boyat is a law I am proud of,” online video clip, *YouTube*, April 25, 2010, <http://www.youtube.com/watch?v=unAV4mkk3Jg&feature=related> (accessed June 20, 2011).

²⁸ Human Rights Watch interview with Bahiya, February 14, 2011, Kuwait City, Kuwait.

²⁹ Nirmala Janssen, “Defiant Kuwaiti transsexual determined to fight it out,” *Gulfnews.com*, October 17, 2004, <http://gulfnews.com/news/gulf/kuwait/defiant-kuwaiti-transsexual-determined-to-fight-it-out-1.335831> (accessed May 17, 2011).

³⁰ *Ibid.*

The Ministry of Health officially has recognized gender identity disorder in individuals who have received such a diagnosis by the state-run Psychological Medicine Hospital as a legitimate medical condition and issues formal letters to that effect, which many transgender women carry with them at all times. Yet the law does not exempt from arrest transgender people who have received such a diagnosis.

Regardless of medical status, prosecuting individuals because of their gender identity and/or presentation constitutes discrimination against a protected social group. In Kuwait, transgenders are arrested for who they are, not for what they do. The International Covenant on Economic, Social and Cultural Rights (ICESCR), to which Kuwait is a signatory, obliges each State party “to guarantee that the rights enunciated in the Covenant will be exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status”. The Committee on Economic, Social and Cultural Rights has expressly designated gender identity as prohibited grounds for discrimination.

However, even receiving this diagnosis does not guarantee treatment, for which there is no established or recommended path. MP Muhammad Hayef, a member of the assembly’s Committee for the Study of Negative Phenomena, said in a TV interview in 2008 that members of the “third sex”—as transgender people are widely called in popular culture—should not be imprisoned, and called for establishing treatment centers instead. According to Hayef, “Prison increases the spread of this phenomenon but doesn’t treat it.”³¹ Despite this perspective, neither Hayef nor any other MP has tried to end the arrests, repeal the amendment, or offer any concrete alternative, such as allowing those diagnosed with GID to undergo sex reassignment surgery and gender correction.

Sara, a transgender woman, decried the hypocrisy of such statements:

One minute they say we shouldn’t be imprisoned, the next minute they’re on TV saying that the police need to clean the streets from such filth.... Who is going to hold them accountable for their words?³²

³¹ “Muhammad Hayef and the Third Sex,” online video clip, *YouTube*, July 9, 2008, http://www.youtube.com/watch?v=zd_wq5MIIBs (accessed May 12, 2011).

³² Human Rights Watch interview with Sara, Kuwait City, Kuwait, February 6, 2011.

Kuwaiti human rights organization Sout Al-Kuwait has argued that the amendment to article 198 contravenes article 10 of the Kuwaiti constitution, which stipulates that the “state cares for the young and protects them from exploitation and from moral, physical and spiritual neglect.”³³ It argued that punishing an individual for a medical condition violates her basic rights and that the state failed to recognize that many of those accused of “imitating a member of the opposite sex” suffer from gender identity disorder, treatment of which “can only happen through sex reassignment surgery.”³⁴

Although the state-run psychiatric hospital has issued GID diagnoses, the Kuwaiti police, courts, and other government branches do not recognize it to be a legitimate reason not to arrest and convict people. According to lawyer Abbas Ali, who has defended several cases involving transgender women and has spoken publicly about the issue, innocent verdicts are issued in court cases where there is evidence of a GID diagnosis,³⁵ although one transgender woman told Human Rights Watch that the court ignored her GID diagnosis and sentenced her to six months in prison.³⁶

Like many other transgender women, Tharwa has a document from the governmental Psychological Medicine Hospital, with seal from the Ministry of Health, stating that she has GID. Not only does this document not protect her from arrest, but the police refused to include it in her file.³⁷ Human Rights Watch found this refusal to acknowledge medical reports repeated in all 19 cases we documented where the reports were presented to the police. In one instance that Human Rights Watch recorded, the Kuwaiti criminal court issued a suspended six-month jail sentence to Tharwa in November 2009, even though she submitted her medical papers confirming her GID diagnosis to the judge.³⁸

Fatwas

Islamic legal opinion in both Sunni and Shia jurisprudence is divided on the matter of sex reassignment surgery and gender correction, although several high level fatwas (rulings on a point of Islamic law given by a recognized authority) condone it.

³³ Constitution of Kuwait, art. 10.

³⁴ Sout al Kuwait, “Unconstitutional Laws,” undated.

³⁵ Human Rights Watch interview with Abbas Ali, Kuwait City, Kuwait, February 14, 2011.

³⁶ Human Rights Watch interview with Tharwa, Kuwait City, Kuwait, February 9, 2011.

³⁷ Ibid.

³⁸ Ibid.

The leading Sunni school of theology led by Al-Azhar Mosque in Cairo has issued at least one legal interpretation recognizing the legitimacy of seeking sex change operations. In a 1988 fatwa, the late Egyptian Grand Mufti of the Al-Azhar, Mohammad Sayed Tantawi, issued an edict in response to a request by Sally (Sayid) Abdallah Mursi, a transsexual woman student at Al-Azhar's Medical School for Boys in Cairo.³⁹ One year shy of graduation, Mursi underwent surgery and attempted to transfer to the girl's school, but was rebuffed. She won two subsequent legal rulings, but the school ignored them. It also blacklisted her from admission to other medical schools.⁴⁰

Tantawi issued a fatwa that recognized that Mursi's change was necessary for her health, but required her to dress, behave, and comply with all obligations of Islam for women, except for marital obligations, for one year before the operation. The fatwa was the first positive Sunni ruling about sex changes, allowing them in cases where there is a clear medical condition, which a GID diagnosis would seem to constitute.⁴¹

The most prominent Shia fatwa on sex changes came in 1987 from Grand Ayatollah Sayyed Ruhollah Musavi Khomeini, an Iranian religious leader and politician and leader of the 1979 Iranian Revolution. For years before, transsexual rights activist Maryam Hatoon Molkara, previously known as Fereydoon, had been lobbying him to grant her religious authorization to legally become a woman. After finally being granted an audience with the ayatollah, he issued a fatwa condoning both SRS and legal gender correction. This fatwa is widely regarded as the edict that authorizes such operations in Iran.

In 2008 in Kuwait, senior Sunni cleric Sheikh Rashid Sa'ad al-Alaymi issued what initially appeared to be a fatwa in a local newspaper in which he stated that SRS should be allowed in cases where gender identity disorder is diagnosed.⁴² Al-Alaymi's statement, which came on the heels of the Kuwait National Assembly's passing the amendment to article 198, claimed it was a mistake to accuse those with GID of "imitating a member of

³⁹ See Annex 2.

⁴⁰ Zagria, "Sally Mursi (1966 -) medical student, dancer," post to A Gender Variance Who's Who (blog), June 2, 2009, <http://zagria.blogspot.com/2009/06/sally-mursi-1966-medical-student-dancer.html> (accessed June 3, 2011).

⁴¹ "Intersex" is a general term used for a variety of conditions in which a person is born with a reproductive or sexual anatomy that does not seem to fit the typical definitions of female or male. For example, a person might be born with female external characteristics and male internal characteristics.

⁴² Dahem Al-Kahtany, "Kuwaiti Fatwa Allows Sex Change," *Al-Rai*, September 16, 2008, <http://www.alraimedia.com/Alrai/ArticlePrint.aspx?id=79123> (accessed June 12, 2011).

the opposite sex,” because “they did not choose this of their own will or because it gives them pleasure, but it is something that comes from God in his infinite wisdom.”⁴³

However, after heavy attack from the Kuwaiti religious establishment, Sheikh Rashid claimed the newspaper misunderstood and misattributed the document it published in his name. In a letter to *Al-Rai* newspaper, Sheikh Rashid said that the statement was not a fatwa, but research he had compiled to send to a medical doctor.⁴⁴ Religious figures in Kuwait have not issued further legal pronouncements on the matter since the ruling.

⁴³ Ibid.

⁴⁴ “Al-Alaimy: I did not issue a fatwa allowing sex change,” *Al-Rai*, September 17, 2008, <http://www.alraimedia.com/alrai/Article.aspx?id=79377> (accessed June 12, 2011).

II. Police Abuse Against Transgender Women

The evidence and statements gathered by Human Rights Watch from transgender women all contain similar and harrowing tales of abuse by police. The most common complaint made by the women to Human Rights Watch was of police sexual violence and humiliation. The following sections outline the main findings arising from the evidence gathered and detail police abuse of transgender women, as well as procedural violations during arrest and detention.

Sexual Violence, Physical Abuse, and Torture

If anyone touches me, I have no right to complain. My body is there to be violated. This is what the government did: it turned my body into a receptacle for depraved Kuwaiti men. And then they call *me* deviant? They punish *me*?

—Samira, 26, Kuwait City, February 11, 2011

They have turned us into prey for society; we have become victims to anyone's whims just to avoid prison. Everyone is a threat. Every time we go out, we take a risk.

—Rima, 27, Kuwait City, February 10, 2011

The ramifications of article 198 go beyond unfair detention and imprisonment, opening the door to a number of other violations, all with little recourse for redress. Every one of the 40 transgender women interviewed by Human Rights Watch reported that she suffered some form of sexual abuse at the hands of police, most of them unreported due to fear of reprisal. The ubiquitousness of these stories among Kuwait's transgender population and the manner in which the abuse was carried out suggest that this sexual violence is a result of both the vague wording of the law (criminalizing an unspecified appearance) and the way police apply it arbitrarily.

Transgender detainees have consistently reported beatings, torture, sleep deprivation, solitary confinement, humiliating and degrading treatment, sexual assault, and

harassment by police. Transgender women have reported that the sexual assault they endure at the hands of the police can take several forms, including harassment such as touching and groping, rape, and blackmailing them into non-consensual sex by threatening to arrest them if they did not comply.

Articles 53, 159, and 184 of the Kuwaiti Criminal Code forbid torture and other cruel, inhuman or degrading treatment, and Kuwait ratified the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment in March 1996. In its concluding observations published in June 2011, the UN Committee Against Torture recommended that “a crime of torture, as defined in article 1 of the Convention, be incorporated into the penal domestic law of the State party ensuring that all the elements contained in article 1 of the Convention are included.”⁴⁵ The committee also recorded 632 trials of cases of torture, ill-treatment, and corporal punishment in Kuwait. In 248 of those cases perpetrators were punished, although Kuwait’s government failed to give information about the exact penalties applied to the convicted.⁴⁶

However, Kuwaiti law still does not clearly define torture, and torture by police and other security forces continues, according to Geneva-based human rights organization Al-Karama.⁴⁷

Moreover, on January 22, 2007, the Committee against Torture published a decision, *V.L. v Switzerland*, concluding that sexual violence committed by police officers acting in an official capacity constitutes torture.⁴⁸ The committee’s conclusion stated:

The acts concerned, constituting among others multiple rapes, surely constitute infliction of severe pain and suffering perpetrated for a number of impermissible purposes, including interrogation, intimidation, punishment, retaliation, humiliation and discrimination based on gender. Therefore, the Committee believes that the sexual abuse by the police in

⁴⁵ United Nations Committee Against Torture, “Consideration of Reports Submitted by States Parties under Article 19 of the Convention, Concluding observations of the Committee against Torture - Kuwait,” CAT/C/KWT/CO/, June 28, 2011, <http://www2.ohchr.org/english/bodies/cat/docs/co/CAT.C.KWT.CO.2.pdf>, (accessed August 2, 2011), para. 11.

⁴⁶ Ibid.

⁴⁷ Al-Karama, “Report submitted to the Committee against Torture in the context of the review of the second periodic report of Kuwait”, April 13, 2011, http://www2.ohchr.org/english/bodies/cat/docs/ngos/Alkarama_Kuwait46_en.pdf (accessed December 21, 2011).

⁴⁸ *V.L. v. Switzerland*, Communication No. 262/2005, 20 November 2006, UN Doc. CAT/C/37/D/262/2005 (2007)

this case constitutes torture even though it was perpetrated outside formal detention facilities.⁴⁹

Several torture scandals involving police rocked Kuwaiti society in early 2011. The most notorious, a case involving the death of a detainee due to torture while in police custody, resulted in the resignation of Minister of Interior Sheikh Jaber Al-Khaled Al-Sabah. A parliamentary committee that investigated the death of the citizen, Mohammed al-Mutairi, said that he had been tortured for six days before dying in the Ahmadi Criminal Investigation Department on January 11, 2011.⁵⁰ The public prosecution investigated 20 individuals for involvement in the incident, 18 of them policemen.⁵¹ The court case is ongoing. This incident received extensive media attention due to the brutality of events leading to al-Mutairi's death and the heated debates it caused in the Kuwaiti parliament between opposition and pro-government MPs. Most other cases go unnoticed.

Transgender women have also reported degrading and humiliating treatment by the police, such as being forced to strip and being paraded around the police station, being forced to dance for officers, sexual humiliation, and verbal taunts and intimidation. A common complaint among transgender women is police blackmail for sex on threat of arrest, an act that constitutes sexual assault. Rima, 27, recounted a typical encounter:

In October 2009 I passed a checkpoint right outside my university's gate. I got scared of course and turned back, but the policeman got suspicious. I stayed on campus for five hours until I was sure that the checkpoint moved. The next day I saw the same checkpoint and the same police officer. He found out which car was mine and as I was walking towards it he stopped me and asked me for my ID. I gave it to him, and immediately the sexual harassment started. He forced me to take off my top so he could see my breasts, right in the middle of the parking lot. When I told him he had no right to treat me like this, he said, "Either you take my number and meet me

⁴⁹ Ibid., Para. 8.10

⁵⁰ James Calderwood, "Kuwait minister resigns and avoids 'torture death' questions," *The National*, February 7, 2011, <http://www.thenational.ae/news/worldwide/middle-east/kuwait-minister-resigns-and-avoids-torture-death-questions> (accessed July 12, 2011).

⁵¹ Ahmad Lazim, "Public prosecutor charges Maimouni 'killers' with crimes punishable by death, life imprisonment," *Al-Rai*, February 24, 2011, <http://www.alraimedia.com/Alrai/Article.aspx?id=258660&date=24022011> (accessed July 12, 2011).

for sex or I will take you to prison.” I had no choice. For the rest of the time I was in college I had to keep seeing him.⁵²

Khouloud said that she was disappeared for two weeks after police stopped her at a checkpoint and subjected her to a range of abuses:

When the police officer took out IDs, he said he couldn’t believe I was a male. He forced his arm through the car window and grabbed my bag. I tried to explain to him that I am a woman, I feel like a woman. He asked me if I had transitioned, and I told him I hadn’t. He raised his eyebrows and said, “Oh, so it still works?” I couldn’t believe it. He asked if I would come with him to his apartment. I asked him why, and he just said, “You know why.”

I was so frightened, but I knew I had to get out of it somehow, so I agreed to meet him later. He took my number, and before letting me leave he felt up my crotch. He kept calling me after that but I never answered. He found out where I worked. One day after leaving work, I found him standing right outside my office building waiting for me. He was furious, he wanted to punish me for not having sex with him. He gave me one last chance: his apartment, or the police station. I refused to go home with him, so I ended up in handcuffs. He called the police station and told them that he’s bringing in a third sex for them to “make a man of.”

There were five officers total with me at the station. They took me to a small room with no cameras. They beat me, made me take my clothes off and touched me everywhere. One of them took his pants off and tried to make me touch him. I was crying the whole time, begging them to stop. They put music on and made me dance naked for them. They would touch me and tell me how pretty I was, then beat me and tell me to be a man. They kept asking me to have sex with them but I kept refusing so they would hit me more. They punched me, beat me with canes on my legs and then forced me to walk around so the blood wouldn’t coagulate and if I faltered they would hit more.

⁵² Ibid.

Khouloud spent two weeks detained in the Criminal Investigation Department never being brought before a judge—as required by the International Covenant on Civil and Political Rights (ICCPR)—⁵³ without her parents knowing where she was, she said, and during which police regularly beat and sexually abused her:

For two weeks I did not see the sun, I didn't know if it was night or day. They tortured me psychologically, telling me that I would be released soon, in two hours, in one hour, and then they would tell me I'm going to prison for a year. Every day they paraded me around in my underwear and touched me. In the end I just started showing them my tits myself to spare myself the humiliation of them forcing me to strip. I saw the worst things possible. They would torture people in front of me and tell me that's what they were going to do to me.

They finally released me after shaving my head and making me sign a paper that said that they had caught me on the street in full makeup with a throng of men behind me, causing a disturbance.⁵⁴

The frequency with which transgender women told researchers that police gave them the choice of having sex with them or going to prison suggests this population serves as easy sexual prey for police, who have allegedly employed threats, intimidation, and physical violence to ensure that these incidents go unreported. Samira, for example, was arrested four times, the last time in the beginning of 2010, when she said that four police officers raped her while in detention and then threw her from a moving police car onto the street. She was not charged with any crime, and did not file a complaint for fear of reprisal.⁵⁵

Farah, 25, told Human Rights Watch another all-too common story of sexual assault at the hands of police. In October 2009 two policemen stopped her and a friend as they left a mutual friend's apartment early in the morning. According to Farah, the policemen took a liking to her friend, and told them that they would not arrest either, and would let Farah go on condition that her friend go with them in their car:

⁵³ ICCPR, Article 9(3)

⁵⁴ Human Rights Watch interview with Khouloud, Kuwait City, Kuwait, February 9, 2011.

⁵⁵ Human Rights Watch interview with Samira, Kuwait City, Kuwait, February 11, 2011.

She had been arrested twice before, and did not want to go through the pain and humiliation of it again. So she went with them. When I called her that evening to ask what had happened, it was as I suspected: they both raped her in the police car.⁵⁶

Haneen suffered terribly at the hands of the police. She recounted one incident where two police officers attempted to break in to her apartment and rape her in June 2009:

As I was opening my door they grabbed me and I lunged myself inside. Half of me was inside the apartment and half outside, so they tried to pull me out completely. They know they have no right to arrest me inside my apartment without a warrant. What were they going to do, arrest my legs? They tried to reason with me, telling me that they find me pretty and just want to talk to me. That was before they got really angry and yelled at me that they were both going to fuck me. I managed to push them off and enter my apartment. One of them was yelling at me to come out or he would get a warrant to arrest me. When I pulled out my camera to take a picture of them they ran away. As they left one of them said that they would be watching for me downstairs to arrest me when I walk into the street.⁵⁷

The second time Ghadeer was arrested, in 2008, she said she was dressed in a track suit outside a restaurant in broad daylight. She reported that the arresting officer let her go after he forced her to give him her number to arrange for a date. That same year, she said a police officer followed her into a mall and threatened to arrest her:

I begged him not to but he started to pinch me on my ass and breasts and pressed himself up against me.... His hands were all over me. He said he wouldn't arrest me if I agreed to go up to the roof where there was no one and have sex with him there. The roof turned out to be locked so he got flustered and decided to take my number instead, telling me he would come to my apartment after his shift was over. After that I changed my number.⁵⁸

⁵⁶ Human Rights Watch interview with Farah, Kuwait City, Kuwait, February 12, 2011.

⁵⁷ Human Rights Watch interview with Haneen, Kuwait City, Kuwait, February 13, 2011.

⁵⁸ Ibid.

Abeer, 29, recounted how police arrested and abused her and her friend for appearing dressed in women's clothes, including detaining them in an informal place of detention:

Before the law was passed in 2007, I was detained twice because of the way I look, and the police never even told me what law I had broken. I was kept in the station for four hours, beaten, and then released.

I was arrested for the third time in March 2008 with a friend of mine. We were stopped at a checkpoint and arrested after they saw that our driver's licenses state our sex as male and we were dressed as women. By law, we were supposed to be transferred to the police station to be investigated or charged. Instead, they took us to their friends at the garage next to the Salmiya police station where police patrol cars are parked. Inside, they took pictures of us with their personal camera phones, probably to make fun of us to their friends and brag that they had arrested transsexuals. They told us they were going to use the pictures for our criminal files, but they had no right to take them in the first place; it's only at the station that they can do that.

They kept us there for an hour and half humiliating, ridiculing and cursing us. They beat my friend with a heavy stapler; she was bruised for weeks after that. She stood strong, so they punched and kicked me even more because they could tell I was afraid. After they saw my friend's shoulder turn blue from the beating, they made sure to hit us in places where there would be no bruises, so I got punched in the stomach a lot. One of them touched my friend's breasts,⁵⁹ and when she told him that he can't do that, he said it's not sexual harassment because she is really a "man."⁶⁰

Ghadeer, 22, is a working class transsexual Bidun—one of a group, now estimated to be 106,000 stateless persons who claim Kuwaiti nationality but have been in legal limbo for the past fifty years.⁶¹ All Bidun have the status of "illegal residents."⁶² Over time, their precarious

⁵⁹ Transgender women who have undergone breast implant surgery are particularly vulnerable to police sexual harassment.

⁶⁰ Human Rights Watch interview with Abeer, Kuwait City, Kuwait, February 10, 2011.

⁶¹ International law defines a stateless person as one "who is not considered as a national by any state under the operation of its law." UN Convention Relating to the Status of Stateless Persons, 360 U.N.T.S. 117, entered into force June 6, 1960, art.1.1.

position has contributed to poverty, and limited access to education and health care. The combination of Ghadeer's gender identity, statelessness, and poverty has amplified her vulnerability at the hands of the police and society at large. The dual stigma attached to being Bidun and transsexual greatly increased her vulnerability to extortion and violence.

Since 2008 Ghadeer said that police had arrested her nine times for allegedly violating article 198 and detained her each time between four and twelve days. In 2009, a Kuwaiti court fined her 1000 KD (\$3000) for "imitating the opposite sex." She said that she has been unable to find and keep a job due to her gender identity and lack of citizenship, and has had to leave her apartment several times because of continued harassment by both police and civilians in her neighborhood.⁶³ The first time Ghadeer was arrested was in March 2008, while she was driving with two Kuwaiti citizens and two Bidun men, wearing a unisex training suit covered by a *dishdasha* (traditional Kuwaiti male garment):

As soon as the police saw us at the checkpoint they pulled us aside and searched us. They searched the trunk, even though they have no right, and found my lipstick and makeup. They dragged me from the car by my hair, kicked and punched me and took us all to the Salmiya police station.

There they asked me if I was a man or a woman. I replied that I am a man, and then they beat me yelling at me to confess I was "third sex". In the end I had to confess from all the beatings even though outwardly I was dressed like a man. The issue is inside me: I am a woman in a man's body.

They took my phone and started going through my text messages and personal pictures of myself and my family. When I tried to object one of the policemen threw a stapler at me. Then he asked me, "Why are you Bidun?" What kind of a question is that?⁶⁴

⁶² Statelessness in Kuwait, as in neighboring Gulf countries, stems from restrictive citizenship laws, and from the lack of effective mechanisms to hear and review applicants' claims for citizenship. The Bidun are comprised mainly of Bedouins who either did not learn about the 1959 drive to nationalize the population in preparation for independence from the British and the creation of a new state, or neglected to register their claims. Some could not read or write, and those who kept no written records faced particular difficulties proving that they met the legal requirements of the new Nationality Law. See Human Rights Watch, *The Bedouins of Kuwait: Citizens without Citizenship* (New York: Human Rights Watch, 1995).

⁶³ Human Rights Watch interview with Ghadeer, Kuwait City, Kuwait, February 14, 2011.

⁶⁴ Ibid.

Ghadeer and her friends suffered doubly because of their Bidun status. She said that police singled them out for abuse and humiliation that they spared their two Kuwaiti friends:

They abused me and my two Bidun friends and did nothing to the Kuwaitis. They even took a trash can full of dirt and cigarette butts and dumped it over my Bidun friend's head, and forced another Bidun to do push-ups with a radiator on his back.

One of the policemen then told me to strip, but I refused. He forcefully lifted my *dishdasha* and when he saw the training suit underneath he asked to see my underwear. The other police officer beat me and forced me to take everything off in front of everybody, made me turn around to see my ass, my breasts.

At one point, Ghadeer said, her mother called her phone.

The police officer answered her and told her, "Your son is third sex," and then hung up, just like that. My mother is old, she is sick, she is a Bidun. Why would he torture her like that?

Both Kuwaiti citizens were let go without any criminal charges. The Biduns were taken to the Criminal Investigation Department. Ghadeer's mother visited "every hospital and every police station in Kuwait" but was simply told there was no one there with her child's name. Ghadeer's time in detention was punctuated by abuse and humiliation.

They would call us to the door just to spit on us and walk away. We'd sleep on the floor without any covers and they would purposely turn on the air conditioning on the highest setting. They took the makeup and the clothes they had found in the trunk of the car and forced me and my Bidun friend to put them on. In the police report they wrote that they caught us red-handed in full impersonation of the opposite sex and included photographs they took of us in the women's clothes they forced us into as evidence.

When I asked to pray I wasn't allowed to change from the women's clothing they forced me to wear. The clothing is inappropriate for praying as it is figure-hugging and they refused to let me change.

Finally they took us to the investigating officer, and while we waited outside his office policemen passing by would just hit us or spit on us on their way. We pleaded with the officer not to call in our fathers. My friend's father is religious, my family is Bedouin, they are a simple, proud, and honorable people. They called them in anyway and beat us in front of them and showed them the pictures they had taken of us after they forced us to wear women's clothes. They swore at us and made derogatory comments in front of them, which was humiliating to our fathers.

Before they were released, Ghadeer and her friends were forced to sign a declaration saying they would never imitate the opposite sex or be found in suspect places. "In the report they wrote down that I was stopped in a 'suspect place.' Is the 5th circle highway a public place or a suspect place?" she asked.

After that my whole extended family found out. My sister was divorced by her husband because of this and my friend had to repeat the school year because he missed his exams in the time we were in detention. And my mother got even sicker.⁶⁵

In mid-2008, Ghadeer was arrested for the third time in a coffee shop in the busy Salmiya district while she was with an older Lebanese woman and her grandchild:

The police officer who saw me called in a patrol, and eight officers came to pick me up. Eight, just for me. They took the child from my lap, placed him on the table, and then cuffed my hands and my feet and walked me out in front of everyone as if I were a murderer. I was in a track suit and had my long hair tucked under my baseball cap. When they arrested me, they took my cap off so that everyone could see my hair.

⁶⁵ Ibid.

Ghadeer was taken to the Criminal Investigation Department, where she was detained for four days.

I had just had breast implants so I was bleeding the entire time from sleeping on the floor and from the way they grabbed and pinched me. I was in so much pain. They saw the blood but didn't clean it up or call in a doctor.⁶⁶

Procedural Violations

Interviewees frequently cited procedural violations in police arrests and detentions of transgender women.

Some of these violations appear to be rooted in lack of clarity in the amendment to article 198—specifically, its failure to explain what constitutes “imitating the opposite sex”—among its central provisions—allowing police complete freedom to define what violates the law.

According to Kuwaiti lawyer Abbas Ali, who has defended a number of transgender women and who has spoken about the issue in the media, most arrested transgender women are not prosecuted by the state, but are detained and released with a warning, keeping them in jail for any time between a few hours to over a week.⁶⁷

Furthermore, despite Kuwaiti and international laws requiring due process guarantees for detainees, transgender women have reported arbitrary detention with no regard to their due process rights. Article 9 of the International Covenant on Civil and Political Rights (ICCPR) to which Kuwait acceded in 1996 guarantees everyone the “right to liberty and security of person” and protection from arbitrary arrest or detention. The right to security obligates the state to take reasonable steps to protect individuals against threats of physical violence whether from agents of the state or third parties. Article 9 requires that anyone arrested or detained on a criminal charge be brought promptly before an independent judge. Article 31 of Kuwait’s Constitution also protects against arbitrary arrest and detention, a right supported by article 60 of Kuwait’s Code of Criminal Procedure, which limits police custody to four days without judicial authorization.

⁶⁶ Ibid.

⁶⁷ Human Rights Watch interview with Abbas Ali, Kuwait City, Kuwait, February 14, 2011.

Despite these legal requirements, 12 out of the 39 transgender women who had been arrested and whom Human Rights Watch interviewed said that police detained them illegally for more than four days, sometimes up to 20. Seven were also not allowed to communicate with their families or inform anyone of their arrest, and the police refused to acknowledge the detention of four of those to their families, act that constitutes an enforced disappearance, a serious human rights violation.⁶⁸ Additionally, all 39 arrested individuals whom Human Rights Watch interviewed said that police did not allow them access to a lawyer during interrogation or inform them of this right, a direct violation of article 75 of the Code of Criminal Procedure.

According to Ali, police have no right to conduct body inspections without permission from the public prosecutor, yet it is common practice for them to force transgender women detainees to strip in front of them to determine, for example, whether they are wearing female underwear or whether they have had breast implants, particularly if they were arrested while wearing male or gender neutral clothing. Such behavior is often accompanied by humiliating sexual harassment.⁶⁹

Unless police actually catch someone in a clear case of “imitation” (a biological male wearing obviously female clothes), they have no legal right to call in a forensic doctor for a bodily inspection).⁷⁰ Yet 15 of the transgender women interviewed reported that police subjected them to such inspection regardless of their state of dress at the time of arrest. Ban, 22, said police caught her wearing a *dishdasha* while in her car, then forced her to undress on the street to reveal she was wearing female underwear. They arrested her on that basis.⁷¹ Article 17 of the ICCPR guarantees that, “No one shall be subjected to arbitrary or unlawful interference with his privacy” and further guarantees the right to protection from such interference. Forcing an individual to undress in public to assess her undergarments constitutes a clear violation of the right to dignity and privacy.

⁶⁸ The Declaration for the Protection of all Persons Against Enforced Disappearances defines enforced disappearance as when “persons are arrested, detained or abducted against their will or otherwise deprived of their liberty by officials of different branches or levels of Government or by organized groups or private individuals acting on behalf of, or with the support, direct or indirect, consent or acquiescence of the Government, followed by a refusal to disclose the fate or whereabouts of the persons concerned or a refusal to acknowledge the deprivation of their liberty, which places such persons outside the protection of the law.” See United Nations Declaration on the Protection of All Persons from Enforced Disappearances, adopted December 18, 1992, G.A. res. 47/133, 47 U.N. GAOR Supp. (No. 49) at 207, U.N. Doc. A/47/49 (1992).

⁶⁹ Human Rights Watch interview with Abbas Ali, Kuwait City, Kuwait, February 14, 2011.

⁷⁰ *Ibid.*

⁷¹ Human Rights Watch interview with Ban, Kuwait City, Kuwait, February 11, 2011.

All of the transgender women we spoke to also reported that police forced them to sign a statement that they would not “imitate the opposite sex again.” They also claimed that police accompanied these forced confessions with humiliation, abuse, torture, sexual harassment, and sometimes sexual assault before releasing them.

For Tabtabai, the author of the law, arresting and forcing transgender individuals to sign these declarations ought to constitute an effective deterrent, although the facts say otherwise.⁷² Approximately half of the 39 arrested transgender women interviewed for this report were arrested more than once, some up to six times. Twelve of the transgender women interviewed were arrested wearing gender-neutral or male clothes, including the traditional *dishdasha*, while three were arrested for “wearing a feminine watch,”⁷³ “having a smooth face,”⁷⁴ and “having a soft voice.”⁷⁵ Ghadeer, the 22-year-old transsexual woman who was arrested nine times, told Human Rights Watch:

Every time they catch me they expect me to repent. If I wear women's clothes, I get caught. If I wear men's clothes, I get caught. If I wear something in between, I get caught. And in all these situations I get sexually harassed. You begin to understand that getting arrested becomes part of your everyday life.⁷⁶

In fact, transgender women trying to pass as men are often at even more risk of arrest because their male attire clashes considerably with their overall female appearance, attracting police suspicion. Khoulood, 26, said: “When we wear men’s clothes, we become more conspicuous. It is obvious we are hiding something, with our caps, sunglasses, shoulders hunched down. We attract even more attention; we look like women in drag.”⁷⁷

⁷² “Al-Tabtabai: Imprisoning third sex and boyat is a law I am proud of,” online video clip, *YouTube*, April 25, 2010, <http://www.youtube.com/watch?v=unAV4mkk3Jg> (accessed June 20, 2011).

⁷³ Human Rights Watch interview with Ghadeer, Kuwait City, Kuwait, February 14, 2011.

⁷⁴ Human Rights Watch interview with Amani, Kuwait City, Kuwait, February 8, 2011.

⁷⁵ Human Rights Watch interview with Jasim, Kuwait City, Kuwait, February 8, 2011.

⁷⁶ Human Rights Watch interview with Ghadeer, Kuwait City, Kuwait, February 14, 2011.

⁷⁷ Human Rights Watch interview with Khoulood, Kuwait City, Kuwait, February 9, 2011.

Amira's Story

Amira, a 26-year old transgender woman, told Human Rights Watch:

In March 2008 I went to visit my friends wearing a tracksuit. I had long hair. A man began following me in his car trying to flirt with me. When I realized he was from the criminal investigation department, I pulled over. He called a five-car police patrol to come get me. Five cars, just for me, as if there are no real problems in the country.

When they put me in one of their cars, a police officer told me that if I showed him my chest he would let me go. I had no choice, so I lifted my shirt. He played with my breasts, but still took me to the Criminal Investigation Department anyway. I was put in a room full of policemen and forced to take off all my clothes, but I refused to take off my underwear. They beat me, and took pictures of me naked and crying with their personal cell phone cameras; they eventually forced me to take off my underwear. They stood there laughing, making me pose for them and taking pictures.

There were no questions, no investigation, and they refused to let me call my parents. They just threw me in a cell and insulted and humiliated me. I spent two days in detention. Every hour someone would open the door, laugh and humiliate me, and then leave.

The next morning I was taken to the vice unit and paraded from office to office just to be put on display. Even the questions they asked were ridiculous: "How long have you grown your hair?" One of the policemen finally took pity on me and called my parents. When my brother came to pick me up they humiliated him for having a brother like me and telling him his sister must be a whore. One of the policemen emptied my wallet on the floor to make me bend over and pick the contents up in front of my brother to humiliate him even more. They made me sign a declaration stating that I would never imitate a member of the opposite sex again.⁷⁸

Fear of arrest, and the actual experience of arrest and detention, is so strong that many transgender women live in what amounts to self-imposed house arrest. In Amira's words:

After that experience, I do not leave the house anymore. I go to work and come straight back home. Every time I leave the house I can never guarantee that I will come home. My parents call me to check on me if I am even two minutes late, even they live in fear now.⁷⁹

The impunity and arbitrariness with which police arrest and mistreat individuals has placed Kuwait's transgender population, and in particular transgender women, under constant threat. Seventeen transgender women we interviewed have reported being stopped at checkpoints, asked for their ID cards, and then arrested because the police determined that their gender presentation did not match their stated sex, regardless of what they were wearing.

Abeer, 29, says that when the police arrested her and her friends in March 2008 for the third time, they transferred them to the Criminal Investigation Department in Salmiya for five days, even though the law only allowed them to be detained for four without instruction from the public prosecutor to extend detention pending investigation.

For the first two days they didn't allow us to call anyone or inform our families or lawyers. On the third day they interrogated us and charged us with violating amended article 198. Then they shaved our heads like sex offenders and released us on a bail of 100 Kuwaiti Dinars (US\$360). Of course we had to sign a declaration that said that we would never imitate a member of the opposite sex or frequent "suspect" places or be seen after midnight in public, even though they had caught us at 10 a.m. on a Friday in our car.

The court fined Abeer and her friend 1000 dinars each (\$3,600) and sentenced them to three years probation.⁸⁰

⁷⁸ Human Rights Watch interview with Amira, Kuwait City, Kuwait, February 9, 2011.

⁷⁹ Ibid.

⁸⁰ Human Rights Watch interview with Abeer, Kuwait City, Kuwait, February 10, 2011.

Transgender women are police targets just by being in public. Because of numerous checkpoints and police patrols around the city, some transgender women have said that the risk of arrest is often too great to venture out. After being arrested twice in the space of 18 months, Maha, 26, fears going out at all because of her own experiences and those of the transgender people around her:

I am a human being. I need to go to the supermarket to buy necessities for my house. If I get sick, I need to go to the hospital. I have to go to work to make a living. But now every time I leave the house I think that I may not come back. Things people take for granted, like going to a restaurant, seeing friends, going to the cinema, these are all things I cannot do anymore.⁸¹

These fears are not unfounded. In October 2010 Abeer said that police arrested her for a fourth time outside a supermarket at 11 a.m., while she was wearing Western-style men's clothes and a baseball cap:

A police car pulled over right behind me as I was parked outside the supermarket to buy cigarettes. The policeman went in the store and then approached my car. I was afraid of course, but I thought I was safe because I was dressed as a man. He asked me for my ID and then told me I had to come with him to the police station in Adan. He gave me two options: either he rides in my car to the station or he humiliates me in front of everyone and forces me into his patrol car. I was scared, so I told him to drive my car as he requested. I was stupid. Of course he didn't take me to the directorate; instead he took me to the police patrol car parking garage right next to it.

He told me that he would let me go, but on condition that I show him my breasts. I protested, but he told me that I'm nothing but filth and that anyway it's OK because I'm a boy like him. I was afraid of what would come next, so in a last effort I showed him my medical document that said I have GID. He looked at it and said, "Oh, so you're crazy. I clean the streets from filth like you." I refused to show him my breasts and begged him to let me go, so he

⁸¹ Human Rights Watch interview with Maha, Kuwait City, Kuwait, February 9, 2011.

hit me and pulled me by the hair into a police car to the criminal investigation department. For three days my parents did not know where I was.⁸²

In a clear violation of the rights of detainees, many transgender women said police refused to allow their families and lawyers to visit them in detention and at times even denying to them that their relatives were in custody:

They had taken my mobile phone at the station, but I had another one that I hid. The second day I called my mother and told her what happened. My father and brother came to the station every day for the nine days I was there, but the police told them that they had no one there by my name. They didn't even let my lawyer in. My father was able to sneak in once. I saw him, but I hid because I didn't want him to see me like this. I made a mistake, I should have spoken to him. One of the officers saw him and kicked him out again. Then the investigating officer asked me if my father was in the Ministry of Interior or the police or army, because in those cases they let the detainees go. My father is retired.

My father brought my medical papers with him, which were official documents from the government psychiatric hospital stating that I have gender identity disorder. This paper has the stamp of the Ministry of Health. The police refused to take them and add them to my file.⁸³

Sara said police placed her in solitary confinement in the Salmiya station for nine days:

On the first floor, there are detention cells for men, women, and minors. On the second floor, there were around 40 solitary confinement cells. This is what they call the "hotel." Each room was about two by one meters. It was terrifying. I was really cold, and they didn't give me any blankets, I would sleep bare on the floor. There were only transsexuals in solitary [confinement] when I was there.

⁸² Human Rights Watch interview with Abeer, Kuwait City, Kuwait, February 10, 2011.

⁸³ Human Rights Watch interview with Sara, Kuwait City, Kuwait, February 6, 2011.

In solitary [confinement] they would rarely allow me to go to the bathroom. They gave me an empty water bottle to urinate in. The food was disgusting; they would throw it on the floor. I didn't eat anything, for nine days I lived on water and juice. They let me out twice just to leer at me and make fun of me. Every time the shift changed I would be asleep, and a new policeman would kick on the door until I woke up; they would make me stand, turn around for them to leer and gawk at me and insult me, and then leave.

They have a room in the Criminal Investigation Department that they call the "VIP room." It has a bed and a private bathroom. It's one of the only places that doesn't have a camera. I would hear heels clicking around in that room. One of my friends who had been arrested told me a police officer took her there and had sex with her. One officer took me there and tried to sweet-talk me into sleeping with him. I refused.⁸⁴

Several transgender women told Human Rights Watch that on several occasions police arrested them while wearing male clothes, but forced them to change into women's clothes at the station before photographing them for their criminal files. Khoulood said that a policeman arrested her in 2010 after she refused to have sex with him. She spent two weeks in the Criminal Investigation Unit, where security forces beat and humiliated her:

When I was arrested I was wearing an XXL-sized tracksuit, and as you can see I'm small. I am careful with these things. When they took me in to the station, they beat me incessantly and made me wear women's clothes and put on makeup, stuff that they had confiscated from another transgender woman they had arrested previously. They took pictures of me like that and claimed that that is how they found me. It was purely for revenge because I refused to give into the policeman's sexual blackmail.⁸⁵

⁸⁴ Ibid.

⁸⁵ Human Rights Watch interview with Khoulood, Kuwait City, Kuwait, February 9, 2011.

III. Ramifications of the Amendment to Article 198

As documented previously, the amendment to article 198 has negative implications that include police abuse and direct violations of the rights to privacy, dignity, and to be free of violence. But it also has several indirect consequences that severely impact transgender women's lives, including sexual assault by civilians who take advantage of the law to blackmail and rape them without fear of reprisal, and discrimination accessing public health care and employment.

Sexual Assault by Civilians

It is not just police who have taken sexual advantage of transgender women since the passage of the amendment to article 198. Civilians are also aware of the law from arrests reported in the Kuwaiti press, and numerous TV programs that have addressed the issue, usually in a derogatory and vilifying manner.⁸⁶ Transgender women told Human Rights Watch that civilian men have taken advantage of the vulnerable position to which the law relegates transgender women: they assume, with reason, that their victims will not report them out of fear of retaliation and because they worry that they will be arrested themselves if they complain.

Haneen recalled her experience in 2008 after a man had stalked her for several months:

One night he broke down the door of my apartment and stabbed me in the shoulder with a knife. He raped me brutally in my own home. When he was finished, he took me in his car to the marina. I thought he was going to take me to the hospital because I was bleeding and in a great deal of pain, but instead he stopped near a police patrol and dared me to report him. We both knew that I wouldn't, because the police would arrest me instead for "imitating the opposite sex." Because of this horrible law, he thinks he has complete access to me and my body whenever he wants. I fought back, I resisted, I argued, but he would just taunt me and laugh. And he did the same thing to others that I know. Now I carry a knife with me wherever I go, but I am still afraid.⁸⁷

⁸⁶ From the end of 2010 to mid-2011, Human Rights Watch found at least one media story reporting such arrests approximately every two weeks.

⁸⁷ Human Rights Watch interview with Haneen, Kuwait City, Kuwait, February 13, 2011.

Human Rights Watch documented four other cases of transgender women who say that civilian men raped them. Five men ambushed Malak, 23, in January 2011 while she was camping with a friend who had completed her transition into a woman:

I pleaded with them to let at least my friend go, she is a woman, and has family asking after her. They got scared and let her go, they didn't want to risk the consequences of assaulting a woman. When she left, I was alone and they gang raped me and told me to go tell the police if I dared. Of course I didn't; they'd arrest me immediately.⁸⁸

According to Khoulood, 26, it is common for men to take advantage of the existence of the law to pressure transgender women into going out on dates or having sex with them:

All people know is that there is a law against us, so they use it. They tell us, "You must either have sex with us, give us your phone number, or we will call the police. This is an everyday thing now. So we smile at them, give them our numbers, and then try to figure out a way to avoid them."⁸⁹

Human Rights Watch has documented two such cases, one in which a transgender woman said that a civilian reported her to police in retaliation for her refusal to have sex with him, and another where a transgender woman agreed to have sex only to avoid a retaliatory police complaint. Sara's first arrest in 2008 came after a man reported her to the police, an act she claims was revenge for her refusing his advances.⁹⁰ Randa, 22, also said she eventually succumbed to a neighbor's advances after he threatened to report her to the police. After experiencing the horror of arrest and police humiliation and abuse in 2009, she decided that "even sexual slavery is better than the police."⁹¹

⁸⁸ Human Rights Watch interview with Malak, Kuwait City, Kuwait, February 16, 2011.

⁸⁹ Human Rights Watch interview with Khoulood, Kuwait City, Kuwait, February 9, 2011.

⁹⁰ Human Rights Watch interview with Sara, Kuwait City, Kuwait, February 6, 2011.

⁹¹ Human Rights Watch interview with Randa, Kuwait City, Kuwait, February 10, 2011.

Obstacles to Healthcare and Employment

Kuwait provides its citizens with nearly unparalleled benefits, including free health care, free education at all levels, virtually guaranteed employment, and housing grants.⁹² The precarious legal and social position of transgender women constitutes a serious obstacle to accessing many of these rights and benefits.

A signatory to the International Covenant on Social, Cultural, and Economic Rights (ICESCR) since May 1996, Kuwait must ensure that everyone in its jurisdiction can access a comprehensive system of healthcare that is available and economically accessible to everyone without discrimination.⁹³ The amendment to article 198 is a major barrier to this access by putting transgender women at risk of arrest simply by being in a public space.

In order to access free governmental health care, citizens, and residents are required to present their civil ID cards. One transgender woman reported that a doctor refused to treat her when he found that her gender presentation did not match the stated gender on her ID card.⁹⁴ In other cases, transgender women say that police arrested them at the hospital after hospital workers, doctors, or other patients called the police to report their presence.

In 2008 Asma, 25, tried to commit suicide after police raped her on several different occasions. Her friend took her to the hospital in Jabriya, but the doctor there refused to treat her. She said that it was only after she began convulsing and foaming at the mouth from the excessive amount of pills she had taken did the doctor agree to treat her. Asma believes she would not have been treated had her situation not been life threatening.⁹⁵

In another case, Hala, 27, was arrested outside her dentist's office in Salmiya in March 2010. The police later told her that a patient in the waiting room reported her.⁹⁶ Rania, 24, told Human Rights Watch that a group of men brutally assaulted her on the street in mid-

⁹² CIA World Factbook, "Kuwait," May 3, 2011, <https://www.cia.gov/library/publications/the-world-factbook/geos/ku.html> (accessed August 2, 2011).

⁹³ UN Committee on Economic, Social and Cultural Rights (CESCR), *General Comment No. 14: The Right to the Highest Attainable Standard of Health (Art. 12 of the Covenant)*, 11 August 2000, E/C.12/2000/4, <http://www.unhcr.org/refworld/docid/4538838do.html>

⁹⁴ Human Rights Watch interview with Nadine, Kuwait City, Kuwait, February 6, 2011.

⁹⁵ Human Rights Watch interview with Asma, Kuwait City, Kuwait, February 8, 2011.

⁹⁶ Human Rights Watch interview with Hala, Kuwait City, Kuwait, February 11, 2011.

2009 after she responded in kind to their verbal harassment. She suffered multiple bruises, cuts, and a broken leg. In the hospital waiting room, Rania recounts:

A pregnant woman came up to me and told me that, “We are supposed to report to the police when we see the likes of you.” I was sitting there stunned, my leg was broken and I was bloodied all over.... Even the policeman who came to arrest me after she made the call was sympathetic to me, but there was nothing he could do. He waited until the doctors dressed my wounds and put my leg in a cast and then took me to the station.⁹⁷

Transgender women interviewed by Human Rights Watch said that even when they have been accepted and treated in hospital, they often have been subjected to verbal harassment and humiliation by hospital workers, doctors, or patients. All the transgender women interviewed generally reported they prefer to avoid seeking government medical care because of fear of arrest or harassment, and most prefer to self-medicate. They said they sometimes avoid government health facilities altogether and instead seek private health care, although it is more expensive.

This situation also affects the families of transgender women who, if the only or eldest biological male in the family, often have the responsibility of taking family members to the hospital. Samia, 30, recounted how she could only take her elderly mother to the hospital in the morning because she was too afraid to go out at night for fear of being arrested.⁹⁸

In December 2010 Khoulood had to take her younger brother to Mubarak Hospital in Jabriya district after he suffered a severe asthma attack. She claims hospital workers made them wait half-an-hour before admitting them, even though her brother sat wheezing painfully in a wheelchair, while they ridiculed her and called colleagues in to quiz them on whether she was a man or a woman.⁹⁹

⁹⁷ Human Rights Watch interview with Rania, Kuwait City, Kuwait, February 8, 2011.

⁹⁸ Human Rights Watch interview with Samia, Kuwait City, Kuwait, February 8, 2011.

⁹⁹ Human Rights Watch interview with Khoulood, Kuwait City, Kuwait, February 9, 2011.

Public sector employment is guaranteed to Kuwaiti nationals and comes with attractive salaries and benefit packages.¹⁰⁰ According to a report by the International Bank of Qatar, 82 percent of Kuwaiti nationals work in the public sector.¹⁰¹ Despite this guarantee, transgender women reported that discrimination in public sector hiring practices persists against transgender individuals. Article 6 of the ICESCR recognizes the right to work, which implies that the state must guarantee equal access to employment and protect workers from being unfairly deprived of employment. It must also take adequate measure to prevent discrimination in the workplace.¹⁰²

Nadera, 32, with a university degree in forensics, said that she tried to get a public sector job for two years but was turned down by the ministries of Health, Education, and the Interior because of her gender identity.¹⁰³ According to Nadera, ministry employees told her explicitly they do not hire her “type” after they discovered that the gender stated on her civil ID was male. At the Civil Service Commission, the body that employs Kuwaiti nationals in various public sector jobs, Nadera was warned that she would “never be employed anywhere in Kuwait.”¹⁰⁴ It was extremely difficult for her to find either private or public sector employment:

After that I applied to any single job vacancy I could find, I even applied to be a janitor. No one hired me, I would actually be thrown out of the interview, I would be made fun of throughout the interview. People would actually tell me, “We do not hire people like you.” They would actually make me feel like I was in the interview process but they would go and call all of the employees of the company to just come and look at me, as if I was a clown or something to look at.... This happened for one whole year until a foreign company finally hired me.¹⁰⁵

¹⁰⁰ Laura El-Katiri, Bassam Fattouh, and Paul Segal, “Anatomy of an oil-based welfare state: Rent distribution in Kuwait,” The Kuwait Programme on Development, Governance and Globalisation in the Gulf States, London School of Economics, January, 2011, <http://www2.lse.ac.uk/government/research/resgroups/kuwait/documents/Fattouh.pdf> (accessed August 1, 2011).

¹⁰¹ Shane McGinley, “At 88%, Qatar tops public sector jobs rankings,” *arabianbusinessonline.com*, August 9, 2010, <http://www.arabianbusiness.com/at-88-qatar-tops-public-sector-jobs-rankings-340902.html> (accessed July 12, 2011).

¹⁰² UN Committee on Economic, Social and Cultural Rights (CESCR), *General Comment No. 18: The Right to Work (Art. 6 of the Covenant)*, 6 February 2006, E/C.12/GC/18, <http://www.unhcr.org/refworld/docid/4415453b4.html>

¹⁰³ Human Rights Watch interview with Nadera, Kuwait City, Kuwait, February 7, 2011.

¹⁰⁴ *Ibid.*

¹⁰⁵ *Ibid.*

Some transsexuals who applied for public sector jobs before article 198 was amended were able to secure employment, and interviewees reported little trouble or discrimination at the workplace. After the amendment of article 198, some transgender women who had been in their jobs for years suddenly found themselves the target of harassment by colleagues and bosses.

Riwa, 28, said that after the amendment to article 198 was passed, her co-worker threatened to report her to police unless she did his work as well.¹⁰⁶ She had no reason to disbelieve him: several of her friends (some of whom Human Rights Watch interviewed) said they had been arrested outside their workplace after colleagues reported them.¹⁰⁷

¹⁰⁶ Human Rights Watch interview with Riwa, Kuwait City, Kuwait, February 9, 2011.

¹⁰⁷ Ibid.

IV. Lack of Protection and Redress

Two realities define the lives of abused transgender and transsexual women in Kuwait: first, fear that prevents them from reporting incidents of violence to the police, and second, the sense that making such complaints is futile. Interviewees said that direct threats and violence from the police ensure that complaints of victims of sexual assaults never surface.

Malak was arrested in July 2009, and picked up by police again two months later. Her hair had not had time to grow out from the last time the police shaved her head, and she was dressed in male clothes. When a patrol car stopped her in Salmiya, she said the police told her they were going to detain her “because of your face.”¹⁰⁸

They drove me to the nearest Salmiya checkpoint to show me to their friends and make fun of me. Then they took me not to the Criminal Investigation Department like they’re supposed to, but to the Department of Traffic Control in Salmiya. I asked them why I was there, and they said “You’re imitating.” I asked them how, and they replied, “Your face.” What do they want me to do, disfigure my face for them? They made me take off my clothes and tried to have sex with me, but I was able to resist. Of course they insulted me and humiliated me, these things go without saying.

One of the officers was from the royal family, a Sabahi.¹⁰⁹ He told me that he wanted to give me a souvenir so that I would always remember him, and then put out his cigarette on my hand. I have the medical report to prove it—a second degree burn on my left palm. They wrote a fake report that I had run a red light and confiscated my license for three months.¹¹⁰

The next day, Malak called in to a TV program called “Scoop” and told her story on the air. She recounts that after hearing her story Maj. Gen. Thabet al-Mhanna of the Department of Traffic Control called the program and told her to come see him about the case.

¹⁰⁸ Human Rights Watch interview with Malak, Kuwait City, Kuwait, February 16, 2011.

¹⁰⁹ The name of the officer has been withheld upon request of the interviewee.

¹¹⁰ Human Rights Watch interview with Malak, Kuwait City, Kuwait, February 16, 2011.

According to Malak, he was very sympathetic and took her testimony respectfully, including the name and rank of her abuser, but she contends that was neither prosecuted nor punished. A few weeks later, Malak's friend, Nisreen, was arrested. Nisreen told Human Rights Watch that she encountered the same officer who had burned Malak. When he found out that she knew Malak, Nisreen said he told her that if he ever found Malak again, he would "destroy her."¹¹¹

Malak's case demonstrates two realities about the lives of abused transgender and transsexual women in Kuwait: first, the fear that prevents them from reporting incidents of violence to the police, and second, the futility of such complaints. Direct threats and violence from the police have ensured that complaints of victims of sexual assaults never surface.

The social and legal vulnerability of transsexuals in Kuwait leaves little room for redress for such crimes. Although the Ministry of Interior has a special department to record public complaints of abuse filed against any ministry officer, the Committee Against Torture has noted that there is no "independent complaint mechanism for receiving and conducting prompt, thorough, and impartial investigations of torture, and for ensuring that those found guilty are appropriately punished."¹¹²

Khouloud recounted her experience with police intimidation:

I stayed in detention for two weeks, even though by law I should only be kept for four days. I wasn't allowed to inform my family. The reason they kept me that long was that I kept threatening to file a complaint about their abuse and torture. They only released me when they made sure I wasn't going to file a complaint, when they beat me enough that I became docile. Towards the end it got so bad that I just wanted to be released, or even taken to prison, anything but this. I would laugh with them, joke with them even through the beating just so they would let me go. After that there was no way I could complain. I had suffered enough.¹¹³

¹¹¹ Human Rights Watch interview with Nisreen, Kuwait City, Kuwait, February 16, 2011.

¹¹² United Nations Committee Against Torture, "Consideration of Reports Submitted by States Parties under Article 19 of the Convention, Concluding observations of the Committee against Torture - Kuwait," CAT/C/KWT/CO/, June 28, 2011, <http://www2.ohchr.org/english/bodies/cat/docs/co/CAT.C.KWT.CO.2.pdf>, (accessed August 2, 2011), para 20.

¹¹³ Human Rights Watch interview with Khouloud, Kuwait City, Kuwait, February 9, 2011.

Transgender women say they have learned the hard way that the police are never there for their protection, but rather constitute a pervasive threat to their safety and bodily integrity. Human Rights Watch heard several accounts in which individuals said they got into car accidents and were then arrested for “imitating the opposite sex” by police who came to the scene to investigate.¹¹⁴ Such experiences have taught the transsexual community that it is at risk in any situation involving the police.

In 2009 Sara and her friend got into a minor car accident with five other cars on a Kuwait City highway. Terrified that when police came they would arrest them for “imitation,” they said they abandoned the car and ran away. After a tow truck took the car to the police station, Sara said she went with her brother to retrieve it, wearing a baggy sweater, loose jeans, and a baseball cap under which her long hair was tucked. Despite this, Sara says, the police officer threatened her with arrest if he ever saw her in a police station again.¹¹⁵

Rima got into a hit-and-run car accident in March 2009. She went to the nearest police station to report the incident, where police yelled at her and called her names:

I was “filth,” a “societal disease.” All I wanted to do was to file a report because a car had backed into me. Even that I couldn’t do. I dropped the charges and left, I couldn’t deal with the abuse any longer.... When I left the police kept calling to try to arrange a date with me. In the end I had to change my number, but I know that if they wanted to harm me, they could very easily [do so] and there’s nothing I can do about it.¹¹⁶

Amina, 35, a transgender woman, told Human Rights Watch that in January 2010 two men began following her in her car, trying to get her to talk to them. They hit her car and was injured quite badly. When the police came, she said they refused to take her to the hospital even though she was bleeding, and took her to the police station where they shaved her head and made her sign a declaration promising never to “imitate” again.¹¹⁷

¹¹⁴ Kuwait has a very high number of traffic accidents. *Al Watan* newspaper reported that over 56,000 car accidents were recorded in 2008 alone—over 1,000 accidents a week in a population of about 2.8 million. See “56,660 car accidents in 2008 alone,” *Al Watan Daily*, <http://www2.alwatan.com.kw/Default.aspx?MgDid=740632&pageId=473> (accessed November 16, 2011).

¹¹⁵ Human Rights Watch interview with Sara, Kuwait City, Kuwait, February 6, 2011.

¹¹⁶ Human Rights Watch interview with Rima, Kuwait City, Kuwait, February 10, 2011.

¹¹⁷ Human Rights Watch interview with Amina, Kuwait City, Kuwait, February 20, 2011.

In July 2010 lawyer Riad al-Saneh wrote an article in daily *Al-Anba* recounting the story of a transgender woman who went into the Salmiya police station to report a man who had broken her mobile phone and refused to compensate her. Al-Saneh wrote that before going into the station, she wore a *dishdasha* over her skirt and washed the makeup off her face, but had forgotten to take off her earrings. Before she even had a chance to report the crime, the police immediately arrested her for “imitating the opposite sex.”¹¹⁸

In the rare cases where transsexuals filed complaints against police for abuse, they said that nothing came of the investigations and no one was punished. In May 2010 Dana, 23, said she filed a complaint with the Hawalli public prosecutor against a police officer who allegedly raped her in the CID in April. To this day, she says the officer in question has not been investigated.¹¹⁹

Transgender women told Human Rights Watch that it is also nearly impossible to achieve redress for violence by civilians against them. In 2010, while Maha was stopped at a red light, a man approached her car and smashed her window in an apparent hate crime. Maha said she went to the police station with the car license number to report him, but police taunted her, saying they ought to file a case against her instead, for “imitating.”¹²⁰

Human Rights Watch was able to confirm two instances where police officers were investigated for accusations of assault, but was unable to learn whether the officers involved were punished. In one case, which later received widespread media attention, *Al-Rai* newspaper reported on January 29, 2011, that three transgender women arrested the previous day filed a complaint against police officers at the Traffic Control Department in the Surra district of Kuwait City.¹²¹ According to the article, police abused and humiliated the detainees and forced them to undress and dance for them. One officer reportedly fired his gun several times to scare them. In the second case, *Al-Rai* reported on June 10, 2011, that a transgender woman serving a prison sentence filed a complaint against a prison

¹¹⁸ Riad Al-Saneh, “Transsexual goes to police station to report a crime and arrested for imitating the opposite sex,” *Al-Anba*, July 2, 2010.

¹¹⁹ Human Rights Watch interview with Dana, Kuwait City, Kuwait, February 7, 2011.

¹²⁰ Human Rights Watch interview with Maha, Kuwait City, Kuwait, February 16, 2011.

¹²¹ Hussein Al-Harby, “Three ‘soft men’ accuse officers of forcing them to dance and one of them of shooting,” *Al-Rai*, January 29, 2011, <http://www.alraimedia.com/Alrai/Article.aspx?id=253119&date=29012011> (accessed June 14, 2011).

guard for attempted rape, but there was no further reporting on the outcome of this case.¹²² However, neither case is typical of those investigated by Human Rights Watch, where most interviewees said that they did not report police violations in the first place.

When Human Rights Watch asked transgender women why they did not lodge formal complaints for mistreatment, abuse, or torture, all but three of the 40 expressed very little confidence in the protective mechanisms of the state and said they preferred to just get on with their lives, hoping that the incident would not be repeated

* * *

The passage of the discriminatory amendment to article 198 criminalizing “imitating the opposite sex” has paved the way for police to arbitrarily detain, torture, and sexually harass and abuse transgender women in Kuwait with impunity. Despite a formal state recognition of Gender Identity Disorder, arrests of transgender women continue unabated. The police often take advantage of the law to blackmail transgender women for sex, and redress for police abuse is difficult, if not impossible, for fear of reprisal and re-arrest. The law does not criminalize any specific act or behavior, but rather an appearance whose interpretation is left entirely up to the whims of the police, giving them free reign to decide who is breaking the law and how it is broken. The state of Kuwait should respect its obligations under international law and investigate all allegations of torture and instate mechanisms to ensure effective monitoring of police behavior. It should also instate an immediate moratorium on arrests of transgenders under this law, and repeal the amendment to article 198.

¹²² Abdelaziz Al-Yahyouth, “Officer in Central Prison Harasses ‘third sex’,” *Al-Rai*, June 10, 2011, <http://www.alraimedia.com/Alrai/Article.aspx?id=280760&date=10062011> (accessed July 2, 2011).

Annex 1

Gender Difference and Social Anxiety: A Note on Identity and Terminology

The transgender individuals interviewed for this report self-identified in various ways that do not always parallel Western understanding of lesbian, gay, bisexual, and transgender. In addition, terms prevalent in Kuwaiti society to describe gender and sexually non-conforming individuals sometimes do not reflect the way these individuals self-identify.

Transsexual or transgender are not widely used terms in Kuwait, although most individuals Human Rights Watch spoke with self-identified as transsexual (in two cases as “she-males,” using the English term) and expressed a desire to transition hormonally, surgically, and legally into women.

The term commonly used in Kuwait for non-conforming biological men is “*jins thalith*” (“third sex”), or “*jins*” for short (simply “sex,” used as a noun, “*jounous*” in the plural). Most individuals we spoke with regard the terms as derogatory. People used the term *jins thalith* to describe a variety of gender and sexual difference in biological men, referring generally to non-normative behavior or presentation: this can include effeminacy, homosexuality, transsexuality and transgenderism, or a combination thereof.

This fluidity was also reflected in the self-conception of individuals with whom we spoke. While many self-identified clearly as transsexual, others were unable to express any clear-cut identity and would best be described as transgender, although they did not self-identify as such. Nor did they necessarily identify as gay. Such individuals were usually effeminate, sometimes used female hormones, and presented themselves as male or female, depending on the situation, without necessarily expressing a consistent gender identity. Their sexual preference was usually towards men.

Homosexual Kuwaiti men use either the English term gay, its neutral Arabic equivalent “*mithly*,” or the term “*louti*” (a reference to the People of Lot). While for many gay rights activists this term is derogatory, some homosexual men used it as a descriptor.

The terms “*boya*” (an Arabization of the English word boy, “*boyat*” in the plural) or the less common “*jins rabi*” (“fourth sex”) refer women or girls whose mannerisms and gender presentation is masculine. In recent years, a moral panic emerged in several Arab Gulf states, including Kuwait, over the phenomenon of *boyat*, which many contend is a form of deviance, moral degeneracy, or a pathology.¹²³ An elaboration of how Kuwaiti and Gulf Arab societies generally view *boyat* illustrates the anxiety caused by any transgression of gender norms.

The term *boya* is generally a description of any form of overt female masculinity, and does not automatically include homosexuality. While many *boyat* do identify as lesbian, others maintain that they are not. Such identities can be situated within a larger global trend of increasingly hybridized sexual and gender identities. *Boyat* challenge social norms of acceptable female behavior and gender roles, in the sense that they defy presentations of the body that Kuwaiti society deems legitimate for women. This defiance encompasses the sexual use of their bodies insofar as attraction to women is considered a characteristic solely of men.

Several mainstream Kuwaiti talk shows that deal with political and social issues across the region and in Kuwait itself have addressed the issue of *boyat*, decrying its spread and warning that masculinization of women may lead to deviant behavior such as homosexuality.¹²⁴ The homosexual component, while implicit, is not necessarily the most important aspect of their behavior; rather, attraction to women is seen as a natural attribute of masculinity. Concern about transgression of gender norms is far more salient in public discourse about *boyat*. One psychologist advocated treatment for female masculinity early on so that it does not *lead* to homosexuality.¹²⁵

The visibility of both *boyat* and transgender women as identifiable markers of gender transgression has led to the vilification of both and the legal sanction of transgender women. The fact that female homosexuality is not a criminal offence does not make it socially acceptable. Both public and medical discourse in Kuwait often portray *boyat* as

¹²³ Amelia Naidoo, “Shedding light on the ‘Boyat’ phenomenon: Conference separates fact from fiction on the issue”, *Gulfnews.com*, April 21, 2011, <http://gulfnews.com/news/gulf/uae/general/shedding-light-on-the-boyat-phenomenon-1.796816> (accessed December 22, 2011).

¹²⁴ CNN, “Gulf Boyat,” online video clip, *YouTube*, May 21, 2010, http://www.youtube.com/watch?v=8FwAl_x9xDU, (accessed June 24, 2011).

¹²⁵ Human Rights Watch interview with Dr. Naima Taher, Kuwait City, Kuwait, February 12, 2011.

manifestations of female teen rebellion against traditions and values embraced by Kuwaiti society.¹²⁶ Media reports commonly characterize them as violent or predatory. When arrests of *boyat* do happen, they are often for crimes such as public disturbances or aggression, rather than for imitating a member of the opposite sex.¹²⁷

The types of opinions expressed in Kuwaiti media and the frequency with which they are articulated are proof of the currency and seriousness of gender transgression from the perspective of the general public and policy makers. Interestingly, there has not been the same amount of media attention or public outcry directed against gay men. In Kuwait specifically, the lion's share of media attention has gone to *boyat*, transgender persons, and male effeminacy generally, and the latter two especially after the passing of the amendment to article 198.

¹²⁶ Dalal S. Almubayei, "Articulations of Identity within Kuwaiti High School Cliques: Language Choices in Boyat and Emo Filipino Youth Groups," PhD. Dissertation, University of Texas at Arlington, 2010.

¹²⁷ Ibid.

Annex 2

Gender Identity Disorder diagnosis from the Psychological Medicine Hospital:

STATE OF KUWAIT
MINISTRY OF HEALTH

دولة الكويت
وزارة الصحة

Reference :
Date :
Medical Report

الرقم :
التاريخ :

To Whom It May Concern

Name : [REDACTED]
File : [REDACTED]
Age : 31 yrs
Sex : Male

The above-mentioned patient is 31 yrs old male, single, working in Ministry of [REDACTED] as [REDACTED]

Presenting History:-
The condition has long history since childhood, where the patient has inner feelings that he is a female and refused the male identity as well as male gender role. He has had begin to express these feelings on adolescence, and taking the female gender role, in his dressings, walking, communication, received hormonal therapy for one year. These behaviour faced by social conflicts and family trouble, which leads to state of confusion, depressive and anxiety. Cipralex 20mg./day was given and supportive therapy also included.

The patient has thoughts & intention for surgical reconstruction for changing his sexual identity to female. Psychometric assessment is going consistently with clinical presentations.

Diagnosis: Gender Identity Disorder (transsexualism) & depression.

Dr. Abdullah Gholoum,
Head of Psychiatric Department,
Psychological Medicine Hospital
Kuwait

Dr. Mamdouh Al-Gamal
Psychiatrist
Psychological Med. Hospital
Kuwait

Annex 3

The 1988 fatwa by Egyptian Grand Mufti of the republic, Mohammad Sayed Tantawi, on sex reassignment states the following:

To the honored general secretary of the Doctors' General Syndicate. This is an answer to the Syndicate's letter number 483 of May 14, 1988, asking for the opinion of religion on the matter of a student of medicine at the al-Azhar university, who has been subjected to a surgical operation (removing his male organs) in order to turn him into a girl.

We find that Usama ibn Sharik tells: "A bedouin came to the Prophet and said, 'O, Messenger of God, can you cure?' And He said, 'Yes, for God did not send a disease without sending a cure for it, knowing it from His knowledge....'" This [hadith] is told by Ahmad [ibn Hanbal]. There is another version: "Some bedouins said, 'O, Messenger of God, can you cure?' And He said. 'Yes. God's servants can cure themselves, for God never gave a disease without providing a cure or a medicine for it, except for one disease.' They asked, 'O, Prophet of God, what disease is that?' He said, 'old age.'" This version is related by ibn Maja abu Da'ud, at-Tirmidhi, and others. (Muntaqi l-Akhbar wa Sharhan nayl al-Awtar, v. 8, p. 200, and Fath al-Bari bi Sharh Sahih al-Bukhari, by al-cAsqalani(29), v. 9, p. 273, in the chapter on those who imitate women).

As for the condemnation of those who by word and deed resemble women, it must be confined to one who does it deliberately [tacahhada dhalika], while one who is like this out of a natural disposition must be ordered to abandon it, even if this can only be achieved step by step. Should he then not comply, but persist [in his manners], the blame shall include him, as well ... especially if he displays any pleasure in doing so.

The person who is by nature a hermaphrodite [mukhannath khalqi] is not to be blamed. This is based on [the consideration that] if he is not capable of

abandoning the female, swinging his hips in walking and speaking in a feminine way, after having been subjected to treatment against it, [he is at least willing to accept that] it is still possible for him to abandon it, if only gradually. But if he gives up the cure with no good excuse, then he deserves blame.

At-Tabari took it as an example that the Prophet (God bless him and grant him salvation) did not forbid the hermaphrodite from entering the women's quarters until he heard him giving a description of the woman in great detail. Then he prohibited it. This proves that no blame is on the hermaphrodite for simply being created that way.

That being so, the rulings derived from these and other noble hadiths on treatment grant permission to perform an operation changing a man into a woman, or vice versa, as long as a reliable doctor concludes that there are innate causes in the body itself, indicating a buried [matmura] female nature, or a covered [maghmura] male nature, because the operation will disclose these buried or covered organs, thereby curing a corporal disease which cannot be removed, except by this operation.

This is also dealt with in a hadith about cutting a vein, which is related through Jabir: "The Messenger of God sent a physician to abu ibn Kacb. The physician cut a vein and burned it." This hadith is related by Ahmad [ibn Hanbal] and Muslim. What supports this view is what al-Qastallani (30) and al-cAsqalani say in their commentaries on it: "This means that it is incumbent upon the hermaphrodite to remove the symptoms of femininity."

And this is further sustained by the author of Fath al-Bari who says "...having given him treatment in order to abandon it..." This is a clear proof that the duty prescribed for the hermaphrodite can take the form of a treatment. The operation is such a treatment, perhaps even the best treatment. This operation cannot be granted at the mere wish to change sex with no clear and convincing corporal motives. In that case it would fall under that noble Hadith which al-Bukhari relates through Anas: "The Messenger of God cursed

the hermaphrodites among the men and the over-masculine women, saying ‘expel them from their houses’, whereupon the Prophet himself (God bless Him and grant Him salvation) expelled one, and Umar expelled another one.” This Hadith is related by Ahmad and al-Bukhari.

To sum up: It is permissible to perform the operation in order to reveal what was hidden of male or female organs. Indeed, it is obligatory to do so on the grounds that it must be considered a treatment, when a trustworthy doctor advises it. It is, however, not permissible to do it at the mere wish to change sex from woman to man, or vice versa.

Praise be to He who created, who is mighty and guiding. From what has been said the answer to what was in the question will be known. Praise be to God the most High.¹²⁸

¹²⁸ Quoted in Jakob Skovgaard-Petersen, "Sex Change in Cairo: Gender and Islamic Law," *Journal of the International Institute* (Spring 1995).

Annex 4

December 5, 2011

Mr. Al-Fareek Ghazi Abdelrahman Al-Omar
Undersecretary of the Ministry of Interior
Ministry of Interior
P.O. Box 11, Safat
Kuwait City, Kuwait
T: 2424007 | F: 2435771

Dear Mr. Al-Fareek:

Human Rights Watch is currently preparing a report on police abuse of transgender women in Kuwait following the passing of amendment to article 198 in the Kuwaiti Penal Code which criminalizes “imitating the opposite sex”.

During a visit to Kuwait in February 2011, a Human Rights Watch research team spoke to 40 transgender women who alleged that police had subjected them to abuse upon arrest and detention, including sexual assault, humiliating and degrading treatment, and physical abuse that may amount to torture.

We would like to ensure that our report on the issue is both accurate and reflects official information and perspectives. We have outlined below a number of problems the transgender women we interviewed say they face, along with illustrative cases. We look forward to your comments and explanations. All pertinent information received by December 26, 2011 will be reflected in our report. We are also willing to come to Kuwait to discuss these matters in person with you, at a date that is convenient for you.

1. Sexual Abuse, Physical Abuse, and Torture: All the transgender women interviewed without exception reported that they suffered some form of sexual abuse or assault at the hands of the police. Twenty-six of those interviewed say that police blackmailed them into sex at the risk of arrest, and if they refused they

were physically abused and humiliated. In all cases, the sexual encounter happened outside the police station – either in police cars or at pre-arranged locations. Additionally, all of those arrested say that police touched them in a sexual manner. Six transgender women told Human Rights Watch that the police forcibly sexually assaulted them.

Transgender women interviewed by Human Rights Watch say that sexual harassment and humiliation also take on different forms, such as parading them around the station in their underwear or asking them invasive questions about their personal sex lives.

Half of the interviewees who were arrested report being physically abused by the police. All of those arrested report being slapped, while ten reported beatings with fists, and two reported beatings with cables and being burned with cigarettes.

Please explain what mechanisms are put in place to monitor police behavior within police stations, and how police misconduct outside of police stations is monitored. Please also clarify how many complaints of sexual abuse against police you have received from individuals arrested for allegedly violating amended article 198 and what the outcome of those complaints were.

2. Arbitrary arrest: Amended article 198 criminalizes “imitating the opposite sex in a public place” without specifying what exactly such imitation entails. The law does not criminalize any specific act or behavior, but rather an appearance whose interpretation is left entirely up to the police, giving them free reign to decide who is breaking the law and how it is broken. Of the 40 transgender women we spoke to, 14 claim that they were arrested while wearing male clothing, including the *dishdasha*. Three other interviewees also reported that police told them they were arrested for having a “smooth face,” a “soft voice,” and a “feminine watch.”

Four others also claim that they were arrested after police forced them to reveal their underwear at the time of arrest to determine whether they were wearing male or female undergarments.

Please clarify the nature and range of what constitutes “imitating the opposite sex”, and on what basis police are authorized to arrest individuals dressed in clothing in line with the gender on their identification papers. Also, please clarify what measures can be taken by individuals who feel that they were unfairly arrested and detained according to this law, and what measures the government may take to prevent such arbitrary arrests from happening.

3. Procedural Violations: Transgender women have told Human Rights Watch of a range of procedural violations carried out by the police besides arbitrary arrests outlined above. Reports of such violations include pre-charge detention well beyond the four day period permitted by Kuwaiti law, and failure to inform families of detainees of their whereabouts. In four cases former detainees claim that police lied to their parents about their detention when asked. Such acts constitute enforced disappearances, a grave violation of human rights and the rights of detainees.

Additionally, seven transgender women told Human Rights Watch that they were arrested while wearing male clothing, but that the police forced them to dress in female clothes before taking their pictures for their criminal files as a way to falsely prove their guilt.

They also claim that police have subjected them to humiliating examinations and bodily inspections by forensic doctors, even when they were arrested while wearing male clothes.

Two transgender women told Human Rights Watch that they were placed in pre-charge solitary confinement, one of them for a total of nine days.

All the interviewees who were detained and released claim that they were forced under duress to sign a declaration stating that they would not “imitate the opposite sex” again or be “found in suspect places at night,” regardless of when or where they were arrested, or what they were wearing at the time of arrest. They also claim that police shaved their heads before releasing them.

Please clarify on what legal basis and in what situations police can authorize bodily inspections by a forensic doctor. We would also like to understand on what

legal basis do individuals charged with violating amended article 198 either get a court case or are forced to sign a declaration and released? Please also explain the basis in Kuwaiti law for head shaving of individuals charged with violating amended article 198.

4. Redress for Violations: Human Rights Watch has asked transgender women who say they were abused by police why they did not submit complaints. The majority said that they were threatened by the police with re-arrest for violating amended article 198. Since police carry out these arrests arbitrarily with no monitoring and with impunity, Human Rights Watch believes that the victims are indeed at risk if they complain about police treatment. Additionally, three transgender women have said that police arrested them for violating amended article 198 while they were at the police station to report car accidents, and others in the same situation said that they were threatened with arrest if they did not leave immediately.

In one case documented by Human Rights Watch, a transgender woman said she was arrested at a checkpoint in September 2009. She says that the arresting officers took her to the traffic police station in Salmiya and attempted to sexually assault her, and when she resisted, Lieutenant Khaled Al-Sabah put out his cigarette on her hand, telling her he wanted to give her “something to remember me by”. She says he wrote a report claiming falsely that she ran a red light and suspended her driver’s license for 3 months. She met with Maj. Gen. Thabet al-Mhanna and submitted her testimony to him after he heard her tell her story on TV. Human Rights Watch has no knowledge of whether the officer in question was investigated or punished.

In another case, a transgender woman told Human Rights Watch that she submitted a complaint to the Hawalli police station in May 2010 against a police officer who she says raped her in the Criminal Investigation Department. She maintains that the officer in question was neither investigated nor punished.

Please clarify what procedures exist for citizen complaints against police mistreatment, how investigations are conducted, and whether measures are put in place for impartial and independent investigation. Please also explain the measures put in place to deal with threats of retribution against civilians who file

complaints. We would also like to know how many complaints of police abuse from individuals arrested for allegedly violating amended article 198 you have received since 2007, and what the outcome of those complaints were.

We look forward to reading your comments on the above issues, as well as any additional comments you wish to provide on the issues of police abuse and arbitrary detention of those suspected of “imitating the opposite sex.”

As noted above, we will reflect in our forthcoming report all pertinent information you provide to us by December 26, 2011. We also reiterate our interest in meeting you in person to discuss these issues, before our report has been finalized and when your comments can be fully incorporated.

Thank you for your consideration.

Sincerely yours,

A handwritten signature in black ink, appearing to read 'Sarah Leah Whitson', with a long horizontal flourish extending to the right.

Sarah Leah Whitson
Executive Director
Middle East and North Africa Division

Acknowledgements

This report is based on research conducted by Rasha Moumneh and Priyanka Motaparthy, researchers in the Middle East and North Africa and Children's Rights Divisions at Human Rights Watch, respectively. The report was written by Rasha Moumneh and edited by Graeme Reid, director of the Lesbian, Gay, Bisexual, and Transgender Rights Division, and Joe Stork and Sarah Leah Whitson, deputy director and director of the Middle East and North Africa Division respectively. Additional reviews were conducted by Nadya Khalife, researcher in the Women's Rights Division, and Diederik Lohman, senior research in the Health and Human Rights Division. Legal review was done by Clive Baldwin, senior legal advisor, and Program review by Danielle Haas, senior editor.

Ghassan Makarem translated this report into Arabic. Amr Khairy, Arabic language website and translation coordinator, provided assistance with translation into Arabic. José Luis Hernández, associate for the Lesbian, Gay, Bisexual, and Transgender Rights Division, prepared this report for publication. Additional production assistance was provided by Grace Choi, publications director, Kathy Mills, publications specialist, and Fitzroy Hepkins, mail manager.

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“THEY HUNT US DOWN FOR FUN”

Discrimination and Police Violence Against Transgender Women in Kuwait

In 2007 the Kuwaiti parliament outlawed “imitating the opposite sex”, paving the way for police to arbitrarily detain, torture, and sexually harass and abuse transgender women in Kuwait with impunity. Despite a formal state recognition of Gender Identity Disorder, arrests of transgender women continue unabated. The police often take advantage of the law to blackmail transgender women for sex, and redress for police abuse is difficult, if not impossible, for fear of reprisal and re-arrest. The law does not criminalize any specific act or behavior, but rather an appearance whose interpretation is left entirely up to the whims of the police, giving them free reign to decide who is breaking the law and how it is broken. This report documents the abuse, violence, and persecution faced by transgender women at the hands of the police as well as the discrimination they face on a daily basis as a result of this law.

Al-Rai newspaper
18 December 2007

CRIMINAL INVESTIGATION DEPARTMENT ARRESTS THREE MEMBERS OF THE “THIRD SEX” AND CHARGES THEM WITH IMITATING WOMEN

The Criminal Investigation Department (CID) arrested three members of the third sex yesterday and referred them to the relevant authorities after charging them with imitating women under the new law that criminalizes such acts.

Official sources told Al-Rai that “the three members of the third sex were arrested by officers from the CID in several areas, following instructions from the general director of the CID, Abdelhameed Al-Awady, who ordered the application of the law that was passed by the National Assembly”.

The sources explained that “the three members of the third sex who were arrested wearing women’s clothes were detained for 21 days for investigation”, and that the “law was applied, and it will be applied to every member of the third sex who is arrested imitating women. They will be referred to the relevant authorities and will be charged”. They added that “officers of the CID formed a unit to arrest those who imitate women and men, and they will bolster their patrols in areas where members of the third sex congregate such as coffee shops, shopping areas, malls, and other places so that the law is applied as meticulously as possible”.

Al Watan
January 3, 2011

TRANSEXUAL “PRANCES” IN THE STREETS OF SURRA

Police officers from the Surra police station arrested a member of the third sex yesterday night in the Surra district. During a routine patrol in the area, police noticed the suspect “prancing” next to one of the restaurants, and seemed flustered when he saw the patrol. When he was stopped the police thought he was a girl from his clothing, but after asking for his ID it became clear he was male. He was then arrested and transferred to the relevant authorities and charged with imitating the fairer sex.

Al-Rai newspaper
6 July 2008

THIRD SEX TODAY AND BOYAS TOMORROW IN THE NATIONAL ASSEMBLY

A few days ago an unprecedented event took place when members of the “third sex” stormed the National Assembly, trying to explain their situation to the Committee to Study Negative Phenomena Foreign to Kuwaiti Society. This was prompted by their fear of the committee and its decisions about them, and their concern it [the committee] could bolster the legal siege they currently face that restricts their “freedom” regarding clothing and hairstyles when out in public.

With the historical entrance of the third sex into the National Assembly, an important and dangerous question presented itself: does the freedom that is constitutionally guaranteed to citizens also apply to those who are “abnormal”?

Al-Rai newspaper
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A TRANSEXUAL DESCRIBES POLICE AS BRUTAL: “THEY HIT ME AND CURSED ME AND TOOK ME TO COURT”

“The harassment by the Ministry of Interior forces was present during the years in which I presented as female, so I decided 5 years ago to return to my previous male appearance. I preferred to be a man outwardly, even though my own sense of self and my real inclinations had not changed. I removed the silicone from my chest and my lips to return to my natural state and gave up dressing as a woman when I was out. So what happened to me on the 29th of October surprised and angered me, and made me feel as if I were not a citizen of this country. I do not know what the police still want with me. I left my house in Hawally dressed as a man, and two police officers stopped me and asked for my ID, which I gave them. One of them asked me: “are you imitating?” So I said that I used to but now I have returned to my natural state, and I showed him the scars of my breast reduction. But he insisted on turning me in to the Criminal Investigation Department. I waited with them for approximately half an hour until another police car arrived to take me there. I told them I was scheduled to have surgery the next day, but they told me “then you can die in detention”. I was detained for two days before they interrogated me. I denied all the charges against me, such as wearing makeup when I was arrested. After the interrogation I was transferred to court, where a police officer started beating me and cursing me without taking into consideration that I was ill. Then they took me to the judge who released me on a 200 KD bail.