



Convention on the Rights of the Child

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Written replies submitted by the Government of the State of Kuwait to the list of issues (CRC/C/OPSC/KWT/Q/1) to be taken up in connection with the consideration of the initial report of Kuwait (CRC/C/OPSC/KWT/1) submitted under article 12 (1) of the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography

[Replies received on 26 November 2007]

Written replies submitted by the State of Kuwait to the list of issues concerning the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography

Q1. Please provide (if available) disaggregated statistical data (including by sex, age groups, urban/rural areas) for the years 2004, 2005 and 2006 on:

(a) The number of reported cases of the sale of children, child prostitution and child pornography, with additional information on type of follow-up provided on the outcome of cases, including prosecution, withdrawals and sanctions for perpetrators;

(b) The number of children trafficked to and from Kuwait as well as trafficked within the country;

(c) The number of child victims provided with recovery assistance and compensation as indicated in article 9, paragraphs 3 and 4 of the Optional Protocol.

1. For disaggregated statistical data from the Department of Juvenile Welfare on all offences and categories of offences for 2004, 2005 and 2006, see the annex* on this subject.

Q2. Please provide further information on steps that the State party has taken in order to enact a law on children, including information whether provisions of the Optional Protocol will be fully addressed in such a law.

2. Act No. 3 of 1983, concerning juvenile welfare, is one of the most important pieces of domestic legislation enacted to provide protection and legal guarantees for children below 18 years of age. Pursuant to the Act, the Juvenile Welfare Authority was established to protect children at risk of delinquency by housing them in social institutions. The Act also makes provision for the creation of the function of a probation officer to monitor the behaviour of juvenile offenders who have been given a conditional discharge. The domestic laws enacted to protect children include the Family Care Act issued in Decree Law No. 83 of 1977, which was designed to offer a normal family environment for children of unknown parentage and those in similar circumstances. The host family, acting in lieu of the State, provides for the social and psychological welfare of these children. In addition to these laws, the Kuwaiti Criminal Code contains a number of articles that offer protection to children against sexual abuse and other forms of exploitation. These laws and texts are fully consistent with the terms and provisions of the Optional Protocol. Nevertheless, with a view to protecting this particular social category, the State, as represented by the Ministry of Justice, has tabled a draft law which criminalizes human trafficking and the smuggling of migrants. The draft law includes provisions that increase the penalty to be imposed on perpetrators of offences in which the victim is a child; the penalty can be as high as a penalty of death.

Q3. Please provide information on measures taken to establish an effective system of data collection on the issues covered by the Optional Protocol.

3. There is a special section within the Social Welfare Department of the Ministry of Social Affairs and Labour which undertakes studies and collects data and information on offences against children. The Ministry recently took the necessary steps to update the information system in order to include the issues covered by the Optional Protocol.

Q4. Please provide information on specific budget allocations for the implementation of the provisions of the Optional Protocol.

4. The information on budget allocations will be forwarded as soon as it becomes available.

Q5. Please clarify the Optional Protocol's legal status in the State party's legislation.

5. With regard to the legal status of the Optional Protocol in the State's legislation, we refer to the reply to question 2 and the details set out on pages 1-4 and 17-20 of the report of Kuwait on the measures taken by the State to implement and give effect to the Optional Protocol. We should also mention that the Optional Protocol is applied in the State of Kuwait in the framework of the mechanism established under article 70 of the Constitution, which provides as follows:

"The Amir shall conclude treaties by decree and shall promptly transmit them to the National Assembly, together with an appropriate statement. A treaty shall acquire the force of law after it is signed, ratified and published in the *Official Gazette*. Peace treaties and treaties of alliance; treaties concerning the territory of the State, its natural resources and sovereign rights or the public or private rights of citizens; treaties on trade, navigation and residence; and treaties which entail expenditure on the part of the State Treasury that is not included in the budget, or that involve an amendment of the laws of Kuwait, must be issued in a law in order for them to enter into force. Under no circumstances may a treaty contain secret provisions that conflict with its published provisions."

6. It is clear from the above article that treaties concluded by the State of Kuwait have the force of law in Kuwait and so they can be invoked by all and are binding on the Kuwaiti courts.

7. With Kuwait's accession to the Optional Protocol, following the completion of the constitutional procedures for accession, the Protocol becomes part of Kuwaiti domestic law and is applicable in the country and binding on all State authorities and institutions at all levels.

8. According to article 70 of the Kuwaiti Constitution, as explained above, no treaty can acquire binding force until the constitutional procedures have been completed and it has then been published in the *Official Gazette*. The article provides an exhaustive list of the treaties that must be promulgated by means of a law.

9. Publication is the final stage in law-making. Its purpose is for the executive authority to make a law known so that implementation can be effected. Laws are published in the *Official Gazette*, in Arabic, within two weeks of the date of issuance, and enter into force a month from the date of publication. It is possible to extend or reduce this time limit pursuant to a special legal provision.

Q6. Please advise the Committee of any measures adopted to detect and investigate cases of sale of children, child prostitution, child pornography and trafficking.

10. The measures taken by the State to detect cases of the sale of children, child prostitution and child pornography include the establishment of a special mechanism to investigate offences committed by or involving minors (children). The mechanism in question is the juvenile police force. Articles 1 and 31 of the Juveniles Act provides for the establishment of this mechanism and detail its functions. The school and the family are tools that can be used to detect cases where children are at risk of delinquency and, thus, of committing an offence. All these social mechanisms and the functions, performed by probation officers, who monitor young offenders given a conditional discharge and check on their behaviour while on probation, are preventive measures designed to avert crime and protect minors (children) from becoming involved in wrongdoing.

Q7. Please inform the Committee on whether the State party may establish its jurisdiction over offences referred to in the Optional Protocol in all cases indicated in article 4, and notably when the crime is committed abroad and the victim is a national of Kuwait.

11. Articles 11, 12 and 13 of the Criminal Code list the situations in which its provisions apply to offences committed outside the territory of Kuwait: the offence must have been committed wholly or in part abroad but its effects must extend to the State, or the alleged perpetrator must be a Kuwaiti national who commits abroad an act that is defined as an offence under Kuwaiti law and in the State in which it was committed. Under the terms of these articles, if the victim is a minor who is a national of Kuwait and the offence falls within the scope of the above-mentioned articles, then the offence will be covered by Kuwaiti law and the Kuwaiti courts will have jurisdiction over it. We should like to make it clear that the draft law on human trafficking prepared by the Ministry of Justice explicitly refers to the question of legal and judicial competence for transnational crimes, i.e. crimes committed in the following situations:

(a) In more than one State;

(b) In one State, but prepared, planned, organized or masterminded in another State;

(c) In one State, by an organized criminal gang that engages in criminal activity in more than one State;

(d) In one State, but with effects in another or a number of other States.

Q8. Please provide information on extradition rules and in particular, on whether the State party applies article 5 of the Optional Protocol, notably its paragraph 2. In particular, please provide information on reciprocity, bilateral or multilateral agreements on extradition and whether or not such agreements have been applied in cases relating to offences under the Optional Protocol.

12. We should like to mention that the rules on extradition of criminals were outlined in the previous report of the State of Kuwait on this subject (p. 16). Kuwait has concluded several bilateral, regional and multilateral agreements on judicial and legal matters. These agreements give effect to the principle of international cooperation in the prompt adjudication of cases, and they facilitate the delivery of criminal, civil and any other kinds of justice. They also criminalize the offences listed in the Optional Protocol.

Q9. Please provide further information on measures taken to protect the rights and interests of child victims of the acts prohibited under the Optional Protocol at all stages of the criminal justice process to ensure that they are not criminalized, and in particular, on the rules and practice concerning the protection of child victims who have to testify in criminal cases.

13. According to Act No. 3 of 1983, concerning young persons, and its explanatory note, and the statutes of the Department of Juvenile Welfare and its institutions as issued pursuant to Ministerial Decree No. 42 of 2004, and the Decree of 7 January 1979, concerning the terms of reference of the Ministry of Social Affairs and Labour, children are included in the categories of persons who come under the purview of the Department of Juvenile Welfare. The Department of Juvenile Welfare Act No. 3 of 1983 states, in article 1 (a), that a child is: "Any boy or girl below the age of 18." Article 1 (b) defines a juvenile delinquent as any minor over 7 and under 18 years of age who commits an offence that is punishable by law. Appropriate care is provided for young persons based on the premise that caring for young persons, protecting them from delinquency, dealing with their problems when they are young and caring for those who fall into delinquency is society's first line of defence against crime, since young persons are the foundation of the human resources on which any country's social development depends. The purpose of these efforts is to rehabilitate these young persons socially and develop their capacities in a framework that protects such children. Paragraph 1 (d) of the Act states that a juvenile court shall be established in pursuance of the Act to hear juvenile cases. The court has jurisdiction for children's cases so that children may be protected and separated from adult offenders. Article 1 (e): Office of the probation officer: every governmental or civil organization tasked by the Ministry of Social Affairs and Labour to study the situation of juvenile offenders and young persons at risk of delinquency must submit a social report on them to the competent authorities.

14. The subsequent paragraphs refer to all forms of protection for young persons, including the juvenile prosecutions department, the juvenile police and the juvenile welfare commission, which is a standing committee assigned to review the problems of young persons at risk of delinquency and advise them on suitable welfare institutions. The same Act also contains many articles providing for the establishment of different homes where young persons can serve out custodial sentences. These arrangements are all geared towards preserving the rights of these children. Chapter II of the Act refers to measures and penalties, while chapter V states that no criminal responsibility shall be borne by a person who was under 7 when he or she committed an offence. In the case of a child aged over 7 and under 15 years of age who commits a major offence, the court shall order the following measures:

1. A caution;
2. Surrender to a guardian;
3. Probation;
4. Placement in a social welfare institution for young persons;
5. Placement in a residential treatment facility.

Article 7

A caution is where a minor receives a rebuke and a reprimand for what he has done, and is enjoined to behave properly.

Article 8

Probation is where a minor is placed in his or her natural environment, under the supervision and guidance of a probation officer, by an order of a juvenile court which sets out the conditions to be met and the length of the period of probation which must not exceed two years and must be managed by the office of the probation officer.

Article 10

The juvenile court may order the placement of a minor in an appropriate institution which the Ministry of Social Affairs and Labour has approved for the purposes of housing and looking after juvenile offenders and children at risk of delinquency. If the minor has a disability, placement shall be effected in a suitable rehabilitation institution.

Article 11

If the court determines that the state of health of the juvenile offender or minor at risk of delinquency is such as to necessitate medical care or treatment, it may order the minor's placement in a suitable health institution, under medical supervision, for whatever length of stay his or her state of health requires, as established in medical and social reports. A review of this measure shall be undertaken, if the court determines that the minor's health permits it.

Article 12

If a minor under the age of 15 commits, for a single purpose, two or more offences that are inextricably linked to one another, or if the offence that he has committed is regarded as a multiple offence, a single appropriate measure must be imposed on him.

Article 13

The measure expires definitively when the minor reaches the age of 21.

Article 14

(a) If a minor over 15 and under 18 years of age commits a serious crime that is punishable by death or life imprisonment, the court shall impose a sentence of up to 20 years' imprisonment;

(b) If a minor commits an offence that is punishable by a fixed term of imprisonment, the court shall sentence him to up to one half the maximum prison term prescribed by law;

(c) A minor shall only be liable to a fine if it is imposed in conjunction with a term of imprisonment, or, in the absence of a term of imprisonment, if the fine is one half the maximum prescribed for the offence that the minor committed.

Article 15

Convictions handed down by the juvenile courts are not registered in a criminal record.

The Act punishes anyone who conceals or induces a child to run away so as to ensure protection of minors.

Article 20

A term of up to three months' imprisonment shall be imposed on anyone who conceals a minor whom he or she has been ordered to surrender to a person or institution pursuant to this Act, or who induces a child to run away or assists him or her in doing so.

Article 21

Without prejudice to any higher penalty that may be prescribed in the Criminal Code, the same penalty as is laid down in the preceding article for the offences enumerated in article 1 (c) of this Act shall be imposed on anyone who assists, incites or in any way facilitates the creation of a situation whereby a minor may be at risk of delinquency, even if the situation does not actually materialize.

A term of up to three years' imprisonment shall be imposed if the perpetrator resorts to coercion or threats, or is an ascendant, tutor or guardian of, or a person with authority over, the child, or if the minor was legally entrusted to that person's care. The purpose is to prevent adults from forcing minors into delinquency, and from exploiting them or obliging them to commit crimes.

In order to take account of the special condition of children, the legislature wrote the following provisions into article 29:

(a) Hearings of young persons shall be conducted in camera in the presence only of the minor, his or her parents, the witnesses, counsel, probation officers and persons that the court specially authorizes to attend;

(b) The juvenile court may excuse a minor from attending a hearing in person and may authorize his counsel or tutor to attend in his stead, provided that the probation officer is present in court;

(c) The juvenile court may, where necessary, hear a case in a minor's absence, provided that the proceedings conducted in the minor's absence are subsequently explained to him, so that his rights may be protected.

Article 30 of the Act provides as follows:

A juvenile offender accused of a serious crime or major offence has the right to appoint a person to present his defence;

If the minor is accused of a serious crime and does not appoint defence counsel directly or through his guardian, the court shall assign counsel for him. If the minor is accused of a major offence, the court has discretion to appoint defence counsel for him, so that he may be afforded every opportunity to present a defence.

The Act does not classify these minors as criminals but rather as young persons whose particular social circumstances have pushed them into offending. Under Article 22, before rendering its verdict in the case of a minor who is subject to the Act, the court must refer the minor to the social monitor's office for verification of the physical, mental, psychological and social circumstances that led him into or exposed him to the risk of delinquency.

Article 33

At the request of the Juvenile Prosecution Service, the court which sentences the minor may revise its verdict or order at any time and may revoke or amend it, where the sentence imposed is considered inappropriate for the minor, provided that the request is submitted together with reports from juvenile welfare institutions. The sentence, when revised, may only be replaced with the measures set forth in the present Act.

15. All the above measures are taken to protect and preserve children's rights. In addition, the statutes of the Juvenile Welfare Department, in chapter VII, entitled "Rights and Obligations of Residents" guarantee all the rights of young persons in institutions run by the Department.

Chapter VII - Rights and Obligations of Residents

1. Minors are entitled to humane treatment and the preservation of their dignity by all the staff of the social institution.
2. Minors shall not be subjected to mental or physical harm. Residents shall be treated fairly and shall be provided with a full range of services, programmes and activities without discrimination on grounds of nationality, religion, colour or creed.
3. The institution shall endeavour to strengthen the young person's ties with his or her family and to correct their attitudes towards one another.
4. Minors are entitled to receive visits from family, relatives and their counsel at the home and from anyone authorized by the supervisor of the home or his representative subject to special permission from the technical committee.
5. A minor may not be denied a family visit in the home unless under very narrowly defined circumstances, or for security reasons, or in the interests of the resident, or subject to a decision of the technical committee of the home.
6. Minors have the right to information about the conduct of proceedings and the schedule for hearings of the charges against them, so that their minds may be put at rest.
7. Minors have the right to the fulfilment of their legitimate requirements by the institution and their family, in the framework of the regulations, rules and decisions in effect in the institution and in the light of the available resources.
8. Minors have the right to the non-publication of any personal information or pictures, by any media or external agency, that would result in their identity, nationality, address, school, place of employment or family circumstances being divulged to any party other than the institutions responsible for examining their case, interviewing them or hearing their case in court.
9. Minors have the right to voice their complaints, demands or objections in an interview with social workers, the supervisor of the home, or anyone who requests an interview with them in conformity with the rules and regulations.
10. Minors are entitled to notify the embassy of their country, the Red Crescent Society, the Red Cross association or any other body or international organization in order to establish contact with their family, through the management of the home, in conformity with the applicable rules and regulations.
11. In all circumstances, minors shall enjoy all the rights and guarantees afforded by the Constitution and the laws, conventions and treaties in force in the State, including the Convention on the Rights of the Child.
12. Minors are entitled to medical treatment. If a resident is found to be suffering from an infectious disease, a total disability or a mental infirmity, he or she shall be referred to the competent institution, subject to a decision of the technical committee of the home and to the requirements of the Juveniles Act.
13. Minors are entitled to have a storage unit in which to keep their personal effects and to receive basic necessities such as accommodation, clothing and food, as well as washing and other services.
14. Minors are entitled to pursue their primary or intermediate studies in order to complete the stages of education which they have reached.
15. Minors are entitled to express their views on programmes and activities requiring their participation.
16. Minors are entitled to receive psychological and social training in preparation for participation in any activity or programme.
17. Minors are entitled regularly to participate in, or evaluate, programmes and activities in order to assess their usefulness.

Q10. Please provide more information on measures taken to strengthen international assistance in connection with investigations or criminal or extradition proceedings brought in respect of the offences covered by the Optional Protocol.

16. With regard to the measures taken to strengthen international assistance in criminal investigations or proceedings, we should like to point out that the State of Kuwait cooperates with Interpol in all cases that have a bearing on the Optional Protocol. Kuwait has concluded several bilateral, regional and multilateral agreements on judicial and legal matters. These conventions give effect to the principle of international cooperation in the prompt adjudication of cases and also facilitate the delivery of criminal, civil and any other kind of justice. They also define the offences enumerated in the Optional Protocol as crimes.

Q11. Please elaborate further on the measures taken to prevent the offences referred to in the Optional Protocol. Please also elaborate on measures, if any, aimed at promoting awareness among the public at large, including children, of the harmful effects of the offences referred to in the Optional Protocol.

17. With regard to the prevention of the offences listed in the Optional Protocol, articles 185 to 199 of the Criminal Code criminalize human trafficking operations and crimes of indecency involving the exploitation of persons in prostitution and indecent acts. The scope of these articles includes children. It is noteworthy that the draft law on human trafficking has increased the penalty for the aforementioned crimes, where the victim is a child.

18. With regard to the provision of additional information on the measures taken to make children aware of the harmful effects of the offences listed in the Optional Protocol, the Juvenile Welfare Department focuses attention to the extent possible on prevention and

remedial action, in cooperation with the organizations involved in this issue, whether they be governmental or civic organizations, the Ministry of Information and the Press, Radio and Television, the Ministry of Education, Religious Endowments and Islamic Affairs, and the Ministry of the Interior. Together they organize seminars to raise awareness among different sectors of the public.

Q12. Please provide the Committee with updated information on the social reintegration assistance, as well as physical and psychological recovery measures, available for victims of offences covered by the Optional Protocol and the State budget allocations for this purpose.

19. With regard to measures to support social reintegration, the State of Kuwait, through the Ministry of Social Affairs and Labour and through social institutions, provides all the needs of residents of these institutions, including children. The services provided by the Ministry include accommodation and daily necessities such as food, clothing, educational and specialist health services and other rehabilitation services to develop the capacities of residents and foster their talents and aptitudes in areas that will allow them to develop self-reliance. In order to reintegrate this group, physically and psychologically, into society, numerous institutions offer psychosocial counselling for children and their relatives. These institutions include the Social Development Bureau, the Regional Centre for Childhood and Motherhood, the Department of Psychosocial Counselling within the welfare section of the Ministry and the Social Development Department, through its centres in the six governorates. In addition, the Family Care Act makes a large contribution to the social integration of children by offering them a normal family environment where a family will look after them and give them all kinds of care, acting in lieu of the State. The latter provides financial aid to host families to help them provide children with the appropriate care.

Q13. Please indicate whether special training, particularly legal and psychological, is provided to persons working in the area of recovery and social reintegration of child victims of the offences under the Optional Protocol.

20. With regard to training of personnel responsible for identifying child victims of the crimes listed in the Optional Protocol, the Ministry of Social Affairs and Labour runs special courses for social workers and psychologists, as well as all personnel involved in caring for special categories of children.
