



**Convention against Torture
and Other Cruel, Inhuman
or Degrading Treatment
or Punishment**

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Held at the Palais Wilson, Geneva, on Wednesday, 11 May 2011, at 10 a.m.

Chairperson: Mr. Grossman

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* The summary record of the second part (closed) of the meeting appears as document CAT/C/SR.986/Add.1.

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The meeting was called to order at 10.05 a.m.

Consideration of reports submitted by States parties under article 19 of the Convention

Second periodic report of Kuwait (CAT/C/KWT/2)

1. *At the invitation of the Chairperson, the delegation of Kuwait took places at the Committee table.*
2. **Mr. Razzooqi** (Kuwait) said that his Government had always paid special attention to human development and did everything within its power to ensure respect for, and protection of, human rights. The legal system in Kuwait included numerous regulations and provisions to ensure respect for the obligations deriving from the Convention against Torture. The Convention had been incorporated into the domestic legal order and all authorities were required to abide by it. Articles 31 and 34 of the Constitution prohibited torture. Article 56 of the Criminal Code punished any official or anyone under their command who abused their authority by inflicting on others cruel or degrading treatment or physical suffering, and article 53 criminalized the act of obtaining confessions through torture or duress.
3. His Government had gone beyond merely enacting laws, and had implemented numerous measures to combat torture and abuse of authority. For example, the utmost caution was exercised when recruiting and training police officers, in an effort to ensure that the latter respected and promoted human rights. A training programme for police officers and members of the legal profession had recently been set up in collaboration with the Office of the High Commissioner for Human Rights. A department had been established within the Ministry of the Interior to receive and handle complaints concerning Ministry officials. Government officials regularly received guidelines reminding them of the standards of conduct to be maintained in the exercise of their functions.
4. Legislative provisions governed the treatment of detainees, and there were mechanisms in place to monitor the implementation of those provisions, including inspections. Under article 18 of the Prisons Act, it was forbidden to detain anyone without a written order from the competent authority. No person could be detained for a period of time exceeding that stipulated by law. It was also forbidden to place detainees in cells without lighting or to discriminate against them on any ground.
5. The High Committee for Human Rights had been established under the aegis of the Ministry of Justice to advise decision makers and to review existing systems and laws. The Committee also conducted human rights training and awareness-raising activities. Furthermore, the legislative authorities monitored State bodies to ensure that legislation was implemented, particularly human rights legislation. The relevant committees of the National Assembly paid regular visits to detention centres and prisons for that purpose.
6. Significant progress had been made in a very short period, as reflected in the laws on persons with disabilities and on protection for older persons, which stipulated that those responsible for the ill-treatment or neglect of such persons would be prosecuted. During the Human Rights Council's universal periodic review (UPR) of Kuwait in May 2008, his Government had made a commitment to set up a national institution to protect human rights and freedoms in accordance with the Paris Principles. It was aware of the obstacles ahead but was determined to fulfil its responsibilities as a member of the international community.
7. **Mr. Bruni** (Country Rapporteur) welcomed the fact that the report had been prepared in accordance with the new procedure, under which the State party replied to a list of issues prepared in advance by the Committee. However, he regretted that the second

periodic report, due on 4 May 2001, had not been submitted until March 2010, thereby delaying the dialogue between the Committee and Kuwait for nine years.

8. With regard to articles 1 and 4 of the Convention, he noted that, according to the report, the State party's criminal legislation did not contain a definition of torture. Given that the Convention had been incorporated into domestic law, he asked if that meant that judges used the definition of torture contained in the Convention as the legal basis for identifying that offence and for making their decisions. He also wished to know what penalties the law provided for in cases of torture, particularly when the acts committed resulted in the permanent disability or death of the victim. It would be useful if the delegation could provide some recent examples of legal proceedings involving torture in Kuwait, specifying their outcome and the penalties imposed. That information was important in order to understand what judicial follow-up there had been on the cases of torture identified by forensic doctors and referred to the investigation authorities.

9. Given that Kuwait was located in a region where armed conflicts had recently occurred, it would be interesting to know what legal, administrative or other measures were in place to give effect to article 2, paragraph 2, of the Convention, which stipulated that no exceptional circumstances whatsoever could be invoked as a justification of torture.

10. With regard to article 3, he said that the State party's replies did not clarify whether or not the competent authorities refrained from deporting any person who would be at risk of torture in the country to which he was to be returned. If in fact they did so, he asked on what legal basis that decision was made, and whether it was on the basis of a specific law or the Convention itself, given that the latter was part of domestic legislation. He also wished to know which authority had the power to assess the risk of torture and on what criteria it based its assessment. According to the report, a person subject to a deportation order could not submit an administrative appeal against the order to the division of the High Court responsible for hearing administrative disputes. He therefore wished to know to which administrative or judicial body a foreigner could appeal against a deportation order.

11. Kuwait had not included statistical data on asylum applications in its report. The delegation might wish to provide the Committee with the requested information regarding the number of applications registered, the number of successful applications, the number of applications accepted because the asylum-seeker had been tortured in his country of origin or might be tortured if returned to it, and the number of deportations, indicating how many of them had involved rejected asylum-seekers and to which country they had been returned. He also wished to know why Kuwait was not a party to the 1951 Convention relating to the Status of Refugees.

12. With regard to article 10, he asked whether police officers, members of the security forces and prison staff received information, training and instructions on the absolute prohibition of torture. If so, he wished to know what their impact had been. In the past five years, had the number of complaints of torture and ill-treatment decreased thanks to that training? He also asked whether the Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Istanbul Protocol) was included in the training given to law enforcement officials and forensic doctors on the prohibition of torture.

13. Regarding article 11, the report did not fully answer the Committee's question whether Kuwait had enacted or was considering enacting legislative measures to reduce the maximum duration of police custody without a written order to less than four days and to eliminate any possibility of extension. Clarification of that point would be welcome. The report also indicated that there was no exceptional provision restricting the rights of suspects or detainees guaranteed in ordinary criminal law. He wished to know whether the rights the Committee had listed (right to a prompt hearing by a judge, to contact family

members and to have access to a lawyer and doctor of one's choice from the moment of arrest) were guaranteed under all circumstances, particularly in the context of the fight against terrorism.

14. The delegation might wish to indicate, as requested in the list of issues, the maximum period of custody for foreigners residing illegally in Kuwait, and whether the detention measures applicable to those persons were subject to review by a competent, impartial and independent judicial body or authority.

15. The Government maintained that the records in the Ministry of Justice did not include any cases in which civilians had been tried before a military court in 1991, or cases of persons who had been in prison or detention in the context of proceedings before military courts. In July 2000, however, the Human Rights Committee had expressed concern about the cases of persons still held under prison sentences handed down by the Martial Law Courts in 1991, and about cases of detainees who had subsequently disappeared. The delegation of Kuwait had assured the Committee that measures would be taken to investigate those disappearances. He wished to know what had been done in that regard.

16. It would be interesting to know the number of women prison guards in Kuwait in order to understand whether women prisoners were supervised by an adequate number of women guards. The Committee also wished to know whether there was a specific detention system or special facilities for women.

17. With regard to article 12, he was surprised to note that a person who arrested and imprisoned another person illegally and tortured that prisoner could only be sentenced to a maximum of 7 years' imprisonment, and asked the delegation for an explanation. He also referred to the case of Mr. Adel Al-Dhaffeery, which had been brought to the attention of the Kuwaiti authorities by the Special Rapporteur on the question of torture. Mr. Al-Dhaffeery had been arrested by the police in May 2008 and stated that he had been tortured during interrogation. He had lodged a complaint with the Prosecutor-General, who had refused to register the complaint or to order a medical examination. After two weeks of detention, he had been released and the medical examination conducted by the Ministry of the Interior had attributed the marks on his body to a car accident and not to torture. According to the NGO Alkarama, that type of practice had become widespread in recent years under the pretext of combating terrorism. The Committee was concerned about regular reports of similar cases, and comments on the matter would be welcome.

18. In connection with article 13 of the Convention, it would be useful to know how many complaints from prisoners were received annually by the Complaints Department at the Ministry of the Interior. As to the implementation of article 14, he noted that the report contained almost no information on compensation. He asked the delegation to provide information on the number of cases in which redress, compensation or rehabilitation measures had been ordered by the courts and on the measures actually taken to assist victims of torture or their families in the past five years. With regard to article 16, he wished to know what measures had been taken to limit to what was strictly necessary the restrictions and restraints applied to patients under obligatory mental health care.

19. Following Kuwait's UPR in May 2010, the State party had indicated that it accepted the recommendation that it should consider withdrawing its many reservations to the human rights treaties to which it was a party, but that it did not accept the recommendation concerning the withdrawal of its reservations to the Convention against Torture. He asked the delegation to clarify that contradiction. In addition, the periodic report stated that Kuwait had not made the declarations under articles 21 and 22 of the Convention (recognizing the competence of the Committee to consider communications from States parties and individuals) because those provisions were "inextricably linked to article 20".

The delegation might wish to explain how a reservation to article 20 would prevent the State party from accepting the procedures provided for under articles 21 and 22.

20. Ms. Belmir (Second Country Rapporteur), who was absent, had asked him to communicate to the delegation on her behalf a number of questions which she had prepared. The delegation was invited to explain the status of the Convention in the domestic legal order and whether it could be directly invoked before the courts. It was also invited to comment on the State party's criteria for granting nationality and on the situation of stateless persons, particularly the Bedoun, who were born in the State party but did not have Kuwaiti nationality and were thus particularly vulnerable to exploitation and ill-treatment.

21. Ms Belmir had expressed concern about the State party's refusal to recognize the existence of religious, ethnic and linguistic minorities within its borders, and about the ill-treatment frequently suffered by members of those groups. Regarding the administration of justices, she noted that the time limit for bringing before a judge a suspect held in custody was not respected in practice, and she asked for clarification in that regard. She expressed concern that the trafficking of female migrants for purposes of sexual exploitation had increased through the use of the kafalah system and the practice of withholding passports, leaving them dependent and very vulnerable.

22. She was surprised at the number of capital offences and noted that a moratorium had not been placed on the death penalty. She was concerned about the non-existence of a justice system for minors and about the fact that corporal punishment of children was tolerated. She would welcome comments from the delegation on all those points.

23. **Ms. Kleopas** welcomed the State party's commitment to establish an independent national human rights institution in accordance with the Paris Principles. With regard to articles 12 and 13 of the Convention, the State party had not, in her view, clearly demonstrated that detainees and persons in police custody had access to an independent complaint mechanism. She would appreciate clarification of that issue.

24. It would seem that corporal punishment for children was still authorized in the home and in establishments providing alternative care. Could the State party renew the commitment it had made before the Human Rights Council to abolish corporal punishment under all circumstances? The Committee was particularly concerned about reports of the imminent adoption of a new Criminal Code that would follow Islamic law and would include penalties such as amputation and flagellation. The delegation was requested to provide information on that question.

25. The Committee was also concerned about the situation of foreign domestic workers, most of whom were women. As well as often suffering from poor working conditions, they were frequently the victims of sexual, physical and psychological violence. The ambassador of a certain country whose nationals were employed as domestic workers in Kuwait had indicated that his country's consular services had received about 950 complaints of rape and sexual harassment in 2009, while the ambassador of another country had indicated that its consular services received those types of complaints on a daily basis. Those figures probably did not illustrate the full extent of the phenomenon, as the women concerned had many reasons not to file a complaint, including fear of reprisals or of prosecution for adultery. Moreover, according to information before the Committee, authorization to reside in the country was linked to a single employer, so that domestic workers who filed a complaint against their employer risked losing their residence permit. At the same time, if an employer filed a complaint against a domestic worker, he or she would be deported, and that decision was not subject to judicial review. The Committee reminded the State party that it was under an obligation to protect vulnerable groups such as foreign domestic workers, and asked the delegation to comment on those points.

26. **Mr. Mariño Menéndez** said he would like clarification of the provisions relating to questioning of detainees and persons in police custody, including on whether the questioning was recorded, whether the person conducting the examination was the same as the one who had made the arrest, and at what point a lawyer could be present. It seemed that article 65 of the Code of Criminal Procedure provided that persons under arrest could have immediate access to a lawyer. However, Kuwaiti legislation also contained some other unusual provisions, including one stating that the lawyer could not speak unless authorized by the investigating judge.

27. He asked if foreigners who were arrested or taken to court had the right to request consular assistance pursuant to article 36 of the Vienna Convention on Consular Relations, and whether foreign prisoners of war still held in the country received such assistance. He also wished to have further information on asylum procedures and on the legal situation of stateless persons, particularly the Bedoun, who numbered in the tens of thousands.

28. **Mr. Gallegos Chiriboga**, welcoming Kuwait's ratification of the Convention on the Rights of Persons with Disabilities, invited the State party to consider expanding its definition of the term "disability" to encompass all types of disabilities, mental as well as physical. He encouraged the State party to consider abolishing the death penalty, which was contrary to the principles of the Convention, and to redouble its efforts to put an end to trafficking in persons and to resolve the problem of ill-treatment suffered by foreign domestic workers and the conditions of slavery in which they sometimes worked.

29. **Mr. Gaye** noted that, according to the information provided in the State party's report, foreigners could be deported under a judicial decision, which was subject to appeal, or under an administrative decision, which was not. He also noted that unauthorized foreigners were placed in deportation centres until their legal status was resolved, which suggested that there was no limit on the length of detention. The delegation might wish to clarify those points. Also, the State party had not really replied to the Committee's request to indicate how it determined that individuals who were the subject of an extradition or deportation order were not at risk of being tortured in the country of return, and in what circumstances the State party used diplomatic assurances. That information was essential for the Committee to be able to consider the State party's fulfilment of its obligations under article 3 of the Convention. The Committee therefore looked forward to receiving further information from the delegation.

30. Article 56 of the Criminal Code punished acts of cruelty against others that were committed by State employees in the exercise of their functions and that were not degrading to the victim and did not cause him or her physical pain. That raised questions about the compatibility of that article with the definition of torture set out in article 1 of the Convention, and thus about the applicable rules in the case of conflict between the Convention and domestic law. It was necessary to know the distinction between category A and category B prisoners and whether it resulted in different treatment, particularly with regard to the right to receive visits and to communicate with loved ones. It would also be useful to know in which cases detainees who did not designate a lawyer themselves had one appointed for them, and whether detainees or persons in police custody who were victims of acts of torture or ill-treatment could lodge complaints directly with the Office of the Prosecutor-General, and if so, what the procedure was for doing so.

31. The use of force did not seem to be subject to the principles of necessity and proportionality when its purpose was to arrest or prevent the escape of a person accused of an offence punishable by death or life imprisonment, at the risk of being fatal to the person concerned. Had such incidents ever occurred? If so, had the officers responsible been prosecuted? Lastly, it would be useful to know what institutional provisions were in place to guarantee the independence of the judiciary, particularly if the irremovability of judges was provided for by law.

32. **Ms. Sveaass** welcomed the fact that there were specialized training programmes in place on how to identify signs of torture, and that medical reports were prepared by qualified professionals each time a case of torture was reported. It would be interesting to know the follow-up action taken on those reports, particularly at the judicial level. Further information on medical services and psychological assistance for victims of torture would be useful, and on measures taken to ensure their right to compensation. Paragraph 39 of the State party's report referred to training on child torture provided for medical staff. A definition of the concept of "child torture" would be useful, particularly to determine whether it included the corporal punishment of children at school or at home, which was not punishable by law.

33. With regard to restrictions and physical restraint applied to patients requiring mental health care, she requested information, including statistics, on the State party's practice with regard to involuntary psychiatric hospitalization. She also wished to know whether persons hospitalized involuntarily had access to complaint mechanisms and whether their living conditions were subject to independent monitoring. The absence of a law classifying domestic violence as a punishable offence was in conflict with the State party's obligation under article 2 of the Convention to take effective legislative measures to prevent acts of torture or ill-treatment from being committed within its territory. Did the State party plan to adopt a law criminalizing domestic violence? It would also be interesting to know whether there were any facilities to shelter and help women victims of violence and, if not, whether any measures were planned to improve the situation. Information on legislative measures taken to combat trafficking in persons would also be useful.

34. The Committee had received worrying allegations that transgender persons had been arbitrarily arrested by the police and subjected to inhuman or degrading treatment during detention. The delegation might wish to comment on those allegations and to indicate whether measures were taken to protect those persons against the violence and prejudice to which they were subjected. The Committee also needed to know whether the State party planned to repeal the provisions classifying homosexuality as an offence.

35. **Mr. Wang Xuexian** said it was his understanding that the Convention, which was legally binding under article 70 of the Constitution, was directly applicable by the courts, but he wished to have confirmation of that fact. He also wished to be certain that in the case of conflict between the Convention and national legislation, the Convention took precedence, particularly with regard to the definition of torture. During the UPR, the State party had made a commitment to enact a law guaranteeing the rights of foreign domestic workers in accordance with international human rights standards. A bill had been drafted in that regard, but it did not completely free foreign domestic workers from the current kafala system. He therefore suggested that the State party should revise the bill to strengthen protection for the rights of those workers and enact it as soon as possible.

36. **Ms. Gaer** said that she regretted the lack of information on the circumstances surrounding the cases of torture that had gone to court and on the decisions handed down; she hoped that the delegation would be able to provide further information in that regard. Persons in pretrial detention had the right to speak in private with their lawyer but must obtain prior written authorization from the Office of the Prosecutor-General or the investigating judge. If recent statistics were available on the subject, it would be interesting to know how many requests for authorization had been submitted by persons in pretrial detention and how many of those had been approved. According to the figures provided in the report, 152 women were currently serving prison sentences following a final ruling and 72 were in pretrial detention. It would be interesting to know whether any of them were detained in relation to acts prohibited by the Convention, where those women were detained, and whether it was ensured that their guards were exclusively female.

37. With regard to the system for self-monitoring by penal institutions, she wished to know how many inspections the Director of Prisons had conducted in the last three years of the reporting period, how many complaints he had received from prisoners, how many of those had been deemed sufficiently serious to require investigation, and what follow-up action had been taken on them. If complaints of sexual violence involving prison staff had been investigated, it would be interesting to know whether they had resulted in any prosecutions and, if so, any convictions. The delegation might wish to comment on the case of Mr. Mohamed Ghazi Al-Maymuni Al-Matiri, who, according to an NGO report, had been tortured with a blowtorch and sodomized during his detention by State security agents and had died while being taken to hospital in January 2011. The case had given rise to fierce controversy that had forced the Minister of the Interior to resign, and some 20 people had been charged following investigations by the prosecution service. It would be interesting to know what the charges had been, whether they had included torture and which laws had been invoked. The delegation might also indicate the current stage of the proceedings and whether any sentences had been handed down.

38. She asked whether corporal punishments such as flagellation and stoning were prohibited under the Criminal Code. The Special Rapporteur on trafficking in persons, especially women and children, had asked to visit Kuwait. Had the State party accepted her request? According to a 2011 report from the United States Department of State, foreigners, especially Asians and persons from Arab countries outside the Gulf region, were particularly exposed to police violence, as were transgender persons. Investigations had reportedly been opened into incidents of that sort, but their conclusions had not been made public. Perhaps the delegation had information to communicate to the Committee in that regard. The new law on employment in the private sector was intended, among other things, to combat illegal employment practices, which was excellent. However, it seemed that it did not apply to the 500,000 or so domestic workers living in the country. It would be interesting to know why that category of workers was excluded from the benefit of the law and how the State party planned to remedy that situation. Persons who employed foreign domestic workers often confiscated their passports to prevent them from fleeing. Apart from a decree prohibiting employers from keeping their employees' passports, which had not yet come into force, what other measures were being taken to combat that practice?

39. **The Chairperson** welcomed the fact that the law required doctors to report to the authorities any cases of ill-treatment of minors that they might become aware of in the performance of their duties. It would be interesting to know how many cases the authorities had been informed of in that way and what measures had subsequently been taken. It was certainly encouraging that the State party had applied a de facto moratorium on executions since 2007, but the articles of the Criminal Code providing for implementation of the death penalty were nevertheless still in force. He wished to know the exact terms defining the cases in which the death penalty was applicable. A copy of the relevant provisions would be useful.

40. In 2009, foreign workers had lodged 1,624 complaints of ill-treatment. It would be interesting to know how many of those had resulted in legal proceedings and whether the victims had been compensated. Detailed examples of cases where victims of torture or ill-treatment had been compensated pursuant to the right to redress provided for in article 14 of the Convention would be particularly useful. An NGO had drawn the Committee's attention to the case of Mr. Alaa Ahmed Al-Sayed Muhamad, who had been arrested by the police in January 2010 for the alleged rape and murder of a young Pakistani girl. He had reportedly confessed under torture but had subsequently been acquitted after the alleged victim had reappeared and testified that she had never met him. It would be interesting to hear the delegation's comments on those allegations.

41. The first part of the dialogue with the State party had come to an end, and the Committee members were looking forward to hearing the delegation's replies to their questions at a later meeting.

42. **Mr. Razzoqi** (Kuwait) thanked the Committee members for their many questions, which his delegation would try to answer at the next meeting devoted to dialogue with the Committee.

The public part of the meeting rose at 12.15 p.m.