



International Convention on the Elimination of All Forms of Racial Discrimination

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Summary record of the 2133rd meeting

Held at the Palais Wilson, Geneva, on Thursday, 16 February 2012, at 3 p.m.

Chairperson: Mr. Calí Tzay (Vice-Chairperson)

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The meeting was called to order at 3 p.m.

**Consideration of reports, comments and information submitted by States parties
under article 9 of the Convention** *(continued)*

*Fifteenth to twentieth periodic reports of Kuwait (CERD/C/KWT/15-20;
CERD/C/KWT/Q/15-20)*

1. *At the invitation of the Chairperson, the delegation of Kuwait took places at the Committee table.*
2. **Mr. Marafi** (Kuwait) said that his country, which was a party to the core international human rights instruments, notably the International Convention on the Elimination of All Forms of Racial Discrimination, had taken a number of legislative and regulatory measures to combat racial discrimination on its territory, while endeavouring to work with the international community to achieve the common goal of affirming the principles of human rights, of which the fight against discrimination was a fundamental aspect.
3. Numerous mechanisms had been created to protect and promote human rights. The Committee on Human Rights, established by the Ministry of the Interior in 2001, was mandated to deal with complaints of human rights violations, investigating and pronouncing on such allegations; the Committee on the Status of Women, established in 2002, was concerned with issues affecting Kuwaiti women at the local and international levels; the Higher Committee for Children and the Family, established in 2005, reviewed laws relating to children and the family; the Higher Committee on Human Rights, established in 2008 and chaired by the Minister of Justice, was responsible for local, regional and international human rights issues.
4. His country had introduced numerous measures to promote women's rights. The representation of Kuwaiti women in high-level posts in the economic, social cultural spheres continued to rise. It should nonetheless be noted that no women had been elected in the parliamentary elections of 2 February 2012.
5. Kuwaiti legislation guaranteed equal employment opportunities and prohibited wage discrimination between men and women. The Constitution and the law guaranteed the right to form and join trade unions, a right which Kuwaiti legislation guaranteed for all, Kuwaitis and foreigners alike, regardless of origin, race or nationality.
6. Determining the conditions for the exercise of the right to nationality was a sovereign act. His country had amended the 1959 Nationality Act several times so as to eliminate all forms of discrimination and to confer Kuwaiti nationality on any person meeting the legal requirements. Several Amiri decrees issued in 1999 permitted the granting of Kuwaiti nationality to the children and grandchildren of a naturalized citizen who had been unable to acquire Kuwaiti nationality under the Nationality Act, and the naturalization of children born to a Kuwaiti mother and foreign father.
7. The problem of foreign residents in an irregular situation was one of the oldest and most significant issues faced by Kuwait. The Executive Committee on Unlawful Resident Affairs was established by decree in 1996 to address the issue with regard to its current and future humanitarian, security, social, cultural, economic, national, moral and international consequences and discussions. Any person living on Kuwaiti territory was treated in a humane and civilized manner. A special commission, established in 2006 to monitor the situation of those concerned, had enabled 23,000 of them to regularize their situation. There were currently 93,334 illegal residents in Kuwait who received a number of services, notably in the health, education, housing and social security areas. Following the commitments made by Kuwait in 2010 during the universal periodic review, the authorities

had established the Central Bureau for Illegal Residents, which was responsible for improving their legal and social situation.

8. His country attached great importance to foreign workers, as reflected by the enactment of legislation to promote and protect their rights and regulate their working conditions. A ministerial decree of 2010 required employment agencies and employers to sign a contract with domestic workers to enable them to enjoy the broadest possible legal protection. The Office for Domestic Workers had been established to issue authorizations to employment agencies and monitor their activities in order to ensure that they did not exploit domestic workers, and a shelter had been established for domestic workers in a dispute with their employer.

9. The Kuwaiti parliament was examining a bill to combat trafficking in persons; it provided for life imprisonment for perpetrators of the offence and significant prison terms for their accomplices, while offering victims comprehensive protection. Furthermore, police officers received training on the issue of trafficking in persons and its links to transnational organized crime.

10. **Mr. Avtonomov** (Country Rapporteur) said he regretted that over ten years since the submission of its previous periodic report, Kuwait had submitted a document of only 18 pages which, in fact, did not fully conform to the Committee's reporting guidelines for States parties.

11. While article 29 of the Kuwaiti Constitution enshrined the principle of equality and prohibited discrimination based on race, origin, language or religion, the definition in the Constitution did not fully conform to that in article 1 of the Convention, which stated that racial discrimination "shall mean any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin".

12. Kuwait having signed the Arab Charter on Human Rights, he would like information on the status of the procedure for the National Assembly's approval of the text prior to ratification. Noting that Kuwait had ratified the Convention in 1968 without reservations, he wished to know whether the authorities intended to ratify the amendment to article 8, whereby States parties were required to defray the expenses of Committee members during performance of their Committee duties, and to make the declaration provided for in article 14, recognizing the Committee's Authority to receive and consider complaints from individuals and groups claiming that their rights set forth in the Convention had been violated.

13. Given that article 70 of the Kuwaiti Constitution provided that international instruments had the force of law, it would be interesting to know whether the courts had already applied the Convention or whether, as certain NGOs claimed, it had not been incorporated in domestic legislation.

14. Welcoming the many successes in combating racial discrimination, he asked how the Higher Committee on Human Rights was run and whether it conformed to the Paris Principles.

15. The delegation might also describe the action taken by the State party since the consideration of the previous periodic report to protect the rights of foreign domestic workers and other vulnerable groups of foreigners, and address the issue of access to Kuwaiti nationality for the "Bedoon". Additional information on the Bedoon, who were stateless persons, would be welcomed, particularly regarding their exact number in the State party (250,000 in 1990, 125,000 in 1991 after the Gulf war and approximately 92,000 according to data from 2008), and their specific situation. The Bedoon appeared to have been divided into three categories: those living in the country before 1920, who could claim Kuwaiti nationality under article 1 of the Nationality Act; those who, as nomads, had

arrived from neighbouring countries after that date; and those who had not regularized their situation before nomadic peoples were excluded from the group to whom the Act was applicable. Many of those persons had lived in Kuwait since the 1950s and had served in the army or the police, but did not possess official documents proving their long presence in the country and did not appear in national statistics; they continued to be viewed as a threat to national security. Furthermore, they were deprived of the rights enjoyed by Kuwaitis, since their identity documents prevented them from leaving the country, starting a business or working in the public sector.

16. It would be desirable for Kuwaiti women married to foreigners to be able to pass her nationality on to her child automatically just like a Kuwaiti man married to a foreign woman, which was not currently the case.

17. The Committee would appreciate more information on the sponsorship (*kafalah*) system to which migrant workers were subjected and which left them dependent on their employer, who, in return for sponsorship, placed very specific restrictions on their possibilities of changing jobs. That information should include whether the State party intended to revise the system and, if so, what benefit it would bring to migrant workers, to whom the Labour Code did not apply. He also wished to know whether migrant domestic workers, the majority of them women from India, Pakistan, Sri Lanka and Malaysia who only spoke their native tongue and lived in virtual captivity in their employers' home, had the right to unionize.

18. He asked which school of interpretation of Islamic law was followed in Kuwait; whether the Shia, who comprised 30 per cent of the population, had recourse to their own courts; whether Islamic law applied to all Kuwaiti citizens, Muslim or otherwise; and whether non-citizens, the Bedoon and foreigners, were eligible to receive money from compulsory (*zakat*) or voluntary (*sadaqa*) Islamic charity contributions.

19. **Ms. Dah**, having welcomed the State party's commitment to promoting and protecting human rights in general and those of women in particular, said that she regretted the lack of both a common core document and detailed information on the composition of the population. While the population appeared to be homogenous, it would be useful to know the national and ethnic origin of the many non-citizens living in Kuwait.

20. She would like to know whether article 29 of the Constitution, which provided that all Kuwaitis were equal before the law in dignity, rights and duties, regardless of race, origin, language or religion, had precedence over article 70, which provided that a treaty, such as the Convention, had the force of law once it had been signed, ratified and published in the Official Gazette.

21. The Kuwaiti delegation might state whether, since the submission of the previous report, the State party had indeed amended the Criminal Code — as it had undertaken — to establish the offence of incitement to racial hatred and, if so, whether civil servants had already been prosecuted for the offence or would be subject to legal proceedings or administrative penalties.

22. It would also be interesting to know whether the State party was taking action to improve the quality of human rights instruction for civil servants and law enforcement officers, as it had been encouraged to do during the universal periodic review of Kuwait in 2010, and whether the State party envisaged revising the Nationality Act to permit a Kuwaiti woman to unrestrictedly transmit her nationality to her foreign husband and her children.

23. Aware that conferring nationality on persons in an irregular situation was very complicated, since it depended on the applicant's period of residence and religion, and on quotas, she would like more details in that regard. She also wished to know how the State

party planned to resolve the problem of statelessness and the illegal situation in which the Bedoon found themselves. Welcoming the State party's commitment, under the universal periodic review of Kuwait, to study the possibility of ratifying the Convention relating to the Status of Refugees and the Protocol thereto, she would be grateful for further information on the situation of asylum seekers and refugees, who often lacked access to social services and the labour market.

24. She also wished to know whether the State party planned to adopt legislation in line with the Convention against Transnational Organized Crime, given that the State party was exposed to the risk of cross-border trafficking in persons owing to the high numbers of migrant workers. She welcomed the progress achieved in protecting domestic workers and regulating the private sector, and hoped that those efforts would continue.

25. **Mr. Saidou** asked whether the State party envisaged ratification of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime. He would also appreciate details of the mandate and membership of the Higher Committee on Human Rights.

26. **Mr. de Gouttes** asked whether a law incorporating the Convention in domestic legislation had been adopted and whether the Convention had already been invoked in the courts.

27. He wondered about the respective functions of the Committee on Human Rights and the Higher Committee on Human Rights. Welcoming the emphasis the State party placed on human rights education and the participation of civil society in public life, he would like to know which civil society organizations had been involved in drafting the periodic report.

28. He would also be interested to learn the follow-up given to Ministerial Decree No. 1182/2010 of the Ministry of the Interior, which strengthened the rights of the Ministry of the Interior, which strengthened the rights of domestic workers and sought to improve their working conditions, and the decree of the Ministry of Social Affairs prohibiting employers from confiscating foreign employees' passports, under threat of prosecution. He would also like to learn the situation regarding the guest workers' shelter and whether the bill to amend Civil Service Act No. 15 of 1979 in order to prohibit officials from discriminating among users of administrative services was under consideration.

29. Aware that the Bedoon could not claim Kuwaiti nationality and were considered illegal residents, what measures did the State party envisage for better integration of that community? He also wished to have more information on the role of the Executive Committee on Unlawful Resident Affairs and learn whether the State party intended to ratify the Convention relating to the Status of Stateless Persons and the Convention on the Reduction of Statelessness.

30. **Mr. Murillo Martínez** asked what strategies the State party was implementing to ease the integration of foreigners and encourage national unity, given the broad diversity within the population.

31. He wished to know whether the State party intended to abolish capital punishment and whether there were any disaggregated data on the frequency with which it was imposed.

32. The delegation might also indicate any plans to ratify the ILO Domestic Workers Convention (No. 189) and whether there had been any awareness-raising activities during the International Year for People of African Descent.

33. **Mr. Diaconu**, having welcomed the State party's progress in terms of education and protection for migrant workers, but nonetheless observing that domestic legislation merely

proclaimed the equality of all citizens, emphasized the paramount importance of explicitly prohibiting racial discrimination by law so that victims could assert their rights. He further noted that, under article 4 of the Convention, States parties were obliged to declare all acts covered by the Convention to be offences punishable by law, which did not appear to be the case in Kuwaiti law.

34. Since the report provided no demographic data on the Bedoon, he wondered whether there were plans to grant them permanent residence status and so remedy their problem of statelessness to some extent. He urged the State party to reconsider its policy on birth registration of Bedoon children and the issuing of identity cards. Could Palestinian workers acquire Kuwaiti nationality? Lastly, he wondered whether the time had not come to consider the abolition of certain provisions of Kuwaiti law inherited for security reasons from the first Gulf War in 1991 and which imposed restrictions that violated the rights of certain population groups, particularly Bedoon.

35. **Mr. Vazquez** asked whether it was true that textbooks dealing with the Holocaust were banned in schools.

36. **Mr. Kemal** welcomed Kuwait's achievements concerning the Millennium Development Goals, notably in access to education and health care.

37. Kuwait was home to a great many migrant workers, who were a valuable source of labour for Kuwait and supported thousands of people in their countries of origin, yet were victims of sundry human rights violations: confiscated passports, obligation to pay down debts to intermediaries involved in their recruitment, opaque work contracts, wages lower than foreseen, violence and all kinds of abuse. He would like to know whether the State intended to establish an agency to protect migrant workers, or an ombudsperson so that they could assert their rights before the law, and whether the proposal to prohibit the use of child jockeys and to raise the minimum age to 18 years had been followed up.

38. **Mr. Thornberry** asked how many cases of incitement to racial hatred and complaints of dissemination of racist discourse had been identified. He also wished to know how many of the Bedoon continued to practice a nomadic lifestyle within the State party.

39. Noting that, in its concluding observations on the State party's second periodic report, the Human Rights Committee had expressed concern at the discrimination against Hindus, Sikhs and Buddhists regarding naturalization and freedom of religion, he recommended that the State party should take measures to resolve the issue. Details of the action taken in response to the recommendation would be welcome, since the Committee was interested in discrimination on the basis of religion insofar as it was linked to discrimination based on national origin, which was the case in the given instance.

40. The delegation was invited to comment on the compatibility of the concept of *wastiya* ("moderation"), which appeared in paragraph 130 of the Arabic and English versions of the report, with certain values that were highlighted in article 7 of the Convention, namely tolerance and friendship among racial and ethnic groups. Lastly, he would be interested to learn what image the State party had of itself and whether it considered still pertinent the point of view expressed in 1997 by the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance in the report of his visit to Kuwait, to the effect that there was no evidence of discrimination against foreigners, "but rather an unacknowledged 'national preference' on the part of a people that is a minority in its own country and sensitive to a foreign presence that massively outweighs its own in the field of employment".

41. **Mr. Lindgren Alves** asked whether foreigners living in Kuwait were included in the population of 3 million inhabitants indicated in the report before the Committee. He was surprised to read in the report that the ministries employed persons in an irregular situation

and that the Government had taken measures to allow those employees' children to be educated, and wondered whether the Kuwaiti authorities were not able to regularize those persons and take steps to ensure that all children of persons in an irregular situation in Kuwait could attend school.

42. **Mr. Ewomsan** said that, even if the State party was not directly responsible for the discrimination and exploitation experienced by migrant workers in an irregular situation, including those employed as domestic workers, it was obligated to take legislative, administrative and judicial measures to prevent and combat those violations, and that it should undertake to cooperate with the relevant countries of origin with a view to granting them residence permits.

43. **The Chairperson** said that, while the State party had a Committee on the Status of Women, women migrant workers, like their male counterparts, continued to be subjected to a form of discrimination that was so entrenched in society that it was no longer regarded as such. The delegation was invited to provide more details on the situation of women and to indicate how many complaints of discrimination had been filed by women and migrant workers, whether the State party had a set minimum wage and who received it.

44. Kuwait had contributed generously to several United Nations institutions, which was testament to its commitment to human rights.

45. **Mr. Marafi** (Kuwait) said that his Government's determination to combat all forms of discrimination was evident from the composition of his delegation, which included representatives from different ethnic and religious groups, namely Christian, Sunni and Shia, as well as one woman and one person with a disability.

The meeting was suspended at 5.40 p.m. and resumed at 5.45 p.m.

46. **Mr. Jafar** (Kuwait) said that article 21 of the Press and Publications Act No. 3 of 2006 prohibited the publication of all content that violated an individual's dignity or constituted incitement to hatred against any group. Similarly, article 11 of the Audiovisual Media Act No. 61 of 2007 stipulated that the dissemination of content that violated the dignity and religion of a group or individual, or advocated hatred against a given group was punishable with a fine of between 10 and 30,000 dollars.

47. In 2010, 709 complaints of incitation to hatred had been filed and 576 of them had been brought before the courts. No grounds for prosecution had been found in 64 of those cases. Parliament was examining a bill to combat religious fanaticism and tribalism, and prohibit and punish incitement to hatred based on membership of a national or ethnic group, as well as the dissemination of ideas that might undermine national unity.

48. The Civil Service Council established by Civil Service Act No. 15 of 1979, was responsible for implementing plans to promote equal treatment within the civil service. Specifically, it ensured that the spouse of a civil servant who had died or was unable to work received family benefits, regardless of his or her nationality. All decisions made by the administrative courts were based on the principle of non-discrimination between citizens and non-citizens, and between men and women. In 2010, the administrative courts issued 2,373 decisions on cases of discrimination in employment and many women who had been treated unfairly, notably with regard to promotion, had received financial and moral damages.

49. **Mr. Alsulaimi** (Kuwait) said that the public Benefit Clubs and Associations Act No. 24 of 1962 expressly prohibited organizations advocating hatred, fanaticism and tribalism, and provided for the relevant authorities to pronounce the dissolution of such organizations' administrative boards.

The meeting rose at 6 p.m.