



Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

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Committee against Torture

List of issues prior to submission of the fourth periodic report of Kuwait*

Specific information on the implementation of articles 1–16 of the Convention, including with regard to the Committee's previous recommendations

Issues identified for follow-up in the previous concluding observations

1. In its previous concluding observations (CAT/C/KWT/CO/3, CAT/C/KWT/CO/3/Corr.1 and CAT/C/KWT/CO/3/Corr.2, para. 46),¹ the Committee requested the State party to provide information on the follow-up to its recommendations on: a public statement by the highest State authority condemning the use of torture and ill-treatment; conditions of detention; the urgent reinstatement of the de facto moratorium on the application of the death penalty; and the situation of foreign workers (see paras. 14 (a), 23, 27 (a) and 31, respectively). Noting that a reply concerning the information sought by the Committee was provided on 2 May 2018,² and with reference to the letter dated 23 October 2018 from the Committee's Rapporteur for follow-up to concluding observations, the Committee considers that the recommendation included in paragraph 27 (a) has not yet been implemented. The recommendations in paragraphs 14 (a), 23 and 31 of the previous concluding observations are considered to have been partially implemented.

Articles 1 and 4

2. With reference to the Committee's previous concluding observations (paras. 7–8), please provide detailed information on the measures taken to adopt a definition of torture in domestic criminal law that is consistent with article 1 of the Convention and that includes appropriate penalties, taking into account the grave nature of such acts.³ Please include information on the measures taken to explicitly criminalize attempts to commit torture and acts constituting complicity or participation in torture and to define them as acts of torture. Has the State party taken steps to ensure that acts amounting to torture are not subject to any statute of limitations?

* Adopted by the Committee at its sixty-sixth session (23 April–17 May 2019).

¹ Unless otherwise indicated, paragraph numbers in parentheses refer to the previous concluding observations adopted by the Committee.

² See CAT/C/KWT/CO/3/Add.1.

³ CCPR/C/KWT/CO/3, paras. 24–25.



Article 2⁴

3. With reference to the Committee's previous concluding observations (paras. 10–11 and 17–19), please provide information on the measures taken by the State party, and on the procedures in place, to ensure that all detainees enjoy in practice all the fundamental legal safeguards from the outset of their deprivation of liberty, in particular the rights to have access to a lawyer, to request and receive an examination by an independent physician of their choice, to be informed of their rights and of the charges against them, to notify a relative or any other person of their choice of their arrest, and to be brought promptly before a judge.⁵ How does the State party guarantee the right of detainees to challenge the legality or necessity of their detention? Please indicate the measures taken to monitor compliance by law enforcement officials with the fundamental legal safeguards. In this connection, please provide information on any disciplinary measures taken since the consideration of the State party's previous periodic report against police officers who did not immediately allow persons deprived of their liberty to benefit from these safeguards.

4. Please clarify whether legislation and jurisprudence exist with regard to the prohibition of invoking superior orders, including orders from military authorities, as a justification of torture; if these exist, please provide information on their practical implementation.

5. In the light of the Committee's previous concluding observations (paras. 38–39), please provide detailed information on the measures adopted to ensure the full independence and impartiality of judges and prosecutors. What measures have been taken to ensure that the laws and regulations that govern such officials' appointment, the terms thereof and security of tenure, especially for foreign judges, are in conformity with international standards, particularly the Basic Principles on the Independence of the Judiciary?⁶

6. With regard to the Committee's previous concluding observations (paras. 40–41), please indicate which measures have been adopted to ensure that the national human rights institution (Diwan Huquq al Insan) has the independence, budget, infrastructure and the resources it needs to fully execute its mandate in accordance with the principles relating to the status of national institutions for the promotion and protection of human rights (the Paris Principles). Please clarify whether the Diwan is placed under the supervision of the Council of Ministers.⁷

7. Further to the Committee's previous concluding observations (paras. 28–29), please provide information on the legislative, administrative and other measures taken to combat all forms of violence against women, particularly with regard to cases that involve the actions and omissions of State authorities and others that engage the State party's international responsibility in accordance with the Convention. What steps are being taken to criminalize acts of domestic and sexual violence, including marital rape?⁸ Please also provide updated information on the protection and support services available to victims of all forms of violence against women that involve actions or omissions of the State authorities. Has the State party taken steps to ensure the availability of an adequate number of shelters for women and children subject to domestic violence? Please include statistical data on the number of complaints of gender-based violence and the investigations,

⁴ The issues raised under article 2 could also touch on issues raised under other articles of the Convention, including article 16. As stated in paragraph 3 of the Committee's general comment No. 2 (2007) on the implementation of article 2, the obligation to prevent torture in article 2 is wide-ranging. The obligations to prevent torture and other cruel, inhuman or degrading treatment or punishment under article 16 (1) are indivisible, interdependent and interrelated. The obligation to prevent ill-treatment in practice overlaps with and is largely congruent with the obligation to prevent torture. In practice, the definitional threshold between ill-treatment and torture is often not clear. See also chapter V of the same general comment.

⁵ CCPR/C/KWT/CO/3, paras. 26–27.

⁶ *Ibid.*, paras. 30–31.

⁷ CEDAW/C/KWT/CO/5, paras. 20–21; CERD/C/KWT/CO/21-24, paras. 11–12.

⁸ CCPR/C/KWT/CO/3, paras. 18–19; CEDAW/C/KWT/CO/5, paras. 24–27; A/HRC/29/17, paras. 157.140–157.145.

prosecutions, convictions and punishments resulting from those complaints since the consideration of the State party's previous periodic report. Please provide up-to-date information on the measures taken to strengthen training programmes for law enforcement officers aimed at raising awareness about domestic and sexual violence.

8. With reference to the Committee's previous concluding observations (paras. 32–33), please provide updated information, disaggregated by the age, sex and ethnicity or nationality of the victims, on the number of complaints, investigations, prosecutions and sentences recorded in cases of trafficking in persons since the consideration of the State party's previous periodic report.⁹ Please comment on reports of trafficking in foreign women on the domestic labour market in the State party by recruitment agents who sell the services of such women on multiple occasions under slave-like conditions to various employers. Please also provide information on:

(a) The impact of the implementation of the Trafficking in Persons and Smuggling of Migrants Act of 2013 and any new legislation or measures that have been adopted to prevent, combat or criminalize trafficking in persons;

(b) The measures adopted to ensure that victims of trafficking have access to effective remedies and reparation;

(c) The measures taken to ensure that non-custodial accommodation is provided, with full access to appropriate medical and psychological support, for potential victims of trafficking while identification processes are being carried out;

(d) The signature of agreements with the countries concerned to prevent and combat trafficking in persons.

Article 3

9. Please provide detailed information on any important new normative and institutional developments in the areas of asylum and the protection of refugees.¹⁰ Bearing in mind the Committee's previous concluding observations (paras. 34–35), please describe the measures taken during the period under review to ensure that no one was returned to a country in which he or she was at risk of being tortured or subjected to ill-treatment.¹¹ Please indicate whether individuals facing expulsion, return or extradition are informed that they have the right to seek asylum and to appeal a deportation decision, and whether such an appeal has suspensive effect. What steps are being taken to ensure that persons subject to a deportation order have their cases reviewed by a competent authority?¹² Please also provide detailed information on the measures adopted to identify vulnerable persons seeking asylum in Kuwait, including victims of torture or trauma, and to ensure that their specific needs are taken into consideration and addressed in a timely manner.

10. Please provide the number of asylum applications received during the period under review, the number of successful applications and the number of asylum seekers whose applications were accepted because they had been tortured or might be tortured if returned to their country of origin. Please include information, disaggregated by country of origin, on the number of persons who have been returned, extradited or expelled since the Committee considered the State party's previous periodic report, including the list of countries to which individuals were returned. Has the State party annulled the daily overstay fines for refugees deemed to be not lawfully staying in Kuwait?¹³

11. Please indicate the number of returns, extraditions and expulsions carried out by the State party during the reporting period on the basis of diplomatic assurances or the equivalent thereof, as well as any instances in which the State party has offered such

⁹ CCPR/C/KWT/CO/3, paras. 34–35; CEDAW/C/KWT/CO/5, paras. 28–29; CERD/C/KWT/CO/21–24, paras. 15–16; A/HRC/29/17, paras. 157.151–157.156; A/HRC/35/37/Add.1.

¹⁰ CCPR/C/KWT/CO/3, paras. 36–37; A/HRC/29/17, para. 157.29.

¹¹ CERD/C/KWT/CO/21–24, paras. 33–34.

¹² CCPR/C/KWT/CO/3, paras. 28–29.

¹³ CERD/C/KWT/CO/21–24, paras. 33–34.

diplomatic assurances or guarantees, and what measures have been taken in such cases with regard to subsequent monitoring.

12. Please provide information on the legislative and other mechanisms taken to improve the identification and determination of statelessness and introduce procedural safeguards to improve access to the procedure to determine statelessness.¹⁴ In this connection, please provide information on the mandate of the Central Agency for Regularization of the Status of Illegal Residents.¹⁵

Articles 5–9

13. Please provide information on any new legislation or measures that have been adopted to implement article 5 of the Convention. Please also inform the Committee of any extradition treaties concluded with other States parties and indicate whether the offences referred to in article 4 of the Convention are included as extraditable offences in such treaties. Please describe the legislative and administrative measures taken by the State party to ensure that the Convention may be invoked as a legal basis for extradition in respect of the offences referred to in article 4 of the Convention when it receives an extradition request from a State with which it has no extradition agreement or treaty. Since the State party's previous periodic report was considered by the Committee, please indicate whether the State party has rejected, for any reason, the request of a State for the extradition of an individual suspected of having committed torture and whether it has started prosecution proceedings against such an individual as a result. If so, please provide information on the status and outcome of such proceedings.

14. Please give details of the mutual assistance treaties or agreements that the State party has entered into with other entities, such as countries or international tribunals or institutions, and whether such treaties or agreements have led in practice to the transfer of any evidence in connection with prosecutions concerning torture and ill-treatment. Please provide examples.

Article 10

15. With reference to the previous concluding observations (paras. 42–43), please provide up-to-date information on educational programmes developed by the State party to ensure that all law enforcement officials, including security and prison personnel, are fully aware of the provisions of the Convention and the absolute prohibition of torture, and know that breaches will not be tolerated and will be investigated, and that any offenders will be prosecuted.¹⁶ Has the State party developed and implemented training programmes on non-coercive interrogation techniques? Please indicate whether the State party has developed a methodology to assess the effectiveness of training and educational programmes in reducing the number of cases of torture and ill-treatment and, if so, please provide information on the methodology. Please also indicate the measures taken to give effect to the provisions of article 10 (2) of the Convention.

16. Please provide detailed information on the training programmes for judges, prosecutors, forensic doctors and medical personnel dealing with detained persons on detecting and documenting the physical and psychological sequelae of torture, including whether they contain specific training with regard to the Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Istanbul Protocol).

Article 11

17. Please describe the procedures in place for ensuring compliance with article 11 of the Convention and provide information on any interrogation rules, instructions, methods and practices or any arrangements for custody, in particular those that may have been

¹⁴ A/HRC/29/17, paras. 157.30 and 157.240–157.254.

¹⁵ CERD/C/KWT/CO/21-24, para. 27.

¹⁶ A/HRC/29/17, paras. 157.43–157.48.

introduced, reviewed or revised since the consideration of the previous periodic report. Please indicate the frequency with which they are reviewed.

18. Taking note of the Committee's previous concluding observations (paras. 22–23) and the State party's follow-up replies,¹⁷ please provide statistical data, disaggregated by sex, age and ethnic origin or nationality, on the number of pretrial detainees and convicted prisoners and the occupancy rate of all places of detention. Please describe the measures taken to reduce prison overcrowding and improve the material conditions in all places of detention during the period under review, including any measures to increase the use of alternatives to imprisonment, both before and after trial. Please also inform the Committee of the measures taken to address concerns about inadequate sanitation and medical care, insufficient ventilation and daylight, and the lack of the possibility to exercise in the open air daily.

19. Please provide information on the State party's efforts to meet the special needs of minors and women in detention. In particular, please indicate the measures taken to ensure that juveniles are separated from adults and that arrested women and girls are guarded only by female guards in all places of detention, including police stations.

20. Please indicate whether the State party has taken measures to bring its legislation and practice on solitary confinement into line with international standards. This should include data on the use of solitary confinement during the period under review, and an indication of its duration.

21. In the light of the Committee's previous concluding observations (paras. 24–25), please indicate whether the State party has amended article 58 of the Prisons Act so as to put an end to all disciplinary measures in which restraints to movement may amount to torture or ill-treatment of detainees.

22. Please provide information on the frequency of inter-prisoner violence, including cases involving possible negligence on the part of law enforcement personnel, the number of complaints made in this regard and their outcome. What preventive measures have been taken?

23. Please provide statistical data regarding deaths in custody, including those detained under mental health legislation or in police custody, during the period under review, disaggregated by place of detention, the sex, age and ethnicity or nationality of the deceased and the cause of death. Please provide information on the results of the investigations into those deaths and on the measures taken to prevent similar cases occurring in the future. Please indicate whether relatives received compensation in any of the cases.

24. Please provide data on the visits to places of detention carried out by the national human rights institution and national and international monitoring organizations during the period under review, and indicate whether the national human rights institution and other independent monitors have unhindered access to all places of detention without prior notice. Please describe any measures taken to establish an independent and systematic monitoring system at the national level for all detention facilities (paras. 23 (e) and 41).

25. Is the State party considering the possibility of transferring responsibility for the prison system from the Ministry of the Interior to the Ministry of Justice (para. 23 (f))?

26. Please provide updated data on the number of asylum seekers and migrants in detention awaiting administrative deportation in the State party. Please also indicate the measures taken by the State party during the reporting period to ensure that the detention of asylum seekers and migrants is only used as a last resort, where necessary and for as short a period as possible, and to further implement in practice alternatives to detention.¹⁸

27. Please provide information on the number of persons deprived of their liberty in psychiatric hospitals and other institutions for persons with psychosocial disabilities, including care homes. Please indicate what the situation is with respect to alternative forms

¹⁷ CAT/C/KWT/CO/3/Add.1, paras. 22–35.

¹⁸ CCPR/C/KWT/CO/3, paras. 28–29.

of treatment, such as community-based rehabilitation services and other forms of outpatient treatment programmes.

Articles 12–13

28. With reference to the Committee's previous concluding observations (paras. 13–14 and 21 (e)) and noting the State party's follow-up replies,¹⁹ please provide updated statistical data on complaints of acts of torture, ill-treatment and excessive use of force recorded by the State authorities during the reporting period. Please include information on investigations, disciplinary and criminal proceedings and convictions and on the criminal or disciplinary sanctions applied.²⁰

29. With regard to the Committee's previous concluding observations (paras. 15–16 and 23 (d)), please indicate whether the State party plans to set up an independent and impartial body to investigate allegations of acts of torture and ill-treatment by law enforcement personnel. Please also provide information on the measures taken to establish an effective complaints mechanism for persons deprived of their liberty.

30. Please describe any efforts by the State party to ensure that witnesses and victims of human rights violations, including torture, and members of their families are effectively protected and assisted. Please also provide information on the measures taken to ensure adequate protection for health professionals documenting torture and ill-treatment from intimidation, retaliation and other forms of reprisals.

31. Please indicate what measures the State party has put in place to ensure that all allegations relating to alleged unlawful attacks by the Saudi Arabia-led coalition engaged in the armed conflict in Yemen, of which Kuwait is a member, will be fully investigated and addressed.

Article 14

32. Taking note of the Committee's previous concluding observations (paras. 44–45), please provide information on redress and compensation measures, including the means of rehabilitation ordered by the courts and actually provided to the victims of torture and/or ill-treatment or their families since the consideration of the previous periodic report. This should include the number of requests for compensation that have been made, the number granted and the amounts ordered and actually provided in each case.

33. Please also provide information on any ongoing reparation programmes, including the treatment of trauma and other forms of rehabilitation, provided to victims of torture and ill-treatment, and on the material, human and budgetary resources allocated for their effective functioning.

Article 15

34. Please provide information on the concrete measures taken to ensure respect, in practice, for the principle of the inadmissibility of evidence obtained through torture or cruel, inhuman or degrading treatment. Please also provide examples of any cases that have been dismissed by the courts owing to the introduction of evidence or testimony obtained through torture or ill-treatment. In this regard, please comment on reports indicating that some of the 26 defendants tried for spying for the Islamic Republic of Iran and Hizbullah by the Cassation Court in 2017 reported that they had been tortured in pretrial detention and their allegations were not investigated.

Article 16

35. With regard to the Committee's previous concluding observations (paras. 26–27) and noting the State party's follow-up replies,²¹ please indicate whether the State party envisages reinstating the de facto moratorium on the use of the death penalty and ratifying

¹⁹ CAT/C/KWT/CO/3/Add.1, paras. 1–21.

²⁰ CCPR/C/KWT/CO/3, paras. 24–25 and 42–43; CERD/C/KWT/CO/21-24, paras. 29–30.

²¹ CAT/C/KWT/CO/3/Add.1, paras. 36–53.

the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty.²²

36. Please indicate whether acts of cruel, inhuman or degrading treatment or punishment have been defined and prohibited in domestic law.

37. With regard to the Committee's previous concluding observations (paras. 36–37), please provide information on the measures taken to protect and improve the situation of the Kuwaiti Bidoon.²³ According to the information before the Committee, Bidoon activist Abdulhakim al-Fadhli was released on 1 August 2017 after serving a one-year prison sentence in relation to a peaceful demonstration in 2012. Please comment.

38. Further to the Committee's previous concluding observations (paras. 30–31) and noting the State party's follow-up replies,²⁴ please indicate the status of the draft law allowing domestic workers to change employers under circumstances defined by the director of the Directorate General for Residence Affairs and without the consent of the original employer.²⁵ Please also indicate what measures have been taken to combat violence against domestic workers.²⁶

39. Please indicate the measures taken by the State party to ensure that corporal punishment of children is prohibited by law.²⁷

40. Please indicate what practical measures have been taken by the State party to combat violence against individuals based on their sexual orientation or gender identity.²⁸ Please comment on reports that, in 2017, Kuwait deported 76 men on suspicion of being gay and that transgender people can be arrested under a 2007 Penal Code provision that prohibits "imitating the opposite sex in any way". Has the State party taken any steps to decriminalize consensual sexual relations between same-sex adults?

41. Please provide information on the number of non-combat deaths in the armed forces, as well as on hazing and other mistreatment of conscripts by officers and fellow soldiers, during the period under review. Please also provide information on the outcome of any investigations conducted in that regard and on compensation and rehabilitation provided to victims and/or their families.

42. Please inform the Committee about the measures taken to ensure that women, especially victims of rape and incest, who voluntarily decide to terminate their pregnancy have access to safe, legal abortions.²⁹

Other issues

43. In view of the State party's public commitment to the Committee,³⁰ please indicate the steps that have been taken to withdraw the reservation to article 20 of the Convention.

44. With regard to the Committee's previous concluding observations (para. 48), is the State party considering the possibility of making the declaration provided for under articles 21–22 of the Convention?

45. Please indicate whether the State party intends to ratify the Optional Protocol to the Convention and, if so, the status of the ratification process.

46. Please provide updated information on the measures taken by the State party to respond to threats of terrorism. Please describe whether those measures have affected

²² CCPR/C/KWT/CO/3, paras. 22–23; A/HRC/29/17, paras. 157.2–157.5, 157.10 and 157.121–157.138.

²³ CCPR/C/KWT/CO/3, paras. 10–11; CEDAW/C/KWT/CO/5, paras. 44–45; CERD/C/KWT/CO/21–24, paras. 27–28; A/HRC/29/17, paras. 157.30–157.34 and 157.240–157.254.

²⁴ CAT/C/KWT/CO/3/Add.1, paras. 70–79.

²⁵ CCPR/C/KWT/CO/3, paras. 32–33; CERD/C/KWT/CO/21–24, paras. 21–26; A/HRC/29/17, paras. 157.28, 157.237 and 157.239.

²⁶ A/HRC/29/17, para. 157.234.

²⁷ Ibid., paras. 157.146–157.150.

²⁸ Ibid., para. 157.170.

²⁹ CEDAW/C/KWT/CO/5, paras. 38 (c) and 39 (c).

³⁰ CAT/C/KWT/CO/2, para. 30. See also CAT/C/KWT/CO/3, para. 47.

human rights safeguards in law and in practice and, if so, how they have affected them. Please also describe how the State party has ensured that those measures are compatible with all its obligations under international law, especially the Convention.³¹ In this connection, please also provide information on the measures taken to comply with the decision of 5 October 2017 by the Constitutional Court declaring articles 2, 4, 8 and 11 of Law 78/2015 as unconstitutional. Furthermore, please indicate what training is given to law enforcement officers in this area; the number of persons who have been convicted under legislation adopted to combat terrorism; the legal remedies and safeguards available in law and in practice to persons subjected to antiterrorism measures; and whether there have been complaints of the non-observance of international standards in applying measures to combat terrorism and, if so, what the outcome was.

General information on other measures and developments relating to the implementation of the Convention in the State party

47. Please provide detailed information on any other relevant legislative, administrative, judicial or other measures taken since the consideration of the previous report to implement the provisions of the Convention or the Committee's recommendations, including institutional developments, plans or programmes. Please indicate the resources allocated and statistical data. Please also provide any other information that the State party considers relevant.

³¹ CCPR/C/KWT/CO/3, paras. 20–21.