



International Convention on the Elimination of All Forms of Racial Discrimination

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Committee on the Elimination of Racial Discrimination

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Consideration of reports submitted by States parties under article 9 of the convention

Concluding observations of the Committee on the Elimination of Racial Discrimination

Kuwait

1. The Committee considered the fifteenth to twentieth periodic report of Kuwait (CERD/C/KWT/15-20), submitted in one document, at its 2133rd and 2134th meetings (CERD/C/SR.2133 and CERD/C/SR.2134), held on 16 and 17 February 2012. At its 2147th and 2148th meetings (CERD/C/SR.2147 and CERD/C/SR.2148), held on 27 and 28 February 2012, it adopted the following concluding observations.

A. Introduction

2. The Committee welcomes the submission of the combined fifteenth to twentieth periodic report of the State party. However, the Committee notes that the periodic report is not completely in line with all the elements of the Committee's reporting guidelines. It regrets the late submission of the report which has prevented the Committee from conducting an on-going analysis of the implementation of the Convention for more than a decade.

3. The Committee welcomes the open and constructive dialogue with the multi-sectoral delegation and expresses its appreciation for the oral presentation and the detailed replies provided by the delegation during the consideration of the report.

B. Positive aspects

4. The Committee welcomes the State party's ongoing efforts to revise its legislation in order to ensure greater protection of human rights and give effect to the Convention, such as the amendment to the Electoral Act No. 35 of 1962 by Act No. 17 of 2005 which granted Kuwaiti women full rights to vote and to stand for elections.

5. The Committee notes with interest that since the consideration of the thirteenth and fourteenth periodic report of the State party, the latter has acceded to or ratified international and regional instruments, such as:

(a) Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography (26 August 2004);

(b) Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflicts (26 August 2004);

(c) ILO Convention No. 182 concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour (15 August 2000);

(d) United Nations Convention against Transnational Organized Crime (12 May 2006);

(e) Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention Against Transnational Organized Crime, 2000 (Palermo Protocol) (12 May 2006);

(f) Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime (2000) (12 May 2006).

6. The Committee also welcomes the State party's efforts to amend its policies, programmes and administrative measures to ensure further the protection of human rights and implementation of the Convention, including:

(a) The issuance of Ministry of Social Affairs and Labour Ministerial Decree No. 166 of 2007 Concerning the Prohibition on Confiscating Travel Documents of Workers in the Private Sector;

(b) The establishment in November 2010 of the Central Bureau for Illegal Residents with a view to resolving the issue of the Bidun (stateless persons);

(c) The establishment of the Higher Committee for Human Rights by Ministry of Justice Decision No. 104 of 2008, and in particular its International Liaison Committee tasked with the preparation of periodic reports to human rights treaty bodies;

(d) The establishment of a Committee on Human Rights by the Ministry of the Interior in 2001, which is competent to receive individual complaints.

C. Concerns and recommendations

7. The Committee regrets that the State party's periodic report did not contain statistics regarding the ethnic composition of the persons living in its territory.

In accordance with paragraphs 10 to 12 of its revised reporting guidelines (CERD/C/2007/1), the Committee recommends that the State party collect and publicize reliable and comprehensive statistical data on the ethnic composition of its population, and its economic and social indicators disaggregated by ethnicity, including on immigrants, from national census or surveys which include the ethnic and racial dimension based on self-identification, to enable the Committee to better evaluate the enjoyment of rights under the Convention in Kuwait. The Committee requests the State party to provide it with such disaggregated data in its next report.

8. The Committee is concerned that national legislation does not contain a definition of racial discrimination in full conformity with article 1 of the Convention, as well as a general norm of prohibition of racial discrimination according to the Convention. (art. 1).

The Committee recommends that the State party amend its legislation to include a definition of racial discrimination in full conformity with article 1 of the Convention.

9. While taking note of the delegation's explanation that the Convention was enacted by Royal Decree as a part of the Kuwaiti legal system and published in the Arabic language in the Official Gazette, the Committee is concerned whether it is actually applied in courts and administrative acts. (arts. 1 and 2).

The Committee requests the State party to provide it with examples of the application of the Convention in courts and administrative acts in its next periodic report.

10. While noting the State party has set up by ministerial decree a special committee to establish an independent national human rights institution for the protection and promotion of human rights in conformity with the Paris Principles, the Committee is concerned that such an institution has not been established to date. (art.2).

Recalling its general recommendation 17 (1993), the Committee recommends that the State party promptly establish an independent national human rights institution for the protection and promotion of human rights in conformity with the Paris Principles.

11. The Committee is concerned at the failure of the State party to accede to the 1954 Convention relating to the Status of Stateless persons and to the 1961 Convention on the Reduction of Statelessness. (art. 2).

The Committee invites the State party reconsider accession to the 1954 Convention relating to the Status of Stateless persons and to the 1961 Convention on the Reduction of Statelessness.

12. Recalling its previous concluding observations, the Committee is concerned at the lack of amendments to the Penal Code to fully comply with the provisions of article 4 of the Convention, and the lack of specific legislation prohibiting dissemination of ideas based on racial superiority or hatred, incitement to racial hatred and discrimination and the lack of legislation banning racist organizations. (art. 4 (a) and (b)).

Recalling its general recommendation 7 (1985) on legislation to eradicate racial discrimination and general recommendation 15 (1993) on article 4, the Committee reiterates its recommendation that the State party revise the Penal Code to introduce and implement specific legislation in full compliance with article 4 of the Convention that prohibits dissemination of ideas based on racial superiority or hatred, incitement to racial hatred and discrimination and bans racist organizations.

13. While taking note that a draft Law against Trafficking in Persons and the Smuggling of Migrants has been submitted to the National Assembly, the Committee is concerned that there is no definition of trafficking in persons and that the draft law criminalizing it has not been enacted to date. (arts. 2 and 6).

The Committee recommends that the State party define and criminalize trafficking in persons and promptly enact legislation against human trafficking and smuggling of migrants in conformity with international standards.

14. The Committee is concerned that there has been no amendment to date of the Civil Service Act (Act No. 15 of 1979) concerning the prohibition of discrimination by officials in all administrative bodies of the State among applicants for posts in the public administration on the basis of sex, origin, language and religion. (arts. 2 and 4).

The Committee recommends the prompt adoption of the draft bill amending the Civil Service Act (Act No. 15 of 1979) to prohibit discrimination in employment in the public administration on grounds of sex, origin, language and religion.

15. The Committee is concerned that constraints regarding the establishment and access to places of worship may result in indirect racial discrimination on the basis of ethnicity, especially among non-citizens. (art. 5).

The Committee recommends that the State party ensure that all persons in its territory enjoy the right to establish and have access to their places of worship and that any instances of constraint are dealt with in accordance with international human rights standards, including treaties acceded to or ratified by the State party.

16. The Committee is concerned at the lack of specific labour legislation that would ensure the protection of foreign and domestic workers and guarantee their rights according to international standards. It is concerned that amendments to the Labour Law, including Law No. 6 of 2010 Governing Labour in the Private Sector, do not cover domestic workers, who are mainly foreigners or of foreign origin, and do not comprehensively regulate their working conditions. It is also concerned that the Ministry of Social Affairs and Labour Ministerial Decree No. 166 of 2007 Concerning the Prohibition on Confiscating Travel Documents of Workers in the Private Sector does not apply to domestic workers. (arts. 2, 5 and 6).

In light of its general recommendation 20 (1996) on article 5, the Committee recommends that the State party adopt specific labour legislation ensuring the protection of foreign and domestic workers and which guarantees their rights according to international standards, including the ILO conventions to which Kuwait is a party. It also recommends that the State party amend the Law Governing Labour in the Private Sector so that it covers domestic workers and comprehensively regulates their working conditions. The Committee recommends that the Ministry of Social Affairs and Labour Ministerial Decree No. 166 of 2007 Concerning the Prohibition on Confiscating Travel Documents of Workers in the Private Sector be amended to apply to domestic workers. The Committee recommends that the State party ratify the ILO Convention No. 189 Concerning Decent Work for Domestic Workers.

17. The Committee is concerned with the situation of the Bidun (stateless persons), some of whom have lived in Kuwait for a long time, have a strong claim to nationality, have a genuine and effective link to the State or have served or serve in the police, army and other State institutions, as well as with the situation of children born in Kuwait to foreigners and stateless persons. While taking note that a Roadmap has been drawn up and that the Central Bureau for Illegal Residents will submit two lists of candidates for naturalization to the Cabinet, the Committee is concerned at the low rate of naturalizations and in particular by the situation of the unregistered Bidun who do not have security cards. The Committee is also concerned that not all Bidun enjoy some basic human rights such as the right to obtain civil documentation, as well as access to adequate social services, education, housing, property, business registration and employment. It is also concerned that they are not always able to return to Kuwait, in contravention of the right to freedom of movement. (arts. 2, 5, 6).

In light of its general recommendation 30 (2004) on non-citizens, the Committee recommends that the State party implement the existing Roadmap and provide a just, humane and comprehensive solution to the situation of the Bidun, with respect for their dignity. The Joint Committee on the Granting of Kuwaiti Nationality should consider naturalizing the Bidun, in particular persons who have lived in Kuwait for a long time, can prove a genuine and effective link to the State, or have served or serve in the police, army and other State institutions, as well as children born in Kuwait of foreigners and stateless persons. The State party should consider providing residence permits and temporary legal status to non-citizens, including the unregistered Bidun who do not have security cards. The Committee recommends that the State party

issue civil documents to all persons in its territory and provide access to adequate social services, education, housing, property, business registration and employment to the Bidun. It recommends that the State party ensure that the Bidun enjoy the right to freedom of movement and are able to return to Kuwait.

18. The Committee is concerned that current legislation does not allow Kuwaiti women who marry foreigners to pass on their nationality to their children and spouses on an equal footing with Kuwaiti men. (arts. 2 and 5)

Recalling its general recommendations 25 (2000) on gender-related dimensions of racial discrimination, 29 (2002) regarding descent and 30 (2004) on non-citizens, the Committee recommends that the State party enact amendments to the Nationality Act that would allow Kuwaiti women married to foreigners to pass on their nationality to their children and spouses on an equal footing with Kuwaiti men.

19. The Committee is concerned that the current sponsorship (Kafala) system for domestic workers continues to be applied. It is concerned in particular with the absence of safeguards for the legal protection of domestic workers under this system as well as the lack of sufficient accountability and legal responsibility of the employers and recruitment agencies. The Committee is also concerned that domestic workers in dispute with their employers are often deported by administrative decision, without a court order or possibility of appeal. (arts. 2, 5 and 6).

The Committee recommends that the State party abolish the sponsorship (Kafala) system and replace it with residency permits for domestic workers issued and overseen by the Government, in conformity with international standards. It also recommends that the State party amend further the Private Sector Employment Act of 23 December 2009 and establish a public body that would regulate the recruitment and employment of workers in the private sector and ensure the implementation of safeguards for the protection of domestic workers and the accountability and legal responsibility of the employers and recruitment agencies. The State party should review the system of administrative deportations of domestic workers and refer such cases to courts of law, with possibility of appeal.

20. The Committee is concerned that refugees recognized by UNHCR and asylum-seekers who are unable to regulate their status in accordance with the current legal framework regulating the employment of foreigners and the sponsorship system remain without legal residence in the country. It is also concerned that the Ministry of the Interior has reinstated the daily overstay fines for refugees not lawfully staying in Kuwait. The Committee is also concerned that refugees recognized under UNHCR's mandate cannot avail themselves of basic rights, including health services and education for refugee children because of their lack of regularized status. (arts. 5 and 7).

In light of its general recommendation 22 (1996) relating to article 5 on refugees and displaced persons and general recommendation 30 (2004) on non-citizens, the Committee recommends that the state party provide legal residence in the country to refugees recognized by UNHCR and asylum-seekers in accordance with the legal framework regulating the employment of foreigners. It also recommends that the Ministry of the Interior annul the daily overstay fines for refugees not lawfully staying in Kuwait as a gesture of support towards them and UNHCR. The Committee recommends that the State party regularize the status of refugees recognized under UNHCR's mandate so that they can avail themselves of basic rights, including health services and education for refugee children.

21. The Committee is concerned that not all Bidun children are covered by free compulsory primary education, including by the charitable fund. (art. 5).

The Committee recommends that the State party implement free compulsory primary education to all children in its territory and make available and accessible secondary education to the greatest extent possible.

22. The Committee is concerned that foreign workers, and in particular domestic workers, are not aware of their rights and responsibilities under Kuwaiti law and to whom they can turn if needing assistance. (art. 5).

The Committee recommends that the State party provide information to all foreign, including domestic, workers on their rights and responsibilities under Kuwaiti law and to whom they can turn if needing assistance, in languages which they understand.

23. The Committee is concerned at the abuses suffered by some domestic workers at the hands of police and immigration officials. It is particularly concerned at the type and extent of abuse of some domestic workers by their employers. The Committee is concerned at the situation of domestic workers in untenable abusive situations who can change employers only after three years. The Committee is also concerned by the unavailability of legal remedies to the victims, including access to justice, compensation and reparation. (arts. 2, 5, 6 and 7).

The Committee recommends that the perpetrators of abuses of domestic workers be investigated, prosecuted and punished and that the victims be compensated and accorded all remedies afforded by the Convention, including reparations for damage. Recalling its general recommendation 13 (1993) on training law enforcement officials in protection of human rights, the Committee also recommends that quality human rights training be provided to investigating magistrates, law enforcement officials and other public servants. In addition, the Committee recommends that the State party establish a monitoring mechanism such as an Ombudsman for domestic workers or Protector for domestic workers and enable them to receive complaints from and provide protection to domestic workers and enforce the law. It invites the State party to consider amending the law allowing domestic workers to leave their employers only after three years of service which is untenable in abusive situations. Recalling its general recommendation 26 (2000) on article 6, the Committee recommends that the State party ensure that victims can avail themselves of legal remedies, including access to justice, compensation and reparation.

24. Bearing in mind the indivisibility of all human rights, the Committee encourages the State party to consider ratifying those international human rights treaties which it has not yet ratified, in particular treaties the provisions of which have a direct bearing on the subject of racial discrimination, such as the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (1990).

25. In light of its general recommendation No. 33 (2009) on follow-up to the Durban Review Conference, the Committee recommends that the State party give effect to the Durban Declaration and Programme of Action, adopted in September 2001 by the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance, taking into account the Outcome Document of the Durban Review Conference, held in Geneva in April 2009, when implementing the Convention in its domestic legal order. The Committee requests that the State party include in its next periodic report specific information on action plans and other measures taken to implement the Durban Declaration and Programme of Action at the national level.

26. The Committee recommends that the State party consult and expand its dialogue with organizations of civil society working in the area of human rights protection, in particular in combating racial discrimination, in connection with the preparation of the next periodic report.

27. The Committee recommends that the State party ratify the amendments to article 8, paragraph 6, of the Convention, adopted on 15 January 1992 at the fourteenth meeting of States parties to the Convention and endorsed by the General Assembly in its resolution 47/111 of 16 December 1992. In this connection, the Committee cites General Assembly resolution 61/148, 63/243 and 65/200, in which the Assembly General strongly urged States parties to accelerate their domestic ratification procedures with regard to the amendment to the Convention concerning the financing of the Committee and to notify the Secretary-General expeditiously in writing of their agreement to the amendment.

28. The Committee also invites the State party to make a declaration under article 14 of the Convention concerning individual communications.

29. The Committee recommends that the State party's reports be made readily available and accessible to the public at the time of their submission, and that the observations of the Committee with respect to these reports be similarly publicized in the official and other commonly used languages, as appropriate.

30. Noting that the State party has not submitted a Core Document, the Committee encourages the State Party to submit a Core Document in accordance with the harmonized guidelines on reporting under the international human rights treaties, in particular those on the common core document, as adopted by the fifth inter-Committee meeting of the human rights treaty bodies held in June 2006 (HRI/MC/2006/3).

31. In accordance with article 9, paragraph 1, of the Convention and rule 65 of its amended rules of procedure, the Committee requests the State party to provide information, within one year of the adoption of the present conclusions, on its follow-up to the recommendations contained in paragraphs 13, 14, and 23 above.

32. The Committee also wishes to draw the attention of the State party to the particular importance of recommendations in paragraphs 17, 18 and 21 and requests the State party to provide detailed information in its next periodic report on concrete measures taken to implement these recommendations.

33. The Committee recommends that the State party submit its 21st to 24th periodic reports in a single document, due on 4 January 2016, taking into account the guidelines for the CERD-specific document adopted by the Committee during its seventy-first session (CERD/C/2007/1), and that it address all points raised in the present concluding observations. The Committee also urges the State party to observe the page limit of 40 pages for treaty-specific reports and 60-80 pages for the common core document (see harmonized guidelines for reporting contained in document HRI/GEN.2/Rev.6, para. 19).