



International Convention on the Elimination of All Forms of Racial Discrimination

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Summary record of the 2550th meeting

Held at the Palais Wilson, Geneva, on Wednesday, 2 August 2017, at 3 p.m.

Chair: Ms. Crickley

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The meeting was called to order at 3.05 p.m.

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

Combined twenty-first to twenty-fourth periodic reports of Kuwait (CERD/C/KWT/21-24 and CERD/C/KWT/Q/21-24)

1. *At the invitation of the Chair, the delegation of Kuwait took places at the Committee table.*
2. **Mr. Alghunaim** (Kuwait), introducing the combined twenty-first to twenty-fourth periodic reports of Kuwait (CERD/C/KWT/21-24), said that the Government had set up a standing committee to prepare periodic reports on the human rights situation in the country. The Constitution enshrined the provisions of the Convention in national law (article 70); reflected the general principles of non-discrimination and equality without distinction on the basis of sex, language, religion or origin (article 29); and stated that justice, freedom and equality formed the bedrock of Kuwaiti society (article 7). A number of laws had been passed to strengthen human rights and several human rights bodies had been created, including the National Human Rights Office, a human rights committee within the National Assembly, the Central Agency for Regularization of the Status of Illegal Residents and a human rights office within the Ministry of Foreign Affairs.
3. All forms of discrimination were prohibited by law, and victims of discriminatory treatment with regard to employment, housing, welfare, health or education could seek legal redress in accordance with article 166 of the Constitution. In addition, following a recent amendment to domestic legislation, individuals could have recourse to the Constitutional Court if they believed that a law ran counter to the freedoms and rights provided for in the Constitution and could submit complaints to the National Assembly human rights committee. The National Human Rights Office had the power to receive, monitor the handling of and follow up complaints of human rights violations.
4. Foreign migrant workers made up more than a third of the population of the State party and were well treated. Kuwait had ratified the International Labour Organization (ILO) Forced Labour Convention, 1930 (No. 29) and the Night Work (Women) Convention (Revised), 1948 (No. 89). In addition, Act No. 68 of 2015 protecting the rights of domestic workers had been introduced and national legislation in that field had been aligned with the ILO Domestic Workers Convention, 2011 (No. 189). A unit had been set up to deal specifically with domestic work issues.
5. There was a high level of transparency and press freedom in Kuwait and media outlets enjoyed significant legal protection against State interference. The Constitution enshrined the freedom of religion and belief (article 35), of opinion, expression and scientific research (article 36) and of the press (article 37), as well as the right to petition the public authorities (article 45). Hate speech and any attempted justification thereof had been criminalized under Legislative Decree 19 of 2012. Judicial prosecutions were carried out in an open, transparent fashion, strictly in line with legal procedure. Human Rights Watch operated freely in Kuwait and could make its findings available to the public.
6. The documents submitted to the Committee by Kuwait along with the periodic report contained information on a wide range of issues, including the definition and number of cases of racial discrimination, the granting of Kuwaiti nationality, citizenship of children of Kuwaiti mothers, convictions for trafficking in persons, domestic workers and services for irregular migrants.
7. **Mr. Khalaf** (Country Rapporteur) said that the State party had submitted its periodic report in a timely fashion, reflecting its commitment to its international obligations and to open dialogue with the Committee. While the State party had taken steps to address all the issues raised in the Committee's 2012 concluding observations (CERD/C/KWT/CO/15-20), additional follow-up on some matters was needed. For example, the report currently under discussion contained only a limited amount of data on ethnic origin, nationality and religious affiliation, although the Committee had requested the inclusion of comprehensive statistical information. The report mentioned various

articles of the Kuwaiti Criminal Code and various laws and legislative decrees, but none of them clearly defined racial discrimination in legal terms. He would like to know whether the State party intended to amend national legislation in order to bring the definition of racial discrimination into line with article 1 of the Convention.

8. It would also be useful to receive information on the number of court cases in which the provisions of the Convention had been invoked pursuant to article 70 of the Constitution, which provided that international treaties to which Kuwait was a party had the force of law and could therefore be directly applied by the Kuwaiti judicial authorities. The absence of a comprehensive definition of racial discrimination appeared to be hindering much-needed legislative reform, as Private Sector Employment Act No. 6 of 2010, for example, had not been further amended to prohibit direct and indirect discrimination in line with the International Labour Organization (ILO) Discrimination (Employment and Occupation) Convention, 1958 (No. 111).

9. While the Committee understood that it fell to the Kuwaiti legislative authorities and not to the Civil Service Commission to amend the Civil Service Act (Act No. 15 of 1979), the fact remained that the provisions of the Act were at variance with those of the Convention. The State party should take prompt action to ensure that the Act was amended to prohibit discrimination in public employment on the basis of sex, origin, language or religion. Although the Act did not draw a distinction between Kuwaiti and non-Kuwaiti employees, in practice non-Kuwaiti public servants tended to enjoy less favourable employment conditions and diminished labour rights, as they were appointed under private contracts. Discrimination against non-Kuwaiti public servants was particularly noticeable in the areas of remuneration and maternity leave.

10. The Committee had learned from alternative sources that the National Human Rights Office was still not operational or in full compliance with the Paris Principles. Moreover, the Office's link to the executive branch called into question its independence. He would like to know how the State party planned to ensure that the Office enjoyed the requisite economic and administrative independence.

11. Although Legislative Decree No. 19 of 2012 concerning the protection of national unity prohibited advocacy or incitement of hatred or contempt for any social group and prescribed penalties for such offences, it appeared that organizations engaging in such activities were excluded from its scope. That omission should be corrected. The Committee had also been informed that a number of Kuwaiti parliamentarians routinely engaged in hate speech against migrant workers and had proposed initiatives aimed at limiting their number and promoting their social segregation. Such discriminatory acts were wholly unacceptable and should be condemned in the strongest terms. He would welcome information on how Legislative Decree No. 19 was enforced on the ground and how many complaints relating to incitement of hatred had been lodged. In particular, had any of the aforementioned parliamentarians been prosecuted and punished for violating that law?

12. The Committee remained concerned about the situation of Bidoon, or stateless persons, who had consistently been denied Kuwaiti citizenship and were unable to obtain civil documentation, such as birth certificates and passports, although some had lived in Kuwait for many years. The Kuwaiti authorities reportedly considered Bidoon to be residing in the country unlawfully and accused them of having destroyed their identity documents in order to claim State benefits. The Committee understood that protests organized by Bidoon had been violently quelled because the right to demonstrate was reserved for Kuwaiti citizens only. The Committee had also been informed that Bidoon were often subject to arbitrary arrest and suffered discrimination at the hands of the Kuwaiti security forces and that Bidoon human rights defenders had been jailed and were still awaiting release. Could the delegation comment on the veracity of those reports and provide an update on the situation of the defenders?

13. He would like to know whether, as had been reported, the State party intended to conclude an agreement with the Comoros under which the Comorian authorities would grant members of the Bidoon community Comorian citizenship in return for financial compensation, thereby making the Bidoon liable to deportation from Kuwait. The plight of Bidoon children, the majority of whom were precluded from attending public schools as

they did not possess a birth certificate, was of particular concern. It was his understanding that programmes launched to educate Bidoon children had proved unsuccessful and had been terminated. Was that indeed the case?

14. It was regrettable that a Kuwaiti woman married to a foreign national was unable to transmit her nationality to her children. The Kuwaiti Nationality Act (Act No. 15 of 1959) also seemed to discriminate against Christian women insofar as it prevented them from transmitting their nationality to their non-Kuwaiti husbands or to their children, with rare exceptions. He wondered whether the State party had taken steps to remedy that situation of inequality.

The meeting was suspended at 4.05 p.m. and resumed at 4.15 p.m.

15. **Mr. Kut** said that he understood that the State party had taken steps to define and criminalize human trafficking by enacting anti-trafficking legislation, as recommended by the Committee in its previous concluding observations. However, it appeared that it had not taken sufficient action to follow up on the recommendations relating to the amendment of the Civil Service Act (Act No. 15 of 1979) and the situation of domestic workers. Moreover, he noted with regret that the follow-up information requested by the Committee had not been received within one year of the adoption of the previous concluding observations. He wished to remind the delegation that follow-up reports were useful not only to the Committee, but also to the State party, providing it with an opportunity to show improvement through prompt action in certain areas. The Committee would like to receive the next follow-up report by August 2018.

16. **Ms. Dah** said that she was pleased to see a large number of highly qualified women included in the State party delegation. While the State party had, as requested, submitted an updated common core document (HRI/CORE/KWT/2015), the document was not sufficiently comprehensive and did not conform to the relevant guidelines on reporting under the international human rights treaties. The Committee appreciated the supplementary documentation provided by the State party, but would request that, in future, it submit such information in advance of the session.

17. She had been surprised to learn that Kuwait, despite having ample means at its disposal, had still not managed to set up a fully functioning national human rights institution in line with the Paris Principles. It would be useful to hear more about the obstacles preventing the National Human Rights Office from carrying out its mandate. She hoped that the Office would be able to participate in future interactive dialogues with the Committee.

18. She would like to know whether the State party envisaged amending the Kuwaiti Nationality Act (Act No. 15 of 1959) to enable Kuwaiti women married to foreign nationals to transmit their nationality to their children and spouses. Noting that, according to the State party's report, a total of 587 persons had acquired Kuwaiti citizenship, she asked on what basis citizenship had been granted in those cases.

19. The State party had stated in its report that, while it recognized the importance of the Committee's work, it did not wish to ratify the amendments to article 8 (6) of the Convention on the Committee's financing or to recognize the Committee's competence to receive and consider individual communications under article 14 of the Convention. She would encourage the State party to reconsider its position, particularly with regard to the amendments to article 8 (6), which in her view were essential for the Committee's continued functioning.

20. **Mr. Avtonomov** said that the supplementary documentation provided on the human rights situation on Kuwait merely confirmed that the Central Agency for the Regularization of the Status of Illegal Residents was responsible for ensuring that matters related to citizenship were dealt with in accordance with the Kuwaiti Nationality Act (Act No. 15 of 1959), without indicating whether it would be possible for any subset of the Bidoon community to acquire Kuwaiti citizenship in the near future. He wished to know whether such a possibility existed, what the procedure for acquiring Kuwaiti citizenship entailed and whether it varied according to the subset of the Bidoon population in question. He also wished to know what specific measures had been taken to combat trafficking in persons. In

addition, he would be grateful for additional information on the State party's relationship with the Independent Permanent Human Rights Commission of the Organization of Islamic Cooperation, in particular insofar as it had an impact on the implementation of the Convention.

21. **Mr. Amir** said that Bidoon should be considered a part of the people of Kuwait. He would be interested in hearing what measures had been or would be taken to improve the provision of human rights training for law enforcement officials, which could in turn improve the situation of the Bidoon community.

22. **Mr. Marugán** said that it would be helpful to learn how many Bidoon studied at Kuwait University and whether Bidoon were included in the statistics that the delegation had provided on participation in higher education by residents in an irregular situation. He wished to know whether the State party planned to cease treating Bidoon residents as irregular, to register all children born in the territory of Kuwait and to issue birth certificates for all such children. He would appreciate statistics on the number of Bidoon children who currently had access to primary and secondary education and would welcome a response from the delegation to reports that the majority of Bidoon had no access to education or health care.

23. **Mr. Kemal** said that it appeared that Kuwaiti nationality was granted only to persons whose ancestors had traditionally lived in the territory of Kuwait. Nevertheless, it could be argued that, as State boundaries were a relatively recent phenomenon, there were grounds on which to grant Kuwaiti nationality to Bidoon, who were indigenous to the Arabian Peninsula.

24. **Mr. Calí Tzay** said that he wished to know why Bidoon appeared not to benefit from the various safeguards available under the Kuwaiti Constitution and the Convention. For example, despite the constitutional right to freedom of assembly, Legislative Decree No. 65 of 1979 prohibited the participation of Bidoon in public assemblies. Moreover, he was concerned that Bidoon were reportedly detained for lengthy periods before being brought before a judge, sometimes not informed of the date of their hearing and often sentenced in absentia. In the light of reports that lawyers representing Bidoon had been subjected to intimidation, he wished to recall the Committee's general recommendation No. 31 (2005) on the prevention of racial discrimination in the administration and functioning of the criminal justice system, which emphasized that all persons should be treated equally under the system. In that connection, he would be grateful for information on the racial composition of the prison population, including the proportion of Bidoon in that population.

25. **Mr. Yeung Sik Yuen** said that, although the State party report cited cases in which international treaties had been invoked before domestic courts, it appeared that the decisions in question had in fact been based on the Constitution. He wondered whether judges received adequate training on the provisions of the international treaties to which Kuwait was a party and whether reference had been made to such treaties, in particular the Convention, in any legal pronouncements.

26. In relation to freedom of religion, it would be useful to learn whether a body had been established to determine whether particular religions were neither prejudicial to public order nor incompatible with morality, as was required under article 35 of the Constitution, and whether any religions had been found wanting in that regard. He would appreciate clarification of whether the powers granted to the Minister of Social Affairs and Labour to order the dissolution of an association were subject to judicial review. He would also welcome an explanation of the unusually specific contents of article 161 of the Criminal Code, which established penalties for anyone who severely harmed another person by using him as a target for any form of projectile. In addition, he would be grateful for more information on the provisions and principles of sharia that governed a woman's right to vote and to stand for election. Lastly, he would appreciate clarification regarding the scenarios in which a person's freedom of residence or movement could legally be restricted.

27. **Ms. Hohoueto** said that she wished to know what measures had been taken to ensure that persons brought before a court were aware of the provisions of the international treaties to which Kuwait was a party and of their right to invoke them. In addition, it would

helpful if the delegation could indicate whether judges invoked international treaties on a regular basis. If so, she would welcome examples of cases in which they had done so.

28. **Mr. Murillo Martínez** said that he would appreciate clarification of the information in paragraph 32 of the State party report regarding the rights of foreign nationals to participate in political affairs and hold public office. He would also be grateful for information on the scope and impact of any special measures taken to improve access for non-citizens to employment in the private sector and on the specific groups that had benefited from such measures. In that connection, he noted that Act No. 38 of 1964 sought to promote access to employment for non-citizens on an equitable basis.

29. He would be grateful if the delegation could provide more information on the measures taken to raise awareness of human rights in the State party and on their effectiveness in terms of combating racism, racial discrimination, xenophobia and related forms of intolerance. It would be useful to learn what measures had been taken or were planned within the framework of the International Decade for People of African Descent. Lastly, he wished to know whether a mechanism was in place to reverse the burden of proof in civil and labour law cases with a view to strengthening efforts to combat racial discrimination and, if not, whether there were plans to introduce such a mechanism.

30. **Ms. Shepherd** said that she would appreciate updated statistics on the percentage of adults who had obtained educational qualifications and on the enrolment rate in primary and intermediate education. While the State party was to be commended for its high level of public spending on education, its high literacy rate and the fact that it granted migrants and residents in an irregular situation access to education, she was concerned that Bidoon were apparently being excluded. It would be useful if the delegation could indicate whether provision was made for adult education and, if it was, whether adult education was accessible to all ethnic groups and whether there was any ethnic group — for example, persons of African descent — that had a particularly low literacy rate. She also wished to know whether the private schools that followed particular national education systems — such as those that followed the British system — accepted only children of the nationality in question.

31. **Ms. Mohamed** said that it was unclear whether any sentences had been handed down in response to complaints received by the Domestic Workers Department, whether measures had been taken to facilitate the submission of complaints and whether regular inspections of the working conditions of domestic workers were conducted with a view to minimizing the number of complaints received. She would like to know whether Kuwaiti and non-Kuwaiti workers were treated equally and received equal pay for work of equal value and whether women were represented in the military and in law enforcement agencies. In addition, she would welcome clarification regarding the recent changes to compulsory education, as the explanation given in paragraph 101 of the State party report, namely that the duration of compulsory education had been extended to nine years, was ambiguous.

32. **Mr. Bossuyt** said that it would be helpful to learn whether treaties to which Kuwait was a party ranked higher than domestic laws or the Constitution. As the State party report indicated that women were entitled to vote in a manner consistent with sharia, he wondered whether a distinction was made between women and men with regard to participation in elections. He also wished to know why non-Muslim working women were granted shorter widow's leave than were Muslim working women. He would appreciate an explanation of what was understood by the term "religious controversies", as used in paragraphs 13 to 19 of the State party report. Lastly, he would welcome an explanation of how the sponsorship (*kafalah*) system — which had given rise to significant abuses — was applied to domestic workers.

33. **Mr. Marugán** said that it was not clear whether the State party had taken steps to amend its Criminal Code, including through the incorporation of a definition of racial discrimination, in order to fulfil its obligations under article 4 of the Convention. He would appreciate statistics on the number of hate crimes and related offences committed in the State party. He would also welcome details on how the police, public prosecutors and judges had been trained to identify and gather evidence on such offences. He seconded Mr.

Khalaf's compliments regarding the preparation of the State party report. However, he would like to hear what role NGOs had played in drafting the report.

34. **Mr. Calí Tzay** said that he would welcome comments from the delegation regarding recent legislative proposals that appeared to be designed to discriminate against migrant workers. It had reportedly been proposed, for example, that foreign workers should be required to pay significantly higher health-care fees than workers who were Kuwaiti nationals. Another measure proposed was the charging of road tolls to migrant workers under the pretext of reducing traffic jams. He understood that in 2013 the Government of Kuwait had adopted mechanisms to enable summary deportation of migrant workers and that the national human rights institution had received numerous complaints from migrants who had been deported on questionable grounds, such as minor traffic violations. A comment from the delegation on that situation would also be welcome.

35. **Mr. Khalaf** (Country Rapporteur), noting that the State party had recently enacted legislation aimed at preventing human trafficking, said that it would be useful to receive statistics on the incidence of trafficking in Kuwait. He would like to know whether a definition of human trafficking had been established under the Prevention of Trafficking in Persons and Smuggling of Migrants Act No. 91 of 2013, whether anyone had been prosecuted under the law and, if so, whether any judgments had been handed down in those cases. In particular, he wondered whether any recruitment agencies had been prosecuted for trafficking workers for purposes of prostitution.

36. The Domestic Labour Act No. 68 of 2015 had improved protections for domestic workers, but it had not abolished the *kafalah* system. Furthermore, the model employment contract for domestic workers was available only in Arabic and English, which meant that workers who spoke neither language could not understand its content. The Committee had noted that thousands of complaints of abuses had been lodged by migrant workers and would welcome information on safeguards in place to prevent such abuses.

37. The Committee had been informed that some 5,000 Palestinians might be subject to deportation because of issues relating to their personal documentation and would appreciate a comment from the delegation on the veracity of that information. It would also welcome the delegation's comments on information indicating that some 88,000 individuals had been deported between 2013 and 2015 and on reports of violations of the right to appeal in cases of administrative deportation. In that connection, he would invite the State party to consider acceding to the 1951 Convention relating to the Status of Refugees and its 1967 Protocol.

38. Kuwait was to be commended for the funding it had provided to aid refugees; in fact, the State party was a top donor in terms of overseas assistance to refugees. It was to be hoped that a State which helped displaced persons outside its borders would also put an end to the suffering of the Bidoon community within its borders.

39. **Mr. Alghunaim** (Kuwait) said that actions such as adopting a definition of racial discrimination fell under the competence of the parliament; the Government could not take any decisions in that regard without a request from that body. With regard to the member of parliament who had made racist remarks, it was important to note that, in response, a number of other members had spoken out vigorously against him. Furthermore, the parliament was a space in which all issues could be debated and all members were free to express themselves and put forward proposals. The idea of charging road tolls and higher health-care fees for migrant workers, for example, had been proposed, but neither of those measures had been implemented.

40. In his view, it was inappropriate for the Committee to question the delegation about matters that were the subject of unsubstantiated reports, such as the idea that members of the Bidoon population were to be sent to the Comoros, something that the Minister of the Interior had categorically denied. He wished to know whether the Committee had any evidence of Bidoon being subjected to beatings when arrested. If such evidence existed, he would raise the issue with the appropriate authorities.

41. Despite its small size, Kuwait was a great country which did its best to honour its commitment to submit its periodic reports to United Nations treaty bodies in a timely fashion and to address the recommendations of those bodies.

42. **The Chair** said that it was important to note that the tenor of the questions asked of the delegation was no different from that of the questions put to any other State party that came before the Committee. Those questions were raised with a view to highlighting areas where there might be room for improvement with respect to the implementation of the Convention.

43. **Mr. Bossuyt** added that no accusations were being made; the Committee was simply seeking clarification and information about the situation in the State party.

The meeting rose at 6.05 p.m.