

Submission to the Universal Periodic Review of Kuwait July 2019

Introduction

Since Kuwait's 2014 Universal Periodic Review (UPR) in the Human Rights Council, the government has had a mixed record in addressing identified human rights issues. While it has taken positive steps to improve in some important areas, including migrant domestic worker protections, it has failed to adequately address longstanding problems such as the Kafala system, discrimination against women, abuses against stateless people, and restrictions on peaceful expression.

In 2015 Kuwait passed a law granting migrant domestic workers a set of enforceable rights. The new law, however, offers protections that are weaker than Kuwait's private sector labor law and fails to abolish the Kafala system that enables abuses against workers. Kuwaiti laws continue to criminalize free expression, with authorities using the 2015 cyber law that includes far-reaching restrictions on Internet-based speech to prosecute government critics for opinions they express online.

In addition, while in 2011 the government announced a set of welfare benefits and access to work for Kuwait's stateless population, known as the Bidun, the process for receiving and renewing these benefits is opaque, restrictions to them are often made without due process, and the government has not fulfilled its promises to grant nationality to all those with legitimate citizenship claims.

Women's Rights

During Kuwait's second UPR cycle in 2014, the country accepted 28 recommendations regarding women's rights, including on taking "legislative steps to ensure gender equality" and adopting "measures to combat domestic violence." Since then, however, the government has taken few meaningful steps to implement these recommendations.

Major gaps in Kuwait's laws allow for continued discrimination against women. Kuwait's nationality law denies Kuwaiti women married to non-Kuwaiti men equality in passing on their nationality on to their children and spouses, which Kuwaiti men married to foreign spouses have. Foreign husbands of Kuwaiti women have no legal authority to remain in the country without a residency permit. Such permits are granted only to non-Kuwaiti men who are employed. In contrast, foreign women married to Kuwaiti men are granted residency automatically and qualify for citizenship after ten years of marriage.

Kuwait's Personal Status Laws – both the codified law no.51 of 1984 which applies to Sunni Muslims and the uncodified Ja'fari interpretation of personal status matters which applies to Shi'a Muslims – discriminate against women. In particular, women's testimony is given lesser weight than men's; they are afforded lesser inheritance rights; and spouses are assigned unequal rights and responsibilities in both marriage and divorce.

Among the most discriminatory provisions in the Personal Status Law No.51 of 1984 are those regarding a marriage contract. Under the law, a woman is never free to make a marriage decision on her own. Unlike a man, she is not free to conclude her marriage contract herself but rather she must have a male guardian (wali) do so on her behalf, regardless of her age. A woman between 15 and 25 years of age may be prohibited by her guardian from marrying, and while she may file a court appeal, she still cannot marry her choice of spouse if the court rules against her. In addition, the minimum age for registering a marriage is fifteen for women, and 17 for men, violating both international law regarding gender equality and international law against child marriage, which states that the minimum age of marriage should be 18 years of age. Witnesses to the marriage must be Muslim men for the marriage to be valid. A man may legally have up to four wives simultaneously, without the permission or even the knowledge of his other wife or wives, while women are permitted a single spouse.

Kuwait still has no laws prohibiting domestic violence, sexual harassment, or marital rape. A 2015 law establishing family courts also set up a center to deal with domestic violence cases, but the law requires the center to prioritize reconciliation over protection for domestic violence survivors or

prosecution of perpetrators. Under article 153 of Kuwait's Penal Code, "anyone who surprises his wife in a state of adultery, or surprises his daughter or mother or his sister in the presence of a man and kills her immediately or kills him or kills them together is punishable by imprisonment for a period not exceeding three years and a fine of not more than 3,000 Dinars or one of these two punishments."

Recommendations

- Amend Kuwait's Nationality Law to recognize equality between Kuwaiti women and men in conferring nationality on spouses and children;
- Amend Personal Status Law No. 51 of 1984 and the application of uncodified personal status laws in line with international human rights standards. In particular, revoke those provisions which assign lesser weight to women's testimony and role as witnesses, give them lesser rights in inheritance, and assign spouses unequal rights, restrict the right of women to marry when and whom they choose, and permit polygamy and forced and child marriage;
- Revoke article 153 of Kuwait's penal code;
- Raise awareness about gender-based violence; provide services for victims including hotlines, shelters, counseling and medical and legal assistance; create accessible mechanisms for victims to report sexual and domestic violence to the police, and ensure that criminal complaints are investigated, prosecuted when warranted, and that judgments are enforced.

Statelessness and Right to Nationality

During its 2014 UPR cycle, Kuwait did not accept any of the recommendations regarding statelessness and the right to nationality. This is despite the fact that between 80,000 to 100,000 stateless people known as the Bidun have remained in a state of legal limbo for the past 50 years. The Bidun are deprived of political rights such as voting or participating in peaceful assembly and face discrimination in access to employment, health care, education, marriage, and founding a family. In 2011, Bidun protestors took to the streets to demand government action on their claims for citizenship and resolution of their stateless status. While the government responded to protests with dozens of arrests and prosecution of community activists, it also eventually issued a royal decree granting "benefits" to the Bidun, including access to health care, employment, education, and civil registration. Over the past four years, while the holders of valid identity cards issued by the Central Agency for Remediating Illegal Residents, an administrative body in charge of Bidun affairs, can access forms of basic services such as education, health care, and civil registration, the process of issuing the cards and determining if the applicant has a second nationality or is in fact stateless remains vastly nontransparent and without sufficient due process.

Since access to many essential government services are tied to the validity of the card, Bidun find it increasingly difficult to adequately access important rights without them. While the government issues time-bound exemptions for access to health and education, the members of the Bidun community without valid ID cards have had their bank accounts closed, are unable to register for university, are denied job opportunities, and occasionally are even deprived of basic health services.

According to Kuwait's constitution, courts do not have jurisdiction over nationality claims. There is no legal path to challenge the central agency's status determination and courts so far have failed to provide a meaningful appeal process for Bidun.

Human Rights Watch has documented several instances of the Central Agency carrying out direct reprisals against community activists by denying them ID cards, including those who have not otherwise been prosecuted by authorities. In those instances, officials from the central agency had refused to renew the ID cards for activists, as well as in some instances their family members, directly intimidating and threatening them in order to coerce them to sign pledges to stop their activism as a quid pro quo to renew their ID cards. At times, the office had renewed the activists' cards for shorter periods and at least in one instance, demanded an activist to travel to the Central Agency multiple times over several months for intensive questioning.

Recommendations

- Implement a strategic plan to remedy Kuwait's longstanding problem of statelessness, in accordance with international legal standards and in consultation with the UNHCR and local civil society organizations. Publish a timetable for ending statelessness in Kuwait and dedicate adequate resources for expediting resolution;

- Grant temporary legal residency to Bidun pending resolution of their claims to Kuwaiti nationality. Cease treating the Bidun as “illegal residents”;
- Grant nationality to children born in Kuwait who would otherwise be stateless;
- Grant nationality to long-term residents with strong claims to nationality, including residents who lack documented ties to other states and whose primary place of residence, familial, economic, and/or social ties are with Kuwait;
- Continue to register all children born in Kuwait upon birth and issue them birth certificates, and do not return to the previous position of non-registration;
- Ensure Bidun have a meaningful and effective avenue to challenge the decision regarding their nationality claims to avoid arbitrary application of the law and ensure due process.
- Ratify the 1954 Convention relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness.

Migrant Domestic Workers

During the 2014 UPR, Kuwait accepted numerous recommendations to protect migrant workers’ rights, improve their living and working conditions.

Migrant workers make up around 2 million of Kuwait’s population of 4.1 million, including more than 660,000 domestic workers.

In 2015, Kuwait passed a law on domestic workers extending labor protections for the first time, including a right to a weekly rest day, a 12-hour working day with rest periods, annual paid leave, and overtime compensation. In 2016, Kuwait became the first in the Gulf region to pass a minimum monthly wage of 60KD (US\$200) for domestic workers. However, the law is weaker than Kuwait’s private sector labor law and does not conform to the International Labour Organization (ILO) Domestic Workers Convention. The law fails, for instance, to provide for workplace inspections in the home, which can be done with due regard to privacy. Moreover, the law still maintains the *kafala* (sponsorship) system, under which workers who flee their employers can be arrested for “absconding” and fined, imprisoned for up to six months, deported, and barred from returning for at least six years. Human Right Watch has documented several cases where employers filed a complaint against workers who had fled abusive work conditions based on an absconding charge. In practice, under the new law, even if the employer does not file a claim, workers who flee abusive environments are only able to seek justice for serious violations such as physical injury while staying at shelter with no pay, and they often have to drop their claims over nonpayment of salary or other benefits.

Recommendations

- Ratify the International Labour Organization’s Convention on Decent Work for Domestic Workers;
- Amend Kuwait’s labor law in order to include coverage of domestic workers and ensure comprehensive protections including a weekly rest day, timely payment of wages in full, limits to working hours, and the right to keep possession of one’s passport;
- Replace the current *kafala* system with domestic worker residency permits overseen by the government, permits that would allow workers to change employers and to exit Kuwait without obtaining consent from a private individual or entity;
- Redouble efforts to investigate and prosecute abuses against domestic workers as well as their salary claims.

Freedom of Expression and Assembly

During the 2014 UPR Kuwait accepted several recommendations to ensure freedom of expression and peaceful assembly, including to “guarantee in law and in practice, without any abusive restrictions, freedom of peaceful assembly and freedoms of opinion and expression, on the internet and in the traditional media.” The country, however, has continued to prosecute peaceful government critics under provisions of the Penal Code that criminalize speech deemed offensive to the emir or disparaging to neighboring countries.

The cybercrime law that went into force in 2015 expanded the reach of existing prohibitions on print publications to virtually all dissemination of information through the Internet, including online journalism and private use of social media and blogs. Article 6 of the law imposes prison sentences and fines for insulting religion and religious figures, and for criticizing the emir over the Internet. Article 6 also prohibits Internet-based statements deemed to criticize the judicial system or harm Kuwait’s

relations with other states, or that publicize classified information, without exceptions for disclosures in the public interest.

Recommendations

- Amend national laws that prohibit insulting the Emir, rulers of other countries, the prophet, Islam, and other government officials, which infringe on the right to free expression;
- Only pursue criminal charges against those exercising speech that amounts to incitement to violence or hatred;
- Do not seek prison sentences for speech alleged to be defamatory.

International Instruments

During the 2014 UPR, Kuwait did not accept any of the recommendations about ratifying additional international instruments. International instruments are, however, the cornerstone of human rights protections across the world.

Recommendation

- Ratify the International Criminal Court (ICC) Statute and align national legislation with all obligations under the Rome Statute, including by incorporating provisions to cooperate promptly and fully with the ICC and to investigate and prosecute genocide, crimes against humanity, and war crimes effectively before its national courts.