



International Covenant on Civil and Political Rights

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Consideration of reports submitted by States parties under article 40 of the Covenant

Concluding observations of the Human Rights Committee

Kuwait

1. The Committee considered the second periodic report submitted by Kuwait (CCPR/C/KWT/2) at its 2040th, 2041st and 2042nd meetings (CCPR/C/SR 2040, 2041 and 2042), held on 19 and 20 October 2011, and adopted at its 2856th and 2857th meetings (CCPR/C/SR/2856 and CCPR/C/SR/2857), held on 1 and 2 November 2011, the following concluding observations.

A. Introduction

2. The Committee welcomes the submission of the second periodic report of Kuwait and the information presented therein. It expresses appreciation for the opportunity to renew constructive dialogue with the high level delegation on the measures taken by the State party during the reporting period to implement the provisions of the Covenant. The Committee also appreciates the written replies (CCPR/C/KWT/Q/2/Add.1) to the list of issues which were supplemented by the oral responses provided by the delegation.

B. Positive aspects

3. The Committee welcomes the following legislative and institutional steps taken by the State party:

- The adoption of Act 17 of 2005 giving women the right to vote and to stand for elections, and the following election of women as members of the Parliament in 2009.

4. The Committee welcomes the ratification by the State party of the following international instruments:

- (a) The Optional Protocols to the Convention on the Rights of the Child on the involvement of children in armed conflict and on the sale of children, child prostitution and child pornography, in 2004;

(b) The Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, in 2006.

C. Principal matters of concern and recommendations

5. The Committee welcomes the Ministerial Decision No. 77 of 2011 establishing a special committee to draft a bill on the creation of a national human rights institution, and the measures taken to ensure that the institution complies with the A-status criteria at the international level. Nonetheless, the Committee is concerned about the delays in creating such an institution, and about the resources that it will be provided with to discharge its functions.

The State party should (a) implement its intention to create a national human rights institution as soon as possible; (b) ensure that the institution will be in full compliance with the principles relating to the status of national institutions for the promotion and protection of human rights (Paris Principles), including ensuring that its budgetary provisions permit the national institution to discharge its functions effectively.

6. The Committee notes the State party's commitment to further improve its legislation and policies to fully implement its obligations under the Covenant. Nonetheless, the Committee is concerned about the lack of clarity on the primacy of the Covenant over conflicting or contradictory national legislation, including both Sharia law and matters not based in Sharia law. The Committee also regrets the limited information on domestic court decisions which make reference to provisions of the Covenant. (art. 2)

The State party should guarantee the full implementation of its obligations under the Covenant within the national legal framework. To this end, the State party should take appropriate measures to ensure that domestic laws, including those based on Sharia, are interpreted and applied in ways compatible with its obligations under the Covenant. It should also raise awareness about the Covenant and its applicability in domestic law amongst judges and judicial officers.

7. The Committee regrets that the State party continues to maintain its interpretative declaration on article 2, paragraph 1 and article 3 of the Covenant, which the Committee has already found in its previous concluding observations to be incompatible with the object and purpose of the Covenant (CCPR/CO/69/KWT, para. 4), as well as its interpretive declaration to article 23, and its reservations to article 25(b) of the Covenant. (art. 2)

The State party should formally withdraw its interpretative declaration on article 2, paragraph 1 and article 3, and should consider withdrawing its interpretative declaration on article 23 and its reservation to article 25(b) of the Covenant.

8. Despite the progress achieved with respect to the participation of women in political life, the Committee remains concerned about their underrepresentation in legislative and executive bodies, especially about the absence of women as judges. The Committee is also concerned about persisting stereotypes of the role of women in the family and in society at large. (arts. 3, 25 and 26)

The State party should enhance its efforts to eliminate gender stereotypes on the role and responsibilities of men and women in the family and in society, including through the adoption, if necessary, of temporary special measures to further increase the participation of women in public and political life, as well as the private sector. The State party should take immediate steps to ensure that the position of judge is effectively accessible to women.

9. The Committee is concerned that the rights of women are affected by discriminatory provisions that are maintained in the current legislation. In particular, the Committee recalls its view that polygamy violates the dignity of women (see the Committee's general comment No. 28 (2000), paragraph 24), and constitutes a violation of article 3 of the Covenant. (arts. 2, 3 and 26)

The State party should undertake a comprehensive review of existing laws to repeal all discriminatory provisions that affect gender equality. The State party should engage in official and systematic awareness-raising campaigns in order to eradicate polygamy, which is a form of discrimination against women.

10. The Committee is concerned that the minimum age for marriage is too low and that it differentiates on the basis of sex. The Committee is also concerned that the State party does not take active measures to prevent early marriages that are practiced by some parts of the population. (arts. 3, 23)

The State party should eliminate discrimination on the basis of sex in the minimum age of marriage. It should also ensure that the minimum age complies with international standards and should adopt active measures preventing early marriage of girls.

11. The Committee is concerned that the testimonies of women before the courts have less value than those of men. (arts. 2, 3, 14 and 26)

The State party should amend its legislation and practice to ensure that judicial authorities always give women's testimonies the same legal and practical value as their male counterparts.

12. The Committee is concerned about discrimination between Kuwaiti men and women with regard to the ability to transmit Kuwaiti nationality to their children, and is also concerned that children who are born in Kuwait to stateless parents may not acquire any nationality. The Committee is concerned about the lack of transparency in the process of acquiring Kuwaiti nationality, in particular with respect to the failure to communicate the reasons behind the denial of such nationality, and about the absence of a review process, which fosters arbitrary decisions. (arts. 2, 3, 24 and 26)

The State party should guarantee the right of every child to acquire a nationality, in compliance with article 24, paragraph 3 of the Covenant, and end discrimination between men and women in the transmission of nationality. The State party should guarantee that applicants are officially informed of the reasons why they were denied Kuwaiti nationality, and should also implement a review procedure.

13. While taking note that a Central Body was established in November 2010 to find a solution for the stateless bedoun currently viewed by the State party as a category of "illegal residents," the Committee remains concerned about the stereotypes and widespread discrimination they suffer. The Committee is also concerned about the practice of withholding documents, including some certificates to which all persons born or married in the State party's territory are entitled. It is also concerned about reports of arbitrary application of Kuwaiti nationality law to Bedoun. (arts. 2, 23, 24, 26 and 27)

The State party should put an end to discrimination against the Bedoun, including in the application of its nationality law, and should ensure that all persons in its territory enjoy the rights set out in the Covenant.

14. The Committee notes the implementation of the de facto moratorium on executions in the State party since 2007. However, it is concerned about:

- (a) The high number of persons remaining on death row;

(b) The large number of offences for which the death penalty can be imposed, including vague offences relating to internal and external security and drug-related crimes. (art. 6)

The State party should eliminate the violations of article 6, paragraph 2 involved in maintaining in its legislation the death penalty for offences that cannot be considered the most serious crimes within the meaning of the Covenant. The State party should also formalize the current de facto moratorium on the death penalty, and accede to the Second Optional Protocol to the Covenant.

15. The Committee is concerned about the lack of statistical information on cases of domestic and sexual violence, and about the lack of provisions in the Penal Code criminalizing domestic and sexual violence against women in the family or workplace. The Committee is also concerned about the non-criminalization of marital rape. (arts. 2, 6 and 7)

The State party should criminalize acts of domestic and sexual violence, including marital rape. It should also create a database to gather comprehensive information on reported cases of domestic and sexual violence, their criminal investigation and prosecution, the sentences imposed on perpetrators, and the remedies granted to victims.

16. The Committee regrets the lack of legislation criminalizing torture and other cruel, inhuman or degrading treatment in accordance with international standards. (art. 7)

The State party should adopt in its legislation a definition of torture that fully complies with articles 1 and 4 of the Convention against Torture, and with article 7 of the Covenant. The State party should ensure that any act of torture or cruel, inhuman or degrading treatment is prosecuted and penalized in a manner commensurate with its gravity.

17. The Committee is concerned that the State party's current penal laws do not reach all forms of trafficking in persons. The Committee is also concerned that statistical information on trafficking in persons is not available. (art. 8)

The State party should enact legislation on trafficking in persons, ensuring its full compliance with the principles of the Covenant. The State party should set up an official database on the number of cases of trafficking in persons, their characteristics, their treatment by judicial authorities, and the remedies and reparations made to the victims.

18. The Committee is concerned about the discriminatory and inhuman treatment suffered by migrant domestic workers. This situation is exacerbated by the sponsorship system which makes them dependent on particular employers for their authorization to work and to remain in the country. The Committee is also concerned that domestic workers were excluded from the 2010 Private Sector Labour Code, and that the modifications of the sponsorship system have not ensured respect for their basic human rights. The Committee also regrets the absence of effective control mechanisms ensuring the respect for employment regulations by employers. (arts. 7 and 8)

The State party should abandon the sponsorship system and should enact a framework that guarantees the respect for the rights of migrant domestic workers. The State party should also create a mechanism that actively controls the respect for legislation and regulations by employers and investigates and sanctions their violations, and that does not depend excessively on the initiative of the workers themselves.

19. The Committee is concerned that a person detained may be held in police custody for a period of four days before being brought before an investigating official and that this

period can be extended up to 21 days. The Committee is also concerned about allegations according to which the detained person does not have immediate access to counsel and contact with his family. (art. 9)

The State party should adopt legislation to ensure that anyone arrested or detained on a criminal charge is brought before a judge within 48 hours. The State party should also guarantee that all other aspects of its law and practice on pretrial detention are harmonized with the requirements of article 9 of the Covenant, including by providing detained persons with immediate access to counsel and contact with their families.

20. The Committee is concerned about the absence of a maximum period of detention for persons awaiting deportation, and the unavailability of judicial remedies enabling such persons to seek review of the lawfulness of their detention. (art. 9)

The State party should ensure that persons awaiting deportation are detained only for a reasonable period of time, and that judicial remedies are available to review the lawfulness of their detention.

21. The Committee is concerned about alleged practices of torture and inhumane or degrading treatment of prisoners in police custody and in detention centres. (arts. 7 and 10)

The State party should ensure independent and prompt investigation and prosecution of State officials responsible for alleged acts of torture or inhumane or degrading treatment, and grant compensation to victims of such acts. The State party should also guarantee full respect for the United Nations Standard Minimum Rules for the Treatment of Prisoners.

22. The Committee is concerned that the State party does not recognize the right of conscientious objection to military service and does not intend to adopt provisions implementing that right. (art. 18)

The State party should adopt legislation recognizing the right of conscientious objection to military service, and put in place an alternative to military service which is neither punitive nor discriminatory.

23. The Committee is concerned about discrimination by the State party on grounds of religion, including the ineligibility of non-Muslims for naturalization, and the restrictions imposed for the construction and access to places of worship, especially for Hindus, Sikhs and Buddhists. (arts. 18 and 26)

The State party should guarantee the right of all persons to practice their religion or belief in an appropriate place of worship, and to be considered for naturalization without discrimination on the basis of religion.

24. The Committee is concerned about the high number of cases that are brought to courts under blasphemy laws, which are incompatible with the Covenant except pursuant to article 19, paragraph 3, and in the specific circumstances envisaged in article 20, paragraph 2 of the Covenant. (arts. 2, 18, 19 and 26)

The State party should revise its legislation on blasphemy and related laws, and the application thereof to ensure their strict compliance with the Covenant, bearing in mind that prohibitions of displays of lack of respect for a religion or other belief system, including blasphemy laws, are incompatible with the Covenant, except pursuant to article 19, paragraph 3, and in the specific circumstances envisaged in article 20, paragraph 2 of the Covenant (Committee's general comment No. 34, para. 48)

25. The Committee is concerned about the excessive restrictions on freedom of expression that are contained in the Press and Publication Law and in related legislation, including prohibitions on legitimate criticism of government officials and other public figures. The Committee is also concerned about allegations of arbitrary arrest, detention, trial and deportation of persons who make use of their freedom of opinion and expression through the media and through the Internet. (art. 19)

The State party should revise the Press and Publication Law and related laws in accordance with the Committee's general comment No. 34 (2011) in order to guarantee all persons the full exercise of their freedoms of opinion and expression. The State party should also protect media pluralism, and should consider decriminalizing defamation.

26. The Committee is concerned about the system by which judges are appointed by the Amir, and is also concerned that the independence of the judiciary is affected by the direct dependency of the Supreme Judiciary on the Ministry of Justice, and by the lack of clarity on the status and security of tenure of foreign judges appointed in the State party. (art. 14)

The State party should guarantee the independence of the judiciary through the reform of the mechanisms of appointment, promotion and evaluation of judges, and through the removal of the dependency between the Supreme Judiciary and the Ministry of Justice. The State party should also revise the modalities of the appointment and tenure of foreign judges, to ensure their total independence, autonomy and impartiality.

27. The Committee is concerned about the lack of statistics on the number of persons who were condemned by military tribunals in 1991 and are still detained despite having served their sentences. It is also concerned that these cases have not been reviewed by an independent and impartial body. (arts. 9 and 14)

The State party should ensure that the cases of persons detained under prison sentences handed down in 1991 by the military tribunals are reviewed, and also that any such persons still detained beyond the completion of their sentences are immediately released.

28. The Committee is concerned about persistent reports that the State party's authorities unreasonably refuse to deliver authorizations and disperse peaceful demonstrations by excessive use of force, restricting the right of individuals to freedom of peaceful assembly. (art. 21)

The State party should revise its regulations, policy and practice, and ensure that all individuals under its jurisdiction fully enjoy their rights under article 21 of the Covenant. It should ensure that the exercise of this right is not subject to restrictions other than the ones permissible under the Covenant.

29. The Committee is concerned that no legal framework regulates the existence of political parties. Political groups are thereby hindered from organizing events that require official authorization, from seeking funds and from participating effectively in the political life of the State party (arts. 22 and 25)

The State party should adopt a legal framework regulating the existence of political parties, and enabling them to participate effectively and formally in Kuwaiti political life.

30. The Committee is concerned about the criminalization of sexual relations between consenting adults of the same sex, and also about the new criminal offence of "imitating members of the opposite sex". It is also concerned about reported acts of violence against lesbian, gay, bisexual and transgender (LGBT) persons, including reports of harassment,

arbitrary arrest and detention, abuse, torture, sexual assault and harassment of individuals on the basis of their sexual orientation or gender identity. (arts. 2 and 26)

The State party should decriminalize sexual relations between consenting adults of the same sex, and repeal the offence of imitating the opposite sex, in order to bring its legislation in line with the Covenant. The State party should also take the necessary steps to put an end to the social stigmatization of homosexuality and send a clear message that it does not tolerate any form of harassment, discrimination or violence against persons based on their sexual orientation or gender identity.

31. The Committee is concerned about the lack of protection of foreign nationals who belong to ethnic, religious or linguistic minorities living in the State party. (art. 27)

The State party should officially recognize ethnic, religious or linguistic minorities as such and ensure the protection and promotion of their rights in compliance with article 27 of the Covenant.

32. The State party should widely disseminate the Covenant, the text of the second periodic report, the written responses it has provided to the list of issues drawn up by the Committee, and the present concluding observations among the judicial, legislative and administrative authorities, civil society and non-governmental organizations operating in the country, as well as the general public.

33. In accordance with rule 71, paragraph 5, of the Committee's rules of procedure, the State party should provide, within one year, relevant information on its implementation of the Committee's recommendations made in paragraphs 18, 19 and 25 above.

34. The Committee invites the State party, given that it has not yet submitted its core document, to do so in accordance with the harmonized guidelines on reporting under the international human rights treaties, which were adopted at the fifth Inter-Committee meeting of the human rights treaty bodies held in June 2006 (HRI/GEN/2/Rev.4).

35. The Committee requests the State party, in its third periodic report due to be submitted on 2 November 2014, to provide, specific, up-to-date information on the implementation of all its recommendations and on the Covenant as a whole. The Committee also requests the State party, when preparing its third periodic report, to broadly consult with and involve civil society and non-governmental organizations operating in the country.
