

*"BIDOONS"*

*A Statelessness Plight in Kuwait*

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## English Abstract

Bidoon is an Arabic word that translates to "Without". The term stemmed from "Bidoon Jinsiya" or "Without Citizenship". According to a Human Rights Watch report that dates back to 1995, Kuwait has a system of institutionalized discrimination against Bidoon that has intensified with the Iraqi invasion in 1990.

Bidoons passed through a series of discriminatory uprising stages that deprived them of their fundamental right to work, travel, get married or receive any education. Consequently, most Bidoon suffer from poverty, illiteracy, and being targeted by the Kuwaiti government either for deportation or arbitrary arrest.<sup>[1]</sup>

Even though Bidoons enjoy protection either under the 1954 Convention on Statelessness or under the 1951 Convention on the Status of Refugee, such protection represents a temporary means to overcome the difficult living conditions Bidoon must face every day. Until Kuwait gets to comply with its international obligations and grant Bidoon the Kuwaiti nationality, we will not reach a final radical solution.

In this paper, I study the conflict between international law and the widespread discriminatory culture against Bidoons in Kuwait. Hereof, I focus on three main aspects of this plight: first, the background of the extensive bigotry course of action against Bidoon in Kuwait; second, the legal status of Bidoon whether nationally or internationally; and third, I would test the best durable solutions as well as the possibility of resolving the Bidoon paradox inside Kuwait. Throughout my study, I discuss the concept of "cultural appropriation" and present it as one of the most effective approaches to end this discriminatory legacy.

The research is an analytical study with a qualitative approach. My main target using such methodologies is to present an applied paper proposing a socio-legal detailed

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study of the Bidoon predicament. I hope this paper contributes to UNHCR's IBELONG campaign that aims at ending statelessness worldwide.

**Arabic Abstract**

يستخدم مصطلح "البدون" لوصف جماعة من السكان تقطن دولة الكويت، حيث يطلق عليهم هذا الاصطلاح نظراً لكونهم "بدون جنسية". وفقاً لتقرير "هيومن رايتس ووتش" عام ١٩٩٥: "إن الكويت لديها نظام اضطهاد ممنهج ضد البدون تزايد بشكل مطرد مع الغزو العراقي للكويت في عام ١٩٩٠".

تعرض البدون لمراحل متلاحقة من ممارسات التمييز العنصري ضدهم، إذ تم حرمانهم من الكثير من حقوقهم الأساسية: كالحق في العمل، السفر، الزواج والتعليم؛ مما أفضى إلى معاناة جلهم من الفقر والأمية. وقد ازدادت تلك المعاناة مع استهدافهم من قبل الحكومة الكويتية سواءً بالترحيل خارج البلاد أو الاعتقال التعسفي. ورغم حقيقة أن البدون يتمتعون بالحماية بمقتضى اتفاقية ١٩٥٤ بشأن انعدام الجنسية أو بموجب اتفاقية ١٩٥١ الخاصة بوضع اللاجئين؛ فإن هذه الحماية لم تكفل لهم الحد الأدنى من الحياة الإنسانية، وفق ما سيتضح في هذه الدراسة.

إن هذا البحث يتناول بالدراسة التضارب الواضح بين القانون الدولي والثقافة التمييزية العنصرية المنتشرة ضد البدون في الكويت، وذلك بالتركيز على ثلاثة نقاط رئيسية: أولاً: الخلفية التاريخية للممارسات العنصرية الممنهجة ضد البدون. ثانياً: المركز القانوني للبدون على الصعيدين الدولي والمحلي بدولة الكويت. ثالثاً: عرض الحلول المتاحة وفق آليات القانون الدولي لوضع حلٍ دائمٍ لهذه الإشكالية على المستويين الدولي والداخلي لدولة الكويت. وخلال هذه الدراسة سنتناول مفهوم "الملاءمة الثقافية" من منظور اجتماعي - قانوني وأقدمه ضمن الأساليب الأكثر فاعلية في معالجة قضية البدون.

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البحث عبارة عن دراسة تحليلية ذات نهج نوعي. الهدف الرئيسي من استخدام هذه المنهجيات هو تقديم ورقة بحثية تطبيقية تقدم دراسة اجتماعية - قانونية مفصلة لقضية البدون.

وإنني إذ أتقدم بهذه الورقة البحثية، فكلي أمل أن تساهم في إيصال صرخات آلاف البدون اللذين يعيشون في معاناة يومية لا تعرف الأوساط القانونية عنها الأثر، علها تكون خطوة نحو تقديم حلول قانونية وعملية لحل إشكالية انعدام الجنسية التي تواجه العالم بشكل مطرد والتي دفعت المفوضية السامية لشؤون اللاجئين بشن حملة "أنا أنتمي" بهدف إنهاء حالات انعدام الجنسية بحلول عام ٢٠٢٤.

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## Introduction

In 2015, I had the pleasure to intern at the UNHCR office in Jordan, one of the most active UNHCR offices worldwide. Throughout my internship period, I have been exposed to a wide array of compelling international law issues. Consequently, it has been tough to pick just one topic for writing my paper. However, as a big fan of UNHCR's I BELONG campaign to end statelessness by 2024 since it had been launched in November 2014, I chose to follow my passion and convey my experience with the stateless Bidoons profile hoping that one day this paper contributes to ending their tragic stateless status.

Bidoons mainly live in Kuwait where the Kuwaiti government discriminates against them and categorizes the population as "illegal residents"; however, authorities used to recognize them as part of the local population besides potential citizens during the first twenty-five years of Kuwait's statehood.<sup>1</sup>

Human Rights Watch published an article in 2011 about Bidoons' participation in demonstrations calling on authorities to address their citizenship claims; but the Kuwaiti government suppressed such movements<sup>2</sup>. The cases I observed during my internship with the UNHCR in Jordan showed that in 2011 and afterward, many Bidoons men fled to the United Kingdom, got refugee status or temporary leave to remain there, and are now trying to bring their families who fled to Jordan to join them in the United Kingdom by applying to the British embassy for family reunification. Many families' files have been put on hold in UNHCR for a couple of years, waiting for the United Kingdom embassy to decide on the family reunification

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<sup>1</sup> Human Rights Watch, Prisoners of the Past: Kuwaiti Bidoons and the Burden of Statelessness, 13 June 2011, P.48, available at: <http://www.refworld.org/docid/4df7191b2.html> [accessed 21 December 2015].

<sup>2</sup> Human Rights watch, JUNE 13, 2011, "Kuwait: Stateless 'Bidoons' Denied Rights Fifty Years of Waiting, but Government Offers Only Handouts", available at: <https://www.hrw.org/news/2011/06/13/kuwait-stateless-Bidoons-denied-rights>

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applications. Such families are stuck in Jordan waiting for either the United Kingdom embassy or the UNHCR office to give a helping hand.

This research is an analytical study with a qualitative rather than quantitative approach. My main target using such methodologies is to present an applied paper proposing a detailed analysis of this socio-legal predicament.

## **I. GENERAL BACKGROUND**

### I.A. Who Are Bidoons?

The Arabic word, "*Bidoon*," is used to denote long-time residents of Kuwait who are stateless. The Kuwaiti government refused to grant citizenship to Bidoons even those who were born in Kuwait or has been residents for decades. This left Bidoons to be the illegal residents of Kuwait.<sup>3</sup> There are presently at least 500,000 stateless Bidoons in the Gulf States, including Saudi Arabia. The largest group is in Kuwait.<sup>4</sup> The estimated number of Bidoons in Kuwait "ranges from 90,000 to 130,000, less than half the number who resided in the country prior to Iraq's invasion in 1990"<sup>5</sup>.

In their World Report 2016, Human Rights Watch stated that at least 105,702 Bidoons residents of Kuwait remain stateless. Some Bidoons activists say that the actual number of Bidoons in Kuwait is closer to 240,000, reflecting the government's failure to update its statistics.<sup>6</sup> However, it is hard to reach accurate calculations of

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<sup>3</sup> Human Rights Watch, Kuwait: Security Forces Forcibly Disperse Stateless Residents, 4 May 2012, available at: <http://www.refworld.org/docid/4fab6bec2.html> [accessed 19 December 2015]

<sup>4</sup> Abas Shiblak, Statelessness "The lost tribes of Arabia", Forced Migration Review, FMR32, April 2009, P.38, available at: [www.fmreview.org/FMRpdfs/FMR32/37-38.pdf](http://www.fmreview.org/FMRpdfs/FMR32/37-38.pdf)

<sup>5</sup> Refugees International, Kuwait: State of Exclusion, 25 July 2007, available at: <http://www.refworld.org/docid/47a6ee9bd.html> [accessed 22 December 2015]

<sup>6</sup> Human Rights Watch, 'World Report 2014' (page 2), available at: <http://www.hrw.org/world-report/2014/country---chapters/kuwait?page=2>. Date accessed: 18 May 2016.

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the number of stateless persons in the Arab region;<sup>7</sup> census data listed approximately one-third of Kuwait's population as Bidoons<sup>8</sup>.

Kuwait's Bidoon population originates from three broad categories: “1) those whose ancestors failed to apply for nationality or lacked necessary documentation at the time of Kuwait's independence in 1961; 2) those recruited to work in Kuwait's army or police force during the 1960s who permanently settled in Kuwait, along with their families; and 3) children of Kuwaiti mothers and stateless or foreign fathers”.<sup>9</sup>

Thus, we must note the difference between "Bidoon" and "Bedouin" ethnicity. Bidoons are the stateless population in Kuwait that includes "Bedouins" as a group belonging to one of the three categories forming the stateless population. A Bedouin is a member of any of the Nomadic Arab tribes. A Bedouin is a Bidoon once belonged to any of the three categories, and most of the time, he would be a person whose ancestors could not apply for Kuwaiti nationality or didn't have the required documentation at the time of Kuwait's independence in 1961.

In the 1960s, there were initial registration efforts in Kuwait. Regardless of the Nationality Law passage, official government data shows that Bidoons were counted among Kuwait's total citizen population. The authorities informed these Bidoons that “they remained eligible to present claims for nationality and issued them temporary documents that identified them as "without nationality””.<sup>10</sup>

According to a Kuwait Times article published in November 2006, some Bidoons were granted the Kuwaiti nationality in the last 10 years, however; reliable

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<sup>7</sup>Abas Shiblak, Statelessness “The lost tribes of Arabia”, Forced Migration Review, FMR32, April 2009, P.38, available at: [www.fmreview.org/FMRpdfs/FMR32/37-38.pdf](http://www.fmreview.org/FMRpdfs/FMR32/37-38.pdf)

<sup>8</sup> Human Rights Watch, Prisoners of the Past: Kuwaiti Bidoons and the Burden of Statelessness, 13 June 2011, P.13, available at: <http://www.refworld.org/docid/4df7191b2.html> [accessed 23 December 2015].

<sup>9</sup> Ibid

<sup>10</sup> Human Rights Watch, Prisoners of the Past: Kuwaiti Bidoons and the Burden of Statelessness, 13 June 2011, P.13, available at: <http://www.refworld.org/docid/4df7191b2.html> [accessed 22 December 2015].

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estimates are not available in printed form, and it is estimated that about 103,000 are still trapped in the category of Bidoons.<sup>11</sup>

Bidoons, who registered their nationality claims with the Executive Committee (the state body in charge of Bidoons), were given Kuwaiti citizenship. However, the numbers were minimal.<sup>12</sup>

As I move onward in the paper, I'll explain why this government's plan to naturalize many Bidoons was fake. Even the documents issued to Bidoons never helped them neither be naturalized nor get equal treatment like Kuwaiti nationals or have access to public services in Kuwait. Moreover, many of the Bidoons ended up not being issued any documents at all and were stripped of their very fundamental rights till this moment.

### I.B. Historical View

A particular issue in the Middle East was that "the emerging new sub-national states of Arabia cut through nomadic or semi-nomadic societies". The previously unknown concepts of nationality besides that of enforceable borders were poorly understood, even suspected by specific segments of the population. Some people failed to comprehend or prioritize the need for registration to acquire citizenship, continuing their lives instead as they had for centuries before while remaining undocumented and without nationality. This was the case in Kuwait where illiteracy and poor awareness-raising efforts, as well as the fact that the actual relevance of citizenship only manifested itself many years later, all contributed to the failure of

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<sup>11</sup> Nasra M. Shah, "Migration to Kuwait: Trends, Patterns and Policies", Migration and Refugee Movements in the Middle East and North Africa, The Forced Migration & Refugee Studies Program, The American University in Cairo, Egypt, October 23-25, 2007.

<sup>12</sup> United Kingdom: Home Office, Country Information and Guidance - Kuwait: Bidoons, Version 2.0, July 2016, P.5, available at: <https://www.refworld.org/docid/5853da784.html> [accessed 6 February 2019]

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large numbers of persons to register as nationals when the 1959 Nationality Law was introduced.<sup>13</sup>

However, the problem mainly started with the changing of demography. “Kuwait's population is aging. Outside the cosmopolitan Kuwait City, half of Kuwait's population now comes from the more conservative countryside”. Many of the so-called Bedouins<sup>14</sup> have roots in Saudi Arabia's tribal and religiously conservative interior. The Bedouin population was growing fast given their higher birth rates. Kuwaiti authorities have reduced Bedouin influence by cracking down on Saudis acquiring Kuwaiti citizenship, sometimes stripping Kuwaiti citizenship from those holding Saudi passports.<sup>15</sup>

The problem is also linked to the government being suspicious of the ancestors of the stateless population. The authorities suspected that they destroyed their original, non-Kuwaiti passports to claim statelessness fraudulently.<sup>16</sup>

In 1959, in preparation for achieving complete independence from Britain, Kuwait issued Law No.15 governing Kuwaiti nationality. When the government started to register all residents of Kuwait, besides identifying those eligible for nationality, many of the outskirts’ residents– mainly of Bedouin ethnicity – either did not care enough to go for registering their citizenship claims or did not know

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<sup>13</sup> UN High Commissioner for Refugees (UNHCR), The situation of stateless persons in the Middle East and North Africa, October 2010, P.23, available at: <http://www.refworld.org/docid/4cea28072.html> [accessed 19 December 2015].

<sup>14</sup> There’s a differentiate between Bidoons and Bedouin: “The Bidoons, or stateless persons, whose status is a politically sensitive issue, are composed mainly of Arabs, most of whom would be classified ethnically as Beduins (Nomadics).” cited at; NASRA M SHAH, MAKHDOOM A SHAH, AND JAAFAR BEHBEHANI, Health Policy and Planning (Impact Factor: 3.47), Department of Community Medicine and Behavioral Sciences, Kuwait University, 09/1996; DOI: 10.1093/heapol/11.3.319, Source: PubMed, Research Reprt: Ethnicity, nationality and health care accessibility in Kuwait: a study of hospital emergency room users, available at: [https://www.researchgate.net/publication/13138473\\_Ethnicity\\_nationality\\_and\\_health\\_care\\_accessibility\\_in\\_Kuwait\\_A\\_study\\_of\\_hospital\\_emergency\\_room\\_users](https://www.researchgate.net/publication/13138473_Ethnicity_nationality_and_health_care_accessibility_in_Kuwait_A_study_of_hospital_emergency_room_users)

<sup>15</sup> Michael Rubin, “Has Kuwait Reached the Sectarian Tipping Point?”, American enterprise institute for public policy research, vol. No. 4, August 2013, available at: <https://www.aei.org/publication/has-kuwait-reached-the-sectarian-tipping-point/>

<sup>16</sup> Ibid

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about it from the very beginning. Some could not read or write, and those who kept no written records could not prove that they meet the legal requirements of the new Nationality Law. Others simply did not care enough about the new concept of nationality, failing to foresee the importance of citizenship in later decades.<sup>17</sup>

Although Kuwaiti authorities formally describe Bidoons as stateless residents, a large percentage of them were government workers in addition to members of the police and armed forces. They were initially given the same health, education together with social rights as Kuwaiti citizens and were exempted from the residence permit requirements of other non-Kuwaiti residents.<sup>18</sup>

However, in the period of 1960-1987, the Kuwaiti government amended the Nationality Law several times, each time introducing further restrictions on eligibility. Restrictions that limited the number of naturalizations each year to only 50 persons took place amongst the amendments. A 1980 amendment removed a Kuwaiti woman's ability to transmit her citizenship to her children, while a 1981 amendment specified that only Muslims could qualify for Kuwaiti nationality.<sup>19</sup> In addition, the regional political instability during the 1980s and 1990s led the government to significantly shift its policy towards the Bidoons by downgrading their status to that of "illegal residents", revoking benefits, plus excluding them from all government services and most jobs.<sup>20</sup>

From 1986 onwards, the government began restricting Bidoon's access to passports. Authorities ceased granting such passports except for those carrying official permits to travel abroad for medical treatment, education, or religious

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<sup>17</sup> Human Rights Watch, Prisoners of the Past: Kuwaiti Bidoons and the Burden of Statelessness, 13 June 2011, P.12, available at: <http://www.refworld.org/docid/4df7191b2.html> [accessed 23 December 2015].

<sup>18</sup> United Kingdom: Home Office, Country of Origin Information Report - Kuwait, 29 January 2010, P.48, available at: <http://www.refworld.org/docid/4bbb1c712.html> [accessed 20 December 2015]

<sup>19</sup> Human Rights Watch, Prisoners of the Past: Kuwaiti Bidoons and the Burden of Statelessness, 13 June 2011, P.13, available at: <http://www.refworld.org/docid/4df7191b2.html> [accessed 23 December 2015].

<sup>20</sup> Ibid

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purposes or to Bidoons serving in the army and police. Authorities started to ask that all government employees provide proof of Kuwaiti or foreign citizenship, otherwise they lose their jobs. In 1987 the Interior Ministry only issued and renewed drivers' licenses to Bidoons in police or military service. At the same time, authorities seized allowing Bidoons to register car ownership in their names.<sup>21</sup>

Hence, the Kuwaiti government dismissed Bidoons from their jobs (historically in the military or police forces), barred children from public schools, and revoked driving licenses. They must leave the country in order to carry passports (known as Article 17 passports) and renounce the right to return.<sup>22</sup>

On the other hand, the Kuwaiti Government expects Bidoons to officially register as Bidtor to obtain a security card. This card is used to circumvent labeling individuals as "illegal residents" by preventing detention or deportation. However, Bidoons must renew the cards either yearly or every two years, which is at the absolute discretion of the governing body of all Bidoons matters, the Central System to Resolve Illegal Residents' Status ("the Bidoons committee"), which was set up in 2010.<sup>23</sup>

It is clear how powerful politics can be to the extent that it outweighs a country's legal obligations and changes an entire nation's culture. There is no doubt that the Kuwaiti government's fears of changes in its demography along with the security claims gave justification to the widespread deteriorating status of Bidoons. The government policy has built up a discriminatory scheme against Bidoons that most people followed in Kuwait. Bidoons are regarded as lower creatures whom Kuwaitis

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<sup>21</sup> Ibid, Page 2

<sup>22</sup> United Kingdom: Home Office, Operational Guidance Note: Kuwait, 5 March 2009, P.48, available at: <http://www.refworld.org/docid/49c35db62.html> [accessed 23 December 2015]

<sup>23</sup> Dana Affleck, BEING "WITHOUT" – WHO ARE THE BIDOONS OF KUWAIT?, July 9, 2012, available at: <http://rightnow.org.au/topics/asylum-seekers/being-“without”—who-are-the-Bidoons-of-kuwait/> [accessed 23 December 2015].

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should never hire or marry. In the third part of my paper, I would focus on this legal-cultural paradox.

In conclusion, Bidoons in Kuwait passed through a series of discriminatory uprising stages that deprived them of fundamental human rights starting from their registration as Kuwaiti citizens; when part of the population failed to register, they then turned to be stateless Bidoons, passing through the issuance of several new laws that deprived Bidoons of many of their civil rights; i.e., issuing travel documents, ending driver license renewal, exclusion from public schools, denial of access to universities/clubs, dismissal from their jobs and losing their rights to free health care.

#### I.C. Reasons for Discrimination Against Bidoons

While discussing the historical background above, we got exposed to many reasons for the widespread discriminatory policy; however, there's still more to add in this regard. As discussed before, statelessness in Kuwait stems from restrictive citizenship laws besides the lack of effective mechanisms to review applicants' claims for citizenship.

Security also appears as a reason for such discrimination. However, what's meant by security here is the desire to keep national wealth for the few in these oil-producing countries, while in some cases the desire to keep the demographic balance in favor of the ruling families and against other religious or national groups remains the unspoken factors behind inclusion or exclusion in most of these countries.<sup>24</sup>

Nevertheless, the big apple here is still politics. Official intolerance to Bidoons escalated with the outbreak of the war between Iran and Iraq in 1980 that threatened Kuwait's internal stability, turning the country to be a target of terrorist attacks.<sup>25</sup>

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<sup>24</sup>Abas Shiblak, Statelessness "The lost tribes of Arabia", Forced Migration Review, FMR32, April 2009, P.38, available at: [www.fmreview.org/FMRpdfs/FMR32/37-38.pdf](http://www.fmreview.org/FMRpdfs/FMR32/37-38.pdf)

<sup>25</sup> Human Rights Watch, Prisoners of the Past: Kuwaiti Bidoons and the Burden of Statelessness, 13 June 2011, P.13, available at: <http://www.refworld.org/docid/4df7191b2.html> [accessed 23 December 2015].

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The political policy further affected the Kuwaiti government's attitude towards Bidoons. Authorities hardened restrictions and discrimination even more following the Iraqi invasion in 1990 and the ensuing war to liberate Kuwait. Before 1990, the official number of Bidoons residents in Kuwait was around 250,000. However, many Bidoons who fled the country during the war found themselves stranded outside of Kuwait. Most Bidoons could not escape to Saudi Arabia (as many Kuwaitis did) because they lacked passports; they could not enter the country, while Bidoons who fled from Kuwait to Iraq were not asked for any travel documents as the Iraqi government considered Kuwait to be its newly annexed "nineteenth province". When these Bidoons attempted to return to Kuwait following liberation, the government refused their entry at the Kuwaiti border. Thousands of Bidoons lived in refugee camps along the Iraq-Kuwait border for up to eight months following Kuwait's liberation from occupation.<sup>26</sup>

After the country's liberation from the Iraqi occupation in 1991, the government stepped up its efforts to strip the Bidoons of their rights. They were fired *altogether* from positions in the military along with the police, while only a tiny fraction was rehired. The dismissed population had to issue passports to collect their severance, whether Kuwaiti, foreign or simply leave the country to get one. Tens of thousands of Bidoons who had fled the country or were forced to leave subsequently were not allowed to return.<sup>27</sup>

In February and March 2011, Kuwaiti authorities showed the rest of its ugly face to Bidoons. As protesters swarmed through the streets of Cairo, Tunis, Libya, and Yemen, Kuwait's Bidoons also organized demonstrations in the primarily-Bidoon's neighborhoods of al-Ahmadi, Taima'a, as well as Sulaibiyya. where

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<sup>26</sup> Ibid P.14

<sup>27</sup> Refugees International, Kuwait: State of Exclusion, 25 July 2007, available at: <http://www.refworld.org/docid/47a6ee9bd.html> [accessed 19 December 2015]

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Kuwaiti security forces ended these demonstrations dispersing protesters with tear gas, smoke bombs, water cannons, beating, and arresting many of them.<sup>28</sup>

In response to the previously stated regional events, the international community suggested that governments who would not address rights violations, would face grave consequences. On this account, Kuwait's government offered the prospect of reform. In March 2011, the head of the Bidoons committee, Saleh al-Fadhala, announced that a new package of eleven rights for Bidoons, including the right to civil documentation, as well as rights to education, health, in addition to work, would be protected in new government decrees. But the reforms offered have not yet been implemented, and Kuwait did not set out a plan for resolving the underlying problem of statelessness in Kuwait.<sup>29</sup>

However positive those reforms might seem, nothing of it came to reality till this moment. Most of Bidoons are living under harsh conditions whether because of the prior discriminatory culture depriving them of most of their civil rights or because of their late demonstrations against the government that made many of them targeted either for their political opinions opposing to the ruling system or their imputed political views of such opposition.

#### I.D. Forms of Discrimination

Bidoons are primarily the victims of a widespread process of discrimination in Kuwait. Bidoons are deprived of many rights that are protected under the umbrella of international law. Some Bidoons have officially been subject to deportation, although there are no reports of these orders being carried out in practice. In Kuwait,

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<sup>28</sup> Human Rights Watch, Prisoners of the Past: Kuwaiti Bidoons and the Burden of Statelessness, 13 June 2011, P.12, available at: <http://www.refworld.org/docid/4df7191b2.html> [accessed 23 December 2015].

<sup>29</sup> Ibid

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one of the non-governmental organizations (NGOs) identified many Bidoons cases held in detention due to their lack of status<sup>30</sup>.

*1- Right to Demonstration and Peaceful Public Gathering:*

Participants in the demonstrations of 2011 reported to Human Rights Watch that once protesters gathered near the mosque, security forces announced that "non-Kuwaitis have no right to demonstrate, and they should end the protest".<sup>31</sup> Though Article 44 of Kuwait's constitution stated that; "Public meetings, demonstrations, and gatherings are permitted in accordance with the conditions and manner specified by law, provided that their purpose and means are peaceful and not contrary to morals.", Article 12 of the 1979 Public Gathering Law prohibited non-Kuwaitis from participating in public gatherings.

This Kuwaiti Public gathering Law came in contrast to Kuwait's international obligation to protect the right of peaceful assembly for all individuals. Kuwait ratified the International Covenant on Civil and Political Rights (ICCPR) in 1996. Article 21 of the ICCPR states that "the right of peaceful assembly shall be recognized" and that "no restrictions may be placed on the exercise of this right other than those imposed in conformity with the law, and which are necessary in a democratic society in the interests of national security or public safety, public order, the protection of public health or morals or the protection of the rights and freedoms of others."

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<sup>30</sup> UN High Commissioner for Refugees (UNHCR), The situation of stateless persons in the Middle East and North Africa, October 2010, P.23, available at: <http://www.refworld.org/docid/4cea28072.html> [accessed 22 December 2015].

<sup>31</sup> Human Rights Watch, Kuwait: Security Forces Forcibly Disperse Stateless Residents, 4 May 2012, available at: <http://www.refworld.org/docid/4fab6bec2.html> [accessed 20 December 2015]

**Bidoons: A Statelessness Plight in Kuwait****2- Restrictions on Property Rights:**

Bidoons are reportedly prevented from officially renting or owning property. These property rights restrictions may leave stateless populations vulnerable to eviction.<sup>32</sup>In addition, they are not permitted to register a vehicle or obtain a telephone line.<sup>33</sup>

**3- Right to Marriage:**

Difficulties in registering marriages between Bidoons couples or a Bidoons with a Kuwaiti citizen, which leaves the pair without legal proof of their marriage, have always been reported. This, in turn, means that women lose the recourse to courts for disputes involving divorce, maintenance in addition to child custody.<sup>34</sup> The vulnerable position of stateless women makes many of them victims of sexual trafficking and coerced marriages where a Bidoon woman marries any person who carries a nationality through whom she could acquire a nationality.

On the other hand, statelessness can drive families apart. The State under the immigration laws may refuse the re-entry of a Bidoon family member or treat the Bidoons husband of a Kuwaiti woman as a foreigner who requires a "sponsor" to enter or remain in the country. Many of the Bidoons families I interviewed during my internship in Jordan, when asked if they would return to Kuwait, said that this wasn't even an available option. A Kuwaiti mother married to a Bidoons man, who left them in Jordan and fled to the United Kingdom, mentioned that her children wouldn't be allowed into Kuwait being Bidoons after their father.

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<sup>32</sup> UN High Commissioner for Refugees (UNHCR), The situation of stateless persons in the Middle East and North Africa, October 2010, P.24, available at: <http://www.refworld.org/docid/4cea28072.html> [accessed 22 December 2015].

<sup>33</sup> United Kingdom: Home Office, Country Information and Guidance - Kuwaiti Bidoons, February 2014, P.34, available at: <https://www.refworld.org/pdfid/52f0b7b04.pdf> [accessed 5 February 2019].

<sup>34</sup> UN High Commissioner for Refugees (UNHCR), The situation of stateless persons in the Middle East and North Africa, October 2010, P.28, available at: <http://www.refworld.org/docid/4cea28072.html> [accessed 22 December 2015].

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In other cases, families have split because the child of a Kuwaiti woman (and Bidoon man) can acquire citizenship upon the parents' divorce. This provides an incentive for couples to separate. Some examples of this practice have been identified. Such action will evidently have severe consequences for the continuing enjoyment of family life.<sup>35</sup>

Musaed Al-Shammari, a Bidoons rights activist, told Human Rights Watch, "When we want to get married, we raise a case against our [prospective] wife, or her father. The judge will ask, 'Is this your wife?' and we say yes, and then we have an official court document proving the relationship.... This is how I was married." <sup>36</sup>

#### 4- Difficulty Accessing Documentation:

It is often the country of nationality, which is tasked with providing documents. Indeed, for many years, Kuwait did not offer or renew identity papers to its Bidoons population. However, the issuance of documents was resumed in March 2006, so the situation is being addressed. Bidoons in Kuwait may generally obtain only single-use documents and then only in exceptional circumstances such as to travel to Mecca for Hajj or for medical treatment that is proven to be both necessary and unavailable in Kuwait.<sup>37</sup>

Possession of a civil identification card (ID) also indicates the degree of accessibility to the health services since this card is required for most services and may be used as an alternative to the health registration card. Most Bidoons (94%) have not been issued ID cards and must use some other form of identification such

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<sup>35</sup> UN High Commissioner for Refugees (UNHCR), The situation of stateless persons in the Middle East and North Africa, October 2010, P.28, available at: <http://www.refworld.org/docid/4cea28072.html> [accessed 22 December 2015].

<sup>36</sup> Human Rights Watch, Prisoners of the Past: Kuwaiti Bidoons and the Burden of Statelessness, 13 June 2011, P.28, available at: <http://www.refworld.org/docid/4df7191b2.html> [accessed 23 December 2015]

<sup>37</sup> UN High Commissioner for Refugees (UNHCR), The situation of stateless persons in the Middle East and North Africa, October 2010, P.17, available at: <http://www.refworld.org/docid/4cea28072.html> [accessed 23 December 2015].

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as a travel document, or driver's license, to obtain services.<sup>38</sup> Putting into consideration that most of them cannot issue such forms of identification, ending up deprived of all services.

Another consequence of the fact that stateless persons cannot obtain travel documents is that they would be prevented from pursuing higher education or accessing specialized medical care abroad as their Kuwaiti national peers.

The civil identification cards issued to citizens, in addition to legal non-Kuwaiti residents, are the only form of identification accepted for purchasing property, enrolling in most school, and being legally registered as an employee. Instead, the Bidoons committee has issued security cards to 106,000 Bidoons. These cards help protect Bidoons from deportation, which is a consequence for violating the country's residency laws.<sup>39</sup>

Unregistered Bidoons include individuals whose security cards were refused to be renewed by the Bidoons committee, and those whose cards applications have been denied at the outset. Bidoons who lack valid security cards cannot obtain other civil documentation which makes them live in self-imposed confinement, fearing arrest and detention. With such lack of identification, Bidoons face difficulty accessing social services, such as health care and others.<sup>40</sup>

Despite repeated promises, there has been little progress on the naturalization of Bidoons. In 2000, the government has passed a law that permitted the naturalization of Bidoons and their descendants, if they can prove that they were registered in 1965

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<sup>38</sup> NASRA M SHAH, MAKHDOOM A SHAH, AND JAAFAR BEHBEHANI, Health Policy and Planning (Impact Factor: 3.47), Department of Community Medicine and Behavioral Sciences, Kuwait University, 09/1996; DOI: 10.1093/heapol/11.3.319, Source: PubMed, Research Reprt: Ethnicity, nationality and health care accessibility in Kuwait: a study of hospital emergency room users, available at: [https://www.researchgate.net/publication/13138473\\_Ethnicity\\_nationality\\_and\\_health\\_care\\_accessibility\\_in\\_Kuwait\\_A\\_study\\_of\\_hospital\\_emergency\\_room\\_users](https://www.researchgate.net/publication/13138473_Ethnicity_nationality_and_health_care_accessibility_in_Kuwait_A_study_of_hospital_emergency_room_users)

<sup>39</sup> Human Rights Watch, Prisoners of the Past: Kuwaiti Bidoons and the Burden of Statelessness, 13 June 2011, P.4, available at: <http://www.refworld.org/docid/4df7191b2.html> [accessed 23 December 2015]

<sup>40</sup> Ibid P.5

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census. However, it has been reported that only a small number of Bidoons who were rich and have connections, were able to acquire nationality through this process. The yearly quota of 2,000 naturalizations, as stipulated by the law, has never been met.<sup>41</sup>

In June 2010, during Kuwait's most recent review by the United Nations Human Rights Council (the successor of the Human Rights Commission), “the government announced that the authorities issued 300 birth certificates to children of Kuwaiti mothers and Bidoons fathers in 2009 but did not mention the children born to two stateless parents”.<sup>42</sup>

**5- Right to Education:**

In 1987 the government ended public education for Bidoon children and instructed private schools to require valid residency permits. In 1988 the government extended the ban on public education to the university.<sup>43</sup>

Accordingly, while Bidoons in the United Arab Emirates cannot follow education beyond high school, Bidoons in Kuwait report problems accessing secondary school as well as entering university.<sup>44</sup>

Suppose access to government education and healthcare facilities is barred. In that case, stateless persons must pay to use private services, which can be prohibitively expensive since stateless persons tend to have an inadequate income (This will be clarified further when discussing the right to work in the following

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<sup>41</sup> Minority Rights Group International, World Directory of Minorities and Indigenous People's, Kuwait, Bidoons, Updated December 2017, available at: <https://minorityrights.org/minorities/Bidoons/> [accessed 15 January 2019]

<sup>42</sup> Human Rights Watch, Prisoners of the Past: Kuwaiti Bidoons and the Burden of Statelessness, 13 June 2011, P.27, available at: <http://www.refworld.org/docid/4df7191b2.html> [accessed 23 December 2015].

<sup>43</sup> Human Rights Watch, Kuwait: Promises Betrayed: Denial of Rights of Bidoons, Women, and Freedom of Expression, 1 October 2000, available at: <https://www.refworld.org/docid/3ae6a87e0.html> [accessed 2 February 2019]

<sup>44</sup> UN High Commissioner for Refugees (UNHCR), The situation of stateless persons in the Middle East and North Africa, October 2010, P.28, available at: <http://www.refworld.org/docid/4cea28072.html> [accessed 21 December 2015].

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point.).<sup>45</sup> Restrictions on Bidoons' access to education make children either receive inferior education to that of Kuwaiti citizen children or fail to get any education at all.

Regardless that the Kuwaiti government announced a package of 11 'privileges' that would be granted to Bidoons upon the 2011 demonstrations, including the right to register births and marriages; moreover, access to education and healthcare; in practice, little has been done since 2011 to implement these promises.<sup>46</sup>

Currently, many Bidoons children attend private schools that provide Arabic-language instruction and serve Bidoon students primarily. These schools' annual fees range between KD 250 and 450 (US \$860 to \$1550) per child while parents pay extra costs for textbooks and uniforms.<sup>47</sup>

Although Kuwait has signed the Convention on the Rights of the Child, which requires governments to provide free education, most of the women I interviewed during my internship were illiterate. They never sent their children to private or public schools. Many of them said that they couldn't afford such fees.

### 6- Right to Work:

Bidoons face discrimination in employment under their 'illegal' status. Although many government ministries hire Bidoons, this is generally based on 'remuneration for work' contracts which offer little job security with none of the benefits provided by law to citizens and expatriate workers; including pensions, childcare supplements, protections against unfair termination, promotions, job security, end-of-service bonuses, paid sick leave, and annual leave. Moreover, in both the public

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<sup>45</sup> Ibid P.28

<sup>46</sup> Minority Rights Group International, World Directory of Minorities and Indigenous People's, Kuwait, Bidoons, Updated December 2017, available at: <https://minorityrights.org/minorities/Bidoons/> [accessed 15 January 2019]

<sup>47</sup> Human Rights Watch, Prisoners of the Past: Kuwaiti Bidoons and the Burden of Statelessness, 13 June 2011, P.33, available at: <http://www.refworld.org/docid/4df7191b2.html> [accessed 22 December 2015].

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and private sectors, Bidoons' salaries are generally lower than those provided to citizens and expatriate workers.<sup>48</sup>

Bidoons can never enjoy permanent employment statuses working only in the low-paying informal sector that lacks legal protection, as street vendors, or providers of services such as auto repairs.<sup>49</sup>

***7- Right to Health:***

Beginning in 1993, Bidoons were required to pay fees to utilize health care centers, although those services remained free for Kuwaiti citizens.<sup>50</sup>

The government used to provide Bidoons with health care covered by low-cost insurance. However, such insurance did not provide full coverage like that Kuwaiti citizens enjoy. Bidoons interviewed said

"... they could not afford their health care costs and that the government policy failed to cover testing, medication, or surgical care that medical professionals had recommended to them".<sup>51</sup>

***8- Right to Freedom of Movement:***

Although Kuwait has ratified the ICCPR- which in article 12 recognizes the right of an individual "to leave any country, including his own and not to be arbitrarily deprived of the right to enter his own country.", most Kuwaiti Bidoons complained from restrictions on their right to travel.

The Committee's General Comment 27 adds that "these provisions apply not only to citizens but also to those with strong ties to a particular country". It also

<sup>48</sup> Minority Rights Group International, World Directory of Minorities and Indigenous People's, Kuwait, Bidoons, Updated December 2017, available at: <https://minorityrights.org/minorities/Bidoons/> [accessed 15 January 2019]

<sup>49</sup> Human Rights Watch, Prisoners of the Past: Kuwaiti Bidoons and the Burden of Statelessness, 13 June 2011, P.38, available at: <http://www.refworld.org/docid/4df7191b2.html> [accessed 22 December 2015].

<sup>50</sup> Human Rights Watch, Kuwait: Promises Betrayed: Denial of Rights of Bidoons, Women, and Freedom of Expression, 1 October 2000, available at: <https://www.refworld.org/docid/3ae6a87e0.html> [accessed 2 February 2019]

<sup>51</sup> Human Rights Watch, Prisoners of the Past: Kuwaiti Bidoons and the Burden of Statelessness, 13 June 2011, P.7, available at: <http://www.refworld.org/docid/4df7191b2.html> [accessed 22 December 2015]

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specifies that "the right to leave a country must include the right to obtain the necessary travel documents."<sup>52</sup>

Pursuant to Article 17 of Law No.11 of 1962 concerning passports in Kuwait (the "Passports Law"), the Kuwaiti government hypothetically issues travel documents "temporary passports" to Bidoons, who hold security cards. In practice, the Passports Authority currently grants Bidoons those temporary passports only in one of three cases: travelling for educational purposes, medical treatment, or religious pilgrimage. Typically, these remain valid only for the trip cited in an individual's application. Nawwaf al-Badr, a Bidoons resident and member of the Committee for Kuwaiti Bidoons, told Human Rights Watch, "Our 'passport' is a different color. It is only good for one trip."<sup>53</sup>

#### I.E. Discriminatory Culture Translated into National Laws

The country's 1959 Nationality Law defined Kuwaiti nationals in article 1 as "persons who were settled in Kuwait before 1920 who maintained their normal residence there until the date of the publication of the law".<sup>54</sup> "Approximately one-third of the population was recognized as *bone fide* citizens, the founding families of the country. Another third was naturalized and granted partial citizenship rights. The remaining third was classified as "*Bidoons jinsiya*." ”<sup>55</sup>

The law has been amended 14 times, becoming more restrictive each time. For example, "the 1959 law (Article 3) granted citizenship to children of a Kuwaiti mother when at least one of four circumstances existed: the father was unknown,

<sup>52</sup> UN Human Rights Committee (HRC), CCPR General Comment No. 27: Article 12 (Freedom of Movement), 2 November 1999, CCPR/C/21/Rev.1/Add.9, available at: <https://www.refworld.org/docid/45139c394.html> [accessed 2 February 2019]

<sup>53</sup> Human Rights Watch, Prisoners of the Past: Kuwaiti Bidoons and the Burden of Statelessness, 13 June 2011, P.29, available at: <http://www.refworld.org/docid/4df7191b2.html> [accessed 23 December 2015].

<sup>54</sup> Nationality Law of Kuwait, 1959, available at: <https://www.refworld.org/docid/3ae6b4ef1c.html> [accessed 2 February 2019]

<sup>55</sup> Refugees International, Kuwait: State of Exclusion, 25 July 2007, available at: <http://www.refworld.org/docid/47a6ee9bd.html> [accessed 20 December 2015]

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paternity could not be proven, the father's nationality was anonymous, or he was stateless when amended in 1980, the mention of unknown nationality and statelessness was omitted".<sup>56</sup>

Nationality is a matter of sovereignty, and by law, courts cannot review sovereign actions of the state. Accordingly, Bidoons cannot petition the courts to have their citizenship claims adjudicated.<sup>57</sup> In addition, a 1990 law removed the courts' jurisdiction over all matters of national sovereignty, including citizenship claims and administrative decisions denying Bidoons temporary travel documents.<sup>58</sup>

## II. LEGAL STATUS OF BIDOONS

### II.A. International Protection

#### II.A.1. Universal Declaration of Human Rights and The Right to Nationality

Article 15 of the Universal Declaration of Human Rights (UDHR), adopted in 1948, asserts "everyone has the right to a nationality," in addition to that "no one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality. However, a declaration is non-binding; this principle has been assured in many conventions and practices that it's considered customary international law that all states must respect.

Though international law requires states to consider individuals' "genuine plus effective links" with a country in evaluating citizenship claims, such as: social, cultural, and economic ties<sup>59</sup>; reports indicate that in Kuwait, the Ministry of Interiors declined many nationality claims for Bidoons without providing enough information about the criteria of their decisions. There are often lengthy and

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<sup>56</sup> Ibid.

<sup>57</sup> Human Rights Watch, Prisoners of the Past: Kuwaiti Bidoons and the Burden of Statelessness, 13 June 2011, P.7, available at: <http://www.refworld.org/docid/4df7191b2.html> [accessed 23 December 2015].

<sup>58</sup> Decree Law No. 23 of 1990 on Regulation of the Judiciary Law in Kuwait.

<sup>59</sup> Human Rights Watch, Prisoners of the Past: Kuwaiti Bidoons and the Burden of Statelessness, 13 June 2011, P.7, available at: <http://www.refworld.org/docid/4df7191b2.html> [accessed 23 December 2015].

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unexplained delays in making decisions, and there has been a failure to make public any procedures or mechanisms to allow applicants to submit supporting evidence, challenge evidence supplied by the ministry, or appeal ministry decisions. Such circumstances render naturalization less accessible to potential applicants, including stateless persons<sup>60</sup>

II.A.2. Protection of The 1954 Convention Relating to The Status of Stateless Persons and The 1951 Refugee Convention

**The 1954 Convention Relating to The Status of Stateless Persons:**

Article 1(1) of the 1954 Convention defines a stateless person as: "For the purpose of this Convention, the term "stateless person" means a person who is not considered as a national by any State under the operation of its law."

According to UNHCR Guidelines on Statelessness, the Convention does not permit reservations to Article 1(1); thus, this definition is binding on all State Parties to the treaty. In addition, the International Law Commission has considered the definition in Article 1(1) as part of customary international law.<sup>61</sup>

The Guidelines also provide that, as with the 1951 Convention, "the rights specified in the 1954 Convention are not only for individuals who have been recognized as stateless following a determination made by a State or UNHCR. A person is stateless from the moment he or she satisfies the criteria in the 1954 Convention definition, any finding of this fact being merely declaratory. Instead, the rights afforded to an individual under the Convention are linked to the nature of that

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<sup>60</sup> UN High Commissioner for Refugees (UNHCR), The situation of stateless persons in the Middle East and North Africa, October 2010, P.36, available at: <http://www.refworld.org/docid/4cea28072.html> [accessed 22 December 2015].

<sup>61</sup> UN High Commissioner for Refugees (UNHCR), Guidelines on Statelessness No. 1: The definition of "Stateless Person" in Article 1(1) of the 1954 Convention relating to the Status of Stateless Persons, 20 February 2012, P.2, available at: <http://www.refworld.org/docid/4f4371b82.html> [accessed 21 December 2015]

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person's presence in the State and assessed in terms of the degree of attachment to the host country".<sup>62</sup>

Therefore, given that the International Law Commission has concluded that the definition in Article 1(1) is part of customary international law; we can conclude that Bidoons in Kuwait still have the right to enjoy stateless person protection even though Kuwait is not a State party to the 1954 Convention, and regardless the fact that it doesn't recognize their statelessness status.

However, in paragraph 12 of the Guidelines, UNHCR assures that establishing whether a person is stateless or not can be complex and challenging. Still, it is in the interests of both States and stateless persons that determination procedures be as simple, fair, and efficient as possible.

Another critical point to catch on in this regard is that the 1954 Convention foresees that stateless persons who are "lawfully in" a Contracting State (in French "se trouvant régulièrement") are entitled to an additional set of rights.<sup>63</sup> The "lawfully in" rights include the freedom of association (Article 15), right to wage-earning employment (Article 17), right to engage in self-employment (Article 18), right to liberal professions (Article 19), right to housing (Article 21), right to public life (Article 23), right to labor organizations and social security (Article 24), freedom of movement within a Contracting State (Article 26), right to issuing and renewing travel documents (Article 28), and right to protection from expulsion (Article 31).

This would take us to question the situation of Bidoons in Kuwait and whether those who are registered with the Bidoons Committee and issued security cards are considered eligible for the "lawfully in" set of rights?

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<sup>62</sup> Ibid

<sup>63</sup> Ibid.

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The Guidelines assure that non-state party countries are still committed to some obligations to stateless populations, stating that:

"Many individuals who meet the stateless person definition in the 1954 Convention live in countries that are not a party to this treaty. States, which are not yet party to the Convention may take note of the practice of providing identity papers and travel documents to stateless persons. These measures have already been adopted in several other non-Contracting States. In addition, all States would need to comply with their obligations under international human rights law, such as protection against arbitrary detention (Article 9(1) of the ICCPR) and, in the case of persons stateless in situ, the right to enter plus remain in one's "own country". (Article 12(4) of the ICCPR).<sup>64</sup>

**The 1951 Refugee Convention:**

Under Article 1(2) of the Convention Relating to the Status of Refugee, it is stated that:

"For the purposes of the present Convention, the term "refugee" shall apply to any person who as a result of events occurring before 1 January 1951 and owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it."

Hence, a stateless person may simultaneously be a refugee. Where this is the case, each claim must be assessed; and both statelessness and refugee status are explicitly recognized. Similarly, States must apply these standards to stateless

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<sup>64</sup> UN High Commissioner for Refugees (UNHCR), Guidelines on Statelessness No. 3: The Status of Stateless Persons at the National Level, 17 July 2012, HCR/GS/12/03, P.7, available at: <http://www.refworld.org/docid/5005520f2.html> [accessed 21 December 2015]

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individuals who qualify for any complementary protection including protection against refoulement.<sup>65</sup>

It is evident that the Bidoons population meet the 1951 convention definition of a refugee being targeted by the Kuwaiti government after the 2011 Bidoons anti-government demonstrations for either their "political opinion" or their "imputed political opinion". According to the narratives of some Bidoons wives during the interviews at UNHCR Jordan, the Kuwaiti government since 2001 has targeted many Bidoons for the mere fact that they belong to the Bidoons population without any distinction between those who have practically taken part in the anti-government protests and those who did not.

UNHCR's Guidelines clarify that stateless persons can be considered in their "own country" in the sense of Article 12(4) of the ICCPR. "Such persons include long-term, habitual residents of a State, which is often their country of birth. Being in their "own country," they have a right to enter and remain there with significant implications for their status under national law. Their profound connection with the State in question, often accompanied by an absence of links with other countries, imposes a political and moral imperative on the State to facilitate their full integration into society. The fact that these people are stateless in their "own country" is often a reflection of discriminatory treatment in the framing and application of nationality laws".<sup>66</sup>

Further, UNHCR Guidelines explicitly mention that the appropriate status for such individuals in their "own country" is the State's nationality in question.

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<sup>65</sup> UN High Commissioner for Refugees (UNHCR), Guidelines on Statelessness No. 3: The Status of Stateless Persons at the National Level, 17 July 2012, HCR/GS/12/03, P.3, available at: <http://www.refworld.org/docid/5005520f2.html> [accessed 20 December 2015]

<sup>66</sup> UN High Commissioner for Refugees (UNHCR), Guidelines on Statelessness No. 3: The Status of Stateless Persons at the National Level, 17 July 2012, HCR/GS/12/03, P.11, available at: <http://www.refworld.org/docid/5005520f2.html> [accessed 20 December 2015]

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“Recourse to a statelessness determination procedure will not generally be appropriate. If, however, individuals are expected to seek protection through such a mechanism, the status awarded on recognition shall include, at the very least, permanent residence with facilitated access to nationality”.<sup>67</sup>

This is a typical scenario for Bidoons who are denied the nationality of their country of birth where their parents have been long-term habitual residents, and they should be granted the Kuwaiti nationality. Kuwait that is neither a State party to the 1951 Refugee Convention plus its 1967 Protocol, nor to the 1954 Convention Relating to the Status of the Stateless Persons, according to the guidelines; still have a political as well as moral obligation to grant Bidoons the Kuwaiti nationality and facilitate their complete integrity in the society by ending such widespread discriminatory policies beside putting all discriminatory nationality laws to an end.

Looking through the 1951 and the 1954 Conventions, they both require States to provide their beneficiaries with affordable and equal treatment to nationals or aliens, including stateless persons.<sup>68</sup>

### II.A.3. Best Durable Solutions Under International Law

The need for durable solutions is necessary not just for refugees; but also, for stateless persons stuck in legal and physical limbo. A durable solution is one of three: 1) Voluntary repatriation. 2) Local Integration, or 3) Resettlement.

According to all the aforementioned, some stateless populations remain to be in their "own country" and may be referred to as "*in situ*" populations. For these groups,

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<sup>67</sup>Ibid.

<sup>68</sup> UN High Commissioner for Refugees (UNHCR), Guidelines on Statelessness No. 1: The definition of "Stateless Person" in Article 1(1) of the 1954 Convention relating to the Status of Stateless Persons, 20 February 2012, P.3, available at: <http://www.refworld.org/docid/4f4371b82.html> [accessed 20 December 2015]

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determination procedures to obtain status as stateless persons are not appropriate because of their long-established ties to these countries.<sup>69</sup>

Based on existing international standards and State practices in reducing statelessness, States might be advised to take nationality verification efforts rather than statelessness determination procedures.<sup>70</sup>

On that account, I would like to reassure you that naturalization is the only fundamental solution to the Bidoons dilemma. Bidoons should be granted the Kuwaiti nationality and integrate within the society they de facto belong as equal citizens enjoying the same set of rights. Accordingly, if the Kuwaiti government started naturalizing Bidoons in Kuwait and ended the widespread discriminatory legacy; two of the three durable solutions would be available for Bedoon to end their misery: "Local integration" for Bidoons who are still in Kuwait in addition to "voluntary repatriation" for those who have fled Kuwait before.

Though resettlement is one of the durable solutions, it doesn't present the best-case scenario for Bidoons who have the right to be naturalized Kuwaitis rather than any other permanent residency or citizenship elsewhere. I believe a Bidoons who has been determined as a refugee or stateless person and could resettle elsewhere would still be hoping to return to his/her motherland and be an equal citizen in Kuwait.

In Kuwait, it is said that some Bidoons have been able to resolve their situation through naturalization. Indeed, there are reports that over 10,000 Bidoons have naturalized over the past decade. However, others suggest that this figure relates to

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<sup>69</sup> UN High Commissioner for Refugees (UNHCR), Guidelines on Statelessness No. 2: Procedures for Determining whether an Individual is a Stateless Person, 5 April 2012, HCR/GS/12/02, available at: <http://www.refworld.org/docid/4f7dafb52.html> [accessed 20 December 2015]

<sup>70</sup> Ibid.

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all those who have been naturalized, such as foreign wives of Kuwaiti nationals and foreigners other than Bidoons.<sup>71</sup>

There are no legal entitlements to durable solutions in International Refugee as well as Statelessness Laws; they are not rights *per se* and remain at the discretion of states.<sup>72</sup> This imposes challenges, as, although the international community needs to work with durable solutions as "answers" to refugees together with stateless conditions, core aspects of them are still rather feeble.<sup>73</sup>

Durable solutions for refugees cannot be attained by UNHCR alone. This task requires UN system-wide consideration and systematic inclusion of all parties of concern. The aim of working in partnership with the World Bank, bilateral development partners, and the UN is that such a cross-cutting concern will be seen as a collective task, and those sister agencies, the donor and development communities, will inscribe this imperative on their agenda. In this way, the opportunities could be maximized in better responding to the challenges inherent in refugees as well as stateless issues.<sup>74</sup> I would talk about this in detail in chapter three: *Role of UNHCR, Civil Society, and "Cultural Appropriation" in Overcoming This Legal-Cultural Paradox.*

<sup>71</sup> UN High Commissioner for Refugees (UNHCR), The situation of stateless persons in the Middle East and North Africa, October 2010, P.33, available at: <http://www.refworld.org/docid/4cea28072.html> [accessed 21 December 2015].

<sup>72</sup> TÜRK, Volker; DOWD, Rebecca, Protection Gaps, In: FIDDIAN-QASMIYEH, Elena; LOESCHER, Gil; LONG, Katy; SIGONA, Nando, The Oxford Handbook of Refugee and Forced Migration Studies, Oxford University Press, Oxford, 2014, P. 284-85.

<sup>73</sup> Liliana Lyra Jubilut and André de Lima Madureira, Durable Solutions For Refugees: Principles And Implementation Strategy Of A General Framework, The London School of Economics and Political Science, Human Rights Student Blog, 21 November 2016, Available at: <https://blogs.lse.ac.uk/humanrights/2016/11/21/durable-solutions-for-refugees-principles-and-implementation-strategy-of-a-general-framework/> [accessed 5 February 2019]

<sup>74</sup> UN High Commissioner for Refugees (UNHCR), *Framework for Durable Solutions for Refugees and Persons of Concern*, Page 6, May 2003, available at: <https://www.refworld.org/docid/4124b6a04.html> [accessed 6 February 2019]

## II.B. International Legal Obligations on Kuwait

International human rights reviews, including the May 2010 review of Kuwait's human rights record at the UN Human Rights Council in Geneva, the annual U.S. State Department Human Rights Report, and briefing papers issued by the UN High Commissioner for Refugees, have highlighted the systematic discrimination against Bidoons in Kuwait. Yet, the government continues to refer to grants and charitable donations, rather than firm legal amendments, as an adequate response to the prolonged problem of statelessness on its territory.<sup>75</sup>

Though Kuwait has ratified the International Covenant on Economic, Social, and Cultural

Rights (ICESCR), in addition to the Convention on the Rights of the Child (CRC), while committed to the progressive realization of the rights therein, including the rights to work, health, and education; the government has increased its restrictions against Bidoons and denied their access to these rights. Where the government has expanded access to these rights for citizens, it still fails to guarantee the Bidoons access to education, primary healthcare, and legal opportunities for employment.<sup>76</sup>

Under Article 26 of the Universal Declaration of Human Rights (UDHR), along with Article 14 of the ICESCR, every person has a right to education. The right to education requires that states provide all children with free and compulsory elementary education as well as available and accessible secondary education. Article 26 states that:

"Everyone has the right to education. Education shall be free, at least in the elementary and fundamental stages. Elementary education shall be compulsory.

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<sup>75</sup>Human Rights Watch, Prisoners of the Past: Kuwaiti Bidoons and the Burden of Statelessness, 13 June 2011, P.24, available at: <http://www.refworld.org/docid/4df7191b2.html> [accessed 23 December 2015].

<sup>76</sup> Ibid P.31

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Technical and professional education shall be made generally available, and higher education shall be equally accessible to all on the basis of merit."

In addition, Kuwait has signed the Convention on the Rights of the Child, which requires governments to provide free education. According to article 28: "1. States Parties recognize the right of the child to education, and with a view to achieving this right progressively while on the basis of equal opportunity, they shall, in particular: (a) Make primary education compulsory and available free to all; (b) Encourage the development of different forms of secondary education, including general plus vocational education, make them available and accessible to every child, while taking appropriate measures such as the introduction of free education and offering financial assistance in case of need; (c) Make higher education accessible to all on the basis of capacity by every appropriate means; (d) Make educational as well as vocational information and Guidance available plus accessible to all children; (e) Take measures to encourage regular attendance at schools and the reduction of drop-out rates.

2. States Parties shall take all appropriate measures to ensure that school discipline is administered in a manner consistent with the child's human dignity and in conformity with the present Convention.

3. States Parties shall promote and encourage international cooperation in matters relating to education, in particular with a view to contributing to the elimination of ignorance and illiteracy."<sup>77</sup>

Kuwait has also signed the Convention on the Elimination of Discrimination in Education, which includes the obligation for state parties to "ensure that the standards of education are equivalent in all public educational institutions of the

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<sup>77</sup> Convention on the Rights of the Child Adopted and opened for signature, ratification and accession by General Assembly resolution 44/25 of 20 November 1989 entry into force 2 September 1990, in accordance with article 49.

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same level and that the conditions relating to the quality of the education provided are also equivalent."<sup>78</sup>

However, Kuwaiti law still does not protect the right of all children in its territory to free primary education as it restricts this right to citizen children, excluding both foreign residents together with Bidoon children.<sup>79</sup>

Article 6 of the ICESCR recognizes the right to work and prohibits discriminatory access to employment. The Committee's General Comment 18 explains that the right to work includes "the right of access to a system of protection guaranteeing each worker access to employment" and "the right not to be unfairly deprived of employment." In addition, it further specifies that: "States Parties have immediate obligations in relation to the right to work, such as the obligation to "guarantee" that it will be exercised "without discrimination of any kind".<sup>80</sup>

The UN Committee on Economic, Social and Cultural Rights, in General Comment 14 expanding on the right to health, requires governments to consider affordability when regulating payment for health care, stating: Health facilities, goods plus services must be affordable for all. Payment for healthcare services must be based on the principle of equity, ensuring that these services, whether privately or publicly provided, are affordable for all, including socially disadvantaged groups.<sup>81</sup>

Moreover, the Committee on the Elimination of Racial Discrimination, charged with interpreting the Convention, has called upon State Parties "to respect the right

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<sup>78</sup> Human Rights Watch, Prisoners of the Past: Kuwaiti Bidoons and the Burden of Statelessness, 13 June 2011, P.34, available at: <http://www.refworld.org/docid/4df7191b2.html> [accessed 23 December 2015].

<sup>79</sup> Ibid P.32

<sup>80</sup> UN General Assembly, International Covenant on Economic, Social and Cultural Rights, 16 December 1966, United Nations, Treaty Series, vol. 993, p. 3, available at: <https://www.refworld.org/docid/3ae6b36c0.html> [accessed 1 February 2019]

<sup>81</sup> 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, available at: <https://www.refworld.org/docid/4538838d0.html> [accessed 1 February 2019]

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of non-citizens to an adequate standard of physical and mental health by, inter alia, refraining from denying or limiting their access to preventive, curative and palliative health services." <sup>82</sup>

The Committee has further expressed its concerns about the violations of the rights of undocumented non-citizens. International law requires Kuwaiti government to implement a health policy that considers affordability and accessibility of services to all residents in its territory. <sup>83</sup>

Accordingly, though Kuwait is not a State party to the 1954 Convention, nor does it recognize statelessness on its territory, Kuwait is still not free of all obligations under international law regarding its discriminatory schemes treating Bidoons as lower human beings not entitled to all international protection.

On the other hand, although Kuwait has never ratified the 1954 or the 1961 conventions on statelessness, and regardless the fact that nationality is a matter of state sovereignty, international law has put limits on States when refusing to grant citizenship to those who would remain stateless within its territory. <sup>84</sup>

The International Court of Justice, in the *Nottebohm* case, defined nationality as "a legal bond having as its basis a social fact of attachment, a genuine connection of existence, interests, and sentiments."<sup>85</sup> A "genuine and effective link," as the "real and effective nationality" has been termed, is determined by considering factors laid out in *Nottebohm*, including the "habitual residence of the individual concerned but

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<sup>82</sup> Human Rights Watch, *Prisoners of the Past: Kuwaiti Bidoons and the Burden of Statelessness*, 13 June 2011, P.41, available at: <http://www.refworld.org/docid/4df7191b2.html> [accessed 23 December 2015].

<sup>83</sup> *Ibid.*

<sup>84</sup> Human Rights Watch, *Prisoners of the Past: Kuwaiti Bidoons and the Burden of Statelessness*, 13 June 2011, P.46, available at: <http://www.refworld.org/docid/4df7191b2.html> [accessed 23 December 2015].

<sup>85</sup> *Nottebohm Case (Liechtenstein v. Guatemala)*; Second Phase, International Court of Justice (ICJ), 6 April 1955, available at: [https://www.refworld.org/cases\\_ICJ\\_3ae6b7248.html](https://www.refworld.org/cases_ICJ_3ae6b7248.html) [accessed 5 February 2019]

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also the center of interests, his family ties, his participation in family life, [and] attachment shown by him for a given country and inculcated in his children." <sup>86</sup>

In 1987, Kuwaiti criminal court held that the state could not convict a Bidoons resident of "illegal residence" under the country's Aliens' Residence Law. A 1988 criminal court decision held that the state could not deport a Bidoon man because "non-Kuwaiti residents of Kuwait who do not belong to another state and do not hold its citizenship but who are deprived of Kuwaiti citizenship for one reason or another... are treated in a special way that is distinct from the treatment of foreigners." <sup>87</sup>

Despite all the previously mentioned holdings of national courts, international court of justice ruling, and all the international legal obligations on Kuwait, discrimination against Bidoons is still a legacy followed in Kuwait beside many neighboring gulf countries, whether in the public or the private sectors.

Following the Bidoons dilemma, Human Rights Watch suggested in its report in 2011 a list of recommendations to the Kuwaiti government to reconsider. Many of the presented recommendations were practical as well as easily applicable if the government was really willing to solve the problem. Some of the recommendations were as follows: <sup>88</sup>

- Grant nationality to long-term residents with strong claims to nationality, including residents who lack documented ties to other states and whose primary place of residence, familial, economic, and/or social connections are with Kuwait.

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<sup>86</sup>Human Rights Watch, Prisoners of the Past: Kuwaiti Bidoons and the Burden of Statelessness, 13 June 2011, P.46, available at: <http://www.refworld.org/docid/4df7191b2.html> [accessed 23 December 2015].

<sup>87</sup> Ibid P.19

<sup>88</sup>Human Rights Watch, Prisoners of the Past: Kuwaiti Bidoons and the Burden of Statelessness, 13 June 2011, P.8, available at: <http://www.refworld.org/docid/4df7191b2.html> [accessed 23 December 2015].

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- Give Kuwaiti women the same legal rights as men to confer nationality upon their spouses and children. Grant nationality to children born in Kuwait who would otherwise be stateless.
- Create a transparent mechanism for individuals to apply for citizenship with the opportunity for judicial review to guard against procedural error or abuse of discretion and ensure due process in determining citizenship claims.
- Grant temporary legal residency to stateless individuals pending resolution of their claims to Kuwaiti nationality. Cease treating the Bidoons as "illegal residents."
- Through legal reform, ensure the Bidoons' right to civil documentation, including birth certificates, marriage registration, death certificates, plus travel documents.
- Allow Bidoons children the right to enroll in government schools to safeguard their right to free and compulsory primary education in addition to available and accessible secondary education.

If we look deeper into many of the Human Rights Watch report recommendations; we realize that most of which are just steps leading to the best durable solution previously discussed in the above section; which is granting Bidoons the Kuwaiti nationality so they can integrate into the Kuwaiti society as equal citizens enjoying the same set of rights.

### **III. ROLE OF UNHCR, CIVIL SOCIETY, AND "CULTURAL APPROPRIATION" IN RESOLVING BIDOONS SOCIO-LEGAL PARADOX**

The role of international institutions and local NGOs can never be denied in overcoming such a discriminatory legal-cultural issue.

UNHCR continues to play an essential role in the region, raising awareness of statelessness issues. Such efforts had pleasant effects in many countries. In Kuwait, a bill of law on the status of stateless Bidoons has been drafted and is being debated

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in the parliament. Also, a statelessness registration campaign is ongoing in the United Arab Emirates, and some persons have already been naturalized.<sup>89</sup>

On the other hand, UNHCR can also advise on the development of new statelessness determination procedures along with the enhancement of existing ones. Also when applicants have access to UNHCR, this ensures the fairness of determination procedures.<sup>90</sup>

Thus, UNHCR plays a very influential role in changing the illegal widespread discriminatory legacy against Bidoons in Kuwait to make it more compliant with its international obligations under international laws. This process is called "cultural appropriation," which can be the only peaceful way to guarantee the gradual compliance of different nations and governments with international human rights protection. Let's look deeper into "cultural appropriation".

Throughout the Anthropology and Human Rights Class I took during my LL.M. studies at NYU, we always discussed how cultures, as well as practices of different countries, can be opposing to the international law standards, and we questioned if there is any peaceful solution to such conflict. This was when I was first exposed to the concept of "cultural appropriation" and the role of civil society. In one of the best ideological contributions, Professor Merry presented the "cultural appropriation" concept as an intermediate space of application where international human rights peacefully meet cultural relativism.

Cultural appropriation was clearly illustrated in Merry's study of a feminist program in Hilo, Hawaii. "The core mission of this program was to protect women

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<sup>89</sup> UN High Commissioner for Refugees (UNHCR), The situation of stateless persons in the Middle East and North Africa, October 2010, P.3, available at: <http://www.refworld.org/docid/4cea28072.html> [accessed 21 December 2015].

<sup>90</sup> UN High Commissioner for Refugees (UNHCR), Guidelines on Statelessness No. 2: Procedures for Determining whether an Individual is a Stateless Person, 5 April 2012, HCR/GS/12/02, available at: <http://www.refworld.org/docid/4f7dafb52.html> [accessed 20 December 2015]

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plus reedify battering as a crime in Hawaiian. The idea of gender equality and women's safety at the expense of marriage runs counter to nationalist ideas (Strength of the nation lies in the unity of its families). However, through different factors that worked side by side with state intervention by laws criminalizing such acts, a form of cultural appropriation took place in redefining violence against women and battering in Hilo. Different sorts of rehabilitation programs played their role in making a change in the cultural beliefs of the people; thus, resulted in a consensus change coming from people's wills based on a shift in their ideologies." "Cultural appropriation, in this case, was fundamentally creative and represented a pluralistic form of resistance to global homogenization."<sup>91</sup>

However, "cultural appropriation is still an uncertain process as it's governed by the nature of change of both culture and human rights."<sup>92</sup>

In 1998 the American Anthropologists Association's Committee for human rights proposed a new declaration on human rights which asserted that: "People and groups have a generic right to realize their capacity for culture, and to produce, reproduce and change the conditions and forms of their physical, personal and social existence, so long as such activities do not diminish the same capacities of others. Anthropology as an academic discipline studies the bases and the forms of human diversity and unity, anthropology as a practice seeks to apply this knowledge to the solution of human problems."<sup>93</sup>

It is important to note that both human rights systems besides culture are always in a dynamic state. "HR system is constantly changing in response to new global

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<sup>91</sup> Wilson, Richard A. "Tyrannosaurus lex: the anthropology of human rights and transnational law." Pp. 342-369 in Goodale and Merry, eds. *The Practice of Human Rights, 2007, P.348*

<sup>92</sup> Cowan, Jane K, Marie-Benedicte Dembour, and Richard A. Wilson (eds.). *Culture and Rights: Anthropological Perspectives: Changing Rights, Changing Cultures, Chapter 2*, Cambridge University Press, 2001, P.47.

<sup>93</sup> Cowan, Jane K, Marie-Benedicte Dembour, and Richard A. Wilson (eds.). *Culture and Rights: Anthropological Perspectives: Changing Rights, Changing Cultures, Chapter 2*, Cambridge University Press, 2001, P.32.

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circumstances. It is the product of negotiation along with discussion rather than imposition."<sup>94</sup> Therefore, the nature, content, plus diversity of rights is constantly changing.

Accordingly, regardless of the vital role of UNHCR plus international institutions, the cultural appropriation process is best applied through efforts of local NGOs that are familiar with the society, the governmental policies, and what language suits each best. I know such a process is not an easy way out and might be facing many obstacles. I know it might take decades to reach any results. However, I still believe that cultural appropriation through a combination of national and international efforts can yet be the most effective, if not the only, strategy to end the discriminatory legacy of Bidoons in Kuwait.

### **Conclusion**

All in all, the Bidoons plight remains to be one of the most hotly contested in Kuwait. The Bidoons plight is a complicated one with many national and international perspectives. But how can we bring this dilemma to an end amicably? It's "cultural appropriation" that would always be a cordial approach to gradually changing the Kuwaiti discriminatory legacy against Bidoons.

Alongside cultural appropriation through the cooperation between the international community and local civil society, there must be a sort of international protection to Bidoons that helps them live livable lives until Kuwait gradually changes its discriminatory legacy and Bidoons become naturalized Kuwaiti citizens. Such temporary protection can either be under the 1954 Convention on Statelessness or under the 1951 Convention on the Status of Refugees, which represents a better option for Bidoons.

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<sup>94</sup> Ibid P.41

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