



Convention on the Elimination of All Forms of Discrimination against Women

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Committee on the Elimination of Discrimination against Women

Concluding observations on the fifth periodic report of Kuwait

Addendum

Information provided by Kuwait in follow-up to the concluding observations*

[Date received: 26 July 2019]

1. Recommendation contained in paragraph 13

The Committee reiterates its previous recommendation (CEDAW/C/KWT/CO/3-4, para. 18) that the State party include in its legislation a definition of discrimination against women, covering direct and indirect discrimination in the public and private spheres, in accordance with article 1 of the Convention.

With the entry into force of the ratification by Kuwait of the Convention with Amiri Decree No. 24 of 1994, the Convention became an integral part of Kuwaiti national legislation. As a consequence, all governmental bodies and institutions, as well as individuals, have an obligation to comply with its provisions, and the judiciary is required to ensure that it is respected and protected.

This national legal obligation derives from article 70 of the Constitution of Kuwait, which provides as follows: “The Amir concludes treaties by decree and transmits them immediately, together with an appropriate explanatory statement, to the National Assembly. Treaties have the force of law after having been signed, ratified and published in the Official Gazette”.

The State of Kuwait adopts an approach that rejects racism and racial discrimination. Justice derives from implementation of the Islamic sharia, which is the primary source for the provisions of the Kuwaiti Constitution, as stated in article 2 of the Constitution.

The general principle of opposition to racism and racial discrimination is laid down in article 29 of the Constitution which places the concepts of equality, non-discrimination and respect for human dignity on a firm foundation by affirming that: “Everyone is equal in regard to human dignity and all are equal before the law

* The present document is being issued without formal editing.



in regard to their public rights and obligations, without distinction among them on grounds of race, origin, language or religion”.

Article 7 of the Constitution further stipulates that: “Justice, liberty and equality are the pillars of society; mutual assistance and respect are the firmest bonds between citizens”.

The explanatory note on the interpretation of article 29 of the Constitution indicates that the said article embodies the principle of equality in regard to rights and obligations in general while referring, in particular, to the most important aspect of that principle, namely the enjoyment of equality without distinction as to race, origin, language or religion. It was deemed preferable for the said article not to include the expression “colour or wealth”, even though it appears in the Universal Declaration of Human Rights, since there is not even the slightest suspicion of racial discrimination in the country and the wording of the article is, in itself, sufficient to dispel any such suspicion. Moreover, the idea of distinguishing between people on grounds of wealth is alien to Kuwaiti society and, consequently, there is no need to make specific mention of this.

In order to promote gender equality, the Kuwaiti Constitution uses inclusive language when referring to persons covered by its provisions, without the slightest trace of discrimination on the basis of gender, colour, religion or even language.

In a related context, and in affirmation of the principle of equality, the Kuwaiti Constitution treats all citizens as equal before the law in rights and duties, and Kuwaiti laws comply with that principle. By way of example, the Penal Code (Act No. 16 of 1960) affirms the principle of equality in the application of its provisions. Article 11 of the Penal Code stipulates that its provisions shall apply to any person who perpetrates any of the offences provided for in the code in the territory of Kuwait. The principle of equality also applies with respect to the assumption of public office, employment, free choice of work and the right to education, healthcare, movement, residence, domicile etc. Under article 31 of the Constitution, it is forbidden to arrest, detain or search any person or compel anyone to reside at a given location or restrict his freedom of residence or movement, except as prescribed by law.

The provisions of the Civil Code (Act No. 67 of 1980) are consistent with the principle of according to women a legal capacity identical to that of men. Article 9 of the Civil Code states that the personality of a human being begins at birth and ends upon death, while article 84 stipulates that every person has the legal capacity to conclude contracts, unless the law states that he is legally incompetent or of diminished capacity.

Article 96 of the Civil Code states that the age of majority is 21 and any person having attained that age continues to have full legal capacity unless an impediment thereto should arise.

It will be clear from the foregoing that the provisions of the Civil Code are inclusive, unbiased and without distinction or discrimination between men and women. Furthermore, they do not restrict the legal capacity of women on grounds of marriage or ties of kinship. Accordingly, if a woman attains the legal age of majority, she is competent to exercise all the rights and carry out all the legal transactions for which provision is made in the Civil Code and other laws in force. She is also competent to administer her property and possessions, as well as her personal affairs, without the imposition of restriction, limitation or impediment in regard to her capacity.

Legal procedures in Kuwaiti courts of every level are regulated by the Code of Civil and Commercial Procedure (Act No. 38 of 1980) and the Code of Criminal

Procedure (Act No. 17 of 1960). The provisions of both codes apply to all litigants, without distinction between men and women.

The Kuwaiti Penal Code contains a variety of provisions penalizing physical violence against any person (man or woman). It also includes provisions criminalizing physical and sexual violence against women, including the following:

- Article 160 of the Kuwaiti Penal Code provides that anyone who strikes, injures, causes bodily harm to or violates the physical integrity of another person in a significant manner shall be punished by a term of up to two years' imprisonment and/or a fine of up to 150 dinars.
- Article 174 stipulates that anyone who supplies, or is instrumental in supplying, a pregnant or non-pregnant woman with drugs or other harmful substances, with or without her consent, or who uses force or any other means in order to induce an abortion shall be liable to a penalty of up to 10 years' imprisonment, to which may be added a fine of up to 1,000 dinars.
- Articles 178–185, on criminal punishment, deal with kidnapping, abduction and trafficking in persons.
- Article 186, on sexual violence, stipulates that anyone who has sexual intercourse with a female without her consent, using coercion, threat or deceit, shall be sentenced to death or life imprisonment.

Kuwaiti criminal law extends the scope of legal protection to women who are mentally retarded, insane or demented, under the age of 15 or lacking mental capacity. Article 187 of the Penal Code stipulates that anyone who has sexual intercourse with a female, without coercion, threat or deceit, knowing her to be mentally retarded or insane, under the age of 15 or lacking mental capacity for any other reason or who does not understand the nature of the act to which she is subjected or believes it to be legitimate, shall be sentenced to life imprisonment. Article 191 provides that anyone who uses force, threats or deception to commit an act of indecent assault shall be liable to a penalty of up to 15 years' imprisonment. If the offender is an ascendant of the victim or if he was one of the persons entrusted with the victim's upbringing or welfare or vested with authority over the victim or if he was the victim's servant or a servant of any of the above-mentioned persons, he shall be liable to a penalty of life imprisonment. The aforementioned penalties shall be imposed if the victim was incapable of exercising willpower due to his or her young age, insanity or feeble-mindedness or if the victim did not realize the nature of the act or believed it to be lawful, even if the act was committed without force, threats or deception.

The Kuwaiti Code of Criminal Procedure (No. 17 of 1960) also contains provisions to elevate the human dignity of women in the State of Kuwait.

- Article 82 provides that, in all cases, a woman may be searched only by a woman delegated for that purpose with the knowledge of investigator, with women witnesses present.
- Article 86 also promotes the human dignity of women by providing that that, if there are veiled women inside a house and the purpose of entry is not to arrest or search them, the officer in charge must ensure that they are treated according to custom.

Kuwait has labour legislation that protects women in various ways. One example is article 23 of Act No. 6 of 2010 concerning private sector employment, which provides that women may not be hired to work at night. That was reaffirmed by Ministerial Decree No. 167 of 2007 concerning the employment of women at night, which was issued by the Ministry of Social Affairs and Labour with a view to ensuring

that women are not exploited and that their rights and humanitarian situation are protected.

Article 26 of the Private Sector Employment Act (No. 6 of 2010) stipulates that women should be paid the same wage as men. The article reads: “A female worker shall be entitled to the same remuneration as a male worker for undertaking the same work”.

Act No. 21 of 2015 concerning the rights of the child allows working mothers to take unpaid leave to take care of their children. The Act also imposes an obligation on institutions to set up a nursery if they employ 50 working women. In addition, it requires employers to grant maternity leave to working mothers and it gives mothers the right to two hours a day to breastfeed their child, without any reduction in wages.

The right of recourse to the courts is a fundamental right under the Kuwaiti Constitution, which confers it on all persons without exception or discrimination among citizens and residents, whether men or women. Article 166 of the Constitution provides that the right of recourse to the courts is guaranteed to all people, and that the law shall set out the procedure and manner required for the exercise of that right.

In addition, article 45 of the Constitution grants every individual the right to address the public authorities in a written document under his or her signature. Accordingly, every person has a constitutional right to address the public authorities and to file complaints and reports with them. Moreover, article 14 of the Code of Criminal Procedure and Trial (Act No. 17 of 1960) provides that any person who has witnessed a crime or is aware that a crime has been committed must report that to the nearest police or investigative official. Accordingly, the reporting of crimes is not a right that is conferred on all. It is rather an obligation on every person, regardless of whether he has been harmed by or is the victim of the crime.

In keeping with Kuwaiti legislation’s commitment to the right of all persons to litigation, and in particular their right to appeal any law, decree or regulation before the Constitutional Court if it is believed to violate the provisions of the Constitution, Act No. 109 of 2014 amending certain provisions of Act No. 14 of 1973 establishing the Constitutional Court grants any natural or legal person the right to appeal directly to the Constitutional Court in an original proceeding.

As part of the State’s concern for the welfare of women, with a view to achieving gender equality and in recognition of the important role women play in society, 22 female prosecutors were admitted in 2014. This was a preparatory step to the transition of women from the prosecution to the judiciary as their careers progress.

Some 24 women graduated from the sharia and law faculties were appointed as legal investigators in the Ministry of Justice in 2018. That was in preparation for their appointments as prosecutors pending their passage of the induction course at the Kuwait Institute for Legal and Judicial Studies. A new class of graduates of the sharia and law faculties are currently being admitted for 2019.

Lastly, we note that the Ministry of Justice issued ministerial decision 463 of 2016 establishing a committee for overcoming all obstacles facing women who work at the ministry, women who work at subsidiary agencies and women who frequent the Ministry. That committee submits its proposals and recommendations directly to the Minister. All its members are women.

2. Recommendation contained in paragraph 29 (b)

Ensuring the provision of assistance to and facilitating reporting by victims, including through properly equipped and adequately staffed shelters offering legal, medical and psychological assistance and rehabilitation, and ensuring that the complaints hotline operates around the clock.

The Council of Ministers adopted Decision No. 652, taken at its meeting no. 2007/20 held at its headquarters on 8 July 2007, which approved setting aside a shelter for migrant workers, and in particular domestic workers involved in disputes with their employers and facing difficult conditions in their workplace having to do with legal, livelihood or humanitarian issues. The shelter takes in workers and takes the necessary measures. They are examined by psychiatric and health experts to determine their fitness for work until such time as their situations are adjusted, either by moving them to a more desirable location or returning them if they wish, with their travel expenses covered.

A new shelter was opened in December 2014 under the aegis of the Public Workforce Authority. The shelter currently has the capacity to house 500 guests.

The shelter provides a range of services, including the following:

1. Basic personal needs and services;
2. Assistance in obtaining travel documents for guests who have no embassy in Kuwait;
3. Facilitated visa approval for guests;
4. Assistance in transporting guests to the airport;
5. Assistance in access to health care;
6. Five meals a day.

Given the success of the shelter for women migrant workers, the Workforce Authority intends to establish another similar shelter for men. A proposed site has been identified and the necessary measures are being taken and approvals obtained to move ahead with implementation of the project.

3. Recommendation contained in paragraph 47 (b)

Bring the uncodified Ja'fari interpretation of personal status matters and the Civil Code into line with the State party's obligations under articles 2, 5 (a) and 15 of the Convention, initiate a public debate on moving towards a unified Personal Status Act, and build on best practices of neighbouring countries with similar cultural and religious backgrounds.

It should be noted that the articles of the Convention referred to in the above recommendation have to do with equality between men and women, non-discrimination against women, conferring legal protection, granting women legal capacity to conclude contracts on an equal footing and changing social and cultural patterns of conduct of men and women, with a view to the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes.

In that regard, in keeping with the desire of the State of Kuwait to move towards with the development of its legislation, it should be noted that there is ongoing discussion in the Kuwaiti National Assembly of a draft act concerning the Ja'fari interpretation of personal status matters.