



# Economic and Social Council

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## Committee on Economic, Social and Cultural Rights

### Concluding observations on the second periodic report of Kuwait\*

1. The Committee on Economic, Social and Cultural Rights considered the second periodic report of Kuwait on the implementation of the International Covenant on Economic, Social and Cultural Rights (E/C.12/KWT/2) at its 31st and 32nd meetings, held on 5 November 2013 (E/C.12/2013/SR.31–32), and adopted at its 68th meeting, held on 29 November 2013, the following concluding observations.

#### A. Introduction

2. The Committee notes with satisfaction the timely submission by Kuwait of the second periodic report and the written replies to the list of issues (E/C.12/KWT/Q/2/Add.1). The Committee also welcomes the opportunity to engage with the State party's large inter-ministerial delegation.

#### B. Positive aspects

3. The Committee welcomes the following actions by the State party:

(a) Ratification of the Optional Protocols to the Convention on the Rights of the Child, on the involvement of children in armed conflict and on the sale of children, child prostitution and child pornography, on 26 August 2004;

(b) Ratification of the Convention on the Rights of Persons with Disabilities, on 22 August 2013;

(c) Adoption of Law No. 91 of 2013 on the fight against trafficking in persons;

(d) Adoption of the Ministerial Decree establishing the Committee on Women's Affairs;

(e) Creation of the Office of Domestic Workers at the Ministry of Interior;

(f) Establishment of the Central Body entrusted with finding a permanent solution to the stateless Bidoun population by 2015;

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\* Adopted by the Committee at its fifty-first session (4–29 November 2013).



(g) Maintenance of a broad social programme whereby several services — such as medical care in public health facilities and education at all levels — are provided free of charge;

(h) Implementation of an insurance scheme for work accidents and occupational diseases.

## C. Principal subjects of concern and recommendations

4. The Committee regrets that the report only partially follows the Committee's reporting guidelines, and that the replies to the list of issues lack statistical data<sup>1</sup> and more precise information to enable the Committee to make an assessment of the actual and progressive realization of economic, social and cultural rights in the State party. The Committee also finds that the oral replies to the questions raised during the dialogue were often general and at times elusive.

**The Committee recommends that the State party include in its next periodic report detailed information on the actual fulfilment of economic, social and cultural rights by the various segments of its population, including statistical data disaggregated by year, sex and other relevant criteria, in accordance with the Committee's reporting guidelines (E/C.12/2008/2). The Committee also recommends that, in implementing the present concluding observations as well as in its efforts to effectively implement economic, social and cultural rights, the State party be guided by the Committee's general comments, which elaborate on the normative content of rights and the obligations of States parties. The Committee further recommends that the State party properly involve civil society in these efforts as well as in the preparation of the next periodic report.**

5. The Committee regrets that information was not provided on jurisprudence invoking the Covenant before national tribunals and administrative instances in relation to individuals or groups alleging violation of their economic, social and cultural rights, in spite of the fact that the provisions of the Covenant form part of the State party's law, in accordance with article 70 of the Constitution.

**The Committee recommends that the State party raise awareness among members of the judiciary, lawyers, public administration and the general public of the Covenant and the justifiability of economic, social and cultural rights. The Committee requests that the State party include information in its next periodic report on decisions by courts and administrative authorities that give effect to the rights set forth in the Covenant. The Committee draws the State party's attention to its general comment No. 9 (1998) on the domestic application of the Covenant.**

6. The Committee reiterates its concern about the reservations and declarations made by the State party in respect of the provisions of articles 2, paragraph 2, 3, 8, paragraph 1 (d), and 9 of the Covenant.

**The Committee calls on the State party to consider withdrawing its reservations and declarations made upon ratification of the Covenant, which are incompatible with the object and purpose of the Covenant.**

7. The Committee regrets the absence of an independent national human rights institution in the State party (art. 2, para. 1).

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<sup>1</sup> The delegation had statistical data on hand for the dialogue, but they were received too late to be used in the consideration of the report.

**The Committee recommends that the State party take steps to establish an independent national human rights institution, in accordance with the Paris Principles, and ensure that its mandate includes economic, social and cultural rights. The Committee refers the State party to its general comment No. 10 (1998) on the role of national human rights institutions in the protection of economic, social and cultural rights.**

8. The Committee notes with concern that constitutional guarantees of non-discrimination are limited to race, origin, language and religion. The Committee is also concerned at the lack of legislation prohibiting and sanctioning discrimination on all grounds (art. 2, para. 2).

**The Committee recommends that the State party adopt a comprehensive anti-discrimination law defining, prohibiting and sanctioning discrimination on all grounds. The law should cover not only direct but also indirect discrimination and provide for the implementation of temporary special measures. In this regard, the Committee draws the State party's attention to its general comment No. 20 (2009) on non-discrimination in economic, social and cultural rights.**

9. The Committee is concerned that the categorization of Bidouns as "illegal residents" reflects neither their status as stateless persons nor their historical sense of belonging to Kuwaiti society. The Committee is also concerned at the slow pace of progress made towards finding a permanent solution to their legal status by 2015, as the majority of this population is still denied most of their economic, social and cultural rights, in spite of the recommendations made by the Committee and other treaty bodies (art. 2, para. 2).

**The Committee recommends that the State party expedite the work entrusted in 2010 to the Central Body to review Bidoun claims for recognition of their status under the Law on Citizenship, and find a permanent solution to their status by 2015, in conformity with international law. The Committee also recommends that the State party:**

**(a) Involve legal experts or judges in the citizenship review process to ensure that decisions are taken according to the relevant laws and standards, and to guarantee the right of individuals to be informed of the grounds of decisions taken and the right to appeal;**

**(b) Accelerate the naturalization process for those who meet the legal requirements;**

**(c) Ensure birth registration of children of stateless women, including those who are not registered with the Central Body, irrespective of the nationality of the father;**

**(d) Expedite adoption by the National Assembly of the decision endorsed by the Central Body granting Bidouns access to socio-economic rights, and address the administrative obstacles to their effective access to services; and**

**(e) Accede to the 1954 Convention relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness.**

10. The Committee is concerned that, in spite of the recommendations made by the Committee and other treaty bodies, discrimination against women under the various laws in force in the State party — such as those on nationality, marriage, inheritance, polygamy, parental authority or insurance rights — still exist and hamper women's equal enjoyment of economic, social and cultural rights. The Committee also notes with concern that the omission of the ground of "sex" among the grounds of non-discrimination in the provisions

of article 29 of the Constitution of the State party deprives women of a crucial legal protection against gender-based discrimination (art. 3).

**The Committee calls on the State party to enshrine equal rights for men and women in its Constitution. Referring to the “project on the creation of a legislative environment conducive to the social empowerment of Kuwaiti women” implemented by the Ministry of Justice and the Ministry for Social Affairs and Labour, the Committee calls on the State party to:**

(a) **Prioritize the abrogation of all discriminatory laws, including those premised on women’s dependence on men;**

(b) **Undertake a gender-based assessment of the impact of all legislation, including gender-neutral laws, which might have indirect effect on the equal enjoyment of economic, social and cultural rights by men and women;**

(c) **Draw primarily on international law on equality between men and women, as well as the experiences of other States with similar legal and cultural traditions, for any legislative change; and**

(d) **Address gender inequality in the application of law, including by ensuring that women judges sit on the newly established family courts.**

**In this regard, the Committee draws the State party’s attention to its general comment No. 16 (2005) on the equal right of men and women to the enjoyment of all economic, social and cultural rights.**

11. The Committee notes with concern that fewer than 50 per cent of women hold employment in the State party, and that the gender pay gap is over 30 per cent. Moreover, the Committee is concerned at the absence of concrete policies to improve access to employment by women. The Committee is further concerned at the absence of policies aimed at addressing the horizontal and vertical gender segregation in the labour market (arts. 3 and 6).

**The Committee calls on the State party to ensure that the comprehensive strategy to be adopted by the Cabinet Committee on Women’s Affairs address women’s under-representation in employment, as well as the vertical and horizontal gender segregation in the labour market, including by introducing temporary special measures with a view to correcting this imbalance in the public sector, with a specific target and timeline.**

12. The Committee regrets that the State party did not confirm whether the legal provisions on penalties involving compulsory labour in prison had been amended (art. 6).

**The Committee calls on the State party to abolish the penalty of forced labour so as to bring its legislation into line with article 6 of the Covenant and the International Labour Office (ILO) Abolition of Forced Labour Convention, 1957 (No. 105). It also recommends that the State party ensure that prisoners work only if they consent to do so.**

13. The Committee regrets the absence of detailed statistical data on the situation of persons with disabilities, including in employment. The Committee also regrets that it has not been provided with detailed information on the enforcement of the quota of persons with disabilities to be employed in companies, according to domestic law (art. 6).

**The Committee recommends that the State party effectively enforce the quota of 4 per cent for employment of persons with disabilities in companies with more than 50 workers, as established under the State party’s law. The Committee also recommends that the State party ensure an adequate collection of statistical data on**

**the situation of persons with disabilities allowing an effective implementation of the Convention on the Rights of Persons with Disabilities. The Committee refers the State party to its general comment No. 5 (1994) on the rights of persons with disabilities.**

14. The Committee is concerned that the implementation of the "Kuwaitization" plan, which aims to reduce the foreign workforce by 100,000 every year over 10 years, may lead to unfair dismissal, discrimination and other human rights violations (art. 6).

**The Committee calls on the State party to ensure that the "Kuwaitization" plan guarantees safeguards for the protection against unfair dismissal and violations of other human rights of those affected by the plan. It also requests that the State party provide in its next periodic report information on the impact of the plan on the exercise of the right to work.**

15. The Committee notes with concern that the provisions of article 26 of the 2010 Labour Law regarding equal pay for men and women for the same work fall short of the requirement of article 7 of the Covenant. The Committee also notes reports that migrant workers often receive lower remuneration than nationals for the same position or work (art. 7).

**The Committee recommends that the State party bring its legislation into line with the provisions of article 7 of the Covenant on the right to equal remuneration for work of equal value. The Committee also recommends that the State party put in place the necessary mechanisms to guarantee the exercise of this right without distinction of sex, race, origin or other status. To that end, the Committee recommends that the State party, among others: (a) train labour inspectors and employers on the application of the principle of equal pay; (b) raise awareness of the illegality of the practice of unequal remuneration; and (c) undertake a survey and classification of work considered as being of equal value.**

16. The Committee is concerned that the minimum wage established by a 2010 decision of the Minister for Social Affairs and Labour, which is payable to workers in the oil sector, guards and security staff, may not apply to other sectors of the economy in the private sector, including domestic workers. Moreover, noting Cabinet Decision No. 623 on expenses borne by employers, the Committee is concerned as to whether the minimum wage of KD 60 (approximately US\$200) per month enables a decent living for the workers and their families (art. 7).

**The Committee recommends that the State party ensure that the minimum wage in the public and private sector provides workers, including domestic workers, with a decent living for themselves and their families, in accordance with article 7 of the Covenant. The Committee requests the State party to include in its next periodic report information on the minimum subsistence level by household size, the minimum wage applied in all sectors of the economy, and statistical data on the absolute number and the percentage of persons earning the minimum wage, disaggregated by year, age, sex, nationality and other relevant status.**

17. The Committee notes with concern that article 10 of the 2010 Labour Law still refers to sponsorship of foreign workers. The Committee also expresses concern at the persistent reports of violations of the labour rights of migrant workers, such as payment of very low wages, retention of salaries and long working hours, in contravention of the State party's legislation (art. 7).

**The Committee recommends that the State party take the necessary legislative measures to abolish the sponsorship system altogether and ensure that the procedure for the recruitment and employment of expatriate labour to be applied by the Public Authority for Labour Force effectively protects migrant workers against abuse and**

exploitation. The Committee also recommends that the State party increase the capacity of the labour inspectorate to monitor working conditions in local companies on a regular basis and ensure that sanctions for violations of workers' rights be effectively implemented. Moreover, the Committee recommends that the State party accede to the International Convention on the Protection of the Rights of all Migrant Workers and Members of Their Families.

18. The Committee expresses concern at the absence of a comprehensive regulation that fully protects the rights of domestic workers as Law No. 40 of 1992 only regulates agencies recruiting domestic workers. The Committee also notes with concern reports of abuse and exploitation of domestic workers by agencies and employers alike (art. 7).

**Considering that according to article 5 of the 2010 Labour Law, a decision shall be issued by the competent minister concerning the rules governing the relationship between domestic workers and their employers, the Committee recommends that the State party regulate domestic work through a law rather than a ministerial decision, and ensure that its legislation and regulations:**

(a) **Guarantee domestic workers the same conditions as other workers covered by the 2010 Labour Law as regards remuneration for work of equal value, protection against unfair dismissal, occupational health and safety, rest and leisure, limitation of working hours, social security, housing and change of employer;**

(b) **Pay particular attention to conditions that render domestic workers vulnerable to compulsory labour and sexual assault;**

(c) **Provide effective mechanisms for reporting abuse and exploitation due to the difficulty for some domestic workers to access telecommunication means; and**

(d) **Establish an inspection mechanism for monitoring the conditions of work of domestic workers.**

The Committee also recommends that the State party raise awareness among employers and the population in general of the need to respect the human rights of domestic workers. The Committee recommends that the State party accede to ILO Domestic Workers Convention, 2011 (No. 189).

19. In spite of the fact that general security and safety regulations in the oil sector in the State party have been established in conformity with international standards, the Committee regrets that regulations applicable in the construction sector still lack conformity with international norms and standards (art. 7).

**The Committee recommends that the State party ensure that occupational health and safety regulations in the construction industry are consistent with international norms and regulations so that construction workers enjoy their rights under article 7 of the Covenant. The Committee requests that the State party provide in its next periodic report statistical data on the inspection of construction sites as well as on workplace accidents and occupational diseases in the construction industry, including in terms of percentage of workplace accidents and occupational diseases in all sectors of the economy.**

20. The Committee is concerned that, while victims of sexual harassment have the right to terminate their employment contract, sexual harassment in the workplace has not been criminalized. The Committee is also concerned that, while divorce is permitted in cases where one spouse harms the other, marital rape is not criminalized (art. 7).

**The Committee recommends that the State party introduce in its legislation the offences of sexual harassment — including in the workplace — and marital rape, and sanctions proportionate to the severity of the offences. The Committee also**

**recommends that the State party ensure that victims can lodge complaints without fear of retaliation.**

21. Notwithstanding the fact that strikes have taken place in the State party, the Committee expresses concern that the right to strike is not protected by law and that the State party has maintained the reservation to article 8, paragraph 1 (d), of the Covenant (art. 8).

**Based on information from the State party that strikes are not prohibited, the Committee calls on the State party to withdraw its reservation to article 8, paragraph 1 (d), of the Covenant and establish safeguards for the exercise of the right to strike.**

22. The Committee notes with concern that under the 2010 Labour Law, the right to form trade unions is recognized only with regard to nationals, in spite of the Committee's previous recommendation (E/C.12/1/Add.98, para. 38) (art. 8).

**The Committee reiterates its recommendation to the State party to extend trade union rights to non-nationals, in line with article 8 of the Covenant. Bearing in mind that the workforce in some industries is composed primarily of migrant workers, the Committee underlines the importance of recognizing their right to form and join trade unions to represent their interests with a view to improving the enjoyment of their Covenant rights.**

23. The Committee is concerned that the State party has not taken steps to include non-Kuwaiti nationals in its social insurance scheme, in spite of the Committee's previous recommendation (E/C.12/1/Add.98, para. 40) (art. 9).

**The Committee urges the State party to withdraw its interpretive declaration to article 9 of the Covenant and to give non-nationals access to its contributory social security schemes for old-age pension and unemployment. Moreover, the Committee recommends that the State party ensure that entitlements are not affected by a change of employer and that migrant workers are able to retrieve their contributions when they leave the country, even if they have not acquired the corresponding rights. The Committee refers the State party to its general comment No. 19 (2007) on the right to social security.**

24. The Committee is concerned at practices and legal provisions relating to marriage which do not meet the State party's obligations under article 10 of the Covenant on protection of the family, care of dependent children and free consent to marriage (art. 10).

**The Committee calls on the State party to: (a) establish a minimum age of at least 18 years for marriage for boys and girls; (b) abrogate the restrictions on marriage with foreigners or non-Muslims; and (c) ensure that marriage is entered into with the free consent of the intending spouses.**

25. The Committee is concerned at reports of inadequate housing conditions for migrant workers, in spite of the State party's legislation and regulations on standards of accommodation to be provided by employers (art. 11).

**The Committee recommends that the State party continue to monitor accommodation conditions for migrant workers with a view to ensuring their right to adequate housing. The Committee also recommends that the State party set rental allowance standards to ensure that migrant workers who do not receive accommodation from their employers have access to adequate and affordable housing. The Committee draws the State party's attention to its general comment No. 4 (1991) on the right to adequate housing.**

26. The Committee is concerned that the Mental Health Act focuses only on institutional care and does not regulate confinement (art. 12).

**The Committee calls on the State party to bring its Mental Health Act into line with established international standards, including by regulating the review and control of internment and confinement. The Committee also recommends that the State party: (a) train mental health professionals in the application of international principles of mental health assessments; (b) develop community-based services; and (c) ensure that mental health is included in the health insurance programme of the State party.**

27. Noting the functions of the Directorate for the Environment, the Committee regrets that it has not been given information on how verbal complaints about pollution from residents of areas neighbouring industrial sites should be dealt with (art. 12).

**The Committee recommends that the State party take effective measures, including engagement with residents of areas neighbouring industrial sites and civil society organizations, with a view to finding solutions to their exposure to air pollution and other environmental concerns.**

28. The Committee is concerned that primary education is not compulsory for non-Kuwaiti children living in the State party. The Committee is also concerned at restrictions on enrolment in the State party's university (arts. 13 and 14).

**The Committee calls on the State party to equally apply compulsory education to non-Kuwaiti children living in the State party. The Committee also recommends that the State party ensure that higher education is made equally accessible to all, on the basis of personal capacity, in accordance with article 13, paragraph 2 (c), of the Covenant. Moreover, the Committee recommends that the State party implement the plan to expand its higher education infrastructure and further develop its fellowship system for disadvantaged and marginalized groups, with a view to fully achieving and securing the right to higher education for all. The Committee refers the State party to its general comment No. 13 (1999) on the right to education.**

29. The Committee regrets that human rights have not been included in school curricula at all levels of education in the State party (art. 13).

**The Committee recommends that the State party ensure that human rights is taught at all levels of education.**

30. In light of the cultural diversity in the State party, the Committee is concerned about the lack of recognition of the right of minorities, minority communities and groups to express their cultural identity (art. 15).

**The Committee recommends that the State party develop a legislative framework which defines and recognizes that minorities, minority communities and groups, among others, have: (a) the right to freely choose their own cultural identity and to belong or not to a community and have their choice respected; (b) the right to conserve, promote and develop their own culture; and (c) the right to cultural diversity, traditions, customs, religion, languages and other manifestations of cultural identity and membership. The Committee refers the State party to its general comment No. 21 (2009) on the right of everyone to take part in cultural life.**

31. Noting that the State party has taken steps for the protection of the archaeological sites on Failaka Island, the Committee is nevertheless concerned at the risk posed by development projects to the preservation of other archaeological sites in the State party. The Committee is also concerned at reports of limited access to cultural goods such as historical sites and artifacts (art. 15).

**The Committee recommends that the State party take measures for the proper implementation of relevant laws and regulations aimed at the protection of historical sites, and undertake systematic assessment of the impact of development projects on**



**their conservation. The Committee also recommends that the State party facilitate and promote effective access to the State party's cultural heritage by the general population.**

32. The Committee is concerned at measures taken by the State party which may constitute censorship of the enjoyment of the right to take part in cultural life (art. 15).

**The Committee recommends that the State party ensure that the exercise of rights such as freedom of thought, conscience and religion, freedom of opinion and expression are not unduly limited by censorship in the context of the right to take part in cultural life. Moreover, in view of the absence of specific criteria of what is understood as "public ethics and morals," the Committee recommends that censorship decisions be made by courts so as to avoid arbitrary decisions. The Committee refers the State party to paragraphs 17 to 20 of its general comment No. 21 (2009) on the right of everyone to take part in cultural life.**

33. The Committee recommends that the State party increase efforts to provide international assistance to developing countries to a level commensurate with its resources and in fulfilment of its international obligations under the Covenant to promote the enjoyment of economic, social and cultural rights.

34. The Committee encourages the State party to consider signing and ratifying the **Optional Protocol to the International Covenant on Economic, Social and Cultural Rights.**

35. The Committee requests the State party to disseminate the present concluding observations widely at all levels of society, particularly among public officials, judicial authorities and civil society organizations, and to inform the Committee in its next periodic report on the steps taken to implement them.

36. The Committee encourages the State party to engage civil society organizations in constructive cooperation in order to implement the present concluding observations at the national level, as well as for the preparation and submission of its next periodic report.

37. The Committee invites the State party to update, as necessary, its core document in accordance with the harmonized guidelines on reporting under the international human rights treaties (HRI/GEN/2/Rev.6, chap. I).

38. The Committee requests the State party to submit its third periodic report in accordance with the guidelines adopted by the Committee in 2008 (E/C.12/2008/2), by 30 November 2018.