



## **Human Rights Watch Submission to the Committee on the Rights of the Child Review of Kuwait's periodic report for the 87<sup>th</sup> pre-sessional**

We write in advance of the 87<sup>th</sup> pre-session of the Committee on the Rights of the Child and its review of Kuwait's compliance with the Convention on the Rights of the Child. This submission proposes issues and questions that the Committee members may want to raise with the government of Kuwait on the topics of nationality, migrant child abuse in detention, female genital mutilation, child labor, violence against children, child marriage, and protecting students, teachers, and schools during armed conflict.

### **1. Nationality (articles 7 and 8)**

Nationality laws in Kuwait do not allow Kuwaiti women to pass nationality to their children in the same way as men, and as a result can sometimes prevent children from obtaining Kuwaiti citizenship.<sup>1</sup> The Nationality Law of 1959 has been amended more than a dozen times since its passage, with each amendment creating more stringent requirements for those claiming citizenship. Kuwaiti men can automatically confer nationality to their children, whereas women can only confer nationality when the father is unknown or the "kinship to the father has not been legally established."<sup>2</sup>

A 1980 amendment to the Nationality Law removed the section that allowed children of Kuwaiti mothers and stateless fathers the possibility to naturalize.<sup>3</sup> Stateless persons in Kuwait are referred to as part of the Bidun community, which is comprised of more than 106,000 persons who claim Kuwaiti nationality but have remained in legal limbo for more than fifty years.<sup>4</sup> In some cases, couples have divorced in an effort to allow their children to apply for citizenship under of the nationality law. However, these children still faced difficulty obtaining citizenship.<sup>5</sup>

Many Bidun children do not have birth certificates and, lacking required identification, struggle to access even the most basic of state services.<sup>6</sup> Bidun seeking other civil documents including marriage, and death certificates, as well as passports, must apply to the Central System to Resolve Illegal Residents' Status, more commonly known as the Bidun

<sup>1</sup> 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," <http://www.ilo.org/dyn/natlex/docs/ELECTRONIC/83364/91990/F734821664/KWT...>

<sup>2</sup> Kuwait Nationality Law (1959), art 3.

<sup>3</sup> The 1980 amendment to the Kuwait Nationality Law (1959) removed the phrase "أو كان أبوه مجهول الجنسية أو لا جنسية له" from Article 3.

<sup>4</sup> 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>

<sup>5</sup> Open Society Foundations, *Without Citizenship: Statelessness, Discrimination and Repression in Kuwait*, 2011, available at <https://www.opensocietyfoundations.org/sites/default/files/without-citiz...>

<sup>6</sup> Country reports for Human Rights Practices in 2015 – Kuwait; United States Department of State, Bureau of Democracy, Human Rights, and Labor, available at [https://photos.state.gov/libraries/kuwait/231771/PDFs/hrr-2015\\_kuwait.pdf](https://photos.state.gov/libraries/kuwait/231771/PDFs/hrr-2015_kuwait.pdf)

Committee. The Committee is the sole government body through which Bidun can register and seek resolution of their claims for Kuwaiti citizenship.

Bidun children cannot enroll in free government schools and instead attend private schools primarily serving Bidun students, where annual fees run between KD250 and KD450 (US\$860 to \$1550) per child and parents must pay additional costs for textbooks and uniforms. Bidun parents, as well as Kuwaiti human rights activists and Bidun school administrators, told Human Rights Watch that these schools have inferior resources and standards to those found in government schools. Though many Bidun children receive free education through a government-administered charity fund established by the Education Ministry, Human Rights Watch has found that not all Bidun children are covered by the fund.<sup>7</sup>

In instances of divorce, article 110 of the Civil Code and article 209 of the Personal Status Law grant the father legal guardianship of his children regardless of whether a court has ordered that the children live with the mother. Women have told Human Rights Watch that following their divorce, they had to apply to a court to obtain an order for each decision that they wished to make for their child such as registering them at a school. Children can also be removed without their consent from living with their mothers if their mothers re-marry.

*We encourage the Committee to pose the following questions:*

- What steps are being taken to ensure women can pass nationality to their children on an equal basis as men?
- What steps are being taken to ensure that children of Bidun men and women can obtain citizenship?
- What measures are in place to ensure that children born in Kuwait's territory will not be stateless?
- How many children are currently stateless in Kuwait?

*We recommend that the Committee call upon the government to:*

- Legally recognize members of the Bidun community and their children and provide them with a path to obtaining nationality.
- Grant nationality to children born in its territory who would otherwise be stateless.
- Ensure that members of the stateless community and their children are properly accounted for in official population statistics.
- Amend the Nationality Law to ensure that Kuwaiti women can pass nationality on to their children on an equal basis as men.
- Amend article 110 of the Civil Code and article 209 of the Personal Status Law to ensure women have equal rights as men with respect to guardianship and other matters concerning children in divorce.
- Ensure that in instances of divorce and remarriage the best interest of the child is the primary concern when determining which parent a child should live with and which guardianship rights each parent should have.

<sup>7</sup> 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>

## 2. Child Marriage (articles 19 and 34)

According to article 26 of the Personal Status Act of 1984, the minimum legal age for marriage is 15 for girls and 17 for boys. However, under article 24 of the Act, both parties may be married before the minimum age if they have both reached puberty. Data regarding child marriages and the frequency with which they occur are difficult to obtain, as government data is not publicly available and it is unclear whether the government collects this data at all. Recent reports estimate that 6 percent of girls under 18 are married.<sup>8</sup> Some reports suggest that the practice is more prevalent in the Bedouin communities (also known as Bedu, a grouping of people with ancestry to nomadic Arab people) than others.<sup>9</sup> Women's rights activists also reported that women in general marry at a later age but that the practice of child marriage persists mostly in the Bedouin community.<sup>10</sup>

Health research demonstrates that girls who enter marriages at a young age face greater risks in pregnancy, including difficulties during childbirth that can result in death.<sup>11</sup> Child marriage also often ends a girl's education and can expose her to domestic violence and marital rape.<sup>12</sup>

During its 2015 Universal Periodic Review, Kuwait agreed to examine recommendations to raise the minimum age of marriage to 18 for girls and boys but has taken no steps to do so.<sup>13</sup>

Kuwait has yet to become a signatory on the Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages.

*We encourage the Committee to pose the following questions:*

- What steps are the government taking to prevent child marriage, including to raise the minimum age of marriage?
- Are there monitoring systems in place to identify children most vulnerable to child marriage?
- What is the number of child marriages in the country, broken down by gender?
- Do children currently in marriages have access to legal redress including measures to annul the marriage?

*We recommend that the Committee call upon the government to:*

- Raise the minimum age of marriage to 18.

<sup>8</sup> Source: OECD (2019), Gender, Institutions and Development Database, Kuwait, available at <https://www.genderindex.org/wp-content/uploads/files/datasheets/2019/KW.pdf>

<sup>9</sup> Girls Not Brides, "Child Marriage – Kuwait," <https://www.girlsnotbrides.org/child-marriage/kuwait/>; and Save the Children Sweden Report "Child Rights Situation Analysis for the Middle East and North Africa Region," August 2008, Available at [https://www1.essex.ac.uk/armedcon/story\\_id/Child%20Rights%20Situation%20Analysis%20for%20Middle%20East%20and%20North%20Africa%5B1%5D.pdf](https://www1.essex.ac.uk/armedcon/story_id/Child%20Rights%20Situation%20Analysis%20for%20Middle%20East%20and%20North%20Africa%5B1%5D.pdf)

<sup>10</sup> Human Rights Watch interviews in October 2019.

<sup>11</sup> World Health Organization, Fact Sheet: Adolescent Pregnancy, January 2020, Available at <https://www.who.int/news-room/fact-sheets/detail/adolescent-pregnancy>

<sup>12</sup> What are the long term impacts of child marriage? Equality Now, May 17, 2019, Available at [https://www.equalitynow.org/long\\_term\\_impacts\\_child\\_marriage](https://www.equalitynow.org/long_term_impacts_child_marriage)

<sup>13</sup> Girls Not Brides, "Child Marriage – Kuwait," <https://www.girlsnotbrides.org/child-marriage/kuwait/>

- Take measures to combat the prevalence of child marriage by developing national strategies and action plans to eradicate child marriage including mainstreaming prevention strategies into policies and programs that deal with reproductive health, education, and literacy development.

### 3. Female Genital Mutilation (article 19)

Statistics about the prevalence of female genital mutilation (FGM) in Kuwait are difficult to source, and official government data on the practice are not publicly available. A study conducted between 2001 and 2004 found that 38 percent of pregnant Kuwaiti women had undergone FGM as girls, most of them between the ages of 4 and 12.<sup>14</sup> As of this writing, Kuwait had not explicitly criminalized the practice of FGM.

*We encourage the Committee to pose the following questions:*

- What steps are the government taking to eliminate the prevalence of FGM?

*We recommend that the Committee call upon the government to:*

- Pass a law banning FGM for girls and non-consenting adult women.
- Take measures to combat the prevalence of FGM, and the practice of FGM by developing national strategies and action plans to eradicate FGM including mainstreaming prevention strategies into policies and programs that deal with reproductive health, education, and literacy development.

### 4. Violence Against Children (article 19)

Violence against women and girls is still provided with lenient sentencing under the penal code. Under article 153 of the Kuwaiti penal code, a man who finds his mother, wife, sister, or daughter in the act of adultery (*zina*) and kills them is given a reduced sentence of either a small fine or a maximum three-year prison sentence. Article 182 of the Penal Code also provides that an abductor who uses force, threat, or deception with the intention to kill, harm, rape, prostitute, or extort a victim is spared any punishment if he marries the victim with her guardian's permission. Several states in the Middle East have repealed such provisions but Kuwait is one of handful of states in the region that still retains such a provision.<sup>15</sup>

A comprehensive child protection system had not been in place before the Ministry of Health in March 2015 established the Kuwait National Child Protection Program (KNCPP).<sup>16</sup> Kuwait has previously reported to this committee that all Kuwait schools were equipped with a socio-psychological counselling service that could confidentially refer complaints made by teachers, parents, or students to "the highest educational authority" and sanction

<sup>14</sup> Rachana Chibber, Eyad El-saleh & Jihad El harmi (2011) Female circumcision: obstetrical and psychological sequelae continues unabated in the 21st century, *The Journal of Maternal-Fetal & Neonatal Medicine*, 24:6, 833-836, DOI: [10.3109/14767058.2010.531318](https://doi.org/10.3109/14767058.2010.531318)

<sup>15</sup> Only Algeria, Bahrain, Iraq, Kuwait, Libya, and Syria retain such laws after Palestine repealed its provision in March 2018 see <https://www.hrw.org/news/2017/08/24/middle-east-roll-repeal-marry-rape-laws> and <https://www.hrw.org/news/2018/05/10/palestine-marry-your-rape-law-repealed>

<sup>16</sup> Save the Children Sweden Report "Child Rights Situation Analysis for the Middle East and North Africa Region," August 2008, Available at [https://www1.essex.ac.uk/armedcon/story\\_id/Child%20Rights%20Situation%20Analysis%20for%20Middle%20East%20and%20North%20Africa%5B1%5D.pdf](https://www1.essex.ac.uk/armedcon/story_id/Child%20Rights%20Situation%20Analysis%20for%20Middle%20East%20and%20North%20Africa%5B1%5D.pdf)

perpetrators if complaints were verified.<sup>17</sup> Complaints could allegedly be broadcast on radio or television and publicized through the bulletin of the Ministry of Public Education.<sup>18</sup>

In the same report to this Committee, Kuwait alleged that corporal punishment in schools was banned by a statute “dating back to the 1960s.” However, hitting or paddling and other forms of corporal punishment are still legal forms of disciplining children in homes, day care institutions, alternative care settings (including foster homes and emergency care institutions), and penal institutions.<sup>19</sup>

According to a media report, the Ministry of Health in 2019 referred at least 150 cases of child abuse to the Public Prosecutor’s Office.<sup>20</sup> Most of these referrals were against parents for sexual assault or emotional neglect.

*We encourage the Committee to pose the following questions:*

- What monitoring mechanisms are in place to identify children most vulnerable to violence in homes, day care institutions, alternative care settings, and penal institutions?
- What reporting mechanisms are there if a child is subjected to corporal punishment or violence in a care setting?

*We recommend that the Committee call upon the government to:*

- Repeal article 153 and 182 of the Kuwaiti penal code which reduce punishments for perpetrators in relation to crimes of violence against women and girls.
- Ensure an accessible reporting mechanism for children subjected to violence.
- Introduce awareness-raising programs to educate the public on the problems associated with the hitting or paddling of children.
- Offer children experiencing violence in their homes support and alternative care, when appropriate.

## **5. Migrant Children in Detention (article 37)**

Some reports indicate that migrant women in Kuwaiti deportation proceedings are detained with their children.<sup>21</sup> Human Rights Watch has found that “migrant women with children who go through deportation proceedings or who end up in jail also have their children in deportation detention or in jail with them. In some cases their husband is not Kuwaiti and no longer in the country, and in some cases the children were the result of rape or a relationship outside of marriage.”<sup>22</sup> If any of these women give birth while awaiting deportation, they and their newborns are taken to the Women’s Prison.<sup>23</sup>

<sup>17</sup> 2 October 1998, CRC/C/SR.489, Summary record of 489<sup>th</sup> meeting, para. 8

<sup>18</sup> Ibid.

<sup>19</sup> Country Report – Kuwait, Global Initiative to End All Corporal Punishment of Children, February 2020, available at [https://endcorporalpunishment.org/reports-on-every-state-and-territory/kuwait/#\\_ftn8](https://endcorporalpunishment.org/reports-on-every-state-and-territory/kuwait/#_ftn8)

<sup>20</sup> Arab Times Online, “150 Cases of Child Abuse in Probe – Parents Blamed,” 2 October 2019, available <https://www.arabtimesonline.com/news/150-cases-of-child-abuse-in-probe-parents-blamed/>

<sup>21</sup> Global Detention Project, “Immigration Detention in Kuwait,” January 2016, available at <https://www.refworld.org/pdfid/5864ce7b1.pdf>

<sup>22</sup> Priyanka Motaparthy (former Human Rights Watch researcher), Email Correspondence with Michael Flynn (Global Detention Project), 23 March 2015.

<sup>23</sup> Global Detention Project, “Immigration Detention in Kuwait,” January 2016, available at <https://www.refworld.org/pdfid/5864ce7b1.pdf>

*We encourage the Committee to pose the following questions:*

- Are there specific protections for women and children held in migrant detention centers and are these included in the trainings, rules, policies, and manuals for detention center staff?
- Are there identification and reporting mechanisms in place to keep track of children in detention?

*We recommend to the Committee that it call upon the government to:*

- Ensure that no child is ever detained for reasons relating to their own immigration status.
- Where children are held with a parent awaiting detention, consider all alternatives to detention, and ensured decisions are based on the best interest of the child.
- Ensure that any children held in detention centers have access to appropriate food, medical care, education, and communication with their families.

## **6. Child Labor (article 32)**

Article 10 of the constitution obligates the state to “watch over the youth and protect it from exploitation.”<sup>24</sup> The labor law also stipulates that no child can be employed under 14 years of age.<sup>25</sup> However, the United States Department of State reports that Bidun children and children of migrant laborers currently pursue work as domestic laborers, some as young as seven years old.<sup>26</sup> There are also reports of Bidun and migrant children working in the informal sector as street vendors. Efforts to enforce child labor laws in the informal sector are reportedly inconsistent.<sup>27</sup>

*We encourage the Committee to pose the following questions:*

- What steps has the government undertaken to identify children (from Bidun, migrant, and other backgrounds) who are working as domestic laborers?
- What steps has the government taken to monitor the use of child labor in the informal sector?
- What steps has the government taken to enforce laws against child labor?
- How many children under the age of 14 are currently working in Kuwait?

*We recommend to the Committee that it call upon the government to:*

- Publicly report on the impact of its interventions to prevent and respond to child labor (Bidun, migrant, or otherwise) in the informal and other sectors.

## **7. Protection of Education During Armed Conflict (article 28)**

<sup>24</sup> Constitution of Kuwait of 1962, Article 10; English translation available at [constituteproject.org/constitution/Kuwait\\_1992.pdf?lang=en](http://constituteproject.org/constitution/Kuwait_1992.pdf?lang=en)

<sup>25</sup> Law No. 38 of 1964 concerning Labor in the Private Sector, Section 5, arts 17 and 19; available (in Arabic) at <https://www.ilo.org/dyn/natlex/docs/ELECTRONIC/36003/91973/F1629684142/KWT36003%20Arabic.pdf>

<sup>26</sup> Country reports for Human Rights Practices in 2015 – Kuwait; United States Department of State, Bureau of Democracy, Human Rights, and Labor, available at [https://photos.state.gov/libraries/kuwait/231771/PDFs/hrr-2015\\_kuwait.pdf](https://photos.state.gov/libraries/kuwait/231771/PDFs/hrr-2015_kuwait.pdf)

<sup>27</sup> Ibid.

As of May 2020, 103 countries have endorsed the Safe Schools Declaration. Kuwait has yet to endorse this important declaration.<sup>28</sup> 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<sup>29</sup>; 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*.<sup>30</sup>

*We encourage the Committee to pose the following questions:*

- Do Kuwaiti laws, policies, or trainings provide explicit protection for schools and universities from military use during armed conflict?

*We recommend to the Committee that it call upon the government to:*

- Endorse and implement the Safe Schools Declaration to deter the military use of schools, including by bringing the *Guidelines for Protecting Schools and Universities from Military Use during Armed Conflict* into domestic military policy and operational frameworks.

<sup>28</sup> "Safe School Declaration Endorsements," Global Coalition to Protect Education from Attack, accessed June 29, 2019, <http://www.protectingeducation.org/guidelines/support>

<sup>29</sup> Safe Schools Declaration, May 28, 2015, [https://www.regjeringen.no/globalassets/departementene/ud/vedlegg/utvikling/safe\\_schools\\_declaration.pdf](https://www.regjeringen.no/globalassets/departementene/ud/vedlegg/utvikling/safe_schools_declaration.pdf) (accessed November 6, 2018).

<sup>30</sup> Guidelines for Protecting Schools and Universities from Military Use during Armed Conflict, March 18, 2014, [http://protectingeducation.org/sites/default/files/documents/guidelines\\_en.pdf](http://protectingeducation.org/sites/default/files/documents/guidelines_en.pdf) (accessed November 6, 2018).