



**Fédération Internationale des Ligues des Droits de l'Homme**

ORGANISATION INTERNATIONALE NON GOUVERNEMENTALE AYANT STATUT CONSULTATIF AUPRES DES NATIONS UNIES, DE L'UNESCO,  
ET DU CONSEIL DE L'EUROPE ET D'OBSERVATEUR AUPRES DE LA COMMISSION AFRICAINE DES DROITS DE L'HOMME ET DES PEUPLES

INTERNATIONAL FEDERATION  
OF HUMAN RIGHTS

FEDERACION INTERNACIONAL  
DE LOS DERECHOS HUMANOS

الفدرالية الدولية لحقوق الانسان

## Follow-up memorandum

### **Concerns and recommendations raised by the FIDH delegation of Human Rights Defenders from the Gulf countries during its visit to the EU in view of the EU-GCC Co-operation Council. (31<sup>st</sup> of March - 4<sup>th</sup> of April)**

#### **Background information:**

The International Federation for Human Rights (FIDH) invited to Brussels, from the 31st of March to the 4th of April, five representatives of major human rights organisations from the Gulf countries. Their visit was aimed at assessing the human rights situation in their countries and exchanging views and information with key EU actors ahead of the EU-GCC cooperation Council, to be held on the 26<sup>th</sup> of May.

They had very useful exchanges of views with key representatives of EU member States and institutions including:

- Members of Council Working Group on Middle-East and Gulf through a hearing in margin of COMAMA-MOG session
- Members of the European parliament through a hearing DROI Sub-committee and bilateral meetings
- European Commission and Council secretariat officials including geographical and human rights desks

The main themes of intervention were:

- Fundamental freedoms in Gulf countries (especially freedom of expression and association)
- Migration and migrants rights (with a specific focus on Asia-Gulf migration flows)
- Women's rights in Gulf countries
- Situation of Human Rights Defenders

#### **Members of the delegation:**

**Mr Nabeel Rajab, (*Bahrain*)** Vice-president of the Bahrain Centre for Human Rights (BCHR).

**Mr Abdulnabi Alekri, (*Bahrain*)** member of the Bahrain Human Rights Society.

**Mr Muhammad Al-Roken (*United Arab Emirates*)**, former President of the Jurists Association.

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**Mr Mina Zekri (Egypt)** specialised on freedom of expression in Gulf countries  
*(Ms. Fawzia Al-Uyuni (Saudi Arabia) specialised on Women's rights, conditions of detention and respect for human rights in the fight against terrorism.) Could not attend the visit to Brussels.*

## **The advancement of democracy in the GCC countries**

FIDH acknowledges that all GCC countries have constitutions<sup>1</sup> or basic codes<sup>2</sup> that include provisions on human rights. However, FIDH raises concern about their implementation: national legislations do not actually provide sufficient guarantees for the respect of both individual and collective rights, and sometimes restrict the effective enjoyment of these rights. The limitations of the rights to freedom of association and freedom of expression are an example in point.

### **The weight of the executive power**

All GCC countries are effectively run by ruling families, who then appoint and control their governments. Although the constitutions or basic codes of GCC countries guarantee the separation of powers and the independence of the executive, legislative and judicial powers, in most of these countries, the Heads of State have effective control over all three authorities, which undermines the effectiveness of the separation of powers and questions their independence. Furthermore, the executive authority is usually above both the legislative and judicial authorities, as it concentrates a lot of authority, including public finances. The weakness or inability of legislative councils to exercise a real counter-power appears here as truly problematic.

### **The independence of the Judiciary**

Whereas the constitutions and basic codes of GCC countries provide for an independent judiciary, in practice judges are appointed at all levels by the Head of State upon recommendation by the Minister of Justice, without adequate guarantees of independence. This is in contradiction with the Basic Principles on the Independence of the Judiciary.<sup>3</sup> According to international human rights principles, the first guarantee of an independent justice is for judges not to be appointed by the ruling power without adequate protection from its influence, and thus cannot be pressured with threats of discharge or transfer. In this regard, FIDH is concerned by the fact that the Judiciary seems to be under the influence of the rulers and the executive authority in GCC countries, and asks for a change of the legislation that regulates judges' mandates and work conditions.

### ***Recommendations:***

- To initiate institutional reforms in view of establishing an effective separation of powers
- To undertake reforms of the judicial system, in particular with regards to independence and impartiality and therefore to reform the procedure of judges' appointment

### **Constant violations of civil and political rights**

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1 Kuwait, Bahrain, United Arab Emirates (UAE) and Qatar (the constitution of Qatar still awaits its publication in the official gazette for implementation).

2 Oman and Saudi Arabia

3 Adopted by the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders held at Milan from 26 August to 6 September 1985 and endorsed by General Assembly resolutions 40/32 of 29 November 1985 and 40/146 of 13 December 1985.

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Regarding the elections, the members of the respective Parliaments are either totally appointed or partly elected and partly appointed. The United Arab Emirates have created a unique system: the government selects the electorate (only 6000 people out of almost 4 million people) and these selected individuals can elect only half of the Assembly; the others are chosen by the rulers. Women were only recently granted the right to vote and to stand for election non-citizens are denied this right. Furthermore, political parties are prohibited in all GCC countries. They are tolerated in Kuwait, and political groups are permitted to register only as associations in Bahrain. FIDH is concerned by the lack of participation from the population and its misrepresentation. There is a need for constitutional and legislative amendments to ensure that the legislative authority comes directly from free and fair elections in accordance with international norms. FIDH also considers that the lack of transparency in the « election » or « designation » process is contrary to fundamental democratic principles. Besides, there is a need for a legislation that allows and regulates the formation and functioning of political parties.

Furthermore, Members of Parliament have no real legislative power or control over the executive authority. Legislative councils' inability to exercise real counter-power when needed is preoccupying.

As well as political parties, trade unions are also forbidden or subjected to restrictive legislation in all GCC countries, even when they ratified the ILO Conventions 87 and 98,<sup>4</sup> notably regarding political activities or the right to strike. Domestic servants cannot join trade unions. Migrant workers also face restrictions or prohibition to form or join trade unions according to the country. Therefore, most migrant workers cannot stand up for their rights. FIDH urges the rulers of all GCC countries to amend their legislation in order to guarantee basic rights for all workers.

Regarding the right to citizenship, relevant laws are discriminatory between men and women, particularly regarding nationality and citizenship in the case of marriage with a foreigner or birth of a child.

Furthermore, the question of stateless people is worrying: some tribal groups, like Bedouins, or some long-term migrants have not been granted citizen status. This means that their freedom of movement is restricted, they cannot own any property, and they have no any civil and political rights in general. They are also discriminated against on the labour market and have limited access to medical care and education.

### ***Recommendations:***

- To organise free and fair elections in all GCC countries, which could be monitored by the EU
- To guarantee the rights to establish and join a political party, to vote, to stand for election.
- To establish a fully elected Parliament with full legislative and democratic control of competences
- To ensure the right to establish and join a trade union for all workers (in accordance with their international commitment, for Kuwait, which has ratified ILO Convention), as well as the right to strike
- To guarantee gender equality with regard to citizenship rights.
- To sort out the question of stateless people, in accordance with international human rights standards

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4 As Kuwait did.

## **The frequent and serious violations of fundamental freedoms and fundamental rights**

Even though constitutions or basic codes include provisions related to the right to freedom of association and freedom of expression, FIDH remains deeply concerned by the restrictive legislation regulating these freedoms. Besides, FIDH is worried by repetitive violations of fundamental civil and political rights.

### **Freedom of association**

FIDH is preoccupied by the restrictive legislation related to the formation of associations in all GCC countries, the worst case being Saudi Arabia where establishing an association is forbidden. The authorities have the power to accredit or dissolve any association, even those without any political goal. A special authorization or licence is needed to start an association. Sometimes restrictions are not obvious, like the minimal number of persons to start a new association, but they have practical consequences. Besides, the authorities can refuse to grant the licence for arbitrary reasons.

For example, in Bahrain, if the authorities think that the country does not need the services offered by the association, then they can refuse to licence it. They can also use the argument of State security and welfare, without further definition. Furthermore, associations are prohibited to carry out any political activity, again without further definition.

In Kuwait, the ministry in charge of associations officially attends the association's general assembly to ensure that internal democracy is respected. The representative of the Ministry can intervene if he/she believes there is something wrong and correct it.

The authorities can decide to dissolve an association by issuing an administrative order. Possibilities of appealing against a refusal regarding the creation of an association or against an order of dissolution are either very limited or non-existent.

### **Freedom of expression**

Closely linked to the restrictions and violations of the right to freedom of association is the right to freedom of expression. FIDH is concerned by the restrictive legislation that regulates all kinds of expression in most of the GCC countries. The first to suffer from these infringements are the media. Even if the foreign press enjoys a certain freedom, the rulers generally control all local media, and have the possibility of prohibiting publication of all works in different forms. Journalists can be prevented from writing in newspapers, or appearing on television when they are not « governmentally approved. » This usually happens when they are critical about the rulers or when they try to speak out for a better implementation of fundamental human rights.

Moreover, some countries have laws sanctioning the imprisonment of journalists on the basis of their opinion or political views. Opposition or reformist blogs and websites are regularly screened by the authorities, and arbitrarily shut down. Electronic activists then face arbitrary arrest and detention. FIDH deplores that opposition to the government can be assimilated to opposition to the State and considered as an offence against state security, and thus lead to the arrest and trial of political opponents to the regime. These arbitrary arrests are sometimes followed by torture or ill treatment, which FIDH strongly condemns. FIDH wants to point out that the power given to the rulers in the field of freedom of expression is in contradiction with international human rights standards, and that there is an urgent need to amend the current legislations.

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The media are not the only targets; some human rights defenders face severe repression. Human rights associations are often targeted and closed down. Their members are « black-listed ». Defenders are often harassed or threatened in order to make them stop talking or gathering. They are subjected to arbitrary arrest, police abuse and even torture while in detention, because they are considered as « activists ». Furthermore, they often have to wait months or years in detention before having access to a lawyer or to an independent tribunal.

### ***Recommendations***

To amend existing laws to

- 1) Guarantee the right to freely set up an organisation
- 2) Limit government control on the creation, the running and the closure of organisations
- 3) To increase the space for democratic debate and participation

To amend media laws in order to ensure freedom of expression to all forms of media and to abrogate all criminal provisions allowing for the detention of journalists

For Saudi Arabia and Bahrain, respectively to accept the request for visit from the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression and the Special Rapporteur on Human Rights defenders

To put an end to the harassment of civil society, and especially human rights defenders

To put an end to extra judiciary detention and to implement laws on access to lawyers and other relevant codes and laws (cf. Saudi Arabia's Code of Criminal Procedure)

To guarantee an effective right to redress

### **The endless violation of women's rights**

FIDH is preoccupied by the situation of women in GCC countries. Women are often victims of discrimination and violence in all GCC countries. Gender equality is a major problem in everyday life: a woman, especially in Saudi Arabia, regardless of her age, must have a « guardian » or a « tutor » (father, brother, husband or even a distant relative) who must give his consent for almost everything, such as going to school, working, getting married, and so on.

GCC countries, except Qatar, have ratified the CEDAW. However, they have also made reservations to its key provisions. In some countries, i.e. Saudi Arabia, women still do not have the right to drive a car. Moreover, not only is the legislation authorizing women to work very restrictive, its implementation is also problematic. Thus, due to the obligation of getting their guardian's authorisation and the many legal restrictions, women rarely work.

Finally, family issues are mostly regulated by Sharia and unwritten laws, which generates a lot of injustice for women, for example regarding custody or divorce. These injustices may remain even when the country has adopted a Family code, as these codes are based on Sharia principles.

### ***Recommendations:***

- To adopt laws against gender discrimination, according to the ICERD and CEDAW that they ratified
- To lift reservations to CEDAW and implement CEDAW Committee recommendations.
- For countries under Sharia Law to adopt a written family code in conformity with CEDAW
- For countries having a family code, to put it in conformity with the provisions of the

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## CEDAW

### **The alarming situation of migrants**

FIDH deplors that none of the GCC countries have ratified the 1990 International Convention on the Protection of the Rights of All Migrant Workers and Their Families (ICMW). However, they have all ratified the 1965 International Convention on the Elimination of all forms of Racial Discrimination (ICERD).

FIDH is concerned with the challenges faced by expatriate workers in the GCC countries, such as delayed payment of wages, substitution of employment contracts, premature termination of services, excessive working hours, poor working conditions, and so on. They also face trafficking and forced labour, and sometimes visa trafficking. There are restrictions on their right to organize and join trade unions and other associations.

Furthermore, there is generally no legislation protecting the rights of migrant domestic workers, although domestic work is the most important category of employment for migrants. They can't access social security systems or form unions. Female migrant domestic workers' situation is particularly bad: they face, alongside bad working conditions, psychological, physical and sexual abuse. The latter is one of the main concerns of FIDH because of the feminization of the migration flows towards Gulf countries.

Finally, FIDH is concerned with the sponsorship system (« kafala ») that affects migrant workers. Thus, migrants are sponsored by employers or other individuals to come and work in the GCC countries but to avoid the payment of taxes and airplane tickets, employers sometimes do not renew the workers' documents on purpose or accuse them of theft: workers are then undocumented, and subjected to pressure, oppression, harassment, deportation...

### ***Recommendations:***

- To ratify and implement the ICMW
- To adopt measures in order to fight against discrimination and xenophobia in accordance with their international commitments
- To better protect labour rights for all by amending labour laws and making them consistent with international human rights standards
- To adopt a legislation on domestic workers, in accordance with international standards
- To reform the sponsorship system and implement existing texts

### **The negotiation of the Free-Trade Agreement (FTA) between the EU and GCC countries: the necessity of Human Rights Impact Assessments (HRIAs)**

FIDH strongly believes that the EU should give itself the means to guarantee that FTAs will not have negative impact on the enjoyment of economic, social and cultural rights. This goes for the EU-GCC FTA too.

The EU carries out Trade Sustainability Impact Assessments before deciding to launch FTA negotiations. However, FIDH deplors that these assessments do not include an evaluation of the potential impact of such agreements on the human rights situation in partner countries, since « international trade and investments agreements could potentially have adverse effects on the right to food, the right to water, the right to education, the right to health, the right to a decent standard of

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living, the right to work and the right to development. »<sup>5</sup> Indeed, as stated by the Committee on Economic, Social and Cultural Rights, the absence of an equitable multilateral trade, investment and financial system – amongst other factors – is a global structural obstacle to poverty reduction.<sup>6</sup> It is thus necessary that the negotiations of the FTA take human rights issues into account and ensure that the agreement will not have negative impact on human rights in the partner countries, and particularly regarding the enjoyment of economic, social and cultural rights.

FIDH recalls that the EU is bound to take into account international human rights in the negotiation and conclusion of international trade and investment agreements. Besides, it is bound under international law to respect general public international law, of which human rights form a part, as they qualify among the « general principles of law recognized by civilized nations. »<sup>7</sup>

Furthermore, the EU should not adopt measures that make it impossible for the individual Member States to comply with their own pre-existing international obligations, as a consequence of Article 307 EC.

Finally, FIDH would like to draw the attention of the EU on the possible impact, among others, on the situation of migrant workers whose working conditions stand below ILO and UN standards.

**In this regard FIDH urges the EU to:**

- Ensure that the agreements it signs have no negative impacts on the enjoyment of human rights in GCC countries
- Ensure that the agreements it signs contribute to the establishment of a just and equitable social order and the realization of human rights
- Ensure that the negotiation process and the formulation, implementation and monitoring of the agreements it signs are consistent with its human rights obligations

**Ratification of main International Human Rights Instruments and Cooperation with UN Special procedures.**

The FIDH urges the six GCC countries to fully cooperate with UN Special Procedures and particularly call the following countries to give positive answers to UN Special Rapporteurs' pending requests:

**Bahrain:** pending request made in 2006 by the UN Special Rapporteur on migrants.

**Kuwait:** pending request made in 2005 by the Un Special Rapporteur on trafficking.

**Saudi Arabia:** pending requests made:

- in 2006 and 2007 by UN the Special Rapporteur on torture
- in 2005 by the UN Special Rapporteur on trafficking
- in 2005 by the Special Rapporteur on summary executions
- in 2006 + reminder letter in April 2008 by the UN Special Rapporteur on freedom of religion
- in 2004 by the UN Special Rapporteur on freedom of expression and opinion
- in 2008 by the UN working group on arbitrary detention

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5 FIDH position paper «Human Rights Impact Assessments of Trade and Investment Agreements concluded by the European Union », February 2008

6 See E/C.12/2001/10, para. 21.

7 See Article 38(1)(c) of the Statute of the International Court of Justice.

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**United Arab Emirates:** pending requests made:

- in 2005 by the UN Special Rapporteur on education
- in 2005 by the UN Special Rapporteur on trafficking

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**Ratification Status of main International Human Rights Instruments  
(March 2008)**

<b>Conventions</b>	<b>Bahrain</b>	<b>Kuwait</b>	<b>Oman</b>	<b>Qatar<sup>8</sup></b>	<b>Saudi Arabia<sup>9</sup></b>	<b>UAE</b>
<b>ICCPR</b>	yes OP1+2: no	yes OP1+2: no	no	no	no	no
<b>ICESCR</b>	yes	yes	no	no	no	no
<b>CEDAW</b>	yes (reservations) OP: no	yes (reservations) OP: no	yes (reservations) OP: no	no	yes (reservations) OP: no	yes (reservations) OP: no
<b>CAT</b>	yes OP: no	yes OP: no	no	yes OP: no	yes	no
<b>ICERD</b>	yes	yes	yes	yes	yes	yes
<b>CRC</b>	yes OP1+2: yes	yes OP1+2: yes	yes OP1+2: yes	yes OP1+2: yes	yes OP1+2: no	yes OP1+2: no
<b>ICMRW</b>	no	no	no	no	no	no
<b>Rome Statute (ICC)</b>	no	no	no	no	no	no
<i>Open invitation SP</i>	no	no	no	no	no	no

8 Member of the UN Human Rights Council (2010)

9 Member of the UN Human Rights Council (2009)

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