



International Covenant on Civil and Political Rights

Distr.: General
27 June 2016

Original: English

Human Rights Committee

117th session

Summary record of the 3269th meeting

Held at the Palais Wilson, Geneva, on Tuesday, 21 June 2016, at 3 p.m.

Chair: Mr. Salvioli

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

Consideration of reports submitted by States parties under article 40 of the Covenant
(continued)

Third periodic report of Kuwait (CCPR/C/KWT/3; CCPR/C/KWT/Q/3 and Add.1)

1. *At the invitation of the Chair, the delegation of Kuwait took places at the Committee table.*
2. **Mr. Alghunaim** (Kuwait) said that Act No. 12 of 1996 had made the Covenant an integral part of domestic law as provided for by the Constitution of Kuwait. In March 2016, the reservation to article 25 (b) of the Covenant had been withdrawn as concerned the equal right of men and women to vote and stand for election, although the part of the reservation concerning the inapplicability of the article to members of the armed forces or the police remained in place. The National Human Rights Authority, a human rights office in the Ministry of Foreign Affairs and an office for children's rights had all been created under legislation enacted in 2015. Other human rights legislation enacted recently in Kuwait included the Juveniles Act No. 111 of 2015, Decree No. 338 establishing the Higher Council for Family Affairs, the Prevention of Trafficking in Persons and Smuggling of Migrants Act No. 91 of 2013 and Act. No. 35 of 2013, by which Kuwait had ratified the Convention on the Rights of Persons with Disabilities.
3. Women enjoyed great respect in Kuwaiti society, in accordance with the principles of Islam, and Kuwait had acceded to the Convention on the Elimination of All Forms of Discrimination against Women in 1994. Women accounted for nearly 50 per cent of the workforce in both the public and private sectors and enjoyed particular privileges under Private Sector Employment Act No. 6 of 2010. Women also occupied a number of important roles in the military, the diplomatic service and the judiciary. Family courts had recently been established in all the country's governorates, as had a community police force which provided social and psychological support in cases of domestic violence. A child protection law had been passed in 2015 which complied with article 24 of the Covenant, and Kuwait had acceded to the Convention on the Rights of the Child.
4. Health care was regarded as a right and was provided free of charge to all citizens, and a bill concerning care for persons with mental illnesses was currently before the legislature. Places of deprivation of liberty in Kuwait were visited regularly by civil society organizations and by the regional delegation of the International Red Cross, which consistently rated prison conditions in Kuwait quite highly.
5. Kuwaiti society was vibrant and culturally pluralistic, and the country was regularly praised by international organizations such as Reporters without Borders for the transparency and freedom of its press and other media. Media outlets could not be closed down except by a definitive court order or if they infringed their licensing conditions. Freedom of opinion, expression and belief was enshrined in the Constitution and, apart from measures intended to safeguard the public interest, national security and the rights of others, that freedom was not restricted in any way. Under Act No. 109 of 2014, individuals could appeal directly to the Constitutional Court, which had the power to abrogate any legislation it deemed to be unconstitutional. Kuwait welcomed the presence of many Western human rights organizations, including Human Rights Watch, which made a visit to the country each year, and Amnesty International. Those organizations were free to present their findings at public press conferences attended by local and foreign media.
6. As a consequence of its open and diverse society and respect for the rule of law, Kuwait attracted migrant workers from many different cultural and religious backgrounds. In fact, migrants currently accounted for around two thirds of the country's population. Kuwait had taken steps to improve conditions for migrant workers, had ratified many

conventions of the International Labour Organization (ILO) and had made particular efforts, in cooperation with ILO, to find alternatives to the sponsorship system. It had also established the Public Authority for Manpower to protect migrant workers' rights.

7. Kuwait also sought to promote human rights values through education and training, and a number of ministries had recently organized human rights courses, including one for judges that focused specifically on human rights treaties. A free press, low levels of illiteracy and high enrolment rates in public education were other factors that contributed to human rights awareness in Kuwait.

8. During its recent universal periodic review before the Human Rights Council, Kuwait had accepted all the recommendations that it had received concerning freedom of expression and peaceful assembly, employment, the human rights legal framework, cooperation with human rights mechanisms and human trafficking.

9. Kuwait was facing many challenges that had arisen since its last appearance before the Committee, including the threat of terrorism, both nationally and regionally, conflicts in nearby countries such as Iraq and Syria, the effects of the Arab Spring and the recent wave of extremism and fundamentalism. Nonetheless, Kuwait had continued to apply the rule of law and to promote human rights.

10. His delegation would provide the Committee with up-to-date statistics on a range of topics, including demographic developments in Kuwait, women in leadership positions, domestic and gender-based violence, persons deprived of liberty, irregular migrants and human trafficking.

11. **Mr. Bouzid** said that, as the issue of any conflict between the Covenant and Kuwaiti law was not addressed in the Constitution, he wished to know which of the two took precedence when such a conflict arose. He would be interested to learn of examples of cases in which national courts had applied the provisions of the Covenant. Legislative provisions in Kuwait that discriminated against women had been repeatedly highlighted by the Committee on the Elimination of Discrimination against Women and NGOs. Moreover, the interpretive declaration on article 23 effectively precluded the implementation of that article. The State party was to be commended for having created a committee to examine the possibility of withdrawing the country's reservations to international treaties, and he wished to know whether it was examining the reservations to articles 2 (1), 3 and 23 of the Covenant. He was eager to hear how Kuwait viewed modern analyses of the Koran and the Sunna in which the role of women in society was interpreted in a manner which accorded with the spirit and the letter of international human rights treaties.

12. According to information made available to the Committee, no lawyer in Kuwait had ever invoked the Covenant, and the national courts seemed to do so only very rarely. That appeared to suggest that the Covenant was not well known or understood in Kuwait and that not enough was being done by the authorities to educate the public and law enforcement officials about the Covenant. He would be interested to hear the delegation's views on that matter.

13. The establishment of the National Human Rights Authority was a welcome development. However, the Committee did not have information on its operational structure and would like to know whether it included representatives of civil society, what its mandate was and what legal force its decisions had. He would also like to know whether the Authority produced an annual report on its activities and, if so, whether that report was made public, whether the Authority was financially and administratively independent and whether it had branches throughout the country.

14. **Mr. Fathalla** said that he, too, was pleased to see that the State party was studying the possibility of withdrawing its reservations to international treaties. It was important to

bear in mind that, although States had the right to enter reservations under the Vienna Convention on the Law of Treaties, those reservations should not contradict the spirit or aim of the treaties concerned. He would appreciate clarification on the position of Kuwait vis-à-vis matters covered by the Covenant which were also regulated by sharia law. In particular, he would welcome more information about the statement made in the State party's declaration according to which it would implement articles 2 (1) and 3 of the Covenant "within the limits set by Kuwaiti law". His understanding of Islamic sharia was that it allowed persons to choose whom they married, that it set no specific age limit for marriage and that it did not restrict the right to divorce to men alone. Many States which, like Kuwait, used Islamic sharia as the principal source of their legislation allowed women to institute divorce proceedings. He would like to learn more about the laws pertaining to marriage between a Kuwaiti and a non-Kuwaiti, particularly in cases where the non-Kuwaiti was not a Muslim, and to marriage between two non-Muslims. Were those laws consistent with the Covenant?

15. He welcomed the amendments introduced into the law regulating elections for the National Assembly and wondered whether the stipulated age requirement of 21 years applied only to the right to vote or also to the right to stand for election.

16. Turning to the question raised in paragraph 4 of the list of issues, he noted that a reference to colour as a prohibited ground of discrimination could be inserted into article 29 of the Constitution. He would appreciate a reply to the question posed in paragraph 4 on non-discrimination on the basis of birth and the corresponding judicial remedies. Clarification with regard to the types of discrimination that were defined as criminal offences under national law and the penalties for those offences would be welcome. As to paragraph 5 of the list of issues, he would like to know what obstacles the authorities had encountered in their efforts to ensure that undocumented residents were issued with identity papers and integrated into society and what progress had been made in that regard. Information would be appreciated on the current number of persons residing in Kuwait whose administrative status was irregular, the reasons for their presence in the country, their legal situation, the requirements that they must meet in order to obtain residence permits, and the number and types of cards issued to them in order to provide them with access to essential benefits and services. Clarification relating to the number of undocumented residents currently in education in Kuwait would also be useful.

17. **Sir Nigel Rodley**, turning to paragraph 6 of the list of issues, said that the language used in paragraph 141 of the State party's report in reference to sexual relations between consenting adults of the same sex was regrettable and that the criminalization of those acts was contrary to article 26 of the Covenant. The State party had not replied directly to the question posed in paragraph 6 on arbitrary arrests and detention, violence and other abuses perpetrated on the basis of sexual orientation and gender identity. It would be interesting to hear the views of the delegation on the allegations contained in the 2012 Human Rights Watch report on discrimination by the police against transgender women in Kuwait entitled *They Hunt Us Down for Fun*. He asked why the Government had recently criminalized the act of imitating members of the opposite sex. Information on the number of persons prosecuted for that offence, the gender of the defendants and the penalties imposed upon them would be welcome, as would information on the number of persons who had been prosecuted since the presentation of the State party's second periodic report under the law which had made homosexual acts a criminal offence. He asked what measures had been taken to prevent the harassment of LGBTI persons and to prosecute and punish harassers. Did victims of harassment generally report such incidents to the authorities?

18. As to paragraph 12 of the list of issues, information on investigations into allegations of torture and inhuman and degrading treatment of detainees at the hands of law enforcement officers would be welcome, as would information on the prosecution and

punishment of such persons and the redress granted to the victims. According to a number of civil society organizations, the number of those offences had increased over the past few months.

19. Turning to paragraph 13 of the list of issues, he asked for an update on plans to amend article 69 of the Code of Criminal Procedure in order to reduce the allowable duration of police custody and pretrial detention to 24 hours and 1 week, respectively. When detainees were transferred from police custody to a detention facility not administered by the police, under whose jurisdiction were they during the transfer? It was unclear from paragraph 90 of the State party's report what the role of the judiciary was with regard to the remand process and whether that process was in accordance with article 9 (3) of the Covenant. Was it true that legal representatives could accompany, but not communicate with, their clients during the police interview process?

20. He would appreciate information on what was done with persons who could not be deported once the corresponding 30-day detention period had expired, the distinction between judicial and administrative deportation, the grounds on which persons awaiting administrative deportation could be released from detention and the procedures pertaining to judicial deportation. Information on the nature of the comprehensive study of the cases of persons awaiting deportation which was referred to in the final subparagraph of the reply to the questions raised in paragraph 13, would be welcome.

21. With regard to the questions raised in paragraph 14 of the list of issues, he would like further information on the capacity and current population of the country's detention centres. While he was glad to note that men and women were held separately in places of detention, the fact that minors did not seem to be separated from adults gave cause for concern.

22. **Mr. Politi**, turning to paragraph 7 of the list of issues, said that he welcomed the measures taken by the State party to enforce women's rights. He would like to know whether only children with a Kuwaiti father were entitled to Kuwaiti nationality from birth, whether any measures had been taken to raise awareness of the need to eradicate polygamy, and whether marriage and divorce were still regulated by Personal Status Act No. 51 of 1984. Were women who wished to conclude a marriage contract required to ask a male guardian to act on their behalf? Had steps been taken to align the minimum age of marriage for both sexes with international standards? Information would be appreciated on any measures that had been adopted to ensure non-discrimination on the basis of gender with regard to divorce, child custody, inheritance, consent to medical treatment, the weight given to testimony in court — in particular with regard to domestic violence and legal separation — and the sentencing of persons found guilty of killing a spouse or relative for having committed adultery.

23. As to paragraph 8, he would appreciate further information on the presence of women in the judiciary, their role and representation in public and political life, their access to employment and the gender wage gap. The report stated that the Supreme Judicial Council had accepted 22 female candidates for enrolment in the Kuwaiti Institute for Judicial and Legal Studies. Other sources had reported that the Ministry of Justice had prohibited women, but not men, from applying for legal research positions until the two-year evaluation of the first group of women students, who had been admitted in 2013, had been carried out. He would like to know whether that first group had completed their training, whether that evaluation had been undertaken and whether the next group of female candidates were in fact enrolled.

24. There was only one woman in the Council of Ministers and no women in the Kuwaiti National Assembly, and it appeared that the participation of women in leadership positions in the country stood at about 7 per cent. He would therefore like to know what

initiatives had been envisaged or carried out to enhance the representation of women in public life and in leadership positions. He would also like to know what measures had been taken to increase employment opportunities for women and to reduce the gender pay gap. The Committee welcomed the partial withdrawal of the reservation to article 25 (b) of the Covenant, pursuant to Act No. 17 of 2005, which granted women the right to vote and to stand for election.

25. With regard to the questions raised in paragraph 11 of the list of issues, clarification would be appreciated on the position of the Government of Kuwait on the death penalty. There had been 73 executions in Kuwait since 1964, but very few had taken place between 2007 and 2013. In 2013, the Kuwaiti authorities had carried out two rounds of executions and were currently seeking the death penalty for 11 suspects in the Shia mosque bombing in Kuwait City. He would be interested to hear the delegation's views on the reasons for the increase in the number of executions carried out or sought in recent years. It would also be useful to know whether consideration was being given to the abolition of the death penalty or, at the least, an effective moratorium on executions.

26. In the Committee's concluding observations on the second periodic report of Kuwait (CCPR/C/KWT/CO/2), it had expressed concern at the large number of offences for which the death penalty could be imposed, including vaguely defined offences regarding internal and external security and drug-related crimes. The Committee would like to receive detailed information on any legislative initiative aimed at limiting the imposition of the death penalty, at the least, to the most exceptional cases involving the most serious crimes. Another concern of the Committee was that the automatic, mandatory imposition of the death penalty in certain types of cases regardless of the defendant's personal circumstances constituted an arbitrary deprivation of life in violation of article 6 (1) of the Covenant. He would like to know how and to what extent those circumstances were taken into consideration in cases involving the death penalty. Since only a pardon from the Emir or an appeal to the Court of Cassation could overturn a death sentence, it would be useful to know how often that Court had found on behalf of the defendant in death penalty cases over the last 10 or 20 years. Finally, clarification would be welcome on the minimum age at which the death penalty could be imposed.

27. **Mr. Seetulsingh** asked, with reference to the interpretative declaration regarding article 23, whether there were any laws in Kuwait that specifically defined domestic violence, including marital rape, as a criminal offence. He would also be interested to learn what measures, if any, had been taken to raise awareness about domestic violence, especially among members of the police, how many persons had been convicted and punished for having committed domestic violence offences and what penalties had been applied. Statistics would be welcome on the measures taken to combat domestic violence. Were shelters available for women and children at risk of that form of violence?

28. With regard to the State party's replies to the questions raised in paragraph 9 of the list of issues, further information would be welcome on the Community Police Department study of criminal laws aimed at controlling violent conduct and on the effectiveness of the Family Court Act in expediting the settlement of personal status disputes. It had also been stated in that portion of the replies that a Kuwaiti woman had an independent legal personality that was recognized from birth and could exercise the right to a defence and to take legal action; it would be helpful to know in what way and under what circumstances that right could be invoked.

29. Kuwait appeared to be the only country in the world to have introduced compulsory DNA testing, a measure it had taken in the wake of terrorist attacks in the country. He would be interested to hear the delegation's views as to whether that measure had been proportionate and reasonable in the context in which it had been applied and how effective it had been in helping to protect Kuwait from terrorist attacks, in particular since it was not

applied to all foreigners entering the country. In addition, he would like to know what measures were taken to prevent the misuse of DNA data.

30. **Mr. de Frouville** said that it was his understanding that abortion was forbidden in Kuwait and that the punishment for aiding in an abortion was 10 years in prison, but that there were exceptions related to the health of the mother or the foetus. In such cases, it appeared that the consent of a hospital committee made up of three doctors, one of whom must be a Muslim, was required. With reference to article 26 of the Covenant, he would like to know why the law required that at least one member of such committees should be Muslim. Statistics would be appreciated on how many abortions were carried out yearly, and on what grounds, as well as on the number of requests for abortions and the number of abortions that were authorized. Were there any figures on cases in which an abortion had been considered medically necessary but the spouse had refused to give his consent? Figures on the number of clandestine abortions and on the number of women who became pregnant outside marriage would be welcome. He would also like to know whether consideration had been given to permitting women who had become pregnant following a rape or an act of incest to have an abortion.

31. **The Chair** said that 2016 was the fiftieth anniversary of the adoption of the International Covenant on Civil and Political Rights and the twentieth anniversary of the State party's ratification of that instrument. As Kuwait had played a pioneering role in the Middle East, it would be ideal if the State party would take the decision to ratify the Optional Protocol, thereby encouraging other States to do the same.

The meeting was suspended at 4.50 p.m. and resumed at 5.10 p.m.

32. **Mr. Alghunaim** (Kuwait) said that it was important to remember that Kuwait was a State that had been invaded, occupied and subject to attempts at extermination. His delegation was extremely pleased to respond to the questions raised by the Committee, which provided an opportunity for clarifying matters that might have been presented in a distorted manner. He would like to stress that it was impossible to disregard the regional context in evaluating the implementation of the Covenant. In Kuwait, there were over 400 nationalities and many religions; protecting the rights and freedoms of those peoples was a priority.

33. **Mr. Alansari** (Kuwait) said that, in answer to the question that had been raised earlier as to whether the Covenant took precedence over national laws, he wished to clarify the fact that, under the terms of the Constitution, any international agreement ratified by Kuwait became part of the country's legal order; all national bodies and individuals must therefore abide by its terms. The Court of Cassation had also determined that, once an international agreement had been ratified, it had legal force, and judges were obliged to apply its provisions. An exception was made, however, when certain provisions of an international agreement ran counter to sharia law. No legislation could be enacted that contradicted the Constitution or any other national law.

34. In a decision of February 2016, the Court of Cassation had invoked the International Covenant on Civil and Political Rights in a case involving freedom of expression. It had rejected an appeal by the prosecution and exonerated the defendant, maintaining that every individual was entitled to entertain his or her own opinions without harassment. It had also stated that the right to freedom of expression entailed certain responsibilities and duties and could be limited solely for reasons of national security or public order.

35. Workshops on the Covenant had been held for judges and prosecutors, and that training effort had recently been expanded to include all members of the judiciary and of the Department of Public Prosecution.

36. A law had been adopted on the establishment of a national human rights institution (Diwan) whose status would be fully compatible with the Paris Principles. The institution would be made up of 11 human rights experts and would be responsible for oversight of the country's efforts to honour its human rights obligations. Plans had been made to set up separate committees to monitor the implementation of specific instruments, such as the Covenant.

37. The Government was currently reviewing a draft amendment to the Criminal Code that would bring the legal definition of torture into line with the definition set forth in the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. In what had been a first for Kuwait, women had recently begun working as prosecutors or judicial officials. The outcome of that innovative step would be evaluated in the near future.

38. **Mr. Alghunaim** (Kuwait) said that Kuwait had gone to considerable lengths to raise awareness of the Covenant, including through social media and television coverage. Judges were also given training on the Covenant.

39. **Mr. Alwahib** (Kuwait) said that the problem of statelessness in Kuwait was compounded by some people's belief that, if they kept their original nationality secret and claimed to be stateless, they could more easily acquire Kuwaiti nationality and thus enjoy the privileges that Kuwaiti nationals were entitled to. In any event, legislative and administrative efforts were being made to naturalize thousands of persons residing illegally in the country.

40. **Ms. Almeshal** (Kuwait) said that steps had been taken to facilitate access to social and humanitarian services for foreign nationals living in Kuwait, including those without residence permits. Stateless persons or other residents in an illegal situation were issued blue identification cards that entitled them to a number of social services, such as education and health care, until the authenticity of the documents that they had submitted in support of their citizenship applications was verified. In recent years, thousands of birth, death, marriage and divorce certificates, as well as driver's licences, had been issued to the holders of such cards.

41. **Mr. Alghunaim** (Kuwait) said that Kuwait, unlike some countries, had acknowledged the presence in its territory of persons in an irregular situation. It had opted to deal with the situation, whether through legislative measures or consultations with philanthropic organizations, in a way that respected those persons' dignity.

42. **Mr. Alharbi** (Kuwait) said that the stigmatization of same-sex sexual relations in Kuwait was informed by the people's religious convictions — in the Koran, the shower of brimstone that had fallen upon the prophet Lot's people was used to illustrate Islam's rejection of homosexuality — and widespread disapproval of homosexual practices, as well as by efforts to inculcate respect for traditional values in young people. However, clinical care was available to all people who were struggling with their sexual identity or orientation, and no one could be prosecuted for seeking such treatment. Homosexual behaviour was subject to prosecution only if it was exhibited in public.

43. The topic of human rights was an integral part of the curricula in Kuwaiti schools. Considerable efforts were made to ensure that young people in Kuwait were aware of the human rights protections to which they were entitled.

44. **Mr. Alghunaim** (Kuwait) said that other awareness-raising measures had included the publication of booklets on children's rights, in particular, and on human rights, in general. Plans had been made to publish a similar booklet on women's rights. In addition to religious and social reasons, there were scientific reasons for Kuwaiti society's disapproval of homosexual conduct; people were aware that such behaviour could contribute to the

spread of disease. It was well known, for example, that in many countries homosexual men were not allowed to give blood.

45. **Ms. Al-Naqi** (Kuwait) said that the country's ongoing efforts to combat violence against children had included the recent adoption of a law that defined the situations in which children were at risk of violence and provided for the establishment of children's centres in every governorate. There was a hotline to report violence against children, and that could be done anonymously if the caller so wished. Cases were referred, as appropriate, to the police, the social services or the health services. A protocol for the protection of children at risk of violence in the home or in institutions had been developed jointly with philanthropic organizations that worked with children, and all victims were offered the necessary care and rehabilitation services.

46. Minors in detention were held in facilities specifically for minors which operated under the auspices of the Ministry of Social Affairs and Labour. The minors detained in the country's five such facilities were classified by age, origin and reason for detention. Health care was provided in the facilities.

47. **Mr. Alansari** (Kuwait) said that, although Kuwait currently had a moratorium on the use of the death penalty, it had no plans to amend its legislation to abolish it outright. In any event, the death penalty was used only in the case of particularly heinous crimes, and it could not be imposed on persons with intellectual or psychological disabilities, while persons with dependants were likely to have their sentences commuted. Persons sentenced to death could seek a reduction of their sentence or appeal to a higher court, and it went without saying that the execution of the penalty was suspended until all appeals had been exhausted. Abolishing capital punishment would be a violation of the precepts of Islamic sharia, the main source of the country's laws, and any decision to do so could be made only by the Emir.

48. **Mr. Alghunaim** (Kuwait) said that there was no international instrument that prohibited capital punishment. Moreover, only three people had been executed in Kuwait since 2011. One of them, who had been known as "the Savage of Hawalli", had raped more than a dozen children. Only after a person had been convicted of such ghastly crimes could he or she be executed.

49. **The Chair** said that he wished to stress that the Committee did not in any way question the religious convictions of a State party's people. It was interested only in the implementation of the Covenant. He also wished to emphasize that the global scientific community had made it entirely clear that a person's sexual orientation was completely unrelated to his or her susceptibility to disease.

The meeting rose at 6.05 p.m.