



Human Rights Watch Submission to the Committee on Economic, Social and Cultural Rights (CESCR) of Kuwait's Periodic Report for the 64th Pre-Sessional Working Group (11 Mar 2019 - 15 Mar 2019) January 2019

We write in advance of the 64th pre-sessional review of the Committee on Economic, Social and Cultural Rights (CESCR), and its review of Kuwait's compliance with the International Covenant on Economic, Social and Cultural Rights (ICESCR). This submission addresses issues related to articles 2, 3, 7, 10 and 13 of the Covenant and suggests questions to put to the Kuwaiti government.

1. Nationality (ICESCR articles 2 and 3)

Kuwaiti women are still not allowed to confer their nationality to their children and their spouses on an equal basis to Kuwaiti men.¹ Kuwaiti men can automatically confer nationality to their children, whereas Kuwaiti women only can confer nationality when the father is **unknown or the "kinship to the father has not been legally established."**² The Minister of Interior may also confer Kuwaiti nationality to a child born to a Kuwaiti mother if the foreign father has irrevocably divorced the mother or has passed away, and after the child has maintained residency in Kuwait "until reaching the age of majority."³ Foreign husbands of Kuwaiti women have no legal right to remain in the country without a residency permit. In contrast, foreign women married to Kuwaiti men are granted residency automatically and qualify for citizenship after fifteen years of marriage.⁴

The Bidun community, who number around 100,000, also face discrimination in obtaining Kuwaiti nationality.⁵ They are designated as undocumented residents and are effectively

¹ Kuwait Nationality Law (1959), art. 2, provides that "Any person born in or outside Kuwait whose father is a Kuwaiti national shall be a Kuwaiti national," available at <http://www.ilo.org/dyn/natlex/docs/ELECTRONIC/83364/91990/F734821664/KWT83364.pdf> (accessed October 9, 2017).

² Kuwait Nationality Law (1959), art. 3.

³ Kuwait Nationality Law (1959), art. 5.

⁴ Kuwait Nationality Law (1959), art. 8.

⁵ "34 Thousand Candidates for Naturalization from 106 Thousand," *al-Qabas*, November 5, 2010. See also Human Rights Watch, *Prisoners of the Past: Kuwaiti Bidun and the Burden of Statelessness*, June 2011, <https://www.hrw.org/sites/default/files/reports/kuwait0611WebInside.pdf>; and Carnegie Endowment for Peace, "The Politics of Kuwait's Bidoon Issue," October 2017, <https://carnegieendowment.org/sada/73492>.

stateless. There are estimates of some 5,000 to 7,000 marriages between Kuwaiti women and Bidun men.⁶ Kuwaiti women cannot pass on nationality to their Bidun spouse or their children from such a marriage, rendering them stateless. In some reported cases, couples have divorced in an effort to allow their children to apply for citizenship under article 5 of the nationality law. However, these children still faced difficulty in obtaining citizenship.⁷

In May 2016, a Comoros Island official told a Kuwaiti daily (Anbaa News) that the Comoros **Island was open to Kuwaiti officials' suggestions that Kuwait may pay the Comoros Islands to grant the Bidun a form of economic citizenship, thus regularizing Bidun as foreign nationals and rendering them liable to legal deportation from Kuwait—possibly violating their right to family life.**⁸

Suggested questions for the Committee to request from Kuwaiti authorities:

- What steps is the government taking to amend article 2 of the Kuwaiti 1959 Nationality Law to stipulate that a Kuwaiti citizen is any person born in Kuwait or abroad to a Kuwaiti father or a Kuwaiti mother?
- What steps has the government taken to allow Bidun people to obtain nationality?
- Of the 16,327 people that the state notes in its report of having naturalized since 1992, how many Bidun were provided Kuwaiti nationality in the years 2015-2018?
- What interim steps has the government taken to ensure that Bidun people including children do not face discrimination in relation to access to education, health, jobs and other economic, social and cultural rights?

2. Personal status laws (ICESCR articles 3 and 10)

Kuwait has failed to undertake reforms recommended by the Committee in its last concluding observations to establish a minimum age of at least 18 years for marriage for boys and girls; abrogate the restrictions on marriage with foreigners or non-Muslims; and ensure that marriage is entered into with the free consent of the intending spouses.⁹

⁶ Open Society Foundations, *Without Citizenship: Statelessness, Discrimination and Repression in Kuwait*, 2011, available at <https://www.opensocietyfoundations.org/sites/default/files/without-citizenship-20110512.pdf> (accessed October 9, 2017).

⁷ Ibid.

⁸ "Comoros ready to take Kuwait's stateless," *Gulf News*, May 16, 2016, <http://gulfnews.com/news/gulf/kuwait/comoros-ready-to-take-kuwait-s-stateless-1.1828738> (accessed October 9, 2017).

⁹ Committee on Economic, Social and Cultural Rights, Concluding observations on the second periodic report of Kuwait, UN Doc. E/C.12/KWT/CO/2, December 19, 2013, para. 24.

Both Kuwait's Personal Status Law No. 51 of 1984, which applies to Sunni Muslims, and the uncodified Ja'fari interpretation of personal status matters, which applies to Shi'a Muslims, still discriminate against women entering marriage, during marriage, and in divorce.¹⁰

Under Personal Status Law No. 51 of 1984, a woman is not free to conclude her marriage contract but must have a male guardian (*wali*) do so on her behalf, regardless of her age. Although Shi'a legal interpretation of Islamic law does not require the presence of a *wali* for women who have reached maturity, witnesses to the marriage must also be Muslim men for the marriage to be valid.

In addition, the minimum age for registering a marriage is 15 for girls, and 17 for boys, in contravention with international standards that recommend a minimum age of marriage at 18.

The Personal Status Law also enables a man to marry up to four wives simultaneously, without the permission or the knowledge of his first wife/wives.¹¹ The law also allows a man to prohibit his wife from working if her work negatively affects the family interests.¹²

Under the law, women can only apply to the courts for a divorce on limited grounds, such as if she has been abandoned or abused, or if her husband has failed to support her financially. Men, however, can divorce women without any restrictions.

Women also face discrimination in relation to the status of children after divorce. Under articles 110 of the Civil Code and 209 of the Personal Status Law, a father maintains legal guardianship of the children, regardless of whether a court has ordered that the children should live with the mother. Women can serve as legal guardians of their children only when they obtain authorization from a court decision. Children can also be removed from living with their mothers if their mothers re-marry, unless their ex-husbands make no complaint about their remarriage for a year.¹³

Suggested questions for the Committee to request from Kuwaiti authorities:

- What steps has the government taken or is considering to amend the personal status laws to ensure that women have equal rights to enter marriage, during marriage, in obtaining a divorce and with regard to guardianship and other orders concerning children after divorce?
- Provide statistics on the number of child marriages taking place in Kuwait.

¹⁰ Personal Status Law no. 51/1984, article 346 states "(a) This law applies to whoever is subject to the school of Imam Malik, and those who are not are subject to the regulations specific to them. (b) If parties in a dispute are non-Muslim and differ in religion or sect the provisions of this law apply to them." In practice, this has meant that Shi'a Muslims cases are heard by a separate section of the personal status division of the courts.

¹¹ Personal Status Law no. 51/1984, art. 21.

¹² Personal Status Law no. 51/1984, art. 89.

¹³ Personal Status Law no.51/1984, art. 191.

- What steps has the government taken to increase the minimum age of marriage to 18 in line with CEDAW and CRC recommendations?

3. Domestic violence (ICESCR articles 3 and 10)

The Committee on Economic, Social and Cultural Rights has noted that gender-based violence is a form of discrimination that inhibits the ability to enjoy rights and freedoms, including economic, social and cultural rights, on a basis of equality” and called on states parties to “take appropriate measures to eliminate violence against men and women and act with due diligence to prevent, investigate, mediate, punish and redress acts of violence against them by private actors.”

However, Kuwait still has no legislation on domestic violence. The Kuwaiti state report provides that the Penal Code’s general provisions on assault, rape and sexual harassment are enough to warrant criminalization of domestic violence. While physical assault can be prosecuted under general assault provisions in the penal code, but there is no publicly available data on the number of successful prosecutions. Marital rape is also not explicitly criminalized, and it is not known if any marital rape has ever been prosecuted under the provision of rape. Lack of domestic violence legislation means that broader elements of domestic violence such as psychological and economic violence are not criminalized, nor an understanding that domestic violence can be multiple acts and can constitute various forms of violence including physical, psychological, economic and sexual violence. Domestic violence legislation can help to set out obligations of the authorities to prevent violence, assist survivors, and prosecute abusers.

Kuwait’s penal code provides reduced sentences for men who commit acts of violence against women if they find them in the act of extra-marital sex. According to article 153 of the Penal Code, a man who finds his wife or her partner in an adulterous act, or his daughter, sister, or mother in the act of *zina* (extramarital sex), and kills them or their partner is sentenced to a maximum of three years in prison or a fine of 3,000 Kuwaiti dinars (approximately US\$9,820).¹⁴ Article 182 also allows an abductor who uses force, threat or deception with the intention to kill, harm, rape, prostitute or extort the victim to avoid punishment if he marries the victim with the permission of her guardian and the victim’s guardian agrees that the abductor not be punished.

The Family Court Act issued in 2015 established the creation of a family court in every governorate in Kuwait, and the creation of centers within the family courts to settle family

¹⁴ Penal Code, Law no. 16 of 1960, available at <http://gulfmigration.eu/law-no-16-of-1960-promulgating-the-penal-code-2/> (accessed October 9, 2017).

disputes and protect individuals from violence by family members.¹⁵ The Kuwaiti government reported that the Ministry of Justice's **2016 decree which** regulates such centers, allows for family members to request a dispute resolution at the center but not where it involves cases **relating to "personal status or cases of emergency."**¹⁶ It is not clear if the process could apply in cases of violence against women **that are not deemed an "emergency."** The UN Women Handbook on Legislation on Violence against Women calls for mediation to be prohibited in all cases of violence against women, at all stages of legal proceedings. It provides that when **mediation is offered as an alternative, "it removes cases from judicial scrutiny, presumes that both parties have equal bargaining power, reflects an assumption that both parties are equally at fault for violence, and reduces offender accountability."**¹⁷

The Committee on Economic, Social and Cultural Rights has called on **states parties "to** provide victims of domestic violence, who are primarily female, with access to safe housing, remedies and redress for **physical, mental and emotional damage."**¹⁸ However, there are currently no state shelters for domestic violence survivors.

Suggested questions for the Committee to request from Kuwaiti authorities:

- Has Kuwait taken any steps to amend the penal code to repeal provisions that allow for stopping of prosecutions or reduction of sentences in cases of violence against women such as articles 153 and 1832?
- Is Kuwait undertaking any national studies or compiling statistics on violence against women including on domestic violence?
- Please provide data on the number of prosecutions and convictions made in relation to domestic violence including a breakdown of the crimes. Have the authorities ever prosecuted or convicted anyone for marital rape under the existing penal code on rape?
- Is Kuwait considering any draft legislation on violence against women, including to prevent domestic violence, prosecute abusers, and assist survivors? If so, what steps **have the authorities taken to consult with women's rights** organizations and domestic violence survivors on such a bill?

¹⁵ Law no. 12 in 2015 promulgating the Family Court Act, art. 8, available at <http://www.gcc-legal.org/LawAsPDF.aspx?opt&country=1&LawID=4152> (accessed October 9, 2017).

¹⁶ See reference to Ministerial Decree No. 115 (2016) in "List of issues and questions in relation to the fifth periodic report of Kuwait: Replies of Kuwait," U.N. Doc. CEDAW/C/KWT/Q/5/Add.1, July 6, 2017, para. 8.

¹⁷ UN Women, "Handbook on Legislation on Violence against Women," 2012, http://www2.unwomen.org/-/media/headquarters/attachments/sections/library/publications/2012/12/unw_legislation-handbook%20pdf.pdf?v=1&d=20141013T121502 (accessed October 9, 2017). section 3.9.1.

¹⁸ CESCR, General Comment No.16 (2005), Substantive issues arising in the Implementation of the International Covenant on Economic, Social, and Cultural rights: The equal right of men and women to the enjoyment of all economic, social, and cultural rights (art. 3 of the International Covenant on Economic, Social, and Cultural Rights), UN Doc E/C.12/2005/4 (August 11, 2005), para. 27.

- What steps has the Kuwait taken to protect victims of domestic violence? Has Kuwait established or funded any centers for victims of domestic violence, including temporary emergency shelters, and legal assistance to domestic violence survivors?

4. Migrant domestic workers (ICESCR articles 2, 3 and 7)

Migrant domestic workers in Kuwait constitute nearly a third of the country's entire workforce. A 2010 Human Rights Watch report documented abuses against domestic workers, including non-payment of wages, long working hours with no rest days, physical and sexual assault, and no clear channels for redress.¹⁹

In 2015, the National Assembly passed a law that gave domestic workers the right to a weekly day off, 30 days of annual paid leave, a 12-hour working day with rest, and an end-of-service benefit of one month a year at the end of the contract, among other rights.²⁰ In July 2016, the Interior Ministry passed implementing regulations for the law, including clarifying that employers must pay overtime compensation.²¹

The ministry also issued a decree in 2016 that established a minimum wage for domestic workers of 60 Kuwait dinars (approximately US\$200).²² However, this minimum wage does not combat wage discrimination based on nationality. Several countries of origin have set monthly minimum salaries for their domestic workers. The salaries vary by country, ranging between **KD70 (US\$230) to KD120 (\$400)**. **Recruitment agencies, in turn, advertise domestic workers' salaries on the basis of nationality, rather than on experience or skills.** We are not aware of government efforts to remedy such nationality-based wage differences. This practice of setting salaries on the basis of nationality amounts to discrimination. It is unjustified, unequal treatment with no legitimate aim.

While these were important steps forward, protections in the domestic workers' law are still weaker than those in the labor law, which provides for an eight-hour work day with one hour of rest after every five hours of work and detailed provisions for sick leave.²³ The domestic worker law also falls short by failing to set out sanctions against employers who confiscate passports, or fail to provide adequate housing, food, and medical expenses, daily breaks, or weekly rest days. The law furthermore fails to set out enforcement mechanisms, such as labor inspections

¹⁹ See Human Rights Watch, *Walls at Every Turn: Abuses of Migrant Domestic Workers through Kuwait's Sponsorship System*, October 2010, <http://www.hrw.org/reports/2010/10/06/walls-every-turn-0>.

²⁰ Law no. 68 of 2015 on Domestic Labor, passed by Parliament on June 24, 2015, and published in the Official Gazette on July 26, 2015, at <http://www.ilo.org/dyn/natlex/docs/ELECTRONIC/101760/122760/F1581984342/k2.pdf> (accessed October 9, 2017). See also "Kuwait: New Law a Breakthrough for Domestic Workers," Human Rights Watch news release, June 30, 2015, <https://www.hrw.org/news/2015/06/30/kuwait-new-law-breakthrough-domestic-workers>.

²¹ Ministerial Decree no. 2194 of year 2016 regarding the Implementing Regulations of Law no. 68 of 2015 on Domestic Labor, published in the Official Gazette on July 17, 2016.

²² Ministry of Interior, Ministerial Decree no. 2302/2016 regarding implementation procedures of Law no. 68/2015 on Domestic Labor.

²³ Law no.6 of 2010 on Labor in the Private Sector, arts. 64-65 and 69.

of working conditions in households. In addition, while the Domestic Labor Directorate has the authority to resolve disputes between domestic workers and employers, it does not appear to require employer participation in dispute resolution processes. The department can sanction a recruitment agency, but not an employer, for failing to contact the department after being summoned.²⁴ In 2018, Kuwaiti authorities transferred the Domestic Labor Directorate from the Interior Ministry to the Manpower Ministry.²⁵

Moreover, the realization of the rights under the new law and regulations remains limited because the *kafala* (visa-sponsorship) system is still intact. This is despite the CESCR's recommendation to Kuwait to "take the necessary legislative measures to abolish the sponsorship system altogether."²⁶

Under the *kafala* system, migrant domestic workers' legal status is still tied to their employers, who act as their visa sponsors. Workers cannot transfer to another employer without their current employer's consent. If they do, they are considered to have "absconded," and can be arbitrarily detained, fined, or sentenced to imprisonment. Human Rights Watch has documented how this policy traps many domestic workers in abusive situations, and can end up punishing victims of employer abuse.²⁷

The 2015 domestic worker law reinforces the *kafala* system. It requires that the Ministry of Interior deport an "absconding" worker, with their travel expenses paid for by either the employer currently "harboring" the worker or the recruitment agency.²⁸

On March 31, 2016, the Public Authority for Manpower published Administrative Decision No. 378/2016, which allows migrant workers in the private sector to transfer their sponsorship to a new employer without their current employer's consent after three years of work, provided they give 90-day notice to their current employers.²⁹ This incremental reform does not apply to domestic workers and still means that migrant workers cannot change employers within the first three years of work without their initial employer's consent.

Suggested questions for the Committee to request from Kuwaiti authorities:

- Have the Kuwaiti authorities made any further reforms or considering further reforms to ensure that the 2015 domestic worker law and its implementing regulations are in line with the ILO Domestic Workers Convention? For instance, ensuring that domestic workers have equal rights to other workers under the labor law; enforcement

²⁴ Law no. 68 of 2015 on Domestic Labor, art.24.

²⁵ "Domestic helpers' department moved to manpower authority," *Kuwait Times*, October 14, 2018, <http://news.kuwaittimes.net/website/domestic-helpers-department-moved-to-manpower-authority/> (accessed January 4, 2019).

²⁶ Committee on Economic, Social and Cultural Rights, Concluding observations on the second periodic report of Kuwait, UN Doc. E/C.12/KWT/CO/2, December 19, 2013, para. 17.

²⁷ For a full account of the *kafala* system see Human Rights Watch, *Walls at Every Turn*, pp.31-38.

²⁸ Law no. 68 of 2015 on Domestic Labor, art. 51.

²⁹ "(Manpower): Transfer (work permit) after three years without return to employer," Kuwait News Agency (KUNA), March 31, 2016, <http://www.kuna.net.kw/ArticleDetails.aspx?id=2495513&language=ar> (accessed October 9, 2017).

mechanisms such as requiring employer participation in dispute resolution processes; and penalties for employers who confiscate passports or fail to provide adequate working conditions.

- Provide data on the following:
 - How many complaints by domestic workers did the authorities receive between 2016 and 2018 regarding labor disputes against employers and agents? Please provide a breakdown of data on whether the case related to the employer or agent, the nature of the complaints, the outcomes, damages awarded, and enforcement of damage awards.
 - How many cases did the authorities investigate and prosecute in relation to abuses against domestic workers that amounted to crimes such as physical abuse, sexual abuse, forced labor or trafficking?
 - Has the government set out sanctions for passport confiscation? How many employers or agents have been prosecuted for confiscating passports between 2016-2018?
 - Does the government prevent abusive employers from hiring new domestic workers? If so, how many such employers have been sanctioned between 2016-2018?
- Have the Kuwaiti authorities taken any steps or is considering taking steps to abolish the *kafala* system in order to allow all migrant workers, including domestic workers, to leave or change employers at will, and without losing their legal status?

5. Protection of Education During Armed Conflict (ICESCR article 13)

The Safe Schools Declaration is an inter-governmental political commitment that provides countries the opportunity to express political support for the protection of students, teachers, and schools during times of armed conflict; the importance of the continuation of education during armed conflict; and the implementation of the *Guidelines for Protecting Schools and Universities from Military Use during Armed Conflict*.

Kuwait is a member of the Saudi-led coalition participating in the armed conflict in Yemen. The coalition has conducted thousands of airstrikes in Yemen since March 2015, including scores that appear to violate the laws of war, some of which may be war crimes. Human Rights Watch has documented that the Saudi-led coalition has carried out about 90 apparently unlawful attacks, including attacks on schools, and attacks that killed and maimed children. While Saudi Arabia leads the coalition, available information shows that other countries have participated in the military campaign to varying degrees. In March 2015, the UAE state news agency reported that Kuwait had deployed 15 aircraft to take part in coalition operations. Coalition members, including Kuwait, have provided no or insufficient information about the

role their forces are playing in alleged unlawful attacks and what steps, if any, they have taken to investigate alleged serious violations by their armed forces and persons within their jurisdiction, to appropriately prosecute military personnel responsible for war crimes, and to provide reparation to victims of unlawful attacks.³⁰

In addition, Kuwait, in its current role as a member of the UN Security Council, has adopted **Resolution 2427 (2018)** which “expresses deep concern at the military use of schools in contravention of applicable international law” and “encourages Member States to take concrete measures to deter the use of schools by armed forces and non-State armed groups in contravention of applicable international law.”

Human Rights Watch believes that an example of such a concrete measure to deter the military use of schools would be for Kuwait to endorse and implement the Safe Schools Declaration. As of December 2018, 82 countries—representing more than one third of all UN member states—have already endorsed the Safe Schools Declaration.

Suggested questions for the Committee to request from Kuwaiti authorities:

- Does Kuwait have any laws, policy, or military doctrine protecting schools from military use?
- Has Kuwait investigated any alleged serious violations by their armed forces and persons within their jurisdiction, to appropriately prosecute military personnel responsible for war crimes, and to provide reparation to victims of unlawful attacks?
- What steps Kuwait has taken in line with Security Council Resolutions 2427 (2018), which encourage member states to take concrete measures to deter the military use of schools?

³⁰ “Hiding Behind the Coalition: Failure to Credibly Investigate and Provide Redress for Unlawful Attacks in Yemen,” August 24, 2018, <https://www.hrw.org/report/2018/08/24/hiding-behind-coalition/failure-credibly-investigate-and-provide-redress-unlawful#>