



## Human Rights Watch Submission to the CEDAW Committee of Kuwait's Periodic Report for the 68th Session

October 2017

We write in advance of the 68th session of the Committee on the Elimination of Discrimination against Women, and its review of Kuwait's compliance with the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW). This submission addresses issues related to articles 1, 2, 3, 9, 11, 15, and 16 of the Convention, and suggests recommendations to put to the Kuwaiti government.

### 1. Nationality (CEDAW articles 1, 9, and 11)

The CEDAW Committee in its last review of Kuwait in 2011 called on the government to “review the Nationality Act to ensure equality between women and men with regard to the acquisition, change and retention of nationality and to enable Kuwaiti women to pass their nationality to their children and to their foreign spouses.”<sup>1</sup>

However, Kuwaiti women are still not allowed to confer their nationality to their children and their spouses on an equal basis to Kuwaiti men.<sup>2</sup> Kuwaiti men can automatically confer nationality to their children, whereas Kuwaiti women only can confer nationality when the father is unknown or the “kinship to the father has not been legally established.”<sup>3</sup> The Minister of Interior may also confer Kuwaiti nationality to a child born to a Kuwaiti mother if the foreign father has irrevocably divorced the mother or has passed away, and after the child has maintained residency in Kuwait “until reaching the age of majority.”<sup>4</sup> Foreign husbands of Kuwaiti women have no legal right to remain in the country without a residency permit. In

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<sup>1</sup> CEDAW Committee, Concluding observations: Kuwait, Fiftieth session 3 – 21 October 2011, UN Doc. CEDAW/C/KWT/CO/3-4, November 8, 2011, para. 37(a), [http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=CEDAW%2fC%2fKWT%2fCO%2f3-4&Lang=en](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CEDAW%2fC%2fKWT%2fCO%2f3-4&Lang=en) (accessed October 9, 2017).

<sup>2</sup> Kuwait Nationality Law (1959), art. 2, provides that “Any person born in or outside Kuwait whose father is a Kuwaiti national shall be a Kuwaiti national,” available at <http://www.ilo.org/dyn/natlex/docs/ELECTRONIC/83364/91990/F734821664/KWT83364.pdf> (accessed October 9, 2017).

<sup>3</sup> Kuwait Nationality Law (1959), art. 3.

<sup>4</sup> Kuwait Nationality Law (1959), art. 5.

contrast, foreign women married to Kuwaiti men are granted residency automatically and qualify for citizenship after fifteen years of marriage.<sup>5</sup>

The Bidun community, who number around 100,000, also face discrimination in obtaining Kuwaiti nationality.<sup>6</sup> They are designated as undocumented residents and are effectively stateless. There are estimates of some 5,000 to 7,000 marriages between Kuwaiti women and Bidun men.<sup>7</sup> Kuwaiti women cannot pass on nationality to their Bidun spouse or their children from such a marriage, rendering them stateless. In some reported cases, couples have divorced in an effort to allow their children to apply for citizenship under article 5 of the nationality law. However, these children still faced difficulty in obtaining citizenship.<sup>8</sup>

In May 2016, a Comoros Island official told a Kuwaiti daily (Anbaa News) that the Comoros Island was open to Kuwaiti officials' suggestions that Kuwait may pay the Comoros Islands to grant the Bidun a form of economic citizenship, thus regularizing Bidun as foreign nationals and rendering them liable to legal deportation from Kuwait—possibly violating their right to family life.<sup>9</sup>

## **2. Personal status laws (CEDAW articles 1, 2, 15, and 16)**

Kuwait has failed to undertake reforms recommended by the CEDAW Committee in its last concluding observations to review the discriminatory provisions in its Personal Status Law, to raise the minimum age of marriage to 18, and to eliminate the requirement of the consent of a *wali* (male guardian) for a Sunni woman to marry.<sup>10</sup>

Both Kuwait's Personal Status 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, still discriminate against women entering marriage, during marriage, and in divorce.<sup>11</sup>

Under Personal Status Law No. 51 of 1984, a woman is not free to conclude her marriage contract but must have a male guardian (*wali*) do so on her behalf, regardless of her age.

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<sup>5</sup> Kuwait Nationality Law (1959), art. 8.

<sup>6</sup> "34 Thousand Candidates for Naturalization from 106 Thousand," *al-Qabas*, November 5, 2010. See also Human Rights Watch, *Prisoners of the Past: Kuwaiti Bidun and the Burden of Statelessness*, June 2011, <https://www.hrw.org/sites/default/files/reports/kuwait0611WebInside.pdf>.

<sup>7</sup> Open Society Foundations, *Without Citizenship: Statelessness, Discrimination and Repression in Kuwait*, 2011, available at <https://www.opensocietyfoundations.org/sites/default/files/without-citizenship-20110512.pdf> (accessed October 9, 2017).

<sup>8</sup> *Ibid.*

<sup>9</sup> "Comoros ready to take Kuwait's stateless," *Gulf News*, May 16, 2016, <http://gulfnews.com/news/gulf/kuwait/comoros-ready-to-take-kuwait-s-stateless-1.1828738> (accessed October 9, 2017).

<sup>10</sup> CEDAW Committee, Concluding observations: Kuwait, Fiftieth session 3 – 21 October 2011, UN Doc. CEDAW/C/KWT/CO/3-4, November 8, 2011, para. 51.

<sup>11</sup> Personal Status Law no. 51/1984, article 346 states "(a) This law applies to whoever is subject to the school of Imam Malik, and those who are not are subject to the regulations specific to them. (b) If parties in a dispute are non-Muslim and differ in religion or sect the provisions of this law apply to them." In practice, this has meant that Shi'a Muslims cases are heard by a separate section of the personal status division of the courts.

Although Shi'a legal interpretation of Islamic law does not require the presence of a *wali* for women who have reached maturity, witnesses to the marriage must also be Muslim men for the marriage to be valid.

In addition, the minimum age for registering a marriage is 15 for girls, and 17 for boys, in contravention with international standards that recommend a minimum age of marriage at 18.

The Personal Status Law also enables a man to marry up to four wives simultaneously, without the permission or the knowledge of his first wife/wives.<sup>12</sup> The law also allows a man to prohibit his wife from working if her work negatively affects the family interests.<sup>13</sup>

Under the law, women can only apply to the courts for a divorce on limited grounds, such as if she has been abandoned or abused, or if her husband has failed to support her financially. Men, however, can divorce women without any restrictions.

Women also face discrimination in relation to the status of children after divorce. Under articles 110 of the Civil Code and 209 of the Personal Status Law, a father maintains legal guardianship of the children, regardless of whether a court has ordered that the children should live with the mother. Women can serve as legal guardians of their children only when they obtain authorization from a court decision. Children can also be removed from living with their mothers if their mothers re-marry, unless their ex-husbands make no complaint about their remarriage for a year.<sup>14</sup>

### **3. Domestic violence (CEDAW articles 1, 2, 3, and 16)**

Kuwait also failed to apply the various recommendations by the CEDAW Committee in relation to violence against women.<sup>15</sup>

Kuwait still does not have publicly available data or statistics on domestic violence or violence against women. A Kuwaiti newspaper reported that a 2011 Ministry of Justice report found that between 1995 and 2005, 30 percent of divorce cases cited domestic abuse as the reason for divorce.<sup>16</sup>

There is still no legislation on domestic violence in Kuwait. Physical assault can be prosecuted under general assault provisions in the penal code, but there is no publicly available data on the number of successful prosecutions. Marital rape is not explicitly criminalized.

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<sup>12</sup> Personal Status Law no. 51/1984, art. 21.

<sup>13</sup> Personal Status Law no. 51/1984, art. 89.

<sup>14</sup> Personal Status Law no. 51/1984, art. 191.

<sup>15</sup> CEDAW Committee, Concluding observations: Kuwait, Fiftieth session 3 – 21 October 2011, UN Doc. CEDAW/C/KWT/CO/3-4, November 8, 2011, para. 31.

<sup>16</sup> "One-third of women in Kuwait are domestic abuse victims," *Kuwait Times*, January 11, 2011, available via <https://www.facebook.com/notes/kuwait-times/one-third-of-women-in-kuwait-are-domestic-abuse-victims/125960400802896/> (accessed October 9, 2017).

Kuwait's penal code provides reduced sentences for men who commit acts of violence against women if they find them in the act of extra-marital sex. According to article 153 of the Penal Code, a man who finds his wife or her partner in an adulterous act, or his daughter, sister, or mother in the act of *zina* (extramarital sex), and kills them or their partner is sentenced to a maximum of three years in prison or a fine of 3,000 Kuwaiti dinars (approximately US\$9,820).<sup>17</sup>

The Family Court Act issued in 2015 established the creation of a family court in every governorate in Kuwait, and the creation of centers within the family courts to settle family disputes and protect individuals from violence by family members.<sup>18</sup> The Kuwaiti government reported that the Ministry of Justice's 2016 decree which regulates such centers, allows for family members to request a dispute resolution at the center but not where it involves cases relating to "personal status or cases of emergency."<sup>19</sup> It is not clear if the process could apply in cases of violence against women that are not deemed an "emergency." The UN Women Handbook on Legislation on Violence against Women calls for mediation to be prohibited in all cases of violence against women, at all stages of legal proceedings. It provides that when mediation is offered as an alternative, "it removes cases from judicial scrutiny, presumes that both parties have equal bargaining power, reflects an assumption that both parties are equally at fault for violence, and reduces offender accountability."<sup>20</sup>

There are currently no state shelters for domestic violence survivors.

#### 4. Migrant domestic workers (CEDAW articles 1, 2, 11, and 15)

Migrant domestic workers in Kuwait constitute nearly a third of the country's entire workforce. A 2010 Human Rights Watch report documented abuses against domestic workers, including non-payment of wages, long working hours with no rest days, physical and sexual assault, and no clear channels for redress.<sup>21</sup>

In 2015, the National Assembly passed a law that gave domestic workers the right to a weekly day off, 30 days of annual paid leave, a 12-hour working day with rest, and an end-of-service benefit of one month a year at the end of the contract, among other rights.<sup>22</sup> In July 2016, the

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<sup>17</sup> Penal Code, Law no. 16 of 1960, available at <http://gulfmigration.eu/law-no-16-of-1960-promulgating-the-penal-code-2/> (accessed October 9, 2017).

<sup>18</sup> Law no. 12 in 2015 promulgating the Family Court Act, art. 8, available at <http://www.gcc-legal.org/LawAsPDF.aspx?opt&country=1&LawID=4152> (accessed October 9, 2017).

<sup>19</sup> See reference to Ministerial Decree No. 115 (2016) in "List of issues and questions in relation to the fifth periodic report of Kuwait: Replies of Kuwait," U.N. Doc. CEDAW/C/KWT/Q/5/Add.1, July 6, 2017, para. 8.

<sup>20</sup> UN Women, "Handbook on Legislation on Violence against Women," 2012, [http://www2.unwomen.org/~media/headquarters/attachments/sections/library/publications/2012/12/unw\\_legislation-handbook%20pdf.pdf?v=1&d=20141013T121502](http://www2.unwomen.org/~media/headquarters/attachments/sections/library/publications/2012/12/unw_legislation-handbook%20pdf.pdf?v=1&d=20141013T121502) (accessed October 9, 2017). section 3.9.1.

<sup>21</sup> See Human Rights Watch, *Walls at Every Turn: Abuses of Migrant Domestic Workers through Kuwait's Sponsorship System*, October 2010, <http://www.hrw.org/reports/2010/10/06/walls-every-turn-o>.

<sup>22</sup> Law no. 68 of 2015 on Domestic Labor, passed by Parliament on June 24, 2015, and published in the Official Gazette on July 26, 2015, at <http://www.ilo.org/dyn/natlex/docs/ELECTRONIC/101760/122760/F1581984342/k2.pdf> (accessed October 9, 2017). See

Interior Ministry passed implementing regulations for the law, including clarifying that employers must pay overtime compensation.<sup>23</sup> The same month, the ministry issued a decree that established a minimum wage for domestic workers of 60 Kuwait dinars (approximately US\$200).<sup>24</sup>

While these were important steps forward, protections in the domestic workers' law are still weaker than those in the labor law, which provides for an eight-hour work day with one hour of rest after every five hours of work and detailed provisions for sick leave.<sup>25</sup> The domestic worker law also falls short by failing to set out enforcement mechanisms, such as labor inspections of working conditions in households. In addition, while the Domestic Labor Directorate in the Ministry of Interior has the authority to resolve disputes between domestic workers and employers, it does not appear to require employer participation in dispute resolution processes. The department can sanction a recruitment agency, but not an employer, for failing to contact the department after being summoned.<sup>26</sup> The law also does not set out sanctions against employers who confiscate passports, or fail to provide adequate housing, food, and medical expenses, daily breaks, or weekly rest days.

Moreover, the realization of the rights under the new law and regulations will be limited because the *kafala* (visa-sponsorship) system remains intact. This is despite the CEDAW Committee's recommendation to Kuwait to "review the sponsorship system in order to decrease the dependency and vulnerability of migrant domestic workers, in particular women, in relation to their employers."<sup>27</sup>

Under the *kafala* system, migrant domestic workers' legal status is still tied to their employers, who act as their visa sponsors. Workers cannot transfer to another employer without their current employer's consent. If they do, they are considered to have "absconded," and can be arbitrarily detained, fined, or sentenced to imprisonment. Human Rights Watch has documented how this policy traps many domestic workers in abusive situations, and can end up punishing victims of employer abuse.<sup>28</sup>

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also "Kuwait: New Law a Breakthrough for Domestic Workers," Human Rights Watch news release, June 30, 2015, <https://www.hrw.org/news/2015/06/30/kuwait-new-law-breakthrough-domestic-workers>.

<sup>23</sup> Ministerial Decree no. 2194 of year 2016 regarding the Implementing Regulations of Law no. 68 of 2015 on Domestic Labor, published in the Official Gazette on July 17, 2016.

<sup>24</sup> Ministry of Interior, Ministerial Decree no. 2302/2016 regarding implementation procedures of Law no. 68/2015 on Domestic Labor.

<sup>25</sup> Law no.6 of 2010 on Labor in the Private Sector, arts. 64-65 and 69.

<sup>26</sup> Law no. 68 of 2015 on Domestic Labor, art.24.

<sup>27</sup> CEDAW Committee, Concluding observations: Kuwait, Fiftieth session 3 – 21 October 2011, UN Doc. CEDAW/C/KWT/CO/3-4, November 8, 2011, para. 40-41.

<sup>28</sup> For a full account of the *kafala* system see Human Rights Watch, *Walls at Every Turn*, pp.31-38.

The 2015 domestic worker law reinforces the *kafala* system. It requires that the Ministry of Interior deport an “absconding” worker, with their travel expenses paid for by either the employer currently “harboring” the worker or the recruitment agency.<sup>29</sup>

On March 31, 2016, the Public Authority for Manpower published Administrative Decision No. 378/2016, which allows migrant workers in the private sector to transfer their sponsorship to a new employer without their current employer’s consent after three years of work, provided they give 90-day notice to their current employers.<sup>30</sup> This incremental reform does not apply to domestic workers.

## 5. Recommendations

We urge the Committee to make the following recommendations to the Kuwaiti government:

- Amend article 2 of the Kuwaiti 1959 Nationality Law to stipulate that a Kuwaiti citizen is any person born in Kuwait or abroad to a Kuwaiti father or a Kuwaiti mother.
- Uphold the rights of the Bidun to nationality.
- Amend the personal status laws to ensure that women have equal rights to enter marriage, during marriage, in obtaining a divorce and with regard to guardianship and other orders concerning children after divorce.
- Increase the minimum age of marriage to 18 in line with CEDAW and CRC recommendations.
- Amend the penal code to remove the reduction to sentences when men commit acts of violence against women if they find them in the act of extra-marital sex.
- Compile and publish national studies and statistics on violence against women including on domestic violence.
- Adopt legislation on violence against women, including to prevent domestic violence, prosecute abusers, and assist survivors.
- Prohibit mediation at police stations, dispute resolution centers, and at all other stages of legal proceedings, in all cases of violence against women.
- Establish or fund centers for victims of domestic violence, including temporary emergency shelters, and legal assistance to domestic violence survivors.
- Align the new 2015 domestic worker law and its implementing regulations in line with the ILO Domestic Workers Convention, including by ensuring that domestic workers have equal rights to other workers under the labor law; enforcement mechanisms such as requiring employer participation in dispute resolution processes; and penalties for employers who confiscate passports or fail to provide adequate working conditions.

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<sup>29</sup> Law no. 68 of 2015 on Domestic Labor, art. 51.

<sup>30</sup> “(Manpower): Transfer (work permit) after three years without return to employer,” Kuwait News Agency (KUNA), March 31, 2016, <http://www.kuna.net.kw/ArticleDetails.aspx?id=2495513&language=ar> (accessed October 9, 2017).

- Enforce the 2015 domestic workers law and 2016 regulations, including investigating and prosecuting employers and agents for violations.
- Reform the *kafala* system to allow all migrant workers, including domestic workers, to leave or change employers at will, and without losing their legal status.