



## International Covenant on Civil and Political Rights

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### Human Rights Committee

#### Concluding observations on the third periodic report of Kuwait\*

1. The Committee considered the third periodic report of Kuwait (CCPR/C/KWT/3) at its 3269th and 3270th meetings (see CCPR/C/SR.3269 and 3270), held on 21 and 22 June 2016. At its 3293rd meeting, held on 8 July 2016, it adopted the present concluding observations.

#### A. Introduction

2. The Committee welcomes the timely submission of the third periodic report of Kuwait and the information presented therein. It expresses appreciation for the opportunity to renew its constructive dialogue with the State party's high-level delegation on the measures taken during the reporting period to implement the provisions of the Covenant. The Committee is grateful to the State party for its written replies (CCPR/C/KWT/Q/3/Add.1) to the list of issues (CCPR/C/KWT/Q/3), which were supplemented by the oral responses provided by the delegation.

#### B. Positive aspects

3. The Committee welcomes the following legislative, institutional and policy measures taken by the State party:

(a) The adoption of the Family Court Act, which provides for the establishment of family courts in each governorate and the creation of centres for the settlement of personal status disputes and the protection of victims;

(b) The adoption of Act No. 21 (2015) concerning the rights of the child, which provides, inter alia, for the protection of children from violence, abuse, neglect and exploitation, the establishment of child protection centres in each governorate and the increase in the age of criminal responsibility from 7 to 15 years;

(c) The adoption of the Domestic Workers Law No. 68 (2015) giving domestic workers enforceable labour rights, the establishment in 2013 of a shelter for domestic

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\* Adopted by the committee at its 117th session (20 June-15 July 2016).



workers who flee abusive employees and the adoption of Act No. 19 (2013) providing for the establishment of the Public Authority for Manpower;

(d) The adoption of Law No. 91 (2013) on the prevention of trafficking in persons and the smuggling of migrants and the opening in 2014 of a high-capacity shelter for domestic workers fleeing from abusive employers;

(e) The adoption of Law No. 67 (2015) on the establishment of a national human rights institution.

4. The Committee also welcomes the accession by the State party to the Convention on the Rights of Persons with Disabilities, on 22 August 2013.

5. The Committee further welcomes the State party's withdrawal, on 20 May 2016, of the first part of its reservation to article 25 (b) of the Covenant limiting the right to vote and to be elected to men.

## **C. Principal matters of concern and recommendations**

### **Domestic applicability of the Covenant**

6. While noting that the provisions of the Covenant are directly applicable in the domestic legal and judicial system of Kuwait, the Committee is concerned about the primacy of sharia law over conflicting or contradictory provisions of the Covenant (art. 2).

**7. The State party should give full legal effect to the Covenant in its domestic legal order and ensure that domestic laws, including those based on sharia law, are interpreted and applied in ways compatible with its obligations under the Covenant. It should also raise awareness about the Covenant among judges and judicial officers.**

### **Interpretative declaration on and reservations to the Covenant**

8. The Committee remains concerned that the State party maintains its interpretative declaration on articles 2 (1) and 3 of the Covenant, which the Committee has repeatedly found to be incompatible with the object and purpose of the Covenant (see CCPR/CO/69/KWT, para. 4, and CCPR/C/KWT/CO/2, para. 7) and regrets that the State party has not yet withdrawn its interpretative declaration on article 23 or the totality of its reservation to article 25 (b) of the Covenant (art. 2).

**9. The State party should withdraw its interpretative declarations on articles 2 (1) and 3 and consider withdrawing its interpretative declarations on article 23 and its reservation to article 25 (b), with a view to ensuring the effective application of the Covenant.**

### **Discrimination against Bidoon people**

10. The Committee notes the steps taken to regularize the status of stateless Bidoon individuals, who are currently viewed by the State party as a category of "illegal residents", including by granting Kuwaiti nationality to some, registering others and providing access to social services for many. It is concerned, however: (a) that the process of granting Kuwaiti citizenship to Bidoon people is slow; (b) at the situation of stateless Bidoon who remain unregistered and are not able to obtain civil documentation and access to adequate social services; (c) that Bidoon people face restrictions to their rights to freedom of movement, peaceful assembly, opinion and expression; and (d) that the State party is considering offering them the "economic citizenship" of another country in exchange for a permanent residence permit in Kuwait (arts. 2, 12, 23, 24, 26 and 27).

11. **The State party should: (a) speed up the process of granting Kuwaiti citizenship to Bidoon people, where appropriate; (b) guarantee the right of every child to acquire a nationality; (c) register and provide non-discriminatory access to social services to all Bidoon people residing in Kuwait; (d) ensure that Bidoon individuals enjoy their right to freedom of movement, peaceful assembly, opinion and expression; (e) set aside plans to offer Bidoon people the “economic citizenship” of another country in exchange for a permanent residence permit in Kuwait; and (e) consider acceding to the 1954 Convention relating to the Status of Stateless Persons and to the 1961 Convention on the Reduction of Statelessness and having the related obligations implemented through the State party’s domestic law.**

#### **Discrimination and violence on the grounds of sexual orientation and gender identity**

12. While the Committee respects the diversity of views on morality held by different cultures, it recalls that State laws and practices must always be subject to the principles of the universality of human rights and of non-discrimination. Bearing that in mind, the Committee expresses its concern about the criminalization of same-sex sexual activity among consenting adults and about the vague offence of “imitating members of the opposite sex”. It is also concerned about reports of harassment, arbitrary arrest and detention and about acts of violence, abuse, torture and sexual assault against persons on the basis of their real or perceived sexual orientation or gender identity (arts. 2, 6, 7, 9, 17 and 26).

13. **The State party should take the measures necessary to decriminalize sexual relations between consenting adults of the same sex and repeal the offence of imitating members of the opposite sex, in order to bring its legislation into line with the Covenant. It should also take measures to put an end to the social stigmatization of homosexuality and the harassment, discrimination and violence perpetrated against persons based on their real or perceived sexual orientation or gender identity.**

#### **Non-discrimination and equality between men and women**

14. The Committee regrets the lack of progress in repealing discriminatory provisions against women such as those contained in the Personal Status Law and the Nationality Law, including on such matters as polygamy, the minimum age of marriage, the ability of women to conclude a marriage contract, divorce, parental authority, inheritance, the value of women’s testimony before the courts compared to that of men and the ability of Kuwaiti women to pass on their nationality to their children and foreign spouses on an equal footing with Kuwaiti men (arts. 2, 3, 14, 23, 24 and 26).

15. **The State party should: (a) undertake a comprehensive review of existing laws to repeal or amend, in accordance with the Covenant, all discriminatory provisions that affect gender equality; (b) take appropriate measures to enhance and promote equality; and (c) adopt measures to prevent early and forced marriages, including by setting a minimum age for marriage that complies with international standards and making the signature of a marriage contract by both spouses mandatory.**

#### **Representation of women in political and public life**

16. The Committee is concerned at the very low level of representation of women in legislative and executive bodies. While welcoming the appointment of 22 women as prosecuting attorneys, the Committee is concerned at the fact that women’s applications for prosecutor positions have been suspended and that there are few women in the judiciary (arts. 2, 3, 25 and 26).

17. **The State party should take the measures necessary, including through the adoption of temporary special measures, to further increase the participation of women in public life, in particular at the highest levels of government, in parliament, in the judiciary and in decision-making positions in all other areas.**

#### **Domestic and sexual violence**

18. The Committee is concerned about reports indicating that domestic violence is widespread and underreported and about the absence of legislation specifically criminalizing domestic and sexual violence, including marital rape (arts. 2, 3, 7, 24 and 26).

19. **The State party should: (a) criminalize acts of domestic and sexual violence, including marital rape; (b) ensure that victims of domestic and sexual violence have access to legal, medical and psychological assistance, reparation and rehabilitation and assist them in reporting incidents; and (c) ensure that cases of domestic violence are thoroughly investigated and that perpetrators are prosecuted and, if convicted, punished with appropriate sanctions.**

#### **Counter-terrorism and the right to privacy**

20. The Committee is concerned that Law No. 78 (2015) on counter-terrorism, which requires nationwide compulsory DNA testing and the creation of a database under the control of the Minister of the Interior, imposes unnecessary and disproportionate restrictions on the right to privacy. The Committee is particularly concerned about:

(a) The compulsory nature and the sweeping scope of DNA testing, which applies to all and imposes a penalty of one year's imprisonment and a fine in case of refusal to provide samples;

(b) The broad powers of the authorities and the Ministry of the Interior to collect and use DNA samples, including "for any other cases required by the supreme interest of the country";

(c) The lack of clarity on whether necessary safeguards are in place to guarantee the confidentiality and prevent the arbitrary use of the DNA samples collected;

(d) The absence of independent control and the inability to challenge the law before an independent court.

21. **The State party should take all measures necessary to ensure that DNA samples are collected, used and retained in conformity with its obligations under the Covenant, including article 17, and that any interference with the right to privacy complies with the principles of legality, necessity and proportionality. Specifically, the State party should: (a) amend Law No. 78 (2015) with a view to limiting DNA collection to individuals suspected of having committed serious crimes and on the basis of a court decision; (b) ensure that individuals can challenge in court the lawfulness of a request for the collection of DNA samples; (c) set a time limit after which DNA samples are removed from the database; and (d) establish an oversight mechanism to monitor the collection and use of DNA samples, prevent abuses and ensure that individuals have access to effective remedies.**

#### **Death penalty**

22. The Committee is concerned about:

(a) The fact that Kuwait carried out several executions in 2013, ending the de facto moratorium on executions that had been in force since 2007;

(b) The large and increasing number of offences for which the death penalty can be imposed, including vague offences relating to internal and external security, and the fact that the legislation maintains the death penalty for offences that do not meet the threshold of the “most serious crimes” within the meaning of the Covenant, such as offences relating to drug-related crimes;

(c) Information indicating that the imposition of the death penalty is mandatory for certain crimes (arts. 6 and 7).

**23. The State party should give due consideration to abolishing the death penalty and acceding to the Second Optional Protocol to the Covenant, aiming at the abolition of the death penalty. If the death penalty is maintained, the State party should take all measures necessary, including legislative action, to ensure that the death penalty is handed down only for the most serious crimes and not for offences that are overly broad or vague, and ensure that it is never mandatory.**

#### **Torture and ill-treatment**

24. The Committee is concerned about allegations of occasional cases of torture and inhuman or degrading treatment in detention by the police and security forces, which seem to have increased in the past few months in response to terrorist activities. The Committee is also concerned that the State party’s criminal legislation does not adequately ensure that acts covered by the internationally accepted definition of torture are fully criminalized (art. 7).

**25. The State party should: (a) amend the Penal Code to ensure that all acts of torture, as contained in the internationally accepted definition of torture, are prohibited and to stipulate sanctions for acts of torture that are commensurate with the gravity of such offences; and (b) establish a fully independent complaint mechanism, ensure independent and prompt investigation and prosecution of State officials responsible for alleged acts of torture or inhuman or degrading treatment, and ensure the independence of the departments of forensic medicine and criminal evidence from the Ministry of the Interior.**

#### **Police custody and basic legal guarantees**

26. While noting the 2012 amendments to the Code of Criminal Procedure, the Committee is concerned that those who are arrested can be held in police custody for up to 10 days upon a written order of the investigator and may be presented before a judge only after that period (art. 9).

**27. The State party should amend its legislation to ensure that anyone arrested or detained on a criminal charge is brought before a judge within 48 hours.**

#### **Administrative deportations, appeals and remedies**

28. The Committee reiterates its concern (see CCPR/C/KWT/CO/2, para. 20) about the absence of a maximum period of detention for persons awaiting administrative deportation and the unavailability of judicial remedies enabling such persons to seek review of the lawfulness of their detention (arts. 9 and 13).

**29. The State party should: (a) ensure that persons subject to a deportation order, including when it relates to immigration, citizenship and nationality, have their case reviewed by a competent authority; and (b) ensure that detention is a measure of last resort, that it is used for the shortest period of time, that it is necessary and proportionate given the circumstances, that alternatives to detention are resorted to,**

**in practice, and that judicial remedies are available to review the lawfulness of the detention.**

#### **Independence of the judiciary**

30. The Committee is concerned about the insufficient independence of the judiciary from the executive branch in such matters as the appointment, promotion and disciplining of judges. It is also concerned that non-citizen judges lack security of tenure since their judicial appointment must be renewed every two years (art. 14).

**31. The State party should guarantee the independence, autonomy and impartiality of the judiciary by reforming the system for the appointment, promotion and disciplining of judges and the security of tenure of foreign judges.**

#### **Discrimination, exploitation and abuse of domestic workers**

32. The Committee is concerned about: (a) the discrimination, exploitation and abuse of foreign domestic workers, which is exacerbated by the *kafala* system; (b) discrepancies between the rights afforded to domestic workers, the majority of whom are foreigners, under Law No. 68 (2015) and the rights provided to other workers; and (c) information indicating that cases of violence against domestic workers are underreported owing to fear of reprisal from the sponsor, the loss of livelihoods and the risk of deportation (arts. 2, 7, 8, 12 and 26).

**33. The State party should: (a) effectively regulate the recruitment and employment of domestic workers in the private sector to prevent abuse and forced labour; (b) abolish the *kafala* system and replace it with residency permits for domestic workers; (c) ensure that all workers enjoy their basic rights, irrespective of their citizenship, including by amending Law No. 68 (2015); and (d) ensure the strict enforcement of legislation and regulations protecting them from abuse, conduct regular labour inspections, investigate allegations of abuse, prosecute and sanction abusive employers, sponsors and recruitment companies and provide reparation to victims.**

#### **Trafficking in persons, forced labour and forced prostitution**

34. While welcoming the measures adopted to combat trafficking in persons, the Committee remains concerned:

(a) At the low number of prosecutions, convictions or sentences handed down under Act No. 91 (2013) for trafficking in persons for the purposes of forced labour or sexual exploitation;

(b) That the 2013 anti-trafficking legislation does not provide protection from prosecution for victims who flee an abusive employer's residence without permission and who are at risk of arrest, detention and deportation;

(c) That, despite the legal prohibition on withholding workers' passports, the practice remains common among employers and sponsors of foreign workers;

(d) At the application of stringent standards of proof, in particular evidence of coercion, applied by the courts and the Criminal Investigation Division for determining whether women have been forced into prostitution (arts. 3, 7-9 and 24).

**35. The State party should: (a) speedily adopt the national strategy to combat trafficking, strengthen its efforts to implement Act No. 91 (2013) and investigate, prosecute and convict offenders, in particular employers, sponsors and recruitment companies found guilty of forced labour and sexual exploitation; (b) develop**

procedures for the identification and referral of victims of trafficking in order to prevent their arrest, detention and arbitrary deportation; (c) step up its efforts to enforce the prohibition on withholding workers' passports; and (d) relax the stringent standards of evidence of coercion for victims of forced prostitution and make available residence permits on humanitarian grounds to foreign victims of trafficking and forced prostitution.

#### **Refugees and asylum seekers**

36. The Committee is concerned at the absence of a legal framework in the State party regulating asylum proceedings and defining a refugee, which leads to the arbitrary implementation of the prohibition of non-refoulement (arts. 6, 7, 9 and 13).

37. **The State party should establish a legal and institutional framework regulating asylum in accordance with international standards so as to ensure its compliance with the non-refoulement principle and consider the possibility of acceding to the 1951 Convention relating to the Status of Refugees and its 1967 Protocol.**

#### **Freedom of thought, conscience and religion**

38. The Committee remains concerned about the existence of legal provisions, regulations and practices that adversely affect the exercise of the right to freedom of thought, conscience and religion, such as blasphemy and related laws and provisions prohibiting the naturalization of non-Muslims. It is also concerned at discriminatory restrictions imposed on the granting of licences for the construction of places of worship (arts. 18 and 26).

39. **The State party should eliminate all discriminatory legislation and practices that violate the right to freedom of thought, conscience and religion, including blasphemy laws that are incompatible with the Covenant.**

#### **Freedom of expression**

40. The Committee is concerned about reports of arbitrary arrest, detention, trial, withdrawal of citizenship and deportation of persons who exercise their freedom of opinion and expression. The Committee is particularly concerned about: (a) the adoption of new legislation to further curb the right to freedom of expression and opinion and extend State control and restrictions on Internet-based expressions under Law No. 37 (2014) on communications and Law No. 63 (2015) on cybercrime; (b) the criminalization of defamation and blasphemy and the application of restrictive, vague and broadly worded provisions to prosecute activists, journalists, bloggers and other individuals for expressing critical views or views deemed to "insult" the Emir or undermine his authority, defame religion or threaten the national security of Kuwait or the country's relations with other States; (c) amendments made in June 2016 to the electoral law barring persons convicted of defamation or blasphemy from standing for election; (d) the alleged termination of licences for audiovisual and print media critical of the Government; and (e) content control and denial of access to the Internet, and the revocation of service providers' licences without disclosing the reasons for doing so and without due process (arts. 9, 17-19 and 25).

41. **The State party should: (a) repeal or revise laws containing provisions restricting the right to freedom of expression and opinion and repeal laws criminalizing blasphemy and insulting the Emir, among other acts, with a view to bringing them into conformity with its obligations under the Covenant; (b) clarify the vague, broad and open-ended definition of key terms in those laws and ensure that they are not used as tools to curtail freedom of expression beyond the narrow restrictions permitted by article 19 (3) of the Covenant; (c) guarantee media freedom,**

including by ensuring that the media can operate independently and free from government intervention and that decisions to suspend or close media outlets are made by an independent authority and are subject to judicial review; (d) release, rehabilitate and provide effective judicial redress and compensation to persons imprisoned in contravention of articles 9 and 19 of the Covenant; and (e) ensure that the monitoring of Internet use does not violate the rights to freedom of expression and privacy set out in the Covenant.

#### **Freedom of peaceful assembly and excessive use of force**

42. The Committee is concerned about article 12 of Law No. 65 (1979) on public gatherings, as it bars non-Kuwaitis from participating in public gatherings, and about the overly broad prohibition on public gatherings without the prior authorization of the Ministry of the Interior. In addition, it remains concerned at reports that the State party unduly restricts freedom of peaceful assembly and that security forces have dispersed peaceful demonstrations with excessive and disproportionate uses of force (arts. 7 and 21).

43. **The State party should: (a) ensure that the exercise of the right to peaceful assembly is not subject to restrictions other than the ones permissible under the Covenant; (b) investigate all allegations relating to the excessive use of force by security forces and ensure that the perpetrators are prosecuted and the victims adequately compensated; (c) increase its efforts to systematically provide training to all security forces on the use of force, especially in the context of demonstrations, taking due account of the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials.**

#### **Freedom of association**

44. The Committee is concerned that articles 2, 3, 6 and 22 of Law No. 24 (1962) on clubs and public welfare societies place restrictions on the establishment and operation of civil society organizations, including by prohibiting them from engaging in political or religious advocacy and limiting their fundraising activities. In addition, the Committee remains concerned at reports that the State party imposes undue restrictions on the exercise of freedom of association, including arbitrary application of the law and its terms to limit dissent and the full participation of non-governmental organizations in civil society (art. 22).

45. **The State party should: (a) repeal or revise laws restricting the right to freedom of association to bring them into conformity with the Covenant; (b) clarify the vague, broad and open-ended definition of key terms in those laws and ensure that they are not used as tools to curtail freedom of association beyond the narrow restrictions permitted in article 22 (2) of the Covenant; and (c) ensure that civil society organizations can operate free of undue government influence and without fear of reprisals or unlawful restrictions on their operations.**

#### **Participation in public life**

46. The Committee remains concerned that no legal framework regulates the existence of political parties. It is also concerned that naturalized Kuwaiti citizens are denied the right to vote for 20 years and are denied the right to be elected as a member of parliament or the municipality and to hold ministerial office (arts. 22 and 25).

47. **The State party should: (a) adopt a legal framework regulating the existence of political parties so as to enable them to participate effectively and formally in political life; and (b) eliminate disproportionate restrictions on the right to vote, to be elected and to take part in the conduct of public affairs of naturalized Kuwaiti citizens.**



### **Deprivation of citizenship**

48. The Committee is concerned about the possibility, under article 13 of Law No. 15 (1959) on nationality, to revoke Kuwaiti citizenship for “undermining the social or economic system” or “threatening the higher interests of the State or its security”, which has increasingly been used arbitrarily for politically motivated reasons against governmental critics (arts. 2, 19, 21 and 24).

49. **The State party should amend Law No. 15 (1959) on nationality to ensure that the peaceful exercise of the rights to freedom of opinion and expression and of association and assembly can never be used as a ground for revoking citizenship, review cases of withdrawal of nationality to ensure that they do not contravene the rights set out in the Covenant and ensure that decisions are subject to judicial review and fully respect the right to fair legal proceedings.**

## **D. Dissemination of information relating to the Covenant**

50. The State party should widely disseminate the Covenant, its third periodic report, the written replies to the Committee’s list of issues and the present concluding observations with a view to raising awareness of the rights enshrined in the Covenant among the judicial, legislative and administrative authorities, civil society and non-governmental organizations operating in the country, and the general public.

51. In accordance with rule 71, paragraph 5, of the Committee’s rules of procedure, the State party is requested to provide, within one year of the adoption of the present concluding observations, information on the implementation of the recommendations made by the Committee in paragraphs 11 (discrimination against Bidoon people), 43 (freedom of expression) and 45 (freedom of peaceful assembly and excessive use of force) above.

52. The Committee requests the State party to submit its next periodic report by 15 July 2020 and to include in that report specific up-to-date information on the implementation of the recommendations made in the present concluding observations and of the Covenant as a whole. The Committee also requests the State party, in preparing the report, to broadly consult civil society and non-governmental organizations operating in the country. In accordance with General Assembly resolution 68/268, the word limit for the report is 21,200 words. Alternatively, the Committee invites the State party to agree, by 15 July 2017, to use its simplified reporting procedure, whereby the Committee transmits a list of issues to the State party prior to the submission of its periodic report. The State party’s response to the list of issues will then constitute the next periodic report to be submitted under article 40 of the Covenant.