



الجمعية الكويتية لحقوق الإنسان
KUWAIT SOCIETY FOR HUMAN RIGHTS

Report on

Kuwait's Commitment to the International Covenant on Economic, Social and Cultural Rights

Submitted to the Committee on
Economic, Social and Cultural Rights



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Introduction

The Kuwaiti association for Human Rights works to spread a culture of respect for human rights and to promote awareness of international human rights conventions and to defend all individuals who are subjected to human rights violations. In the framework the organization's keenness to protect and promote these rights, the association presents in this report the most important observations and recommendations on the Kuwait's commitment to the implementation of the International Covenant on Economic, Social and Cultural Rights through the topics presented in this report. The association also calls for a number of reforms in line with the Covenant. This report has been prepared according to the following criteria:

-  **Concluding observations on Kuwait's second periodic report.**
-  **International Covenant on Economic, Social and Cultural Rights.**
-  **Third periodic report submitted by the State of Kuwait under articles 16 and 17 of the Covenant on 18 December 2018.**
-  **Recommendations of workshops carried out by the Association.**
-  **Complaints received by the association.**
-  **Violations that are monitored by the monitoring teams of the association.**
-  **Studies and research conducted by the Society.**

In this report, we will attempt to address some of the topics related to economic, social and cultural rights ,they are as follow:

1

Enforcement of the International Covenant on Economic, Social and Cultural Rights and the compatibility of national legislation with the Covenant

When looking at the enforcement of the Covenant through the judiciary and the inclusion of its articles in the context of the Kuwaiti courts, we find that it is too scarcely as opposed to what must be the relevant and effective inclusion of the enforcement of the Covenant through judicial decisions. But mentioning the state's report on the existence of rule 3332 \ 2014 Administrative 7 issued in 2014⁽¹⁾ without mentioning any recent ruling, indicates that there is nothing new about the enforcement of the International Covenant through the judiciary. The rule was issued in 2014 without the existence of a new ruling in the following years is evidence of the years recurrence without including the International Covenant in the terms of the new provisions.

The national legal system has been and continues to be void of national legislation that defines, criminalizes and penalizes acts of discrimination, although the Kuwaiti Constitution prohibits discrimination based on origin, religion, sex or language⁽²⁾. However, the laws that are the tools of enforcing the principles of the Constitution completely disappear in this context, and the Kuwaiti Penal Code contains no provision that punishes discrimination based on the criteria set by the Constitution "origin - religion - sex - language" a deterrent punishment to deter this inhuman behavior. These standards are incomplete as the Universal Declaration of Human Rights has added color and wealth to it, and this has not been addressed by the Constitution or its implementing legislation, and the state's claim in its report that there is discrimination in Kuwaiti society according to against color and wealth⁽³⁾ does not change that, Kuwaiti society has changed completely and it has people, culture and minorities that reflects different ideologies. With the passing of 57 years on the national legal system, it became clear that the lack of mentioning of color and wealth in the legislative laws has affected the ideology of modern Kuwaiti society, which is made up of multiple cultures, which become more intense in the absence of legal provisions criminalizing and punishing the act. What makes it more complicated is the absence of internal legal legislation in all its branches from a definition that defines what constitutes racial discrimination in order to avoid its use, whether in the treatment, terms or words contained in the official books of the State. As there is a definition to racial discrimination in the International Convention on the Elimination of Racial Discrimination but it was not adopted.

(1) The Report Submitted by the State of Kuwait under articles 16 and 17 of the Covenant - paragraph page 14

(2) Constitution of the State of Kuwait - Article 29.

(3) Explanatory Note 'Constitution of the State of Kuwait - Article 29.



Recommendations

1

Urging the Kuwaiti government to activate the International Covenant on Economic, Social and Cultural Rights in the courts and administrative procedures in government facilities.

2

Training law enforcement officers , judges, lawyers and others who work in the field of law enforcement to ensure that the articles of the Covenant are enforced in the national system.

3

Urging the Government to harmonize national legislation in conformity with the International Covenant on Economic, Social and Cultural Rights.

4

Encouraging the inclusion of a clear and specific definition of racial discrimination in national legislation.

2

Women and discriminatory laws

Existing discriminatory laws continue to diminish women's right to be equal as men and prevent them from exercising their rights as men do without justification except being women. In fact, none of the laws that discriminate against women have been repealed, they are as follow:

Nationality Law :

Distinguishes between men and women on the basis of sex. it states that "Whoever is born in Kuwait or abroad from Kuwaiti father is Kuwaiti." Excluding women from their right to pass their nationality to their children unlike men who can pass their nationality to their wives. women cannot pass her full inheritance to her sons in case they are non-Kuwaitis, especially immovable property, since according to the law, foreigners can not own the property even if they are children of Kuwaiti woman and so are the salaries of children of Kuwaiti woman if they work in government jobs is not equal to Kuwaiti salaries which is discrimination against Kuwaiti women.

The Housing Welfare Act :

it includes discriminatory provisions against Kuwaiti women who are divorced, widows or married to non-Kuwaiti. Instead of receiving state property, they receive adequate housing at a reduced rent. The divorced Kuwaiti woman acquires a loan of 70,000, which reveals that discrimination does not stop on sex, but also it reaches their social status.

Involvement of Women in the Judiciary :

Since the admission of women to the Public Prosecution Office in 2014, 22 female students from Kuwait University have joined the Faculty of Law to enter the field of prosecution and then to the judiciary. The judicial arena has not accepted another batch of women until recently in 2018. A decision was issued by the Supreme Judicial Council to accept a second batch of 24 out of 93 graduates of the Faculty of Law and Sharia to work as legal researchers in the Ministry of Justice ⁽⁴⁾. The direct discrimination lies in subordinating women who enter the public prosecutor's office to a number of different tests related to the work, different from the tests that both sexes are subjected to at the beginning, without subjecting men to any of these tests, although they work in the same field and in the same job specifically.

The laws of eligibility :

It exists in different articles in the branches of the law, but they all make women deficient regarding her competence, it exists in the Penal Code and in the law of personal status. Thus, her father and her brother are her guardians and she does not have guardianship over herself. This restricts her right to be treated as a full-fledged person and directly affects her freedom of movement. as for example she is not entitled to move anywhere without the consent of her guardian or else she has committed escape crime.

Therefore, the guardian has the right to register an escape case if the woman leaves the house to on her own .

(4) The Report Submitted by the State of Kuwait under articles 16 and 17 of the Covenant - paragraph 1 - page 23

lack of women presence in leadership positions. Political and leadership positions are predominately filled by men. The state does not adopt any special measures or quota system to ensure that women are appointed to leadership positions so that they have equal job opportunities as men.

Labor Laws :

Kuwaiti women working in the government sector are entitled to a two-month maternity leave followed by maternity leave for four months at half-wage, while female expatriate women working in the government sector are entitled to only one-month maternity leave ⁽⁵⁾.

Discrimination in education :

From a stereotypical perspective, the curriculum always presents a traditional image of women as housewives, and the transfer of female student to evening education, when she is married during the school years without converting the male student if he is married too. Moreover, in the university education, the required academic grade of women is higher than what is required of males. This is a direct discrimination, and government education is still based on the principle of gender segregation.

- No legislative, administrative or other measures have been taken to combat stereotypes that reduce women or symbolize their subordination to men.

(5) Employment in the public sector is governed by Law No. 15 of 1979 regarding the civil service of citizens and non-nationals. However, the appointment of non-Kuwaiti nationals is under contracts according to Circular No. (6) of 1979 on the rules and provisions of temporary appointment. These contracts reduce the rights granted by the Civil Service Law. The non-Kuwaiti employee's maternity leave is one month while the Kuwaiti employee or married to a Kuwaiti woman is entitled to two months' maternity leave and is entitled to a maternity leave of four months with half the salary.



Recommendations

1

Urging the Government to take the necessary measures to repeal or amend discriminatory laws against women.

2

Adoption of quota system or special procedures to ensure women's access to political positions and leadership to ensure equal and fair opportunities between men and women.

3

to make more efforts to address stereotyping patterns that underestimate women and make them subordinate to men.

4

Urging the Government to include in national legislation a definition and prohibition of discrimination against women in accordance with article 1 of the Convention, since the Kuwaiti Constitution provides for equality without discrimination on the basis of sex, color, language or religion in accordance with article 29.

3

Education :

- Although Article 7 of the Constitution stipulates compulsory and free education , it is not considered to be free for resident students and is not always available for stateless people, In many cases stateless people faced , the right to education was linked to some civil dealings such as renewing the security card. In the case of non-renewing the security card , the student is not allowed to attend public schools for education. Moreover, Private schools close their doors on the basis that he does not have a valid security card. The list of the 10 exceptions mentioned by the State in its report, which includes admissions of non-Kuwaiti students in public schools, does not deny the fact that discrimination in giving free education to Kuwaitis alone is an existing discrimination as for its obligation. And that this list reflects individual cases that deserve free education in exceptional circumstances. The vast majority of non-Kuwaiti students are still not allowed to enter public schools.
- As for the charitable fund mentioned by the State in its report, which is supposed to support financially defaulters, this fund has failed to cover all cases that have not been able to obtain education due to the high prices and fees of registration in private schools. Which denies the fact that education is free and available for all.
- As for the state's claim of providing university education for all, the opposing argument is 1. The state considers that the principle is that university education for Kuwaitis only. The exception is the acceptance of the sons and husbands of the faculty members and the supporting body and the sons and the spouses of the diplomas through grants. 2. The number 231 does not reflect the true numbers of students arriving at universities demanding their right for education. In addition the state did not provide the source with the actual numbers of non-Kuwaitis applying for universities and the actual number of those who were accepted.
- There is no special curriculum in any of the subjects of any of the educational years prior to the university years related to human rights, as for the subject "Constitution" that is given to students as a subject that deals with human rights subjects is in fact a constitutional subject and is not a subject that deals with the concepts of human rights. Thus , what students learn from this subject even if it discusses human rights issues will be general information, non-specialized, non-systematic, and from a national constitutional perspective, not a universal human rights perspective.



Recommendations

1

Urging the Government to apply compulsory education to non-Kuwaiti children who are resident and to ensure equal access to higher education for all, without regard to their nationality.

2

Ensure that stateless people in Kuwaiti universities are accepted at fair rates for those who deserve entry on equal basis.

3

Urging the Government to ensure that a human rights subject is included in the curricula at all levels of education.

4

The right to participate in cultural life:

- The Department of Supervision of Publications of the Ministry of Information continues its oversight role to prevent books which, in its view, violate the law without referring the case to the judiciary, which has a broad discretion to look into the matter and investigate its truth. Evaluator of literary production does not have the professional expertise to evaluate the literary work, although he has the university qualification to take this post, but However, critique of literary work is a job that requires professional experience from the field of work that comes from the exercise of the work required to review. , And this is due to the nature of the literary work that requires years of desertion in literary criticism, and the situation is further aggravated by the fact that the complaint submitted by the author of the literary writer is considered before a committee that follows the same administration. This does not guarantee the neutrality and independence of the decision issued against this author.
- As for the term “public morality” and “morals”, it is still a case for readers who wish to understand what is general morality. It may include some terms that are criminalized, and by returning to morality, values and principles that determine what is a criminalized and what is not we find it is also not specific as what is considered immoral in a group is not the same in another group, but more than that, the principles and values in some provinces and regions are not as such in other area, so from which perspective does the censorship looks?
- the states claim that it recognizes the culture of minorities and providing diverse schools with different cultures. This statement does not reflect the bureaucracy and administrative complications that the licensee faces if he wishes to open one of these schools that have different nature.

Recommendations

1

Urging the Government to ensure that literary works are not unduly restricted in the context of the right to participate in cultural life and the exercise of rights, such as the right to freedom of thought, conscience, religion and freedom of opinion and expression. In the absence of specific criteria as to what should be understood as ethics and public morality, Courts should issue censorship decisions to avoid arbitrary decisions.

2

Establish a legislative framework that recognizes that minorities have the right freely to choose their cultural diversity, affiliation or non-belonging to the local community, and to respect their right to maintain, promote and develop their culture, traditions, customs, religions and languages.

5

stateless persons:

- The situation has become more complicated than before. In the past, the government has stated that the number of persons entitled to citizenship does not exceed 34,000 from the stateless persons. The third report, however, submitted to the Committee on Economic, Social and Cultural Rights (CESCR) confirmed that there was a difference between stateless persons and illegal residents and that the difference between them was significant. Thus, the state included everyone. The state added that they had entered the country illegally and then concealed their personal documents⁽⁶⁾, reflecting the lack of seriousness of the Kuwaiti Government to resolve the stateless persons case and give them all the right, including economic, social and cultural rights.
- The central agency, which is empowered by the government to deal with the situation of the stateless people, has become a tool of pressure through its arbitrary procedures and pressure on the vast majority not to renew the security cards they hold, except after signing a declaration that they follow the nationality of other countries. The Ministry of the Interior warned a few days ago the demonstrations or sit-ins without the prior permission of the competent authority. The warning came as a comment on what was circulated on the social networking sites. As some people called for demonstrations and sit-ins in the area of Taima in 11/01/2019⁽⁷⁾. A number of stateless activists on January 13, 2019, staged sit-ins in front of the Central Agency building demanding that they be referred to the judiciary if they have falsified or concealed their nationalities, as the Central agency claimed. They held banners that say “send us to the Public Prosecution if you have documents proving that we have the nationality of other countries.”⁽⁸⁾

Recommendations

1

Urging the Kuwaiti government to take urgent measures to improve the humanitarian and legal status of stateless people as a prelude to giving them all their rights.

2

The government should adopt a plan of action with gradual stages and clear steps to solve the stateless issue in general.

3

Accelerate the process of naturalization for those who meet the legal requirements.

4

Forming committees of legal experts and judges in the citizenship review process to ensure that decisions are taken in line with international laws and standards, and to ensure the right of individuals to obtain information on the reasons for decision-making and the right to appeal.

5

Urging the State of Kuwait to accede to the 1954 Convention relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness.

(6) The Report Submitted by the State of Kuwait under articles 16 and 17 of the Covenant - Paragraph H Subparagraph 40 - Page 20

(7) Kuwait - Demonstrations - Bedoons
arabic.sputniknews.com/arab_world/201901101038144180

(8) www.instagram.com/p/BskiM7bAMWe/

6 Migrant workers in the national sector and oil:

- The modern performance of kafala system is inherently filled with opportunities for employers to violate the human rights of migrant workers, as evidenced by grievances expressed by migrant workers such as restrictions on freedom of movement, confiscation of passports, late payment or non-payment of wages, long hours of work, ill-treatment and exploitation all of which could lead to situations of forced labor and trafficking in human beings due to the imbalance in the working relationship between the worker and the employer.

The Hotline for Labor Consultations and Complaints at the Kuwait association for Human Rights received 4758 calls during 2018, which varied between inquiries about labor law and labor complaints such as financial claims, passport recovery complaints and complaints of cancellation and transfer from one employer to another⁽⁹⁾.

In addition to the narrowing of the administrative procedures and the increase in fees by the Kuwaiti government in order to adjust the population structure.

- The Association expresses its concern about the Kuwait's reservation to article 8, paragraph 1 (D), of the Covenant on the right to strike and not explicitly stating it in the Labor Code, although article 132 of the Labor Code in the national sector implicitly mentioned it, it is understood that the legislator, while drafting this article, had in mind that workers should cease all or part of the strike at the stage of official negotiations conducted by the Ministry of Social Affairs and Labor, in addition the article confirmed the legitimacy of the act since it was not explicitly prohibited by the law. There have been a number of strikes, the largest of which is a strike by oil workers in Kuwait in protest of the government's plans to reduce their salaries in 2016. In November of 2018, a group of workers following an Italian company carrying out a contract in el matalaa city and they were 300 workers carried out a sit-in due to a delay in the payment of their wages⁽¹⁰⁾.
- The right to form labor unions is restricted to Kuwaiti workers only according to the labor law in the national sector, although the labor force in some industries is mainly based on migrant workers.

(9) The hotline statistics of a project to support the protection of migrant workers carried out by the Kuwaiti Society for Human Rights in cooperation with the Swiss Agency for Development and Cooperation.

(10) www.alqabas.com/608511



Recommendations

1

demanding the government to take responsibility and abolishing the Kafala system and to work on the development of an alternative system that protects the rights of everyone.

2

Applying employment procedures effectively to protect migrant workers from exploitation.

3

Intensify visits by labor inspectors to monitor the working conditions of local companies and to ensure that penalties for violations of labor rights are effectively implemented.

4

Urging the State of Kuwait to withdraw its reservations to article 8, paragraph 1 (D), of the International Covenant on Economic, Social and Cultural Rights and to establish adequate safeguards on the exercise of the right to strike.

5

Urging the State of Kuwait to accede to the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.

6

Urging the Kuwaiti government to expand the right to form and join labor unions by non-citizens.

7

Migrant domestic workers:

- Law No. 68 of 2015 on domestic labor was adopted by the State of Kuwait. The law is intended to meet the lack of legislations related to the regulation of domestic workers. The Labor Code in the national sector No. 6 of 2010 did not apply to them. The law is an important and pioneering step because, for the first time, domestic workers are granted labor rights that can be implemented, But can it be said that the law has proved effective in providing appropriate protection through the eradication of coercive practices against domestic workers, and has it been able to influence employers and convince them that these workers have the right to a weekly rest day like other workers?
- Migrant domestic workers in Kuwait suffer from several violations, most notably long working hours without rest and long periods of work without additional pay, delays in the payment of monthly wages, denial of annual leave or weekly rest. In addition to physical, psychological and sexual abuse. Many migrant domestic workers are victims of slavery when taking loans as part of their employment conditions from recruitment agencies. In most cases, victims are exploited by cancelling their contracts, reducing wages or not paying them.
- By the end of 2017, the Department of Domestic Labor announced that it had received 2068 complaints⁽¹¹⁾, including 1624 complaints from employers and 81 complaints from recruitment offices. Domestic workers' complaints were limited to 363 complaints, one complaint per day. In accordance with the law, disputes are settled by the domestic workers management. In the event of a non-settlement, the dispute is referred to the competent court. The number of cases referred to the court from all the above categories reached 304 in 2017. The number of violating offices reached 86, And 7 offices were temporarily suspended for a period of 3 months to 6 months.
- From the beginning of the year 2018 until October, the Department of Domestic Employment received 2056 complaints, including 1297 complaints from employers, 47 complaints from the recruitment offices and 447 complaints referred by the General Authority for Manpower to the Department of Domestic Labor which it received during the period in which decision of the Council of Ministers No. 614/2018 was issued, which included the transfer of competences in Law 68/155 on domestic labor from the Ministry of Interior to the Ministry of Social Affairs and Labor and the General Authority for Manpower, while the number of complaints submitted by domestic workers was only 265 complaints. The number of complaints referred to the Court 372 . And the remainder of 1684 were resolved by friendly settlement through the Department of Domestic Workers⁽¹²⁾. Many domestic workers can not file complaints against employers for reasons such as fear of filing complaints with the Ministry of the Interior or inability to leave their homes or their lack

(11) Statistics issued by the Department of Domestic Work at the Ministry of Interior for the year 2017

(12) Statistics issued by the Department of Domestic Employment in the Ministry of Interior from the beginning of the year 2018 to 11 October 2018.

of knowledge of the administration as they do not speak Arabic, since the Kafala system gives the Kafel wide powers to determine the conditions of their work and livelihood.

- According to a study by the Kuwait association for Human Rights that targeted 380 domestic workers (182 males - 198 females) and 173 employers. The study found out that 91.9% of employers had travel documents belonging to their domestic workers, violating the law. It should be noted that the legislator has incorporated in law 68/2015 a provision prohibiting employers from confining any documents or personal identification of a domestic worker such as a passport or civil ID. The domestic workers confirmed this when the same question was addressed to them, they answered that 92.63% of them do not keep the travel documents related to them⁽¹³⁾.

Recommendations

- 1 Abolishing or amending the direct Kafala system, which gives employers the authority over domestic workers and their freedom to move from one employer to another and enable them to terminate employment relations and seek new employment after termination of the first working relation.
- 2 To consider ratifying ILO Convention No. 189 of 2011 on decent work for domestic workers.
- 3 Reconsideration of Law 68/2015 on domestic workers in terms of including deterrent penalties that prevent employers from confiscating passports of domestic workers and punishing the violator, where significant violations were observed through the confiscation of travel documents and banning the workers from taking weekly and annual leave.
- 4 Ensuring the enforcement of law 68/2015, through follow-up, ensuring the implementation of its provisions, and to which extent is the law valid and its effectiveness in reducing disputes and complaints and improving the atmosphere of trust between parties related to the law.
- 5 Urge the Kuwaiti Government to implement its voluntary commitments within the Universal Periodic Review (UPR) mechanism, in particular the accepted recommendations on continuing its efforts to ensure the safety, security and dignity of migrant workers, including domestic workers, and to protect their interests by taking the necessary institutional and legislative measures and ensuring their rights in accordance with international standards. In addition to the prosecution of those who use violence against domestic workers, the adoption of specific standards for the complaints mechanism and the enforcement of the law and the inclusion of penalties for violators of laws.

(13) According to a field study conducted by the Kuwaiti Human Rights Society
<http://kuwaithr.org/library/studies-research.html?download=15:therightsofdomesticworkers>



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