



# International Covenant on Civil and Political Rights

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## Human Rights Committee

103rd session

### Summary record of the 2840th meeting

Held at the Palais Wilson, Geneva, on Thursday, 20 October 2011, at 3 p.m.

*Chairperson:* Ms. Majodina

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*The meeting was called to order at 3.00 p.m.*

**Consideration of reports submitted by States parties under article 40 of the Covenant**  
(continued)

*Second periodic report of Kuwait (CCPR/C/KWT/2; CCPR/C/KWT/Q/2 and Add.1)*

1. *At the invitation of the Chairperson, the delegation of Kuwait took places at the Committee table.*
2. **Mr. Razzoqi** (Kuwait) said that his country's Constitution was based on the principles enshrined in Islamic sharia law and the international treaties to which Kuwait was party. Many of the articles of the Constitution echoed those of the Covenant inasmuch as they upheld the principles of equality and non-discrimination. Kuwait had an independent, fair and free judiciary, and great strides had been made towards establishing a national human rights institution in accordance with the Paris Principles.
3. In the field of civil and political rights, Kuwait had taken several measures to protect the right to life, including granting all citizens the right to decent housing, free education and free health care. All forms of forced labour were prohibited. Progress had been made in advancing women's rights, specifically their rights to housing, freedom of movement and equality in employment. Four women had been elected to the National Assembly. Persons with disabilities and their carers received both financial and material assistance, and a new agency had been set up specifically to address their needs. To follow up the recommendations emanating from the universal periodic review process, Kuwait had also created a new institution to tackle the concerns of illegal residents, who were now entitled to free education, health care, food rations and other benefits. Over 5,000 passports, as well as other documents, such as marriage and death certificates, had been issued to illegal residents, and their situation was expected to be resolved within the next five years.
4. **Mr. Alharbi** (Kuwait) said that the Constitution protected human dignity in a number of ways. Unlawful arrest and torture were prohibited under all circumstances. Persons accused of breaking the law were entitled to be brought to justice without unreasonable delay. Deportation orders were executed only in accordance with the law and could be appealed. Foreign workers had the right to decent accommodation, food and health care, and their employers were not allowed to retain their passports. Kuwait actively combated all forms of forced labour and was party to the United Nations Convention against Transnational Organized Crime and its Protocols.
5. With regard to property rights, interest-free loans were provided, through the Savings and Credit Bank of Kuwait, to allow direct property purchases by individuals. New laws had recently made those facilities available to women as well. Property ownership by non-Kuwaitis was governed by Act No. 74/1979.
6. Domestic violence was criminalized under articles 160–164 of the Criminal Code, and women were encouraged to report cases of such violence or sexual assault. A Department of Community Police had been established to follow up such cases and provide victim-support services. The Ministry of the Interior would first attempt to reconcile the parties in a domestic violence case in order to safeguard family ties, in keeping with the values of Islam and the traditions of Kuwaiti society. Article 126 of the Personal Status Act guaranteed a woman the right to separate from her husband should she sustain an injury. The punishments applicable in cases of domestic violence against women also applied to any type of violence against children, whether perpetrated in the home or elsewhere.
7. Article 35 of the Constitution guaranteed freedom of belief, and all persons were free to practise their religion provided that that did not conflict with public policy or morals. Freedom of opinion was also guaranteed by the Constitution. Under the Criminal

Code, fair criticism of a court order did not constitute a crime. The misuse of telecommunication equipment was criminalized by law, and wiretapping without a warrant was prohibited. Act No. 3/2006 relating to publications and publishing protected freedom of expression and provided for victims of any abuse of that freedom to be compensated.

8. People had the right to hold rallies in accordance with the corresponding public-interest laws. A bill to amend Act No. 56/1979 relating to public rallies and gatherings was before the National Assembly. The right of association of all workers was guaranteed, and the Private Sector Labour Code (Act No. 6/2010) did not bar foreigners from joining trade unions.

9. **Mr. Neuman** requested clarification of the status of the Covenant in domestic law. He wished to know which types of legal norms had equal or higher rank in relation to the Covenant and asked the delegation to confirm whether the Covenant took precedence over domestic legislation pre-dating 1996 but had equal status with legislation passed since then. The Committee would like to know whether the Covenant had ever been invoked directly by the courts, and if not, why not.

10. The interpretative declaration regarding article 2, paragraph 1, and article 3 of the Covenant appeared ambiguous and could be understood to state that rights under the Covenant were accepted only within the limits established by Kuwaiti law. If that were the case, the declaration would have to be regarded as invalid. He wished to know what effect the declaration had in the national legal system and whether the State party would withdraw it to make clear its commitment to the Covenant. He also enquired about the status of the proposed national human rights institution.

11. With regard to persons awaiting deportation, he asked whether there was a maximum legal period during which such persons could be held in detention, whether they could appeal deportation orders on the merits of their case or on the grounds that they had been detained for too long, and whether they had the right to legal representation. He also requested information on the conditions in which detainees were held in the Tala deportation centre and whether it was subject to inspection by an independent authority.

12. In relation to labour issues, the Committee wished to know whether the offences referred to in the State party's written replies (CCPR/C/KWT/Q/2/Add.1) regarding forced labour covered all types of forced labour, including that performed through coercion by private-sector employers. The Committee also requested statistics on hard labour in prisons. Although measures had been taken to ensure that the sponsorship system did not result in employers imposing unlawful working conditions, he wished to know whether the State party had considered that it might be necessary to abolish the system altogether.

13. He asked whether employers were punished if they confiscated an employee's passport and under what circumstances workers could transfer their work permits from one employer to another. The 600,000 foreign domestic workers in Kuwait were particularly vulnerable, working as they often did in isolation, and he requested an explanation as to why they had been excluded from the new Private Sector Labour Code of 2010. Specifically he asked whether the regulations prohibiting the confiscation of passports applied to employers of domestic workers, whether any such employers had been punished for violating those regulations and whether workers who had been wronged by their employer could remain in Kuwait to seek other work. Information on when the new labour authority would be operational and on the resources devoted to labour inspection in the field of domestic work would also be welcome.

14. Trafficking in persons was reportedly a serious problem in Kuwait and he asked the delegation to explain the delay in the enactment of the bill on the subject. He would like to know whether older provisions that referred to slavery were applicable to trafficking in

persons and how many trafficking cases had been prosecuted under article 185 of the Criminal Code in recent years.

15. **Mr. Flinterman** said that, in its concluding observations in 2000 (CCPR/CO/69/KWT), the Committee had requested the State party, in its next report, to provide detailed information on the status of women together with gender-disaggregated data. Neither had been provided. Significant progress had been achieved in the field of human rights inasmuch as women could now vote and stand for election, and the reservation to article 7 of the Convention on the Elimination of All Forms of Discrimination against Women had been withdrawn. He wondered, however, why the State party had not taken the next step and appointed women judges.

16. Equality and non-discrimination were core principles of human rights, yet it seemed that Kuwait did not intend to criminalize marital rape. He asked the delegation to explain why not. The State party also apparently had no intention of drafting specific legislation on domestic violence, which mostly affected women and was a form of discrimination against them. Foreign domestic workers, especially females ones, needed special protection. Statistics on domestic violence, together with data on the number of shelters and hotlines available for victims and the number of complaints filed since 2005, would be appreciated.

17. The State party had not taken any action to follow up the Committee's recommendation, also made in 2000, that polygamy should be prohibited, and he wished to know how widespread the practice was and whether the delegation agreed with the view that polygamy was a form of discrimination against women. The Committee would appreciate learning what the Government had done to raise public awareness with a view to eradicating attitudes that discriminated against women, including within marriage. The Committee was concerned that adulterous men and women were not treated equally and that so-called "honour crimes" exacerbated gender inequality. He asked the delegation to clarify the status of the bill on the civil rights of women and explain whether the new law would address some of the existing gender inequalities and thus, for example, enable Kuwaiti women married to foreigners or Bidun to pass on their nationality to their children.

18. According to the Committee's interpretation of article 26 of the Covenant, the prohibition of discrimination on the ground of sex also encompassed sexual orientation. In 2007, homosexuals in the State party had requested authorization to establish an association to protect them from harassment, but that request had been refused. He asked whether any investigations had been conducted since then into allegations of harassment or mistreatment of homosexuals, and if so whether those investigations had led to prosecutions. He wondered whether the Government would consider decriminalizing homosexual behaviour.

19. Despite the serious concern the Committee and other treaty bodies had previously expressed regarding the situation of the Bidun or "illegal residents", it seemed that the problem still existed in all its magnitude. Nevertheless, some potentially important steps had been taken, such as the establishment of a central body in November 2010 to seek a solution to the problem. At the heart of the issue was a denial of human rights, specifically the right to citizenship. He asked whether the Government would consider becoming a party to the Convention relating to the Status of Stateless Persons and the Convention on the Reduction of Statelessness. He also wondered whether the Government might consider options for granting citizenship based on long-term residency in Kuwait, and for working together with other countries in the region to find solutions for residents deemed to be of a certain nationality. The procedures for nationality applications should be transparent and should include a review of rejected applications. He asked the delegation to explain the restrictions on foreigners owning property in Kuwait.

20. **Mr. Thelin** reiterated the Committee's serious concern about the large number of offences for which the death penalty could be imposed, citing paragraph 8 of its previous

concluding observations (CCPR/CO/69/KWT). He wished to know how many death sentences had been pronounced and how many persons sentenced to death had actually been executed. According to information before the Committee, death sentences were less likely to be carried out against Kuwaiti citizens than against foreigners. Noting that sharia was the primary source of law in Kuwait, he asked whether it superseded the State party's obligations under the Covenant.

21. While welcoming the extensive replies on cases of alleged torture or mistreatment by police officers, he requested similar information on cases involving prison officials. He asked the delegation to explain the apparent discrepancy between the number of cases involving police officers charged with assault as listed in paragraph 48 of the replies to the list of issues (CCPR/C/KWT/Q/2/Add.1) and the figures given in annex IV of those replies. He also requested an explanation of the "no sentencing" category used in that annex.

22. He asked whether Kuwaiti law included a definition of torture, and whether there was an independent mechanism to investigate allegations of torture by public officials. Information before the Committee suggested that allegations of torture were taken more seriously if they were made by Kuwaiti citizens. He invited the delegation to comment on that point.

23. He asked when the bill amending the Code of Criminal Procedure and reducing to 48 hours the period for which a detainee could be held before being brought before a judge would be adopted. He wished to know how many persons were held in pretrial detention and the average length of pretrial detention. He also requested further information on how the right of access to counsel was guaranteed. He noted that question 11 of the list of issues on persons condemned by military tribunals in 1991 had not been covered by the written replies and requested an answer.

24. According to information before the Committee, the Supreme Judiciary Council was subordinate to the executive branch. If true, that situation raised doubts about the independence of the judiciary. He asked the delegation to explain the relationship between the Council and the Ministry of Justice. He noted that there were many foreign judges in Kuwait employed on short-term contracts that could be rescinded at any time, which also compromised the independence of those judges.

25. **Sir Nigel Rodley** asked which authority had the power to order the extension of pretrial detention beyond 48 hours and whether it was true that the prosecution could order detention for up to 21 days. If so, he wished to know at what point the detainee was brought before a judge, had access to a lawyer and was transferred from police custody.

26. According to information before the Committee, there were no female judges in Kuwait. Allegedly, that was in part because experience as a prosecutor was a prerequisite for serving as a judge, and there were no female prosecutors. If that was true, he wondered how foreign judges could qualify to work in the State party and asked the delegation to comment.

*The meeting was suspended at 4.15 p.m. and resumed at 4.40 p.m.*

27. **Ms. Altararwa** (Kuwait) said that the Covenant formed part of the national legal system in her country and the Constitution respected all the rights enshrined in the Covenant. Nevertheless, Kuwait adhered to its interpretative declaration regarding article 2, paragraph 1, and article 3 of the Covenant, given that sharia was the only source of all laws on the subject of personal status.

28. **Mr. Alsaana** (Kuwait) said that judges observed all provisions of the Covenant and that the Court of Cassation had expressly referred to the Covenant in a judgement issued in January 2008.

29. **Mr. Mohammad Almutairi** (Kuwait) said that detainees were brought before the prosecutor during the initial period of police custody, which was currently up to 4 days but would be shortened to 48 hours once the bill amending the Code of Criminal Procedure had been enacted. During that period the detainee was brought before the judicial authority and then either released or held in custody for up to 21 days until all investigative procedures had been completed. During the investigative period, the detainee enjoyed all guarantees in accordance with the Criminal Code, including the right to a fair trial, to contact relatives, to contact a lawyer and to seek health care.

30. **Mr. Alshamali** (Kuwait) said that deportees who did not have passports were issued a deportation document by their embassy before they were deported; they were also issued a plane ticket, which was usually reimbursed by their sponsor. A commission had been established within the Ministry of the Interior two months earlier to investigate such cases on an individual basis. About 450 to 500 persons were currently awaiting deportation. They were held in decent conditions, not in prison but in a special facility, and a new building was being constructed for that purpose.

31. **Mr. Alsulaimi** (Kuwait) said that a shelter accommodating more than 700 persons had been established in 2007 to provide social, psychological and other services for abused foreign domestic workers. After ensuring that their wages had been fully paid, the Government contacted the relevant embassy with a view to the return of those workers who did not wish to stay in their jobs.

32. **Mr. Razzooqi** (Kuwait) said that his Government had made a commitment to establish an "A status" national human rights institution in accordance with the Paris Principles, though doing so could be a lengthy process. Government representatives had met the previous week with OHCHR representatives to discuss the procedures involved.

33. **Mr. Alansari** (Kuwait) said that those procedures were currently in their final stages and his Government would keep the Committee informed of further developments.

34. **Mr. Alsulaimi** (Kuwait) said that the sponsorship system was not enshrined in law, but was governed by ministerial decisions designed to organize private-sector labour relations. The Government was exploring alternatives to the sponsorship system in consultation with the International Labour Organization (ILO). In the meantime, the Ministry of Social Affairs and Labour had issued a ministerial decision allowing workers to change jobs without the consent of the first employer, as long as the worker had completed up to three years of the contract, depending on the type of institution involved. The Ministry was taking every measure possible against abusive employers. The provisions prohibiting the confiscation of passports were enforced by all courts, and employers who violated those provisions were obliged to compensate the worker. Additionally, employers who imported workers without giving them work could be sentenced to 3 years' imprisonment or fined 5,000 Kuwaiti dinars. The establishment of a new labour authority was moving ahead: the corresponding bill was already before parliament and the authority was expected to be operational in 2012.

35. Domestic workers were not covered by the Private Sector Labour Code, but the Ministry could issue a decision whereby its scope would be extended to cover labour relations with domestic workers.

36. **Mr. Alenezi** (Kuwait) said that labour inspections were carried out in the field of domestic work as well as other sectors. The employment of domestic workers was regulated by ministerial decisions issued in 1992 but not by laws, which was a recognized shortcoming. Drafting committees were being established to draw up new laws in light of the 2010 discussions of the ILO Domestic Workers Convention, 2011 (No. 189).

37. Relations with employers were established in contracts, which were usually drafted by an employment agency and authenticated by the Ministry of the Interior. To grant domestic workers more rights, a 100-day period of probation had been established, during which both parties could terminate the contract and the employment agency could find the worker another position.

38. Domestic workers in Kuwait, and especially female workers, did not work in isolation: they were considered part of the family. Cases of abuse were very rare, and when they arose they were rigorously investigated. A special department had been set up in the Ministry of the Interior to handle complaints lodged by domestic workers, employers or employment agencies. A shelter had been opened where domestic workers who had filed complaints of abuse could stay pending the investigation of their case or until they left the country. They had the right to seek alternative employment instead of returning to their country of origin.

39. **Mr. Razzooqi** (Kuwait) said that the presence of 192 different nationalities and 1.3 million foreigners in a country with a population of 2.3 million posed major challenges, but his Government was committed to upholding international humanitarian law. Kuwait had nothing to hide; there was not one political prisoner in the country. The Government had excellent working relations with the labour attachés of foreign embassies and worked closely with them to address issues that arose.

40. **Mr. Alsulaimi** (Kuwait) said that the new Private Sector Labour Code prohibited employers from hiring workers without work permits and guaranteed all workers a safe working environment. The provisions of the Code were strictly enforced, and some employers had been prosecuted and punished for violations. He would provide the Committee with the relevant statistics.

41. **Mr. Alansari** (Kuwait) said that the delay in the enactment of the bill to combat trafficking in persons was due solely to the slow pace of legislative procedures. Statistics on trafficking would not help combat the problem; a law was needed to criminalize trafficking so that action could be taken.

42. **Mr. Alsaana** (Kuwait) said that forced labour, slavery and living off immoral earnings were criminalized in the amended Criminal Code, and penalties had been established to punish anyone who threatened or coerced other persons into doing or not doing something. With regard to trafficking in persons, some cases had already resulted in convictions and others were before the courts.

43. Regarding the criminalization of marital rape, Islamic sharia, which was the basis of the law in Kuwait, established the rights of spouses. In the case of normal sexual relations, lack of consent by the woman did not make the sexual act a crime if the perpetrator was her husband. All normal sexual relations were viewed as legal, but a husband could be prosecuted for forcing his wife to engage in an abnormal act.

44. The Criminal Code did not define honour killings as such, but did provide for attenuating circumstances if a woman was murdered by a male relative when caught in flagrante delicto. Under Kuwaiti legislation, men could have more than one wife, but women could not have more than one husband. For a woman it was therefore conceivable that her husband might be with another woman, but for a man it was unthinkable that his wife could be with another man. The killing of a woman by a male relative was nevertheless considered murder and was punished in accordance with the law. He would try to provide the Committee with statistics on honour killings.

45. **Mr. Razzooqi** (Kuwait) said that honour killings were very rare in Kuwait. Kuwaiti society was conservative and people did not like to wash their dirty linen in public. They

preferred to try to solve problems within the family without involving the police, but family courts were now being established.

46. **Ms. Alshaaji** (Kuwait) said that the Ministry of Justice had drafted a bill establishing family courts throughout the country; it would be considered at the next session of parliament. Under the bill, a family court would be established in each of the six governorates to handle cases of domestic violence and assault, marriage, divorce, child custody disputes and other family-related matters.

47. **Mr. Mutlak Almutairi** (Kuwait) said that polygamy did exist in the country but was not widespread. Under sharia, polygamous men must treat all their wives equally. As an Islamic State, Kuwait did not view polygamy as discrimination against women because it was part of divine law. The women involved consented to a polygamous marriage, which indicated that they too did not consider it discriminatory.

48. **Ms. Altararwa** (Kuwait) said that a woman could file for divorce if her husband decided to take another wife. Property and inheritance were two completely separate issues, and the rights of men and women were equal with regard to property ownership. There were various regulations for different classifications of property, but in some cases women could gain ownership through either direct purchase or a loan. A law passed in 2011 established that Kuwaiti women had the right to apply for a special type of mortgage called a family mortgage loan.

49. **Mr. Razzooqi** (Kuwait) said that Islam was not only a religion but also a way of life. As an Islamic State, Kuwait had no choice but to follow the major tenets of Islam, but whenever possible it also sought solutions combining both sharia and the international treaties to which it was a party, as those treaties were also part of the national legal system. In any case, Islam and the Covenant both sought the equality and dignity of human beings, so there was no contradiction between the two. Owing to changes in society, polygamy was becoming less and less common in Kuwait and currently accounted for less than 9 per cent of marriages.

50. **Mr. Alsaana** (Kuwait) said that women held a variety of high-level posts within the judiciary, such as counsel for the State within the Department of Legal Advice and Legislation. Article 19 of the Decree-Law on the Regulation of the Courts set out five conditions that all judges must meet, none of which prohibited a woman from becoming a judge.

51. **Mr. Razzooqi** (Kuwait) said that such matters would be decided not only by the executive branch but also by the courts, but the appointment of female judges did not contravene the Constitution or the law. A healthy debate on the subject had been ongoing ever since the universal periodic review of Kuwait, and he hoped that it would reach a positive conclusion.

52. **Mr. Alsaana** (Kuwait) said that homosexual relations were prohibited in Kuwait out of respect for Islamic traditions. Nevertheless, judges could decide whether to apply the law rigorously or flexibly, taking individual circumstances and character into account.

53. **Ms. Altararwa** (Kuwait) said that the Ministry of Education had not received any request to establish an association for the protection of homosexuals, but if one were received then a committee would consider it to determine whether it met the conditions set out in Act No. 24 of 1962 relating to clubs and associations.

54. **Mr. Alsulaimi** (Kuwait) said that even if such a request were rejected through a ministerial decision, that decision would not be final from a legal standpoint, as the applicants could appeal to the courts to have the decision annulled. If they chose not to appeal the decision, then it must be concluded that they were not very serious about their request.



55. Kuwait had ratified the ILO Forced Labour Convention, 1930 (No. 29) and the ILO Abolition of Forced Labour Convention, 1957 (No. 105). Act No. 31 of 1970 and several ministerial decrees issued by the Ministry of Social Affairs also completely prohibited forced labour.

56. **Mr. Alansari** (Kuwait) said that article 162 of the Constitution stipulated that the honour of the judiciary and the integrity and impartiality of judges were the bases of the legal system and a guarantee of rights and freedoms. The Government had signed an agreement with Egypt on the secondment of Egyptian judges to work in Kuwait. It was not true that those judges' employment contracts could be terminated at any time; the judges were under the Emir's protection and enjoyed the same working conditions as Kuwaiti judges.

57. **Mr. Razzoqi** (Kuwait) said that Kuwaiti citizens were entitled to numerous benefits, such as free housing, education and health care. While it was not practical to offer all those privileges to non-citizens, their rights were nevertheless protected. Citizenship was a matter that affected the nation's sovereignty. Since Kuwaitis were a minority in their own country, granting citizenship to residents would change the demographic composition of Kuwaiti society. Even so, the Government was always quick to help illegal residents when necessary, and it also funded many programmes throughout the developing world through the Kuwait Fund for Arab Economic Development.

58. **The Chairperson** said that the delegation would have the first 15 minutes of the next meeting to conclude its oral replies.

*The meeting rose at 6 p.m.*