



International Convention on the Elimination of All Forms of Racial Discrimination

Distr.: General
19 September 2017

Original: English

Committee on the Elimination of Racial Discrimination

Concluding observations on the combined twenty-first to twenty-fourth periodic reports of Kuwait*

1. The Committee considered the combined twenty-first to twenty-fourth periodic reports of Kuwait (CERD/C/KWT/21-24), submitted in one document, at its 2550th and 2551st meetings (CERD/C/SR.2550 and 2551), held on 2 and 3 August 2017. At its 2564th meeting, held on 11 August 2017, it adopted the present concluding observations.

A. Introduction

2. The Committee welcomes the submission of the combined twenty-first to twenty-fourth periodic reports of the State party.
3. The Committee expresses its appreciation for the frank and constructive dialogue with the State party's large delegation. The Committee wishes to thank the delegation for the information it provided during the consideration of the report and for the additional written information submitted during the dialogue.

B. Positive aspects

4. The Committee notes with great interest the text of article 1 of Legislative Decree No. 19 (2012), prohibiting, inter alia, advocacy or incitement of hatred for any social group and promotion of racial superiority ideology.
5. The Committee also welcomes the State party's efforts to amend its policies, programmes and administrative measures to ensure increasing protection of human rights and implementation of the Convention, including:
 - (a) Adoption of Law No. 68 (2015) regarding domestic workers, giving such workers certain labour rights, and the establishment in 2014 of a shelter for female workers fleeing abusive employees;
 - (b) Adoption of Law No. 91 (2013) on trafficking in persons and smuggling of migrants;
 - (c) Establishment of the Kuwait Central Agency for Regularization of the Status of Illegal Residents, in 2010.
6. The Committee welcomes the accession of the State party to the Convention on the Rights of Persons with Disabilities on 22 August 2013.

* Adopted by the Committee at its ninety-third session (31 July-25 August 2017).



C. Concerns and recommendations

Statistics

7. The Committee notes with interest the statistics the State party provided in its report and during the dialogue regarding the composition of its population, disaggregated by regional provenance, but regrets that the State party's periodic report did not contain statistics regarding the ethnic composition of its population or socioeconomic indicators, disaggregated by ethnicity, as recommended by the Committee in its previous concluding observations (see CERD/C/KWT/CO/15-20, para. 7).

8. In accordance with paragraphs 10 to 12 of its revised reporting guidelines (CERD/C/2007/1), the Committee reiterates its recommendation (see CERD/C/KWT/CO/15-20, para. 7) that the State party collect and publicize reliable and comprehensive statistical data on economic and social indicators, disaggregated by ethnicity, from national censuses or surveys 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, including statistics on migrants and stateless persons, in its next report.

Definition and criminalization of racial discrimination

9. While noting the reference to equality in article 29 of the State party's Constitution, the Committee remains concerned that national legislation does not contain a definition of racial discrimination in full conformity with article 1 of the Convention and does not expressly prohibit both direct and indirect forms of racial discrimination (art. 1).

10. The Committee urges the State party to amend its legislation to include a definition and a prohibition of racial discrimination in full conformity with article 1 of the Convention.

National human rights institution

11. While welcoming the adoption of Law No. 67 (2015) providing for the creation of a national human rights institution (Diwan Huquq al-Insan), the Committee is concerned that the institution is not yet operational, and that the Law does not require it to comply with the principles relating to the status of national institutions for the promotion and protection of human rights (the Paris Principles) in matters including structural independence from the cabinet (art. 2).

12. The Committee recommends that the State party:

- (a) Amend Law No. 67 (2015) to strengthen the independence of its national human rights institution and bring it into conformity with the Paris Principles;**
- (b) Move forthwith to operationalize that institution.**

Racist hate speech and hate crimes

13. While welcoming the adoption of Legislative Decree No. 19 (2012) and noting with interest the delegation's statements concerning the submission of relevant complaints in recent years, the Committee is concerned by the lack of detailed information regarding the application of the Decree and the substance and outcome of complaints relating to it. The Committee is further concerned by a rise in hate speech directed at foreign workers, including by a member of Parliament (arts. 4 (a) and (b) and 7).

14. Recalling its general recommendations No. 7 (1985) and No. 15 (1993) relating to article 4 of the Convention, the Committee:

- (a) Recommends that the State party ensure that all incidents of hate crimes and hate speech are investigated and prosecuted, that the perpetrators are sanctioned and that victims are adequately compensated;**

(b) **Requests that the State party provide in its next periodic report detailed statistics, disaggregated by ethnicity, on the number and nature of hate crimes and hate speech cases reported, prosecutions and convictions, and compensation to victims;**

(c) **Requests that the State party provide in its next periodic report information on the training of security forces, prosecutors, judges, labour inspectors and other public officials to identify and record racist incidents.**

Trafficking in persons

15. While welcoming the adoption of Law No. 91 (2013) on trafficking in persons and smuggling of migrants, and the establishment of a national strategy to combat trafficking, the Committee is concerned by the lack of detailed information on the concrete measures that have been taken to implement the Law (arts. 2 and 6).

16. **The Committee requests that the State party provide in its next periodic report statistics on the application of Law No. 91 (2013), including the number of investigations and prosecutions carried out, and the sanctions and remedies applied.**

Civil service employment

17. The Committee remains concerned that Law No. 15 (1979) concerning the civil service has not been amended to prohibit discrimination on the basis of sex, origin, language and religion by officials in all the administrative bodies of the State among applicants for posts in the public administration (arts. 2 and 4).

18. **The Committee reiterates its recommendation (see CERD/C/KWT/CO/15-20, para. 14) that the State party amend Law No. 15 (1979) concerning the civil service to prohibit discrimination in employment in the public administration on the grounds of sex, origin, language and religion.**

Application of the Convention in the domestic legal order

19. While taking note of the cases cited by the State party in its report, the Committee considers that it is not clear whether specific provisions of the Convention are expressly interpreted and applied in domestic court decisions and administrative acts (arts. 1 and 2).

20. **The Committee requests that the State party provide in its next periodic report examples illustrative of the application of the Convention in judicial decisions and administrative acts.**

Sponsorship system for foreign workers

21. The Committee remains deeply concerned by the continued application of the sponsorship (*kafalah*) system for foreign workers. It considers that this system places many foreign workers in a highly dependent relationship with their employers, rendering them vulnerable to exploitation and abuse. The Committee is also concerned that foreign workers do not appear to enjoy the right to family reunification in the country (arts. 2, 5 and 6).

22. **The Committee reiterates its recommendation (see CERD/C/KWT/CO/15-20, para. 19) that the State party abolish the sponsorship (*kafalah*) system for the employment of migrant workers and replace it with a system of residency permits for such workers, issued and overseen by the Government, to prevent exploitation and abuse. The Committee also recommends that the State party guarantee foreign workers the right to family reunification.**

Foreign domestic workers

23. The Committee welcomes the adoption of Law No. 68 (2015) regarding domestic workers. The Committee notes the State party's statement that the Law exempts domestic labour-related cases from legal fees, and welcomes the mandate of the Department of Domestic Labour to, inter alia, receive and investigate complaints concerning violations by employers. While noting the delegation's statement that many complaints have been submitted through this mechanism, the Committee remains alarmed by reports that some

foreign domestic workers face serious physical, verbal and sexual abuse by employers. The Committee is concerned by the lack of precise information concerning the outcome of complaints by foreign domestic workers of abuse, penalties under the Law and relevant enforcement mechanisms. It also expresses its concern that employers are allowed to retain foreign workers' personal identification documents with the workers' consent, as the nature of the employer-employee relationship means that workers' consent may not be freely given. The Committee further notes with concern the information provided by the State party to the effect that, in 2015, the Department of Domestic Labour received 2,487 complaints demanding the return of passports, and also remains concerned that foreign domestic workers in disputes with their employers are often deported by administrative decisions, without a reasoned court order or possibility of appeal (arts. 2 and 5-7).

24. The Committee:

(a) Recommends that the State party ensure that its laws, regulations and mechanisms concerning foreign domestic workers establish and enforce penalties for abuses by employers;

(b) Reiterates its recommendation (see CERD/C/KWT/CO/15-20, para. 23) that the perpetrators of abuse of foreign 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;

(c) Further reiterates its recommendation that the State party review the system of administrative deportations of foreign domestic workers and refer such cases to courts of law, with the possibility of appeal (see CERD/C/KWT/CO/15-20, para. 19);

(d) Requests that the State party provide, in its next periodic report, information on the application of Law No. 68 (2015), including a copy of the model contract issued by domestic authorities and statistics on the number of foreign domestic workers who have filed employment-related complaints and the investigations, prosecutions and sanctions resulting from such complaints.

Access to justice for foreign workers

25. While noting the delegation's statement that the Constitution of Kuwait guarantees the right to legal redress, the Committee remains seriously concerned that many foreign workers are unaware of their rights and responsibilities under national law and are not informed of avenues of redress, including compensation, in cases where they need assistance. Noting that the State party provides translations of foreign workers' contracts into Arabic and English only, the Committee considers that this approach does not ensure that all workers are adequately informed of their duties and rights, nor of mechanisms for their protection (arts. 2, 5 and 6).

26. The Committee reiterates its recommendation (see CERD/C/KWT/CO/15-20, para. 22) that the State party provide information to all foreign workers explaining their rights and responsibilities under national law and the authorities to whom they can turn if they need assistance, in languages they understand. The Committee further recommends that the State party:

(a) Ensure that foreign workers can, without fear of reprisals, submit complaints regarding employment-related abuses to independent and effective mechanisms;

(b) Provide detailed information in its next periodic report on the number of complaints submitted by foreign workers and their outcome, and on the number and outcome of migrant workplace inspections carried out by qualified and trained inspectors in those areas;

(c) Require that a copy of a migrant worker's contracts of engagement be provided to the worker in a language she or he understands.

Persons in an irregular situation — stateless persons (Bidoon)

27. The Committee notes that the State party established the Central Agency for Regularization of the Status of Illegal Residents under Decree No. 467/2010, and the delegation's statements that stateless persons enjoy human rights on an equal basis with nationals of Kuwait; that many stateless persons (Bidoon) have obtained Kuwaiti nationality in recent years; and that many persons claiming to be stateless in Kuwait are in fact nationals of other countries. However, the Committee remains deeply concerned by the situation of Bidoon, many of whom have lived in Kuwait for generations but are deemed "illegal residents" by the State party. It expresses serious concern at persistent reports that Bidoon do not enjoy equal access to social services, due process and legally valid civil documentation, including birth registration documents (arts. 2, 5 and 6).

28. In the light of its general recommendation No. 30 (2004) on discrimination against non-citizens, the Committee recommends that the State party:

(a) **Find a durable solution to the problems faced by Bidoon, including by considering naturalizing those who have lived in Kuwait for long periods and have a genuine and effective link to the State;**

(b) **Put into place immediate administrative procedures to allow all Bidoon to obtain official documents, including birth registration documents;**

(c) **Consider providing residence permits and temporary legal status to all non-citizens as appropriate;**

(d) **Guarantee access for all to adequate social services and education on an equal footing with nationals of Kuwait, and provide in its next periodic report information on access to primary, secondary and tertiary education;**

(e) **Ensure that applications for Kuwaiti nationality are assessed through written, reasoned decisions that may be appealed;**

(f) **Accede to the Convention relating to the Status of Stateless Persons and the Convention on the Reduction of Statelessness.**

Human rights defenders

29. While noting the delegation's statements that protests organized by Bidoon have disturbed the peace, the Committee expresses alarm at reports that such protests have been met with excessive force and arbitrary arrest, and that several Bidoon rights defenders have been harassed and detained in connection with their advocacy activities. The Committee is also concerned by reports that the release of some individuals detained for protesting in defence of human rights has been conditioned upon the signature of a written pledge not to participate in such protests again (arts. 2, 5 and 6).

30. The Committee recommends that the State party promptly investigate allegations of excessive use of force, arbitrary detention, deterrence of lawful protests, ill-treatment and torture of human rights defenders, including stateless individuals, and provide statistics in its next report concerning any investigations, prosecutions, convictions and sanctions applied.

Nationality laws

31. While noting the State party's position regarding the sovereign nature of nationality issues, the Committee remains concerned that the Nationality Act 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).

32. The Committee reiterates its recommendation (see CERD/C/KWT/15-20, para. 18) that the State party modify the Nationality Act to allow Kuwaiti women married to foreigners to pass on their nationality to their children and spouses on an equal footing with Kuwaiti men.

Refugees and asylum seekers

33. The Committee notes with concern that the State party is not a party to the Convention relating to the Status of Refugees. It remains concerned that refugees deemed to be not lawfully staying in Kuwait face daily overstay fines unless they leave the country (arts. 5 and 7).

34. The Committee reiterates its recommendation that the Ministry of the Interior annul the daily overstay fines for refugees deemed to be not lawfully staying in Kuwait (see CERD/C/CO/KWT/15-20, para. 20). It further recommends that the State party fully apply the principle of non-refoulement, and encourages it to ratify the Convention relating to the Status of Refugees and its Protocol of 1967.

D. Other recommendations**Ratification of other instruments**

35. The Committee encourages the State party to consider ratifying those international human rights treaties that it has not yet ratified, in particular treaties with provisions that have direct relevance to communities that may be subjected to racial discrimination, including the International Convention for the Protection of All Persons from Enforced Disappearance and the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families. The Committee also reiterates its recommendation that the State party ratify the Domestic Workers Convention, 2011 (No. 189) of the International Labour Organization (see CERD/C/KWT/CO/15-20, para. 16.)

Follow-up to the Durban Declaration and Programme of Action

36. In the 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.

International Decade for People of African Descent

37. In the light of General Assembly resolution 68/237, the Committee requests that the State party include in its next periodic report precise information on the concrete measures adopted in the framework of the International Decade for People of African Descent, taking into account its general recommendation No. 34 (2011) on racial discrimination against people of African descent.

Consultations with civil society

38. The Committee recommends that the State party continue consulting and increasing its dialogue with civil society organizations working in the area of human rights protection, in particular those working to combat racial discrimination, in connection with the preparation of the next periodic report and in follow-up to the present concluding observations.

Declaration under article 14 of the Convention

39. The Committee encourages the State party to make the optional declaration provided for in article 14 of the Convention recognizing the competence of the Committee to receive and consider individual complaints.

Amendment to article 8 of the Convention

40. The Committee recommends that the State party ratify the amendment to article 8 (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.

Common core document

41. The Committee welcomes the submission of the State party's common core document in 2015, but notes that the document does not fully conform to the harmonized guidelines on reporting under the international human rights treaties, in particular those on the common core document (HRI/GEN/2/Rev.6, chap. I). The Committee invites the State party to revise and resubmit its core document in accordance with those guidelines. In the light of General Assembly resolution 68/268, the Committee urges the State party to observe the limit of 42,400 words for such documents.

Follow-up to the present concluding observations

42. In accordance with article 9 (1) of the Convention and rule 65 of its rules of procedure, the Committee requests the State party to provide, within one year of the adoption of the present concluding observations, information on its implementation of the recommendations contained in paragraphs 12 (b) and 28 (b) above.

Paragraphs of particular importance

43. The Committee wishes to draw the attention of the State party to the particular importance of the recommendations contained in paragraphs 14, 20, 26 and 28 (a) above and requests the State party to provide detailed information in its next periodic report on the concrete measures taken to implement those recommendations.

Dissemination of information

44. 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 concluding observations of the Committee with respect to those reports be similarly publicized in the official and other commonly used languages, as appropriate.

Preparation of the next periodic report

45. The Committee recommends that the State party submit its combined twenty-fifth and twenty-sixth periodic reports, as a single document, by 4 January 2020, taking into account the reporting guidelines adopted by the Committee during its seventy-first session (CERD/C/2007/1) and addressing all the points raised in the present concluding observations. In the light of General Assembly resolution 68/268, the Committee urges the State party to observe the limit of 21,200 words for periodic reports.
