



**International Convention on  
the Elimination of All Forms  
of Racial Discrimination**

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**Committee on the Elimination of Racial Discrimination**

**Consideration of reports submitted by States  
parties under article 9 of the Convention**

**Twenty-first to twenty-fourth periodic reports of States  
parties due in 2016**

**Kuwait\*\***

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## **Part II: Legislative, judicial and administrative measures taken by the State of Kuwait to implement the articles of the Convention**

### **Article 1**

1. The State of Kuwait acceded to the International Convention on the Elimination of All Forms of Racial Discrimination in 1968 pursuant to Act No. 33 of 1968, thereby affirming its determination to apply the principles and values of human rights in both law and practice by, inter alia, eliminating all forms of racial discrimination.

2. Kuwait's policy of rejecting racism and racial discrimination is in conformity with verse 13 of the chapter of the Holy Qur'an entitled *Al-Hujurat* ("O mankind! We created you from a single pair of a male and a female and made you into nations and tribes so that you may know each other. Verily, the most righteous among you shall be the most honoured in the sight of God, who is Omniscient and All-Cognizant"), especially as the Islamic Sharia is the primary source of the principles and provisions of the Kuwaiti Constitution, as stipulated in article 2 thereof.

3. The general principle of opposition to racism and racial discrimination is laid down in article 29 of the Constitution which places the concepts of equality, non-discrimination and respect for human dignity on a firm foundation by stipulating that: "Everyone is equal in regard to human dignity and all are equal before the law in regard to their public rights and obligations, without distinction among them on grounds of race, origin, language or religion."

4. Article 7 of the Constitution further stipulates that: "Justice, liberty and equality are the pillars of society. Mutual assistance and respect are the firmest bonds between citizens."

5. The explanatory note on the interpretation of article 29 of the Constitution indicates that the said article embodies the principle of equality in regard to rights and obligations in general while referring, in particular, to the most important aspect of that principle, namely the enjoyment of equality "without distinction as to race, origin, language, or religion" (or colour or wealth).

6. In conformity with those articles, numerous relevant legislative instruments have been enacted, including:

- Article 6 of Act No. 24 of 1962, concerning clubs and associations of public benefit, which stipulates that: "Associations and clubs shall not be permitted to pursue any unlawful objective ... and it shall be prohibited for them to involve themselves in politics or religious controversies or incite intercommunal, racial or confessional bigotry."
- Article 6 of Legislative Decree No. 42 of 1978, concerning sports associations, likewise stipulates that: "Sports organizations shall not be permitted to pursue an unlawful objective ... and shall be prohibited from engaging or involving themselves in politics or religious controversies or inciting intercommunal, racial or confessional bigotry."
- From the penal standpoint, article 111 of the Kuwaiti Criminal Code (Act No. 16 of 1960) criminalizes any manifestation of religious bigotry by stipulating that: "Anyone who publicly disseminates, in any of the ways specified in article 101, views that constitute derision, disparagement or defamation of a religion or a religious confession or an attack on the doctrines, observances, rites or teachings

thereof shall be liable to a penalty not exceeding one year's imprisonment and/or a fine of not more than 1,000 rupees.”

- Article 46 of the Private Sector Employment Act No. 6 of 2010 stipulates that: “It is prohibited to terminate the services of an employee without justification or because of the employee’s trade-union activity or the employee’s claiming or enjoyment of his or her legitimate rights in a lawful manner. It is likewise prohibited to terminate the services of an employee on grounds of race, origin or religion.”
- Article 1 of Legislative Decree No. 19 of 2012, concerning the protection of national unity, prohibits: advocacy or incitement of hatred or contempt for any social group by any of the means of expression specified in article 29 of Act No. 31 of 1970 amending various provisions of the Criminal Code; provocation of sectarian or tribal factionalism; promotion of ideology based on the superiority of any race, group, colour, national or ethnic origin, religious confession or lineage; encouragement of any act of violence to that end; and dissemination, propagation, printing, broadcasting, retransmission, production or circulation of any concepts, printed or audiovisual material, or spreading or retransmission of false rumours, likely to lead to any of the above.

## Article 2

7. The Kuwaiti legislature has sought to prevent any discriminatory or prejudicial acts against individuals, groups or institutions through enactments such as the following:

- Act No. 3 of 2006, article 19 of which prohibits disparagement of the Divine Essence, the Holy Qur’an, the prophets, the noble companions or wives of the Prophet (peace and blessings be upon him) or the members of his family (peace be upon them).
- The Audiovisual Information Act No. 61 of 2007, article 11 of which prohibits licensees from broadcasting or retransmitting material likely to be deemed defamatory to religions.
- The Criminal Code (Act No. 16 of 1960), article 109 of which stipulates that: “Anyone who vandalizes, damages or desecrates a place intended for the performance of religious observances or who, being aware of the significance of his behaviour, commits within such a place an act that detracts from the respect due to the religion concerned shall be liable to a penalty not exceeding a term of one year’s imprisonment and/or a fine not exceeding 75 dinars.”

8. The same penalty is prescribed for anyone who disturbs the tranquillity needed for a lawful gathering, held to perform religious observances, with intent to disrupt the gathering or detract from the respect due thereto, or who commits a wrongful act against any person attending such a gathering.

9. Given the fact that Kuwait has acceded to the International Convention of the Elimination of All Forms of Racial Discrimination, and insofar as the general constitutional principle in this regard is that, with effect from the date of their entry into force, treaties ratified by the State form an integral part of Kuwait’s national legislation and are incorporated in its corpus of domestic law, all governmental bodies and institutions, as well as individuals, therefore have an obligation to comply with the provisions of the Convention and the Kuwaiti judiciary is required to ensure that they are respected and protected. This national legal obligation derives from article 70 of the Constitution which stipulates that: “The Amir concludes treaties by decree and transmits them immediately,

together with an appropriate explanatory statement, to the National Assembly. Treaties have the force of law after being signed, ratified and published in the Official Gazette.”

10. In the light of this constitutional principle, it is evident that the provisions of the Convention are directly applicable within the procedural context of the national legislative and judicial system. The Kuwaiti Court of Cassation has set numerous judicial precedents in which the authoritative nature of the provisions of ratified international treaties has been firmly established at the national level before the Kuwaiti courts since Kuwait’s accession to any treaty signifies that its provisions will become part of the State’s domestic law and judges will be under an obligation to apply them (Cassation Ruling No. 80 of 1997/commercial/session of 10/5/1998, *Majallat al-Qada’ wal-Qanun*, year 26, No. 1, p. 291).

11. Accordingly, Kuwaiti judges are fully empowered to invoke and apply the provisions of ratified international treaties in the judgments that they deliver. In fact, they are duty-bound to apply the provisions of international treaties that have been ratified by the State whenever such provisions are relevant to a case being heard before them.

12. The right to equality and non-discrimination is also clearly protected under the following articles of the Kuwaiti Constitution:

- Justice, liberty and equality are the pillars of society. Mutual assistance and respect are the firmest bonds between citizens (art. 7);
- The State shall safeguard the pillars of society and shall guarantee security, peace of mind and equal opportunities for its citizens (art. 8);
- Everyone is equal in regard to human dignity and all are equal before the law in regard to their public rights and obligations, without distinction among them on grounds of race, origin, language or religion (art. 29);
- Freedom of belief is absolute. The State shall protect freedom of religious observance in accordance with established customs, provided that it is neither prejudicial to public order nor incompatible with morality (art. 35);
- Freedom of opinion and scientific research is guaranteed. Everyone has the right to express and propagate his opinion orally, in writing or by any other means in accordance with the legally prescribed conditions and procedures (art. 36);
- Freedom to form associations and trade unions on a national basis and by peaceful means shall be guaranteed in accordance with the legally prescribed conditions and procedures. No one shall be compelled to join an association or a trade union (art. 43).

13. With regard to civil society organizations and institutions, as already indicated, article 6 of Act No. 24 of 1962, concerning clubs and associations of public benefit, stipulates that they must not pursue any objective which is unlawful or not provided for in their statutes and they must not involve themselves in politics or religious controversies or incite confessional or racial bigotry.

14. Under section I of the Model Statutes of Associations: “The Association shall not involve itself in politics or religious controversies or incite confessional or racial bigotry” (art. 3)

15. Furthermore, “all members shall be equal in regard to their rights and obligations within the limits laid down in the provisions of this Statute and the by-laws issued by the Association” (art. 5).

16. Paragraph 5 of the general rules for the registration of associations of public benefit, as laid down in Council of Ministers Decision No. 836 of 2004, stipulates that: “In the

interest of social solidarity, the founders shall undertake not to propagate a spirit of sectarianism or tribalism nor to involve themselves in religious or political controversies.”

17. Under paragraph 6 of section II of the said decision, the rules to be included in the association’s statute must include a stipulation to the effect that the association shall not involve itself in politics or religious controversies, nor shall it incite confessional or racial bigotry.

18. Under article 1 of section III of the decision, concerning the rules to be observed by the Ministry of Social Affairs and Labour, it is prohibited to register any association established under the terms of a statute that in any way contravenes the above-mentioned legal rules.

19. Article 2 of Council of Ministers Decision No. 74 of 1999, concerning the statutes of charitable institutions, stipulates, inter alia, that the statutes of such institutions cannot be registered if their objectives include involvement in politics or controversies or incite confessional or racial bigotry.

### **Article 3**

20. No reference is made to racial segregation or apartheid in any articles of the Kuwaiti Constitution or any laws or procedures that have been promulgated in the State. On the contrary, they emphasize that everyone is equal regardless of origin, language, race or any other consideration. This implies Kuwait’s categorical rejection and unequivocal condemnation of all forms of segregation or exclusion of any individuals, institutions or other components of society. Believing in the importance of equality and non-discrimination, Kuwait supports the endeavours made in international forums to combat racial discrimination and segregation and has participated in numerous international conferences in this connection.

### **Article 4**

21. The dissemination of ideas based on racism constitutes an offence punishable by law in Kuwait insofar as Legislative Decree No. 19 of 2012, concerning the protection of national unity, criminalizes all forms of expression of racial hatred and discrimination or instigation of any act of violence to that end. Article 1 of the said decree prohibits advocacy or incitement, by any [traditional or modern] means of expression, of hatred or contempt for any social group; provocation of sectarian or tribal factionalism; promotion of ideology based on the superiority of any race, group, colour, national or ethnic origin, religious confession or lineage; instigation of any act of violence to that end; and dissemination, propagation, printing, broadcasting, retransmission, production or circulation of any concepts or printed or audiovisual material, or spreading or retransmission of false rumours, likely to lead to any of the above. This prohibition applies even to acts perpetrated outside the territory of Kuwait provided that all or part of the offence was committed within its territory.

22. Under the terms of article 2 of the decree, anyone who contravenes the prohibition stipulated in article 1 thereof is liable to a penalty of up to seven years’ imprisonment and/or a fine of not less than 10,000 and not more than 100,000 dinars, together with confiscation of the means, funds, instruments, newspapers and printed matter used to commit the offence, the penalty being doubled in the event of a repeated offence, without prejudice to any heavier penalty that might be prescribed in any other legislative enactment.

23. Article 3 of the decree specifies the criminal liability of the corporate person through which the acts prohibited in article 1 are committed and, in the light of the adoption of the new crime prevention policy, article 4 stipulates that anyone who helps the law enforcement authorities to apprehend an offender shall be exempt from prosecution.

24. The unacceptability of any propaganda inciting discrimination and racism is emphasized in section V of Act No. 24 of 1962, concerning the dissolution of associations and clubs, article 27 of which empowers the Minister of Social Affairs and Labour to order the dissolution of an association or club in various circumstances, including departure from its objectives or commission of a gross infringement of its statute.

25. Article 31 of the same Act stipulates that: “Any violation of the provisions of this Act or its implementing regulations shall be punishable by a fine of 50 dinars, without prejudice to any heavier penalty prescribed in the Criminal Code or any other legislative enactment.”

26. Article 32 further stipulates that violations of the provisions of the Act and its implementing regulations shall be reported by officials delegated by the Minister of Social Affairs and Labour for that purpose.

27. We also find that article 30 of Act No. 31 of 1970 amending certain provisions of the Criminal Code stipulates that: “Associations, groups or bodies seeking to propagate principles designed to undermine the basic institutions by unlawful means or to forcefully bring about the collapse of the country’s social or economic order are prohibited. The persons organizing, or recruiting members for, such bodies shall be liable to a penalty of up to 15 years’ imprisonment and anyone who joins such bodies in full awareness of the objective that they are seeking to achieve shall be liable to a penalty of up to 10 years’ imprisonment.”

28. In this connection, Kuwait’s information media and educational institutions are also combating ideas advocating discrimination and racism. By way of example, the Ministry of Education has issued binding orders and circulars prohibiting any form of discrimination between individuals or incitement of hatred and contempt for cultures, races or any of their members. The Ministry has also endeavoured to promote the values of peace, tolerance and international mutual understanding in its educational curricula, including the syllabuses for Islamic education, Arabic language, the Constitution and human rights.

## **Article 5**

29.

(a) In Kuwait, the right to seek legal redress is guaranteed to all, without distinction, in accordance with article 166 of the Constitution (“The right to seek legal remedy is guaranteed to everyone and the conditions and procedures for the exercise of this right shall be prescribed by law”). The term “everyone” is comprehensive and does not distinguish between any individuals on grounds of race, origin, language or other distinctive criteria.

(b) The right to security of person is explicitly recognized in the Kuwaiti Constitution and other legislative enactments including, in particular, the Criminal Code, as illustrated by the following:

- Article 31 of the Constitution (“No one shall be arrested, detained, searched or compelled to reside in a specified location, nor shall his freedom of residence or movement be restricted, except as provided by law, and no one shall be subjected to torture or degrading treatment”).

- Article 34 of the Constitution (“An accused person is presumed innocent until proved guilty in a legal trial in which the requisite safeguards for his exercise of the right of defence are secured. It is prohibited to subject an accused person to physical or mental harm”).
- The Kuwaiti Legislature guarantees the right of individuals to security of person and protection against violence or bodily harm without distinction as to gender, origin, language or any other consideration. Under article 149 of the Kuwaiti Criminal Code promulgated under Act No. 16/1960, anyone who commits an act of intentional homicide is liable to capital punishment or life imprisonment.
- Under article 149 bis of the same Code, anyone who commits an act of intentional homicide by means of substances that eventually result in death is liable to capital punishment.
- Under article 152 of the Code, anyone who deliberately wounds, strikes or gives narcotic substances to another person without intending to kill him but thereby causing his death is liable to a penalty of up to 10 years’ imprisonment.
- Under article 154, anyone who unintentionally kills or causes the death of another person by acting in a thoughtless, negligent, careless or inattentive manner or by failing to respect regulations is liable to a penalty of up to three years’ imprisonment and, under article 158, anyone who incites another person to commit suicide is guilty of a criminal act if the said person actually does commit suicide.
- Under article 160 of the Code, anyone who strikes, wounds, causes bodily harm to, or prejudices the physical integrity of, any person in an appreciable manner is liable to a penalty of up to two years’ imprisonment.
- Under article 161, anyone who severely harms another person by using him as a target for any form of projectile, by striking him with a knife or any other dangerous instrument, by throwing a caustic liquid at him, by placing such liquid or any explosive material in any place with a view to harming him, or by providing him with a narcotic substance, is liable to a penalty of up to 10 years’ imprisonment.
- Under article 162, anyone who inflicts harm on another person in such a way as to cause a permanent disability is liable to a penalty of up to 10 years’ imprisonment. If such act of aggression causes the victim to suffer severe physical pain or renders him unable to use one or more of his limbs or bodily organs in a natural manner for a period of more than 30 days but without causing him to suffer a permanent disability, the penalty is five years’ imprisonment.
- Under article 163, anyone who commits a minor act of aggression of lesser gravity than the acts referred to in the preceding articles is liable to a penalty of up to three months’ imprisonment.
- Under article 164, anyone who unintentionally wounds or causes appreciable harm to another person by acting in a thoughtless, negligent, careless or inattentive manner or by failing to respect regulations is liable to a penalty of up to one year’s imprisonment.

It is evident from the above-mentioned provisions that the Kuwaiti Constitution and legislation have taken care to ensure security of person without discrimination and without distinguishing between the perpetrators of any criminal acts of aggression against individuals.

(c) The Kuwaiti Constitution and the relevant legislation recognize the political rights of all persons, and particularly the right to participate in elections — to vote and to stand for election — on the basis of universal and equal suffrage, to take part in governance

as well as in the conduct of public affairs at any level and to have equal access to public service.

30. Electoral rights are regulated by Act No. 35 of 1962, concerning elections to the National Assembly, as amended, article 1 of which stipulates that every Kuwaiti over 21 Gregorian years of age has the right to vote, with the exception of naturalized persons who have held Kuwaiti citizenship for a period of less than 20 Gregorian years in accordance with the provisions of article 6 of Amiri Decree No. 15 of 1959 promulgating the Kuwaiti Nationality Act. Women are entitled to vote and stand for election in a manner consistent with the principles and provisions of the Islamic Sharia.

31. Article 4 of the said Act further stipulates that voters must exercise their electoral rights in person in the electoral district in which they are domiciled and, under article 33, elections must be conducted by secret ballot.

32. Kuwaiti society is based on justice, liberty, equality and mutual assistance and respect among all citizens without distinction. This equality includes the right to take part in the Government and the conduct of public affairs. The right of every individual to elect, by secret and direct ballot, his or her representative in the National Assembly is regulated by law. The right of access to public service is guaranteed to all Kuwaiti nationals in accordance with the provisions of article 26 of the Kuwaiti Constitution which stipulates that public office is a national service entrusted to those who hold it. In the exercise of their duties, civil servants are required to act in the public interest without discriminating between nationals and foreign residents on grounds of colour, race or religion.

**(d) (i)**

33. Personal freedom is guaranteed under article 30 of the Constitution, as already indicated, and article 31 thereof further stipulates that no one may be arrested or compelled to reside in a specified location, nor may his freedom of residence or movement be restricted, except where otherwise provided by law

34. This is the case of persons convicted and sentenced to terms of imprisonment in respect of the aforementioned criminal offences defined in the Criminal Code (Act No. 16/1960) or persons remanded in custody by order of the competent investigating authorities. This right is enjoyed by all nationals and foreign residents, without distinction as to colour, race or ethnic origin, in the manner specified in the above provisions. In accordance with article 28 of the Constitution (“No Kuwaiti may be expelled from Kuwait or prevented from returning thereto”), every Kuwaiti national enjoys freedom of movement and has the right to choose the place in which he wishes to reside in the State. Foreign nationals likewise have an unrestricted right to reside wherever they wish within the State.

**(d) (ii)**

35. All persons who have entered the State under the terms of any of the types of entry visa specified in Ministerial Decision No. 640/1987, promulgating the implementing regulations of the Residence of Aliens Act, are granted an ordinary or temporary permit to reside therein provided that they meet the conditions laid down in Amiri Decree No. 17/1959 concerning the Residence of Aliens Act and its implementing regulations. The Administration does not discriminate between one person and another in this regard.

36. Moreover, any person holding an ordinary Kuwaiti residence permit is entitled to freedom of movement within the country in accordance with article 31 of the Constitution (“No one shall be arrested, detained, searched or compelled to reside in a specified location, nor shall his freedom of residence or movement be restricted, except as provided by law”) and therefore has the right to travel to his or any other country and return to Kuwait as long



as his residence permit is valid and provided that he is not subject to any restriction that would prevent him from entering the country.

**(d) (iii)**

37. The right to nationality is governed by article 27 of the Constitution, which stipulates that “Kuwaiti nationality shall be determined by law and may be forfeited or withdrawn only within the limits prescribed by law”.

38. Accordingly, Amiri Decree No. 15 of 1959 regulated the manner and circumstances in which Kuwaiti nationality may be acquired and did not deny the right of persons or individuals to hold any nationality, subject solely to the proviso contained in article 11 to the effect that a Kuwaiti forfeits his nationality if he voluntarily acquires a foreign nationality through naturalization.

39. By decision of the Council of Ministers based on a submission by the Minister of the Interior, Kuwaiti nationality may be recovered by a person who has forfeited it in accordance with the preceding paragraph provided that he has been legally resident in Kuwait for a period of not less than one year, has requested recovery of his Kuwaiti nationality and has renounced his foreign nationality. In such a case, his Kuwaiti nationality is deemed to be reinstated with effect from the date of approval by the Council of Ministers.

40. Under the terms of article 11 bis of the above-mentioned decree, a foreigner who has acquired Kuwaiti nationality in accordance with the provisions of articles 4, 5, 7 and 8 is permitted to renounce any other foreign nationality that he might hold within three months from the date of his acquisition of Kuwaiti nationality. Hence, the legal provisions concerning nationality do not deprive any person of his right to hold Kuwaiti or any other nationality.

**(d) (iv)**

41. The Personal Status Act No. 61 of 1969 contains numerous provisions concerning the right to marriage and choice of spouse, including:

Article 24, paragraph (a), under the terms of which, in order to be eligible for marriage, a person must have attained the age of majority and must be of sound mind;

Article 25, under which the marriage of a person acting under coercion or in a state of intoxication is deemed to be invalid;

Article 34, under which the validity of a marriage is conditional on the husband’s compatibility with the wife at the time of conclusion of the marriage contract and the wife, or her guardian, has the right to apply for annulment of the marriage in the event of incompatibility.

Article 36, under which age commensurability between the spouses is regarded as an exclusive right of the wife.

42. The legal justification for this is that the Islamic Sharia makes eligibility for marriage conditional on attainment of the age of majority and full possession of mental faculties insofar as marriageable age implies the end of minority as is clearly evident from the words of Almighty God: “Put orphans to the test until they reach marriageable age and, if you then find them to be of sound judgment, release their property to them” (verse 6 of the chapter of the Holy Qur’an entitled “Women”).

**(d) (v)**

43. The right of all citizens to property ownership and protection of capital is guaranteed in various provisions of the Kuwaiti Constitution, including:

Article 16: Property ownership, capital and labour are the mainstays of the State's social fabric and national wealth. They are all individual rights with social functions regulated by law.

Article 17: Public property is inviolable and every citizen has an obligation to protect it.

Article 18: Private ownership shall be safeguarded. No one shall be prevented from disposing of his property except within the limits prescribed by law. No one shall be subjected to expropriation except in the public interest in the circumstances and the manner prescribed by law and on condition that he be equitably compensated therefor. Inheritance is a right governed by the Islamic Sharia.

Article 19: General confiscation of property is prohibited. Specific items of property may be confiscated, as a punitive measure, only by a court order in the circumstances prescribed by law.

**(d) (vi)**

44. The Islamic Sharia recognizes the right to inherit as an incontestable human right and the Personal Status Act No. 61 of 1969 contains numerous provisions affirming the inheritance rights of both men and women, as illustrated by the following.

45. Article 288: Inheritance is due on the established or legally presumed death of the owner of inheritable property.

46. Article 292: Murder of the decedent constitutes an impediment to inheritance by the principal perpetrator of the homicidal act and by any accomplice thereto or person giving false testimony thereon.

**(d) (vii)**

47. With regard to freedom of thought, belief and religion, article 35 of the Kuwaiti Constitution stipulates that: "Freedom of belief is absolute. The State shall protect freedom of religious observance in accordance with established customs, provided that it is neither prejudicial to public order nor incompatible with morality." In this context, "absolute" signifies that there is no ban, prohibition or discrimination in matters of religious belief and the enjoyment of this freedom is clearly evident in Kuwait.

**(d) (viii)**

48. Under the provisions of article 36 of the Constitution: "Freedom of opinion and scientific research is guaranteed. Everyone has the right to express and propagate his opinion orally, in writing or by any other means in accordance with the legally prescribed conditions and procedures." This right to freedom of expression is reaffirmed in article 37 ("Freedom of the press, printing and publication is guaranteed in accordance with the legally prescribed conditions and procedures").

**(d) (ix)**

49. Article 44 of the Constitution stipulates that: "Individuals have the right of assembly without any need for prior notification or authorization and no member of the security forces may attend their private meetings". The Kuwaiti legislature regulated this right in Legislative Decree No. 65 of 1979, concerning public meetings and gatherings, which

recognizes the right of all individuals, without distinction as to race, colour, ethnic origin or language, to assemble, demonstrate and hold gatherings and processions. Kuwait has therefore been a trailblazer in this field by virtue of its recognition of this right without discrimination against anyone.

50. As a result of the freedom of peaceful assembly and association which is guaranteed by the Kuwaiti Constitution and the laws in force, and by virtue of the State's ongoing belief in the importance of promoting and ensuring respect for freedom of expression and opinion, cultural awareness-raising, citizenship rights and social solidarity through the implementation of the Clubs and Associations of Public Benefit Act No. 24 of 1962, there are currently 116 such clubs and associations and the financial support that they received in 2014 amounted to 1,580,000 Kuwaiti dinars, equivalent to US\$ 5,216,104.52. Moreover, an enactment concerning voluntary work, under which non-citizens will have the right to become members of all civil society institutions, is currently in the process of being promulgated.

**(e) (i)**

51. The right to work and to free choice of employment is recognized in article 41 of the Kuwaiti Constitution which stipulates that: "Every Kuwaiti has the right to work and to choose the nature of his occupation. Every citizen has a duty to work, which is required by dignity and the public interest. The State shall make employment opportunities available to citizens on fair conditions." This article implies that everyone must be treated in an equitable manner in regard to employment, which should not be prejudicial to human dignity and values. In the State of Kuwait, employment in the public sector is regulated by the statutes of the Civil Service Commission.

52. Labour relations and workers' rights are regulated by article 22 of the Constitution under which the relationship between workers and employers and between landlords and tenants must be regulated by law with due regard for the principles of economics and social justice.

53. Under the terms of article 42 of the Constitution, no one may be subjected to forced labour except in the circumstances in which such is required by law in a situation of national emergency and in return for fair remuneration.

54. The Kuwaiti Constitution guarantees the right to work, as well as every individual's freedom to choose the type of work most suited to him, in conformity with the provisions of the Universal Declaration of Human Rights concerning the rights to work, to free choice of employment and to fair remuneration therefor.

55. The employment of non-citizens is governed by Act No. 38 of 1964 and the subsequent Act No. 6 of 2010, concerning employment in the private sector, which recognizes their rights and does not discriminate between one worker and another on grounds of ethnicity, race, language or religion insofar as all its provisions are based on the principle of equality. Moreover, article 6 of the latter Act stipulates that the rights provided for in the Act constitute a minimum and the recognition of other rights not mentioned therein would be welcomed.

The said article 6 reads as follows: "The provisions hereof constitute the minimum rights of workers, without prejudice to any more favourable benefits or rights that they might enjoy in accordance with individual or collective contracts of employment, special systems or regulations applied by an employer, or occupational or general practices." This illustrates the State's desire to set minimum conditions in order to protect workers in their relations with employers by prohibiting any action or attempt to apply terms and conditions of employment that are below the standard set in any articles of the Act. The predominant principle is that there is no objection

to divergence from the provisions of the Act provided that such divergence is more favourable to workers.

### **Scope of application of the Act**

The provisions of the Act apply to workers in the private sector and to contracts of employment in the maritime sector on matters which are not covered by the Merchant Shipping Act, except in cases in which the provisions of the latter Act are more favourable to the worker. They also apply to the petroleum sector on matters which are not covered by the provisions of the Petroleum Sector Employment Act, except in cases in which the latter are more favourable to the worker.

The Act takes care to ensure that the scope of its application does not entail any form of racial or other discrimination between workers covered by its provisions, which apply to all national and Arab or foreign migrant workers.

### **Contracts of employment**

56. In order to protect the worker, article 18 of the Act stipulates that contracts of employment must be drawn up in writing and must specify, in particular, the date of conclusion of the contract, the date of its entry into force, the amount of the remuneration, the duration of the contract if it is for a fixed term, and the nature of the work. The requirement that the contract be drawn up in writing makes it legally enforceable and enables the worker to invoke it as proof of his rights.

### **Remuneration**

57. The Act defines remuneration as anything that the worker receives, or should receive, by way of basic wage in return for and in respect of his work, together with all the benefits provided for in the contract or the employer's regulations. Any extra pay, bonuses, allowances or grants, gifts or benefits in cash that the worker receives periodically, including the amount of the national labour force subsidy, are taken into account in the calculation of the remuneration. This is a clear indication of the legislature's desire to define remuneration in an unambiguous manner by including all its financial components in order to establish a total amount that is acceptable to the worker.

58. The Act incorporates the following remuneration-related principles to ensure equality and protect the worker from any attempt on the part of the employer to violate his rights:

- Remuneration is a recompense for work.
- Female workers are entitled to remuneration comparable to that received by men performing the same type of work.
- The worker's remuneration may not be reduced while his contract remains valid and any agreement to the contrary that is reached prior or subsequent to the contract's entry into force is deemed totally null and void as a matter of public policy.
- Not more than 10 per cent of the worker's remuneration may be deducted in repayment of loans or debts due to the employer.
- Not more than 25 per cent of the remuneration due to the worker may be garnished or withheld.

### **Working hours and weekly rest period**

59. The Act contains the following provisions specifying the maximum number of daily or weekly working hours, as well as rest days and circumstances in which working hours may be exceeded subject to payment of compensation, in order to protect the worker and safeguard his right to appropriate remuneration for his work:

- The worker shall not be required to work more than 48 hours per week or eight hours per day except in the circumstances provided for herein. Working hours shall be limited to 36 hours per week during the holy month of Ramadan and may also be reduced, by decision of the Minister, in occupations that are arduous, hazardous to health or exercised in harsh conditions.
- The worker shall not be required to work more than five consecutive hours per day without a rest period of at least one hour. Such rest periods shall not be counted as working hours.
- The worker may be required to work overtime, if so ordered in writing by his employer, in order to prevent the occurrence of a serious accident or remedy the consequences thereof.
- Overtime shall not exceed two hours in any single day or a maximum of 180 hours per year.
- Overtime shall not be worked on more than three days per week or 90 days per year.
- The worker is entitled to a weekly period of 24 consecutive hours' rest with pay after every six working days. The employer may require the worker to work on his weekly day of rest if occupational circumstances create an imperative need therefor, in which case the worker shall receive extra pay calculated at not less than 50 per cent of his basic wage and shall be given another compensatory day of rest.

### **Types of leave to which the worker is entitled**

60. The Act recognizes the worker's right to official periods of leave on full pay during which, if occupational circumstances require him to work, he is entitled to receive double his basic wage and is given a compensatory day of leave for every day so worked.

61. The Act also makes provision for other types of leave, such as:

- Pilgrimage leave: A worker who has spent two consecutive years in his employer's service is entitled to 21 days' paid leave to perform the pilgrimage if he has not previously fulfilled this religious duty.
- In the event of the death of a relative in the first or second degree, the worker is entitled to three days' leave on full pay.
- In the event of her husband's death, a Muslim female worker is entitled to widow's leave on full pay for a period of four months and 10 days with effect from the date of his death provided that she does not engage in any form of work for a third party during this period of leave. The conditions under which such leave is granted are regulated by decision of the Minister.
- A non-Muslim female worker whose husband has died is granted a period of 21 days' paid leave.
- An employer may grant a worker a period of paid leave to attend periodic labour-related conferences, meetings and social events.
- A pregnant female worker is entitled to 70 days' paid maternity leave, non-deductible from her other leaves, provided that she gives birth during that period.

**Sick leave**

62. The worker is entitled to annual sick leave of 15 days on full pay, 10 days at three quarters of his pay, 10 days on half pay, 10 days at one quarter of his pay and 30 days without pay.

63. Under the terms of the Act, the worker is entitled to 30 days' periodic paid leave as well as sabbatical leave with pay in order to obtain a higher qualification in his occupational field provided that he undertakes to remain in his employer's service for a period equivalent to the duration of such leave, up to a maximum of five years. If the worker fails to honour this undertaking, he is required to reimburse the employer for the pay received in respect of the remaining proportion of the period that he should have spent in his employ.

**Termination of the employment contract**

64. In the event of termination of their services, workers on contracts of indefinite duration are entitled to a period of notice with pay and those on fixed-term contracts are entitled to appropriate compensation.

65. In view of the State's desire to protect the worker's right to work and safeguard him against sudden termination of his services, the Act contains numerous provisions to ensure that the worker is treated fairly on termination of the employment relationship. These provisions include an obligation on the part of the employer to grant the worker a period of three months on full pay in which to adapt to his situation and search for new employment. Under article 44 of the Act, either party to an employment contract of unlimited duration may terminate it by giving the other party not less than three months' advance notice in the case of workers on a monthly salary and not less than one month's notice in the case of other workers. Under article 45, in the event of termination of a fixed-term contract, the worker is entitled to compensation in respect of the detriment caused if his services are terminated unfairly, with the proviso that the amount of compensation must not exceed the equivalent of the worker's remuneration for the remaining period of the contract.

66. Finally, we wish to refer to some important Convention-related principles which the Private Sector Employment Act No. 6 of 2010 took care to retain in its amendment of the previous Employment Act No. 38 of 1964:

1. Pursuant to article 9 of Act No. 6 of 2010, Decree No. 109 of 2013 made provision for the establishment of a National Manpower Authority to take over the functions assigned to the Ministry under the terms of Act No. 28 of 1969 and Act No. 6 of 2010 without any discrimination between national and migrant workers.
2. It is prohibited to employ persons under 15 Gregorian years of age.
3. The provisions of this Act constitute the minimum rights of workers, without prejudice to any more favourable benefits or rights that they might enjoy in accordance with individual or collective contracts of employment, special systems or regulations applied by an employer, or occupational or general practices.
4. The maximum working hours for juveniles are set at six hours per day, with the stipulation that they must not be required to work more than four consecutive hours without a rest period of at least one hour.
5. Female workers are entitled to remuneration comparable to that received by men performing the same type of work.
6. The worker's remuneration may not be reduced while his contract remains valid and any agreement to the contrary that is reached prior or subsequent to the

contract's entry into force is deemed totally null and void as a matter of public policy.

7. It is prohibited to employ women on night shift between 10 p.m. and 7 a.m. except in hospitals, clinics, private treatment centres and other institutions as determined by decision of the Minister of Social Affairs and Labour.

8. It is prohibited to employ women in types of work that are hazardous, arduous, detrimental to health or morality or based on exploitation of their femininity in a manner inconsistent with public morals. It is also prohibited to employ them in institutions that provide services solely for men.

9. It is prohibited to employ men in premises that are frequented solely by women, such as beauty salons and health clubs, etc.

10. Female workers are entitled to two hours for breastfeeding during their work on the terms and conditions specified by the Minister of Social Affairs and Labour.

11. Employers have an obligation to establish crèches for children under four years of age in workplaces in which more than 50 female workers or more than 200 male workers are employed.

12. The proceeds of deductions from workers' wages are paid into a fund set up to finance socioeconomic and cultural activities of benefit to the workers.

13. The worker's entitlements are calculated on the basis of the last wage that he received. If the worker was paid by piecework, his wage is calculated on the basis of the average amount received in respect of the days actually worked during the last three months.

14. Contested claims filed by workers invoking the provisions of the Act more than one year after the date of termination of their employment contract are inadmissible. Contestation is governed by the provisions of article 442, paragraph 2, of the Civil Code and, although claims filed by workers or their beneficiaries are exempt from court fees, if such claims are rejected the court may order the claimant to pay all or part of the costs. Employment-related claims are heard in summary proceedings.

15. Notwithstanding the provisions of article 1,074 of the Civil Code, the entitlements of workers as recognized in the Act have first claim on the employer's movable and immovable property, with the exception of his private residence. Such entitlements are payable after court fees, amounts due to the public treasury and maintenance and repair costs.

67. It is evident from the above that both the Kuwaiti Constitution and the more recent Private Sector Employment Act seek to safeguard the human rights to work, to free choice of employment, to just and favourable conditions of work, to equal pay for equal work and to just and favourable remuneration without any discrimination as to ethnicity, race, language or religion.

68. The National Labour Force Support Act No. 19 of 2000 was designed to encourage Kuwaiti nationals to work in the non-governmental sector.

69. To that end, article 3 thereof stipulated that the Government would pay social and child benefits to professionals, craftsmen and other nationals working in all private institutions and the Council of Ministers would issue directives regulating such payments.

70. The said directives specify the amount of those benefits, the conditions for entitlement thereto, the professions, crafts, occupations and institutions to which they apply

and the period during which the Government will continue to pay them. The child benefit is set at 50 dinars for each child up to a maximum of seven children.

71. With a view to achieving the State's objective of providing incentives to encourage nationals to seek employment in non-governmental institutions, the Act addressed numerous issues and remedied the causes of aversion to such employment, including the financial disparities between the salaries of persons working in the governmental and private sectors and the lower level of job security enjoyed by persons working for non-governmental institutions.

72. The Act and the directives issued pursuant thereto established a manpower restructuring programme to implement policies designed to increase the proportional employment of national labour by providing a wide variety of appropriate job opportunities. The programme has diligently endeavoured to implement those policies and achieve their objectives through numerous measures such as the direct subsidization of nationals working for non-governmental institutions, payment of a cash benefit to jobseekers and persons working in the private sector who services have been terminated, and payment of social security benefits to graduates until such time as they find employment. Measures have also been taken to develop the skills of Kuwaiti nationals by training jobseekers in preparation for their entry into the private sector labour market and by contributing to the cost of various forms of vocational and professional in-house training for persons already employed in that sector. The programme has trained students during their summer holiday, thereby enabling them to acquire practical experience and familiarizing them with the private sector and the nature of work in non-governmental institutions with a view to encouraging them to seek employment therein.

73. It is noteworthy that, by their very nature, the services provided by the programme are available to all Kuwaiti workers without any gender-based or other form of discrimination. There is no difference in the amount of financial support received by equally qualified citizens engaged in the same type of work and the conditions under which financial benefits are payable do not distinguish between men and women since all are equal and entitled to receive services without discrimination.

74. The programme is not confined to the provision of various types of financial support or coverage of all or part of the costs of technical and in-house training to qualify citizens for an appropriate post or encourage them to work in the private sector. In fact, it has adopted numerous proposals and forward-looking policies designed to increase the proportional recruitment of national labour, safeguard the human rights to work and to free choice of employment and ensure job security for workers. These proposals included the establishment of the *Mustaqbal* Centre for the employment of national labour in major development projects, the bill of law on the establishment of a public authority to support and promote the employment of national manpower, and a project to encourage working from home, all of which have unquestionably helped to increase the proportion of Kuwaitis working in the private sector and provide new employment opportunities for jobseekers.

75. The following labour-related statistics illustrate the role played by the State and the diligent measures that it has taken to support the national labour force in an equitable manner and provide it with a decent livelihood.

#### **1. Payment of benefits**

76. The programme has supported workers in the private sector by paying them a fixed financial subsidy to help them to meet their living expenses, and to give them an incentive to work in that sector, without any discrimination between them. It pays social security and child benefits and cost-of-living allowances to persons working in non-governmental



institutions in addition to certain benefits, increments, premiums and other allowances that it grants to persons working in governmental institutions:

- From 2001 (the year in which the programme began its operations) to the end of December 2014, a total of 109,774 male and female citizens received social security and child benefits.
- From 2001 to the end of December 2014, the total cost of social security and child benefits amounted to 2,484,000,000 Kuwaiti dinars, equivalent to US\$ 8,200,726,312.30.

## **2. Training of national labour**

77. The training provided for jobseekers and persons already in employment has proved to be highly instrumental not only in increasing the proportion of nationals employed but also in developing the capacities of citizens and thereby helping them to find and keep jobs. The programme decided at an early stage to train citizens for employment in the private sector and began by instilling work ethics in students and providing them with in-house training in private sector companies in order to encourage them to work in that sector:

- During the period from 2003 to the end of December 2014, the total number of male and female national jobseekers who received training amounted to around 6,346.
- During the period from 2003 to the end of December 2014, the total number of male and female nationals working in the private sector who received training amounted to around 17,345.
- During the period from 2003 to the end of December 2014, the total number of male and female students benefiting from training amounted to 7,291.
- The total number of male and female nationals who received training therefore amounted to 35,618 at a cost of 6,652,332.529 Kuwaiti dinars, equivalent to US\$ 21,962,141.06.

## **3. Payment of jobseekers' allowances**

78. The manpower restructuring programme has made great endeavours to train jobseekers in order to develop their capacities and skills in such a way as to increase their chances of employment in the private sector, after which they are periodically offered appropriate job opportunities so that they can choose those most suited to their qualifications and fields of specialization in a manner consistent with labour market requirements:

- During the period from 2003 to the end of December 2014, the programme awarded jobseekers' allowances to a total of 31,848 applicants.
- The total cost of these allowances amounted to 22,188,316.650 Kuwaiti dinars, equivalent to US\$ 73,252,943.71.
- It is noteworthy that 4,614 jobseekers are currently registered with the programme, under which they are periodically offered employment opportunities.

## **4. Social security benefits for graduates**

- During the period from 1 January 2012 to the end of December 2014, a total of 26,394 graduates received social security benefits.
- The total cost of these benefits amounted to 32,291,056 Kuwaiti dinars, equivalent to US\$ 106,606,325.52.

## 5. Decisions imposing employment quotas and setting targets to be met

79. Act No. 19 of 2000 imposed quotas on private sector companies in order to increase the number of nationals employed in non-governmental institutions by requiring those companies to act as partners participating in the absorption of national labour. Accordingly, the programme drafted the following decisions specifying national employment quotas in non-governmental institutions which have been issued by the Council of Ministers since 2002:

- Decision No. 904 of 2003 (setting a target of 8,000 job opportunities);
- Decision No. 955 of 2005 (setting a target of 13,732 job opportunities);
- Decision No. 1104/5 of 2008 (setting a target of around 12,000 job opportunities) which was put into effect in March 2010;
- Decision No. 1028 of 2014 (setting a target of around 10,000 job opportunities) which was put into effect on 25 February 2014.

## 6. Redundancy benefits

80. Council of Ministers' Decision No. 675/1 of 2009, as amended, granted a cash benefit to every Kuwaiti capable of work whose services were terminated, against his wishes, by a non-governmental institution during the period from 1 August 2008 to 31 October 2013. The programme continued to pay this benefit up to 30 October 2014 pursuant to Council of Ministers Decision No. 610 of 2014 and is still paying it pursuant to Council of Ministers Decision No. 1577 of 2014. This cash benefit payable to persons who have been dismissed from service amounts to 60 per cent of their salary on which basic and supplementary insurance contributions were paid to the Public Institution for Social Insurance plus an additional monthly amount of 220 Kuwaiti dinars, equivalent to US\$ 726.31.

81. Up to the end of December 2014, a total of 2,378 citizens had benefited from Council of Ministers Decision No. 675/1 of 2009, as amended, at a cost of around 25 million Kuwaiti dinars, equivalent to US\$ 82,535,490.26.

82. It is noteworthy that the Kuwaiti Government has ensured greater job security for Kuwaiti workers through a number of decisions and enactments, such as Council of Ministers Decision No. 675 of 2009, as amended, and Decision No. 101 of 2013 concerning indemnity against unemployment, under which the State has undertaken to pay a cash benefit to persons whose services in the private sector have been terminated.

83. Certain shortcomings that were found in the Public Assistance Act No. 9 of 1962 were subsequently remedied by Act No. 5 of 1968 which, in turn, was revised on several occasions and, most recently, by the Public Assistance Act No. 12 of 2011 which laid down rules and regulations for the granting of assistance to Kuwaiti families and individuals in the following eventualities: loss of the provider, as in the case of widows and orphans; sickness or invalidity of the provider; inability of the provider to meet his maintenance obligations if, for example, he is financially insolvent or imprisoned; and other special circumstances such as crises affecting families not falling within the categories entitled to assistance. The latter Act permitted the granting of additional assistance to families and individuals facing specific problems or for socially beneficial purposes other than those listed above.

84. In addition to the foregoing, the government agencies concerned, and most notably the Ministry of Social Affairs and Labour, provide citizens with financial assistance whenever such is warranted by their circumstances. The State has also developed the public assistance scheme by amending the Public Assistance Act in such a way as to ensure that

people enjoy an adequate standard of living. Amiri Decree No. 23 of 2013 regulated the entitlement to and assessment of public assistance in the case of: widows who have not remarried after the death of their husbands; divorced women who have completed the legally prescribed waiting period after the termination of a marriage in which they have engaged in conjugal relations or been in a state of legal seclusion with their previous husband; all wives and children of prisoners (each wife being regarded as an independent household for assistance assessment purposes); unmarried women over 18 years of age who lack a provider; unmarried women between 35 and 60 years of age, even if they have a provider; women married to non-Kuwaitis; and married Kuwaiti women over 55 Gregorian years of age, unless they are proved to have a private source of income. All these public assistance benefits are available to Kuwaiti women.

85. Numerous local and external projects to provide social, health and educational care for citizens and non-citizens alike are undertaken by the Kuwaiti *Bait al-Zakat*, which is an independent government agency responsible for the collection and development of alms tax and charitable resources which it disburses at home and abroad, for the benefit of citizens and non-citizens entitled thereto, in an outstandingly efficient manner through the application of financial and administrative systems consistent with the provisions of the Islamic Sharia and the highest standards of excellence and institutional governance.

**(e) (ii)**

86. The right to form occupational associations and trade unions and engage in trade-union activity is guaranteed in article 43 of the Kuwaiti Constitution and regulated by article 98 of the Private Sector Employment Act No. 6 of 2010 which stipulates that:

“The right to form employers’ federations and workers’ trade-union organizations is guaranteed in accordance with the provisions hereof. The provisions of this section shall apply to persons working in the private sector and also to those working in the governmental and petroleum sectors except in matters on which they conflict with the legislation governing the latter sectors.”

**(e) (iii)**

87. Kuwait has shown concern for housing welfare as a human right which affects the lives of citizens. This is evident from article 18 of the Constitution, which stipulates that: “Private ownership shall be safeguarded. No one shall be prevented from disposing of his property except within the limits prescribed by law. No one shall be subjected to expropriation except in the public interest in the circumstances and the manner prescribed by law and on condition that he be equitably compensated therefor. Inheritance is a right governed by the Islamic Sharia.”

88. In its development plans, the Government has adopted a policy of providing appropriate housing units for Kuwaiti families and, since 1954, has constructed various types of such units ranging from houses to residential apartments and has distributed plots of land to citizens in accordance with regulations and procedures that guarantee their fair allocation. The Kuwait Credit Bank has provided housing loans for the same purpose and the amount of such loans for the construction of appropriate homes for citizens has increased from 70,000 to 100,000 dinars in view of the rising prices. Construction materials are also subsidized at a rate of around 25,000 dinars for every citizen wishing to build a family home.

89. The State has provided housing units for 93,040 Kuwaiti households, i.e. around 40 per cent of the current total number of households. At the present time, the cost of a government housing unit amounts to around 60,000 Kuwaiti dinars, equivalent to US\$ 205,000, and citizens who have been allocated plots of land for the construction of

houses are granted an interest-free State housing loan of 100,000 Kuwaiti dinars, equivalent to US\$ 329,327.60, for that purpose. Persons entitled to housing welfare are paid a monthly rental allowance of 150 Kuwaiti dinars, equivalent to US\$ 500, until such time as they are provided with housing.

90. The State has promulgated a number of legislative enactments which have helped to ensure the housing welfare of citizens. Under the terms of Act No. 50/2010, the Public Authority for Housing Welfare was required to provide land sufficient for the construction of not less than 10 housing estates comprising a minimum of 200,000 residential units and, pursuant to article 27 bis of Act No. 27 of 2012 amending certain provisions of the Housing Welfare Act No. 47 of 1993, the Authority was called upon to establish one or more Kuwaiti joint-stock companies to build, operate and maintain the housing estates.

**(e) (iv)**

91. The State of Kuwait is diligently providing health care through its 100 primary health-care centres, 6 public hospitals, 36 specialized medical centres, the diabetes clinics (the number of which recently rose to 73) and the Dasman Diabetes Research Centre, which provide a health umbrella for the entire population. These government health services are provided free of charge to citizens and at token costs to foreign residents and services are also available in the private health sector.

92. A School Health Department was established pursuant to Ministerial Decision No. 172 of 2012 to supervise the modern clinics that have been installed in schools and which are at the forefront of the endeavours to raise public health awareness in fields such as dental health, nutrition and the prevention of diseases and epidemics. The State is also considering the introduction of electronic health records for students.

93. The maternity, paediatric, family and public health clinics provide services for expectant mothers, children and families free of charge to citizens and at token costs to others through the health insurance and social security schemes.

94. The preventive health units play a role in the prevention of contagious diseases and the State is endeavouring to ensure that all children are immunized, free of charge, with various types of vaccines (the immunization coverage rate amounted to 99 per cent in 2013).

95. The projects implemented for the benefit of Kuwaiti and non-Kuwaiti children stricken with cancer and other incurable diseases include the Bayt Abdullah Children's Hospice, established in 2011 to cater for the needs for children, as well as their families, during the final stages of terminal diseases by providing them with care, comfort, recreation and a family environment under the supervision of a team of specialized physicians, sociologists and psychologists qualified to alleviate the suffering of patients and their families in this sanatorium situated on the seashore in a non-hospital ambience.

96. Patients are sent abroad for treatment if they cannot be treated within the State. In the year 2010/11, a total amount of 62,948,543 Kuwaiti dinars (equivalent to US\$ 218,195,787.15) was disbursed for this purpose. For the year 2013/14, an amount of 120 million Kuwaiti dinars (equivalent to US\$ 416,562,823.66) was budgeted under the heading "treatment abroad", while the actual costs totalled 325 million Kuwaiti dinars (equivalent to US\$ 1,128,525,675) in that financial year.

97. Act No. 112 of 2013, establishing the Public Authority for Food and Nutrition, emphasized the need to ensure healthy food and nutrition for the population in order to attain the optimal standards of physical, mental, psychological and environmental health and safety, put an end to the proliferation of diseases associated with malnutrition and protect public health by monitoring the implementation of the legislation and regulations concerning food and nutrition.

98. The International Committee of the Red Cross commended Kuwait for the exemplary health care that it provided in prisons, noting that the State had outstripped the World Health Organization by 40 years in calling upon the countries of the world to place prison health care under the supervision of the Ministry of Health rather than the Ministry of the Interior.

(e) (v)

99. In the State of Kuwait, everyone has a guaranteed right to education in accordance with article 40 of the Constitution which stipulates that: "All Kuwaitis have a right to education which shall be guaranteed by the State". This right is also enjoyed by everyone residing in its territory, including communities of migrant workers to which the Ministerial Decision of 1967 concerning private education is applicable. The right of illegal residents to education was also recently recognized in the Ministerial Decision of 2014 under the terms of which the Central Agency for Regularization of the Status of Illegal Residents, acting in coordination with the Ministry of Education, was required to ensure that the illegally resident children of serving and retired members of the armed forces were admitted to the education system.

100. It should be noted that primary and intermediate education has been compulsory for Kuwaitis since 1965 in accordance with the Compulsory Education Act No. 11 of 1965, as amended by Act No. 25 of 2014 which stipulates as follows:

Article 1: Education shall be compulsory and free of charge for all male and female Kuwaiti children from the beginning of the primary to the end of the intermediate stage. The State shall have an obligation to provide the school buildings, books, teachers and all the human and material resources needed to ensure the success of compulsory education.

Article 12: The prescribed period of study for compulsory education shall extend from the beginning of the primary stage to the end of the intermediate stage.

101. The law further underscores the compulsory nature of education:

Article 9: If the child fails to attend within one week after receipt of a registered letter or again plays truant without a valid reason, the child's father or guardian shall be deemed to have violated the provisions of this Act. In 2003, a ministerial decision was issued under which the duration of compulsory education was extended to nine years.

102. In addition to public education, Kuwait recognizes the right to education of all persons residing in its territory and, consequently, has permitted the establishment of numerous private schools for various communities. According to the statistical abstract for the academic year 2008/2009, the numbers of schools and students were as follows: 154 Arab schools attended by 88,969 students; 61 schools with 18,113 students following the British system; 30 schools with 9,869 students following the American system; 48 schools with 12,878 students following the bilingual system; 67 schools with 33,015 students following the Indian system; 61 schools with 25,015 students following the Pakistani system; 4 schools with 901 students following the Filipino system; 4 schools with 1,120 students following the French system; 6 schools with 2,473 students following the Iranian system, 6 schools with 299 students following the Canadian system; and 3 schools with 355 students following the Armenian system.

- Kuwait shows great concern for training in the form of education, specialized courses and further education through the programmes run by the Ministry of Education, Kuwait University, the Public Authority for Applied Education and Training and private training centres and institutes. Most of these programmes focus

on the cognitive and practical aspects of the human need for learning, knowledge and the acquisition of life skills. They cover subjects relevant to the everyday lives of individuals such as management, law, electricity, mechanics and communication, thinking and driving skills, etc.

103. Adult education is available, in accordance with the legislation and regulations in force in Kuwait, to all persons in the following categories:

- Civil servants wishing to complete their education and improve their qualifications and occupational performance;
- Persons over the age of compulsory education who have experienced difficulties in their academic studies;
- School leavers or dropouts from secondary education;
- Women who have abandoned their studies.

**(e) (vi)**

104. Kuwait attaches great importance to culture and scientific research in conformity with article 12 (“The State shall safeguard the Islamic and Arab heritage and contribute to the furtherance of human civilization”) and article 14 (“The State shall promote science, literature and the arts and encourage scientific research”) of the Constitution. Accordingly, every individual has the right to:

- (a) Equal participation in cultural activities;
- (b) Enjoyment of the benefits of scientific progress and its applications;
- (c) Protection of the moral and material interests resulting from any scientific, literary or artistic production, as provided for in article 1 of Act No. 64 of 1999 which stipulates that: “The protection afforded by this Act shall be enjoyed by the authors of original literary, artistic and scientific works regardless of their value or type”.

105. The content of cultural, press and media productions is regulated by the Press and Publications Act No. 3 of 2006 and the Audiovisual Information Act No. 61 of 2007.

106. The State’s development plans and policies include strategies designed to promote innovative thinking, art and culture by:

- Encouraging artistic and literary creativity, propagating a high standard of culture in society, providing theatres, halls and other fundamental requirements for a cultural environment, developing public museums and libraries and organizing competitions for the most original artistic and literary works;
- Rebuilding, restoring and reviving the various forms of Kuwait’s long cultural heritage in past decades, and enhancing its potential to continue playing a leading role in all fields;
- Boosting free, innovative and creative thought in society by removing all the obstacles and administrative restrictions impeding greater media freedom;
- Sponsoring cultural, artistic, intellectual and literary production and providing better means for its display through the construction of modern facilities such as the Cultural Complex and exhibition halls for the figurative arts;
- Encouraging hobbies and aptitudes in general education in order to nurture an innovative generation that will help to raise cultural awareness in society;
- Combating radical and extremist ideologies through the promotion of moderation and the creation of an appropriate environment for its development within a

framework of broad-based social dialogue without curtailing freedom of thought or denying the right to hold independent or differing opinions;

- Showing concern for public libraries and providing them with the modern equipment that they need in order to play a more effective role in encouraging reading and free access to information in a manner conducive to personal enlightenment and the development of free, critical and innovative thought;
- Highlighting the importance of the various national history, art and science museums, expressionist and figurative art galleries and concert halls;
- Encouraging artistic works of a high standard designed to enhance children's culture and develop their talents while, at the same time, monitoring commercial productions for children's theatres in order to prevent any adverse effects that they might have;

107. In this context, it is noteworthy that there are no laws prohibiting access to places of entertainment, including theatres and coffeehouses, and everyone has the right to equal participation in cultural activities.

**(f)**

108. Everyone has the right of access to theatres, hotels, restaurants and public transport without any discrimination or segregation since this falls within the scope of the freedom of movement guaranteed by the Constitution to which reference has already been made in the comments on article 5 (d) (i).

## **Article 6**

109. The right to seek legal remedy is one of the fundamental rights enjoyed by all nationals and foreign residents, without exception or preferential treatment, in conformity with the Kuwaiti Constitution which stipulates that "the right to seek legal remedy is guaranteed to everyone ... and the procedures and conditions for the exercise of this right shall be prescribed by law" (art. 166) and "everyone is equal in regard to human dignity and all are equal before the law in regard to their public rights and obligations, without distinction among them on grounds of race, origin, language or religion" (art. 29).

110. Far from confining itself to granting the right of legal remedy to victims of acts of torture, the Kuwaiti Constitution categorically prohibits torture, as can be seen from article 31 ("No one shall be arrested, detained, searched or compelled to reside in a specified location, nor shall his freedom of residence or movement be restricted, except as provided by law, and no one shall be subjected to torture or degrading treatment") and the second paragraph of article 34 ("It is prohibited to subject an accused person to physical or mental harm").

- Litigation procedures before all levels of Kuwaiti courts are regulated by Act No. 38 of 1980 promulgating the Code of Civil and Commercial Procedure and Act No. 17 of 1960 promulgating the Code of Criminal Procedure, the provisions of both of which apply to all litigants.

111. With regard to compensation in respect of criminal acts of torture, article 30 of Legislative Decree No. 67 of 1980 promulgating the Civil Code defines the types of harm that create an entitlement to compensation as follows: "1. The exercise of a right is deemed to be unlawful if the person exercising it deviated from its purpose or its social function and, in particular: (a) if the benefit derived therefrom was unlawful; (b) if its purpose was solely to harm another person; (c) if the benefit derived therefrom was totally disproportionate to

the harm caused to another person; (d) if it was likely to cause undue grievous harm to another person.”

In the same context, Legislative Decree No. 67 of 1980 promulgating the Civil Code contains numerous provisions upholding the right of a person harmed by an unlawful act to claim compensation for the harm suffered. Of these provisions, the following are worthy of mention:

- Article 227: 1. Anyone whose wrongful act directly or indirectly causes harm to another person shall be required to compensate the injured party. 2. The wrongdoer shall be obliged to make amends for the harm resulting from his wrongful act even if he was incapable of exercising discretion.
- Article 228: 1. If several persons were at fault in causing the harm, they shall be held jointly liable to compensate the injured party in full. 2. The burden of the joint liability shall be apportioned among those bearing it in accordance with the extent to which each was at fault in causing the harm. If the extent cannot be established, the liability shall be apportioned equally among them.
- Article 229: If the fault that caused the harm was committed as a result of incitement or abetment, the harm shall be deemed to have resulted from a fault on the part of both the principal actor and his accomplices and they shall all be held jointly liable for compensation.
- Article 230: 1. The harm in respect of which the person responsible for the unlawful act is liable for compensation shall be assessed in terms of the loss suffered or the *lucrum cessans* whenever it is a natural result of the unlawful act. 2. The loss suffered or the *lucrum cessans* shall be deemed to be a natural result of the unlawful act if they could not have been avoided by the exertion of a reasonable effort that the circumstances required on the part of an ordinary person.
- Article 231: 1. Compensation for a wrongful act shall be due even in respect of moral harm. 2. Moral harm includes, in particular, sensory or mental suffering resulting from detriment caused to a person’s life, physical integrity, freedom, dignity, honour, reputation, social or moral status or financial standing. It also includes the grief and distress that a person suffers and the love and tenderness that he misses as a result of the death of someone dear to him.

## Article 7

112. Kuwait is doing its utmost to combat all forms of racial discrimination in the fields of education, culture and information. In the education sector, it has taken the following measures:

- Numerous directives have been issued prohibiting discrimination between students and between teaching staff on ethnic, sectarian, tribal or any other grounds.
- It is prohibited to enter into dialogue, discussion or debate on matters that give rise to discord and lead to problems of discrimination between individuals.
- The academic curricula include subjects relating to human rights, global peace and international mutual understanding.
- Secondary school students are taught a human rights syllabus comprising the concept, importance, features and origins of human rights, the role played by international organizations in the protection and in-depth study of certain rights such as the rights to life, equality, human dignity, freedom of belief, freedom of opinion and expression, and education, as well as women’s rights, the rights of the child,



political rights and the obligations of individuals. The Ministry of Education has also held training courses and workshops on ways and means to teach human rights and incorporate them in the education system.

113. In this connection, it is noteworthy that Legislative Decree No. 19 of 2012 concerning the protection of national unity prohibits advocacy or incitement, by any means of expression, of hatred or contempt for any social group; provocation of sectarian or tribal factionalism; promotion of ideology based on the superiority of any race, group, colour, national or ethnic origin, religious confession or lineage; encouragement of any act of violence to that end; and dissemination, propagation, printing, broadcasting, retransmission, production or circulation of any concepts or printed or audiovisual material, or spreading or retransmission of false rumours, likely to lead to any of the above.

### **Part III: Concerns and recommendations expressed by the Committee in section C of document CERD/C/KWT/CO/15-20**

#### **Paragraph 7 of the recommendations**

114. The following table shows the ethnic, national and religious diversity of the persons living in the territory of Kuwait. The State takes great care to respect the beliefs and freedoms of its religious minorities, as well as their equality with all other members of society, in conformity with article 27 of the International Covenant on Civil and Political Rights and in keeping with its belief that all religions advocate love, virtue and tolerance. Every individual has a fundamental right to freedom of religion and belief and no one should be hated or rejected on grounds of his religion since, in accordance with international laws and conventions, all members of society must be treated equally.

		<i>National groups</i>							
<i>Religion</i>	<i>Gender</i>	<i>Arab</i>	<i>Asian</i>	<i>African</i>	<i>European</i>	<i>North American</i>	<i>South American</i>	<i>Australian</i>	<i>Total</i>
Muslim	Male	1 347 959	580 750	3 960	3 084	6 514	548	682	<b>1 943 497</b>
	Female	1 044 164	147 057	16 592	2 861	5 338	393	541	<b>1 216 946</b>
	<b>Total</b>	<b>2 392 123</b>	<b>727 807</b>	<b>20 552</b>	<b>5 945</b>	<b>11 852</b>	<b>941</b>	<b>1 223</b>	<b>3 160 443</b>
Christian	Male	47 123	350 513	3 093	4 805	5 344	344	251	<b>411 473</b>
	Female	14 163	289 834	30 865	4 043	2 514	265	171	<b>341 855</b>
	<b>Total</b>	<b>61 286</b>	<b>640 347</b>	<b>33 958</b>	<b>8 848</b>	<b>7 858</b>	<b>609</b>	<b>422</b>	<b>753 328</b>
Other/ unspecified	Male	3 779	191 493	853	505	716	45	41	<b>197 432</b>
	Female	922	65 811	4 868	399	390	39	26	<b>72 455</b>
	<b>Total</b>	<b>4 701</b>	<b>257 304</b>	<b>5 721</b>	<b>904</b>	<b>1 106</b>	<b>84</b>	<b>67</b>	<b>269 887</b>
<b>Total</b>	<b>Male</b>	<b>1 398 861</b>	<b>1 122 756</b>	<b>7 906</b>	<b>8 394</b>	<b>12 574</b>	<b>937</b>	<b>974</b>	<b>2 552 402</b>
	<b>Female</b>	<b>1 059 249</b>	<b>502 702</b>	<b>52 325</b>	<b>7 304</b>	<b>8 242</b>	<b>697</b>	<b>738</b>	<b>1 631 256</b>
	<b>Total</b>	<b>2 458 110</b>	<b>1 625 458</b>	<b>60 231</b>	<b>15 697</b>	<b>20 816</b>	<b>1 634</b>	<b>1 712</b>	<b>4 183 658</b>

#### **Paragraph 8 of the recommendations**

115. The general constitutional principle in this regard is that, with effect from the date of their entry into force, treaties ratified by the State form an integral part of Kuwait's national

legislation and are incorporated in its corpus of domestic law. All governmental bodies and institutions, as well as individuals, therefore have an obligation to comply with the provisions of the Convention and the Kuwaiti judiciary is required to ensure that they are respected and protected.

116. This national legal obligation derives from article 70 of the Constitution which stipulates that: “The Amir concludes treaties by decree and transmits them immediately, together with an appropriate explanatory statement, to the National Assembly. Treaties have the force of law after being signed, ratified and published in the Official Gazette.”

117. Article 1 of Legislative Decree No. 19 of 2012, concerning the protection of national unity, prohibits: advocacy or incitement of hatred or contempt for any social group by any of the means of expression specified in article 29 of Act No. 31 of 1970 amending various provisions of the Criminal Code; provocation of sectarian or tribal factionalism; promotion of ideology based on the superiority of any race, group, colour, national or ethnic origin, religious confession or lineage; encouragement of any act of violence to that end; and dissemination, propagation, printing, broadcasting, retransmission, production or circulation of any concepts, printed or audiovisual material, or spreading or retransmission of false rumours, likely to lead to any of the above. These provisions also apply to anyone outside Kuwaiti territory who commits an act which renders him liable, as principal actor or accomplice, for a criminal offence all or any part of which is perpetrated within Kuwaiti territory. The above-mentioned means of expression include information networks, blogs and other modern means of communication.

118. Article 2 of the same Decree prescribes the following criminal penalties for the above-mentioned acts: “Without prejudice to any heavier penalty provided for in other legislative instruments, anyone who commits an act in violation of the prohibition stipulated in article 1 hereof shall be liable to a penalty of up to seven years’ imprisonment and/or a fine of not less than 10,000 and not more than 100,000 dinars, together with confiscation of the means, funds, instruments, newspapers and printed matter used to commit the offence, the penalty being doubled in the event of a repeated offence.”

#### **Paragraph 9 of the recommendations**

119. In the light of the above-mentioned constitutional principle, it is evident that the provisions of the Convention are directly applicable within the procedural context of the national legislative and judicial system. The Kuwaiti Court of Cassation has set numerous judicial precedents in which the authoritative nature of the provisions of ratified international treaties has been firmly established at the national level before the Kuwaiti courts insofar as Kuwait’s accession to any treaty signifies that its provisions will become part of the State’s domestic law and judges will be under an obligation to apply them (Cassation Ruling No. 80 of 1997/commercial/session of 10/5/1998, *Majallat al-Qada’ wal-Qanun*, year 26, No. 1, p. 291).

120. In its judgment delivered on 11 November 2015 in case No. 751/2015/Kuwaiti City, the Court of First Instance decided to convict the defendant on the charges brought against him in accordance with article 172 of the Code of Criminal Procedure on the ground that he had disparaged and expressed contempt for a religious confession in his refutation of its observances, doctrines and teachings and therefore merited the penalty for the most serious offence, namely the first offence referred to in articles 1 and 2 of Legislative Decree No. 19 of 2012, concerning the protection of national unity, pursuant to the provisions of article 84 of the Criminal Code. The court drew attention to the fact that national unity formed the foundation for the stability and development of States and the land and people of Kuwait had always been renowned for the close and friendly relations between all their social groups and religious communities, in spite of the hardships and ordeals that the country had experienced, since intercommunal harmony constituted the impregnable stronghold that had

enabled the country to survive as a cohesive and united entity. The court also pointed out that Islam was a religion that advocated concord and forbade discord.

121. In its judgment handed down on 9 December 2015 in case No. 2 of 2015, concerning alleged discrimination between migrant male and female teachers in regard to housing allowances, the Constitutional Court ruled that the provision of the second paragraph of Civil Service Commission Decision No. 1 of 2011, taken at its meeting on 27 March 2011, was unconstitutional insofar as it set the monthly housing allowance entitlement of female teachers working in schools run by the Ministry of Education at 60 Kuwaiti dinars, which was less than the corresponding entitlement, specified in the first paragraph of that decision, for male teachers working in the same schools.

122. Kuwaiti judges are therefore fully empowered to invoke and apply the provisions of ratified international treaties in the judgments that they deliver. In fact, they are duty-bound to apply the provisions of international treaties that have been ratified by the State whenever such provisions are relevant to a case being heard before them.

#### **Paragraph 10 of the recommendations**

123. It is noteworthy that Act No. 67 of 2015 made provision for the establishment of a National Human Rights Office. Article 2 of the Act stipulated that: “An independent office known as the ‘National Human Rights Office’ shall be established to promote and protect human rights, raise awareness of public and private freedoms and ensure greater respect therefor in the light of the principles enshrined in the Constitution and the international treaties that have been ratified by the State of Kuwait and in a manner consistent with the provisions of article 2 of the Constitution. The Office shall be endowed with legal personality and shall enjoy independence in the performance of its mandated functions and activities as specified herein.”

124. Article 6 of the Act stipulated that, in order to achieve the objectives of the Office, its Board would undertake the following functions:

1. Expressing opinions and submitting recommendations, proposals and reports to the competent authorities on matters relating to the promotion and protection of human rights and on issues referred to it by the National Assembly and the Council of Ministers.
2. Conduct of legal and fact-finding studies in connection with the promotion and protection of human rights in the light of the provisions of the Constitution and the international and regional human rights instruments that have been ratified; assessment of the extent to which proposed bills of law are consistent with the basic principles of human rights; and submission of recommendations concerning the drafting of new legislative enactments or the amendment of those that already exist.
3. The Office would be empowered to receive complaints; to monitor, study and investigate cases involving violations of human rights; to refer to the competent authorities any cases which, in the Board’s opinion, need to be so referred; to follow up such cases in coordination with the said authorities; and to advise complainants on the legal procedures to be followed in this regard and help them to complete such procedures or settle the case with the competent authorities.
4. Monitoring the application in Kuwait of the constitutional provisions concerning freedoms and international human rights treaties and conventions, and submitting the requisite proposals to the competent authorities with a view to ensuring their proper application.
5. Preparation of annual reports on developments in the human rights situation in Kuwait for submission to the National Assembly and the Council of Ministers.

6. Cooperation with the United Nations and its agencies and with national, regional and international institutions, and coordination and communication with national institutions and non-governmental organizations concerned with human rights.
7. Assisting in the preparation of reports that the State has an obligation to submit to United Nations bodies and committees and to regional organizations under the terms of international human rights treaties and conventions to which it has acceded, and in the preparation of responses to reports issued by non-governmental organizations and foreign bodies.
8. Preparation of studies and training and awareness-raising activities within the framework of the dissemination of a general culture based on the rules and principles of human rights and freedoms, including the need to combat torture and racial discrimination, and contribution to the preparation of programmes for the teaching of human rights in schools, universities and professional milieus.
9. Monitoring of the various correctional, detention and care facilities through periodic or unannounced field visits and the issuance of reports on conditions therein.
10. Discussion and study of the possibility of accession to international human rights treaties and instruments that have not been ratified by the State of Kuwait, and submission of recommendations in this regard to the competent authorities.
11. Participation in international forums, meetings, conferences, symposiums and courses relevant to the promotion and protection of human rights.
12. Monitoring of violations of the human rights of Kuwaiti nationals outside the country, in coordination with the Ministry of Foreign Affairs.
13. Organization in Kuwait of conferences, symposiums and activities relating to the promotion and protection of human rights.
14. Issuance of bulletins, magazines and publications relating to the objectives and functions of the Office.

#### **Paragraph 11 of the recommendations**

125. The Convention on the Reduction of Statelessness conflicts with the provisions of the Kuwaiti Nationality Act insofar as it adopts the view that the problem of stateless persons should be overcome by granting them the nationality of the country in which they are residing. The stipulation in article 1, paragraph 1, of the Convention to the effect that “a Contracting State shall grant its nationality to a person born in its territory” is contrary to the provisions of the Kuwaiti Nationality Act under which nationality is granted on the basis of *jus sanguinis* on the father’s side and not on the basis of the place of birth.

126. Article 1, paragraph 3, of the Convention further stipulates that a child born to a mother holding the nationality of a Contracting State “shall acquire the nationality of that State if it otherwise would be stateless”. This is inconsistent with the Kuwaiti Nationality Act and, in particular, the provisions of article 5 thereof under which the child of a Kuwaiti mother can acquire the nationality subject to specific rules and conditions, including the requirement that the child must retain his or her residence in the country until the attainment of legal age.

127. Under the terms of article 6 of the Convention, if a person’s spouse or children are liable to lose their nationality as a consequence of the said person’s loss of his nationality, their loss thereof shall be conditional upon their possession or acquisition of another nationality. This is inconsistent with the provisions of articles 11 and 12 of the Kuwaiti Nationality Act under which loss or withdrawal of a naturalized person’s nationality entails

the withdrawal of nationality from those who acquired it by virtue of their relationship to the said person. The State cannot be held responsible for finding another nationality to replace the one that they have lost.

128. The Convention relating to the Status of Stateless Persons regulates matters pertaining to all aspects of the lives of stateless persons. It is noteworthy that this Convention does not seek to reduce statelessness by providing solutions to the problems faced by that category of persons; it merely regulates their status in the country in which they are living. Since the Convention contains provisions that conflict with those of the Kuwaiti Nationality Act, Kuwait is unable to accede thereto.

129. Article 7, paragraph 1 (a), makes loss or renunciation of nationality conditional on acquisition of another nationality. This falls outside the scope of the State's authority since such loss or renunciation occur only in certain circumstances that lead thereto irrespective of whether the person concerned subsequently acquires another nationality.

130. The same applies to article 7, paragraph 6, which lays down the general principle that a person shall not lose his nationality if such loss would render him stateless. As already indicated, the State cannot be held responsible for finding a nationality to replace the one that a person has lost and this should not be an impediment to the loss or withdrawal of nationality pursuant to the provisions of the Kuwaiti Nationality Act.

131. Article 17, paragraph 2, of the Convention stipulates that no reservations thereto shall be admissible except in respect of articles 11, 14 or 15. Consequently, Kuwait's accession to the Convention is precluded by the fact that it has numerous reservations to other articles thereof.

#### **Paragraph 12 of the recommendations**

132. Kuwait's policy of rejecting racism and racial discrimination is in conformity with verse 13 of the chapter of the Holy Qur'an entitled *Al-Hujurat* ("O mankind! We created you from a single pair of a male and a female and made you into nations and tribes so that you may know each other. Verily, the most righteous among you shall be the most honoured in the sight of God, who is Omniscient and All-Cognizant"), especially as the Islamic Sharia is the primary source of the precepts and provisions of the Kuwaiti Constitution, as stipulated in article 2 thereof.

133. The general principle of opposition to racism and racial discrimination is laid down in article 29 of the Constitution which places the concepts of equality, non-discrimination and respect for human dignity on a firm foundation by affirming that: "Everyone is equal in regard to human dignity and all are equal before the law in regard to their public rights and obligations, without distinction among them on grounds of race, origin, language or religion".

134. Article 7 of the Constitution further stipulates that: "Justice, liberty and equality are the pillars of society; mutual assistance and respect are the firmest bonds between citizens."

135. The explanatory note on the interpretation of article 29 of the Constitution indicates that the said article embodies the principle of equality in regard to rights and obligations in general while referring, in particular, to the most important aspect of that principle, namely the enjoyment of equality without distinction as to race, origin, language or religion. The note also points out that it was deemed preferable for the said article not to include the expression "colour or wealth", even though it appears in the Universal Declaration of Human Rights, since there is not even the slightest suspicion of racial discrimination in the country and the wording of the article is, in itself, sufficient to dispel any such suspicion. Moreover, the idea of distinguishing between people on grounds of wealth is alien to Kuwaiti society and, consequently, there is no need to make specific mention of this.

136. It should also be noted that article 6 of Act No. 24 of 1962, concerning clubs and associations of public benefit, stipulates that: “The association or club shall not be permitted to pursue any unlawful objective ... and it shall be prohibited for the association or club to involve itself in politics or religious controversies or incite intercommunal, racial or confessional bigotry.”

137. Article 6 of Legislative Decree No. 42 of 1978, concerning sports associations, likewise stipulates that: “The sports organization shall not be permitted to pursue an unlawful objective ... and shall be prohibited from engaging or involving itself in politics or religious controversies or inciting intercommunal, racial or confessional bigotry.”

138. From the penal standpoint, article 111 of the Kuwaiti Criminal Code (Act No. 16 of 1960) criminalizes any manifestation of religious bigotry by stipulating that: “Anyone who publicly disseminates, in any of the ways specified in article 101, views that constitute derision, disparagement or defamation of a religion or a religious confession or an attack on the doctrines, observances, rites or teachings thereof shall be liable to a penalty not exceeding one year’s imprisonment and/or a fine of not more than 1,000 rupees”.

139. Moreover, at the end of 2012, Kuwait promulgated Legislative Decree No. 19 of 2012, concerning the protection of national unity, the provisions of which were published in edition No. 1102 of the Official Gazette *Al-Kuwait Al-Youm*. Article 1 thereof prohibits: advocacy or incitement of hatred or contempt for any social group by any of the means of expression specified in article 29 of Act No. 31 of 1970 amending various provisions of the Criminal Code; provocation of sectarian or tribal factionalism; promotion of ideology based on the superiority of any race, group, colour, national or ethnic origin, religious confession or lineage; encouragement of any act of violence to that end; and dissemination, propagation, printing, broadcasting, retransmission, production or circulation of any concepts, printed or audiovisual material, or spreading or retransmission of false rumours, likely to lead to any of the above.

### **Paragraph 13 of the recommendations**

140. In fulfilment of its international commitments, Kuwait acceded to the United Nations Convention against Transnational Organized Crime, as well as its Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, and its Protocol against the Smuggling of Migrants by Land Sea and Air, under the terms of Act No. 5 of 2006 promulgated on 27 March 2006.

141. The general constitutional principle in this regard is that, with effect from the date of their entry into force, treaties ratified by the State form an integral part of Kuwait’s national legislation and are incorporated in its corpus of domestic law. All governmental bodies and institutions, as well as individuals, therefore have an obligation to comply with their provisions and the Kuwaiti judiciary is required to ensure that they are respected and protected.

142. This national legal obligation derives from article 70 of the Constitution which stipulates that: “The Amir concludes treaties by decree and transmits them immediately, together with an appropriate explanatory statement, to the National Assembly. Treaties have the force of law after being signed, ratified and published in the Official Gazette.”

143. The State subsequently promulgated the Prevention of Trafficking in Persons and Smuggling of Migrants Act No. 91 2013, article 1 of which contained definitions of the terminology used therein, including “transnational organized crime”, “trafficking in persons” and “smuggling of migrants” and the nature of illegal entry. Article 2 prescribed penalties under which traffickers in persons may even be liable to capital punishment.

144. Article 3 prescribed a penalty of up to 15 years' imprisonment and a fine of 10,000-20,000 dinars for perpetrators of the offence of smuggling migrants.

145. Article 4 addressed matters relating to concealment of persons accused of, or proceeds arising from, any offences of trafficking in persons or smuggling of migrants, while article 5 made provision for the confiscation of movable property, means of transport and seized items that had been used or were intended to be used in the commission of any such offences.

146. Under the terms of article 6, both the legal representative and the de facto manager of a corporate entity for the benefit of which an offence of trafficking in persons or smuggling of migrants had been committed were punishable without prejudice to the personal criminal liability of the perpetrator of the offence.

147. Article 7 prescribed a penalty of up to three years' imprisonment and a fine of 1,000-3,000 dinars for anyone who, being aware of a plan to commit an offence of trafficking in persons or smuggling of migrants, failed to inform the competent authorities.

148. Article 8 prescribed penalties for perpetrators of assaults on law enforcement officials, and article 9 criminalized the use of force, threat or bribery to induce any person to commit perjury or provide false information.

149. Article 10 made provision for the granting of impunity to any of the offenders who informed the competent authorities of what they knew about the offence before it was committed, and article 11 stipulated that the Public Prosecution had sole jurisdiction to investigate, take action and institute prosecution proceedings in the offences referred to in the Act.

150. Article 12 empowered the Public Prosecution or the competent authority to refer victims to the medical authorities or social care centres or order their placement in any of the shelters that the State had established for that purpose.

151. Article 13 emphasized that, by way of exception to the provisions of article 83 of the Criminal Code, it was not permissible to commute a death sentence to a penalty of life imprisonment or commute a penalty of life imprisonment to a lesser term of imprisonment, nor was it permissible to order the suspension of a sentence or refrain from passing sentence, in respect of any of the offences referred to in the Act.

- In addition to the promulgation of Act No. 91 of 2013, the State has taken other legislative and practical measures in conformity with international standards to provide protection and put an end to trafficking in persons and smuggling of migrants, as illustrated by the following:
- Promulgation of Act No. 68 of 2015, which was designed to ensure the protection of domestic workers by placing their employers under numerous obligations to that end.
- Establishment of an Anti-Human Trafficking Department in the Directorate General of Criminal Investigation to supplement the endeavours that numerous other bodies, and particularly the Ministry of Social Affairs, were already making to combat trafficking in persons.

#### **Paragraph 14 of the recommendations**

152. Kuwait has been a leading champion of the principle of equality and elimination of discrimination on grounds of race, origin, language or religion, as can be seen from the constitutional provisions to which reference was made in connection with article 5, paragraph (c), of the International Convention on the Elimination of All Forms of Racial Discrimination.

153. With regard to failure to amend the Civil Service Act No. 15 of 1979, we wish to point out that the legislature has, in fact, made various amendments to that Act whenever such was deemed necessary. The Civil Service Commission is not empowered to amend the Act since this falls within the jurisdiction of the State's legislative authorities. The Civil Service Commission and the Civil Service Council merely issue any circulars and decisions needed to interpret ambiguities in the Act. All the circulars and decisions that it has issued are in conformity with the Constitution and the Act which affirm the principle of equality and equal access to public office in the State's administrative apparatus.

**Paragraph 15 of the recommendations**

154. All persons in the State's territory enjoy a guaranteed right to establish and have access to places of worship and any instances of constraint are dealt with in accordance with international human rights standards, including treaties acceded to or ratified by the State. However, permits for the construction of places of worship, like the construction of any other public facilities, require the completion of a series of procedures and the issuance of administrative and regulatory approvals by a number of governmental authorities before the permit is granted. Accordingly, the establishment of places of worship is not subject to special constraints of a racially discriminatory nature.

155. Freedom of religion and belief, which is guaranteed by international instruments and carefully monitored by international human rights bodies, has long been an established principle of the Islamic religion and is reaffirmed in article 35 of the Kuwaiti Constitution which stipulates that: "Freedom of belief is absolute. The State shall protect freedom of religious observance in accordance with established customs, provided that it is neither prejudicial to public order nor incompatible with morality."

156. This freedom is shielded from violation or infringement by articles 109-113 of the Criminal Code which prescribe a series of penalties applicable to anyone who vandalizes or desecrates a place of religious worship, commits therein an act prejudicial to the respect due to the religion concerned or disturbs the peace at a lawful gathering held for the purpose of religious observance.

157. Kuwait is proud to consider itself a pioneer in the promotion of a culture of religious tolerance and moderation as a mode of conduct from which the State does not deviate since it is based on the teachings of a sound religion, supportive constitutional and legal provisions and a society with an innate propensity to coexist peacefully with all religious faiths and confessions.

158. The State spares no effort to establish institutions conducive to this end and promulgates the legislation required to protect and ensure respect for these ideals. In this connection, it established the World *Wasatiyya* (Moderation) Centre in 2006 under the terms of Ministerial Decision No. 14/2006 to propagate religious moderation, combat extremism and all forms of terrorism and promote the values of tolerance and peaceful coexistence among all religious faiths and confessions.

159. The Centre has endeavoured to achieve these aims at the local and international levels by, inter alia, organizing conferences and dialogues, issuing publications calling for propagation of the concepts of tolerance and moderation among ethnic, religious and confessional communities, combating all forms of religious and confessional extremism and bigotry and encouraging the building of bridges of cooperation and communication between civilizations with a view to the promotion of a culture of moderation, in addition to the endeavours being made by international institutions and civil society organizations to the same end.

160. In this connection, it is noteworthy that Legislative Decree No. 19 of 2012, concerning the protection of national unity, prohibits: advocacy or incitement of hatred or



contempt for any social group by any of the means of expression specified in article 29 of Act No. 31 of 1970 amending various provisions of the Criminal Code; provocation of sectarian or tribal factionalism; promotion of ideology based on the superiority of any race, group, colour, national or ethnic origin, religious confession or lineage; encouragement of any act of violence to that end; and dissemination, propagation, printing, broadcasting, retransmission, production or circulation of any concepts, printed or audiovisual material, or spreading or retransmission of false rumours, likely to lead to any of the above.

161. Since the Kuwaiti Constitution guarantees freedom of belief, the State has a legal obligation to protect freedom of religious observance in accordance with established customs provided that it is not detrimental to public order or morals.

#### **Paragraph 16 of the recommendations**

162. Note should be taken of the protection that the Kuwaiti legislature affords to migrant workers under the terms of the Private Sector Employment Act No. 6 of 2010 to which reference has already been made in this report.

163. In view of the high degree of importance that it attaches to the category of domestic workers who have come to work in the country, the Kuwaiti legislature promulgated Legislative Decree No. 40 of 1992 regulating the recruitment of domestic labour. This remained in force for a long period of time until, given the changes that had taken place and the State's desire to provide greater protection and care for domestic workers by regulating the tripartite contractual relationship between them, their employers and the recruitment agency, the legislature promulgated the Domestic Labour Act No. 68 of 2015 which contained detailed provisions concerning the relationship between such workers and their employers.

164. The latter Act was designed to protect domestic workers by placing their employers under numerous obligations, as illustrated by the following:

- Under articles 7 and 8 of the Act, the employer is required to pay the agreed salary to his domestic worker at the end of each month. The confirmation of transfer or the acknowledgement of receipt constitutes sufficient proof of payment of the worker's salary, which is due with effect from the date of the worker's entry on duty. No deductions may be made from the salary under any circumstances whatsoever.
- Under articles 9, 10 and 11, the employer has an obligation to feed and clothe his domestic worker, cover the worker's medical treatment and nursing expenses and provide the worker with decent accommodation. The employer does not have the right to require his domestic worker to perform any work that is dangerous or likely to prove detrimental to the worker's health or human dignity.
- Article 22 stipulates that the recruitment contracts drawn up by the Domestic Workers Department must include the following labour-related rights:
  1. Specification of the maximum number of daily working hours, interspersed with rest periods.
  2. The domestic worker's entitlement to a weekly day of rest and annual leave with pay.
  3. The employer's obligation to pay the costs of medical treatment and compensation in respect of any occupational injury suffered by his domestic worker.
  4. A stipulation to the effect that the domestic worker's passport is a personal document which the worker has a right to keep and, consequently,

the employer is not entitled to seize it and prevent the worker from retaining it.

- Under article 27, if the employer fails to pay the worker's salary on the due dates, the worker is entitled to compensation amounting to 10 Kuwaiti dinars in respect of each month's delay.

165. Other relevant enactments have also been promulgated, including Act No. 69 of 2015 concerning the establishment of a closed joint-stock company for the recruitment and employment of domestic workers.

166. Under the terms of the Act and ministerial decisions, the employer is not permitted to hold the worker's travel document in his possession. A number of judgments that have been handed down in this regard have stipulated that passports are personal documents which cannot be seized against the wishes of their holders and there is no reason why an employer should keep a worker's passport. If an employer does so, the worker is entitled to file a complaint with the Directorate of Labour Relations, which summons the employer and, in the event of the latter refusing to hand over the passport, the complaint is referred to the judiciary. In 2015, the Directorate of Labour Relations received 2,487 complaints demanding the return of passports.

#### **Paragraph 17 of the recommendations**

167. First of all, it should be noted that the number of illegal residents prior to the Iraqi invasion and the establishment of the Central Agency amounted to 220,000 and, in December 2015, the total number of such persons holding cards issued by the Central Agency had declined to around 96,000. This number fluctuates depending on the mortality rate and the number of illegal residents who have regularized their status or left the country.

168. In 2010, the Supreme Council for Planning and Development held preparatory meetings for the formulation of an appropriate plan to address the issue of illegal residents and, subsequently, issued practical recommendations and proposals in this regard after preparing a study containing a clearly defined roadmap which was adopted by the Council of Ministers in Decision No. 1612/2010. That decision led to the promulgation of Decree No. 467/2010 of 9 November 2010 establishing the Central Agency for Regularization of the Status of Illegal Residents as the sole official governmental authority responsible for the affairs of illegal residents and implementation of the above-mentioned roadmap in collaboration with the bodies concerned in the State. The Agency began by dividing illegal residents into the following three specific categories:

1. Those whose status needed to be regularized;
2. Those whose naturalization could be considered in accordance with the Kuwaiti Nationality Act No. 15/1959;
3. Those for whom the issuance of legal residence permits could be proposed.

169. In this way, illegal residents are screened in accordance with their legal status so that their situation can be resolved either by considering the granting of Kuwaiti nationality to those meeting the legal conditions therefor or by regularizing the illegal status of others.

170. Persons whose nationalities are ascertained by the Central Agency are treated in accordance with the laws in force in the State and are referred to the competent authorities therein.

171. We wish to make it clear that, in the State of Kuwait, there is no form of racial discrimination against illegal or other residents. The Central Agency for Regularization of the Status of Illegal Residents is diligently providing registered illegal residents with civil and humanitarian services and facilities after taking the initiative of proposing the

continuation of such services, which was approved by the Council of Ministers in Decision No. 409/2011 as a token of the State's desire to ensure that such persons were treated in a humanitarian manner. Accordingly, the Central Agency, in coordination with the bodies concerned in the State, is facilitating access by illegal residents to a range of civil and humanitarian services and benefits. All the bodies concerned have an obligation to provide such services in order to ensure that illegal residents enjoy a decent life.

172. This does not imply that illegal residents were denied access to humanitarian services before the Central Agency was established. On the contrary, the State has always met all their humanitarian needs and the Central Agency has merely highlighted this policy in spite of their illegal status. The following table shows the civil and humanitarian services and facilities provided for illegal residents registered with the Central Agency.

<i>Service</i>	<i>The facts</i>	<i>Statistics</i>
Medical treatment	<ul style="list-style-type: none"> <li>• Since the establishment of the Central Agency on 9 November 2010, the Kuwaiti Government has borne the full costs of the medical treatment of illegal residents. This service, for which a fee was formerly charged, is provided free of charge at all government health centres and hospitals.</li> <li>• The Charitable Health Care Fund, established pursuant to Decision No. 855/2003, covers all the costs of health care, including radiography, surgical procedures, laboratory analyses, medication and fitting of prostheses, for needy persons.</li> <li>• Female illegal residents receive full therapeutic services on an equal footing with men, in addition to maternity and female health care benefits.</li> </ul>	<ul style="list-style-type: none"> <li>• From September 2003 to the end of 2012, a total of 56,547 illegal residents benefited from the Charitable Health Care Fund at a cost of KD 3,812,107, equivalent to US\$ 12,553,907.37.</li> <li>• In accordance with Ministerial Decision No. 86/2011, illegal residents are treated in the same way as Kuwaitis in regard to fees and are exempt from payment of charges for the occupancy of private rooms.</li> </ul>
Education	<ul style="list-style-type: none"> <li>• The Charitable Fund for the Education of Needy Children, established pursuant to Council of Ministers Decision No. 855/2003 and subsidized by the Government, covers all types of academic expenses.</li> <li>• Illegally resident students receive the same standard of education and follow the same curricula as Kuwaiti students.</li> <li>• The State gives illegal residents an opportunity to continue their education at university, since their studies are no longer confined to preparatory education and they are allocated places in the various university faculties in accordance with the procedures, rules and conditions for admission to the university faculties.</li> <li>• A Students' Welfare Programme has been set up to help to ease the burden on needy students by providing them with assistance and covering their academic fees.</li> <li>• They have an opportunity to enrol in private</li> </ul>	<ul style="list-style-type: none"> <li>• In the academic year 2014/15, around 15,105 male and female beneficiaries were receiving education at a cost of KD 4,711,093, equivalent to US\$ 15,514,418.96.</li> <li>• Children of Kuwaiti women married to illegal residents working for the Ministry of Defence and the Ministry of the Interior were enrolled in general education schools.</li> <li>• The Ministry of Education bears the academic expenses of children of persons working for the Ministry of Defence and the Ministry of the Interior who have regularized their status and hold valid passports.</li> <li>• Persons who have regularized their status are entitled to continue their education at higher levels such as Kuwait University and the Public Authority for Applied Education and Training in accordance with the rules and conditions applied in each institution.</li> <li>• From the academic year 2011/12 up to the academic year 2014/15, a total of 5,758</li> </ul>

<i>Service</i>	<i>The facts</i>	<i>Statistics</i>
	<p>universities subject to payment of the academic fees and fulfilment of the requirements laid down in the regulations of those universities.</p> <ul style="list-style-type: none"> <li>• An arrangement has been made with the Public Authority for Applied Education and Training under which certain categories are permitted to study in the Authority's colleges.</li> <li>• In accordance with instructions from H.H. the Amir, all talented children of illegal residents were admitted to university in the academic year 2012/13.</li> <li>• Male and female students have equal access to preparatory and university education services. The sole requirement for admission to university faculties is fulfilment of the conditions of admission and attainment of the requisite grades.</li> <li>• The children of illegal residents receive the full range of education services, all the costs of which (uniforms, books and other educational requisites) are borne by the Charitable Fund for the Education of Needy Children.</li> </ul>	<p>illegally resident students were enrolled at Kuwait University.</p> <ul style="list-style-type: none"> <li>• From the academic year 2011/12 to the academic year 2014/15, a total of 3,347 illegally resident students were enrolled at the Public Authority for Applied Education and Training.</li> <li>• During the period from 2010 to 2014, the academic fees of 1,063 illegally resident male and female university students were paid by the Students' Welfare Programme at a cost of KD 420,078, equivalent to US\$ 1,383,387.27.</li> <li>• In the academic year 2015/16, a total of 5,000 illegally resident male and female students were admitted to various levels of education.</li> </ul>
<p>Civil registration, including:</p> <ul style="list-style-type: none"> <li>• Birth certificates</li> <li>• Death certificates</li> <li>• Registration of testamentary bequests and inheritance</li> <li>• Marriage certificates</li> <li>• Divorce certificates</li> </ul>	<ul style="list-style-type: none"> <li>• The State recognizes the inalienable right of all persons residing in its territory to apply for all types of civil registration. No one is prevented from obtaining such registration since it is regarded as a means by which the State protects the family.</li> <li>• Birth and death certificates are issued in accordance with Act No. 36/1969 regulating the registration of births and deaths.</li> <li>• Marriage-related documents are drawn up, notarized and certified in the manner prescribed by Ministerial Decision No. 142/2002, concerning the reorganization of the administration, and by the official directives and circulars regulating its work.</li> <li>• The procedures for the issuance of registration documents to illegal residents were facilitated by Council of Ministers Decision No. 409/2011 in accordance with which the expression "non-Kuwaiti", instead of the original nationality, is entered in such documents.</li> <li>• The facilities approved by the Government led to an increase in the number of documents received by illegal residents, who</li> </ul>	<ul style="list-style-type: none"> <li>• Birth certificates: from 2011 to August 2014, a total of 23,247 certificates were issued.</li> <li>• Death certificates: from 2011 to March 2014, a total of 1,268 certificates were issued.</li> <li>• Marriage contracts: from January 2014 to August 2014, a total of 6,256 marriage contracts were issued.</li> <li>• Divorce certificates: from 2011 to July 2014, a total of 77 divorce certificates were issued.</li> <li>• Certificates of succession: in 2012, a total of 315 certificates of succession were issued and, from January 2014 to July 2014, a total of 84 certificates designating heirs were issued.</li> <li>• Official notifications: 15,416 official notifications were issued in 2012, as compared with 7,326 from January 2014 up to July 2014.</li> <li>• General powers of attorney: 1,427 general powers of attorney were issued in 2012.</li> <li>• Special powers of attorney: 3,603 special powers of attorney were issued in 2012.</li> <li>• Property conveyance: 17 transactions.</li> </ul>

<i>Service</i>	<i>The facts</i>	<i>Statistics</i>
	had previously refused to receive them.	<ul style="list-style-type: none"> <li>• Conveyance by gift of the State: 10 transactions.</li> <li>• Shares in the estate of deceased Kuwaiti relatives: 4 shares.</li> <li>• Notarial acts: 4,240 certifications and 1,309 attestations (powers of attorney and affidavits) in 2013.</li> <li>• Prenuptial medical examination certificates: 79 certificates were issued during the first three months of 2014.</li> </ul>
Issuance of driving licences	<ul style="list-style-type: none"> <li>• The requirements for the issuance of driving licences are specified in article 85 of the implementing regulations of the Traffic Act (Ministerial Decision No. 1729/2005), as amended by Decision No. 393/2013 (“Some categories, including illegal residents holding valid ID cards issued by the Central Agency for the Regularization of the Status of Illegal Residents, are exempt from these requirements”).</li> <li>• Driving licences are issued, without impediment, to all illegal residents over 18 years of age who pass the oral and practical tests.</li> <li>• There is no gender-based discrimination in regard to the issuance of driving licences, the important criterion being the statutory conditions therefor.</li> </ul>	<ul style="list-style-type: none"> <li>• Driving licences: 34,085 licences were issued from 2012 to 2014.</li> <li>• Vehicle registrations, renewals and transfers of ownership: 3,186 certificates were issued in 2012.</li> </ul>
Employment	<ul style="list-style-type: none"> <li>• With regard to employment in the public sector, the Civil Service Commission has agreed to accept applications by illegal residents to fill vacant posts in government ministries.</li> <li>• With regard to employment in the private sector, a website has been set up in collaboration with the Kuwait Chamber of Commerce and Industry and the Ministry of Social Affairs and Labour so that job applicants can be distributed in the private sector in accordance with the available vacancies.</li> <li>• The salaries paid to illegal residents in the public sector are determined on the basis of those to which the applicant would be entitled if he were appointed in accordance with the Civil Service Act and its implementing regulations and also in the light of the type of post that he occupies. There is no discrimination in favour of civil servants who are legal residents.</li> </ul>	<ul style="list-style-type: none"> <li>• 1,419 illegal residents were appointed to posts in government agencies up to the end of March 2014.</li> <li>• 2,030 children of Kuwaiti women married to illegal residents were appointed to posts in the Ministry of Defence in 2015 and the number of illegal residents employed in consumer cooperative societies amounted to 630.</li> </ul>

Service	The facts	Statistics
	<p>Remuneration in the private sector is determined by the contract signed between the two parties.</p> <ul style="list-style-type: none"> <li>• Employment in the cooperative sector is coordinated with the Union of Consumer Cooperative Societies so that job opportunities can be provided for illegal residents.</li> <li>• Men and women enjoy equal employment opportunities without any discrimination between them.</li> <li>• The Government is using all available legal means to combat the phenomenon of economic exploitation of illegally resident children by their relatives since it has an adverse effect on their education.</li> </ul>	
Issuance of ration cards	<ul style="list-style-type: none"> <li>• The Government subsidizes basic consumer foodstuffs through the issuance of ration cards to illegal residents.</li> <li>• Ration cards cover basic foodstuffs such as rice, sugar, cooking oil, infant formula, chicken, cheese, lentils and tomato paste.</li> </ul>	<ul style="list-style-type: none"> <li>• In 2014, a total of 98,384 illegal residents benefited from this scheme at a cost of KD 699,527, equivalent to US\$ 2,303,659.67.</li> </ul>
Care of persons with disabilities	<ul style="list-style-type: none"> <li>• Illegal residents with disabilities enjoy the services rendered by the Supreme Council for the Disabled to persons covered by article 2, paragraph 1, of Act No. 8/2010 concerning the rights of persons with disabilities (“The provisions of this Act apply to persons with disabilities who are Kuwaitis, or children born to Kuwaiti women married to non-Kuwaitis, within the limits of the health and educational care and occupational rights specified herein”). Those to whom the preceding article does not apply are referred to the Patient Assistance Fund and <i>Bait al-Zakat</i>.</li> <li>• Endeavours are being made in coordination with the Public Authority for the Affairs of the Disabled to apply Act No 8/2010 to non-Kuwaitis with disabilities under rules and conditions that it deems appropriate and subject to approval by the Supreme Council for the Disabled so that illegal residents can benefit from its provisions.</li> <li>• Pending approval of the above proposal, the Public Authority for the Affairs of the Disabled is providing the following services for illegal residents with disabilities: <ol style="list-style-type: none"> <li>1. Issuance of official disability certificates recognized by the government authorities;</li> </ol> </li> </ul>	<ul style="list-style-type: none"> <li>• 1,871 illegal residents are benefiting from the services of the Public Authority for the Affairs of the Disabled.</li> <li>• In 2013, a total of 36 male and female students with disabilities were enrolled in classes for persons with special needs in private schools.</li> <li>• In the academic year 2009/10, a total of 87 male and female students with disabilities were enrolled in public schools.</li> <li>• 91 male and female students were enrolled in the academic year 2010/11.</li> <li>• Up to January 2013, a total of 89 persons with disabilities had benefited from the services provided by the residential centres.</li> </ul>

Service	The facts	Statistics
	<ol style="list-style-type: none"> <li>2. Issuance of official letters addressed to <i>Bait al-Zakat</i> and the Patient Assistance Fund requesting the provision of services by these bodies;</li> <li>3. Supply of special vehicle licence plates;</li> <li>4. Payment of a disability allowance, equivalent to that received by the children of Kuwaiti citizens, to the illegally resident disabled children of military and police personnel;</li> <li>5. Payment of a full education grant to the disabled children of Kuwaiti mothers;</li> <li>6. Illegally resident disabled women married to Kuwaitis, and divorcees or widows who have a disabled Kuwaiti child by a Kuwaiti husband, are paid a monthly allowance of KD 300;</li> <li>7. Kuwaiti mothers with a disabled child are issued with a certificate entitling them to reduced working hours;</li> <li>8. Exemption from residence permit fees. <ul style="list-style-type: none"> <li>• Services for persons with disabilities are not confined to those provided by the Authority since various government ministries also provide services for this category. The Ministry of Education and Higher Education organizes classes for persons with special needs in private schools and also enrolls such persons in public schools.</li> <li>• Persons with intellectual and/or psychosocial disabilities who hold a vocational rehabilitation certificate below secondary level are employed by the Ministry of Social Affairs and Labour.</li> </ul> </li> </ol>	
Housing welfare	<ul style="list-style-type: none"> <li>• The Housing Welfare Act No. 45 of 2007 made provision for the establishment of a low-cost housing project which has been put out to tender.</li> <li>• Illegal residents holding military rank in the army and the police enjoy the rights stipulated in the Social Insurance Act.</li> </ul>	<ul style="list-style-type: none"> <li>• Illegal residents are accommodated in 4,800 housing units.</li> <li>• The cost of the housing allowances paid to homeless persons amounts to around KD 2 million, equivalent to US\$ 6,602,839.22.</li> </ul>
Social services (a) Social insurance: Payment of retirement pensions	<ul style="list-style-type: none"> <li>• In addition to the pensions that it pays to Kuwaiti citizens, the Public Institution for Social Insurance also pays retirement pensions to illegally resident military personnel.</li> </ul>	<ul style="list-style-type: none"> <li>• 921 retirement pensions have been paid.</li> </ul>

<i>Service</i>	<i>The facts</i>	<i>Statistics</i>
(b) Residential services in social care institutions	<ul style="list-style-type: none"> <li>The residential centres run by the Ministry of Social Affairs and Labour provide services for the following categories: <ul style="list-style-type: none"> <li>Juveniles</li> <li>Elderly persons benefiting from mobile care services</li> <li>Persons with disabilities</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>In 2012/13, these centres provided services for 229 juveniles, 173 elderly persons and 89 persons with disabilities.</li> </ul>
(c) Contact with civil society institutions	<ul style="list-style-type: none"> <li>Contact is maintained with numerous public benefit institutions such as the Women’s Cultural Association, the Kuwaiti Association to Assist Students, the Kuwaiti Bar Association, the Kuwaiti Red Crescent Society, the Kuwaiti Society for Human Rights and the Kuwaiti Association for the Care of Persons with Disabilities which are collaborating with the State in this regard.</li> </ul>	
Right to seek legal redress	<ul style="list-style-type: none"> <li>Illegal residents are entitled to apply to the Kuwaiti courts for legal redress and there is no discrimination between them and citizens in this respect. Many of them bring proceedings in Kuwaiti courts against official government bodies and judgments thereon are handed down in a fully impartial manner.</li> <li>Notwithstanding the fairness and integrity of the Kuwaiti courts and the impartiality of their judgments, the State shows due regard for the special humanitarian situation of illegal residents and, in conformity with the rules and conditions of the 2013/14 Amiri amnesty for prisoners, all convicted illegal residents were exempted from enforcement of the judicial penalty of deportation.</li> </ul>	<ul style="list-style-type: none"> <li>182 convicted illegal residents were covered by the Amiri amnesty in 2013.</li> </ul>



Service	The facts	Statistics
Expression of opinion through the media and peaceful assembly	<ul style="list-style-type: none"> <li>• Illegal residents have the right to express their opinion through the various audiovisual information media and, in this regard, are subject to no restrictions other than those prescribed by law.</li> <li>• Since peaceful assembly is a form of expression of opinion, Kuwaiti law does not discriminate in this regard. Hence, illegal residents enjoy the right of peaceful assembly to express their views provided that they observe the rule of law.</li> <li>• Illegally resident children enjoy the same guaranteed right and have attended peaceful gatherings and demonstrations under the protection of the security forces, in addition to their participation in a number of campaigns organized to express their views.</li> </ul>	
Issuance of passports	<ul style="list-style-type: none"> <li>• Illegal residents are issued with passports in accordance with article 17 of the Passports Act No. 11 of 1962 in order to perform the <i>hajj</i> or the <i>umrah</i> pilgrimages or to study or receive medical treatment abroad.</li> </ul>	<ul style="list-style-type: none"> <li>• During the period from 1 November 2010 to 1 March 2013, they were issued with 43,142 passports in accordance with article 17 of the Kuwaiti Passports Act.</li> </ul>
Social solidarity (a) Services of <i>Bait al-Zakat</i>	<ul style="list-style-type: none"> <li>• <i>Bait al-Zakat</i> provides the following services: <ol style="list-style-type: none"> <li>1. Payment of the costs of genetic screening;</li> <li>2. Provision of financial assistance;</li> <li>3. Provision of in-kind assistance: foodstuffs, clothing, blankets, furniture, electrical appliances and school satchels;</li> <li>4. Issuance of health insurance cards to persons not holding the Central Agency's ID cards;</li> <li>5. Implementation of the project for the training of persons from needy families who are able to work, including illegal residents, in collaboration with the Patient Assistance Fund.</li> </ol> </li> </ul>	<ul style="list-style-type: none"> <li>• Up to 2013, a total of KD 814,300, equivalent to US\$ 2,691,900, was paid for the genetic screening of 9,580 illegal residents.</li> <li>• The cost of financial assistance amounted to: <ul style="list-style-type: none"> <li>• KD 13,606,474, equivalent to US\$ 47,032,645.69, for 62,590 persons in 2012;</li> <li>• KD 13,086,465, equivalent to US\$ 45,258,127.64, for 13,434 families, comprising 64,949 members, in 2013;</li> <li>• KD 6.73 million, equivalent to US\$ 23,266,420.74, for 13,414 families from January 2014 to July 2014.</li> </ul> </li> </ul>

<i>Service</i>	<i>The facts</i>	<i>Statistics</i>
(b) Social Assistance	<ul style="list-style-type: none"> <li>The Social Assistance Act No. 12 of 2011 amended Legislative Decree No. 22 of 1987 by adding new categories entitled to assistance, including Kuwaiti women married to non-Kuwaitis, thereby explicitly acknowledging that Kuwaiti women married to illegal residents also have an established right to such assistance.</li> </ul>	<ul style="list-style-type: none"> <li>In-kind assistance:</li> <li>The cost of this assistance, received by 37,947 persons, amounted to KD 1,052,410, equivalent to US\$ 3,638,308.15, in 2012;</li> <li>4,115 families, comprising 28,805 persons, benefited therefrom in 2013;</li> <li>From 2007 to 2014, the cost amounted to KD 69,880, equivalent to US\$ 241,655.80, for 5,357 families.</li> <li>135 individuals have benefited from the project for the training of persons able to work at a cost of KD 158,300, equivalent to US\$ 547,254.12.</li> </ul>
Regularization of status	<ul style="list-style-type: none"> <li>Two bodies (the Mubarak al-Kabir Centre and the Immigration Investigation Department) have been designated to receive illegal residents wishing to regularize their status.</li> <li>Although illegal residents are considered to be in breach of the Kuwaiti Residence of Aliens Act No. 17 of 1959, the procedures for the regularization of their status are facilitated and they are not liable to any legal penalty in respect of such breach.</li> <li>The Central Agency continues to grant them civil and humanitarian services as an encouragement.</li> </ul>	<ul style="list-style-type: none"> <li>From the establishment of the Central Agency in 2011 to the middle of 2015, a total of 7,243 illegal residents regularized their status, which is an indication that many of them held the passports of their country of origin. Their number may increase as a result of the Agency's screening and study of the fathers, children and grandchildren affected.</li> </ul>

### Paragraph 18 of the recommendations

#### The right women to pass on their Kuwaiti nationality:

173. It is an internationally recognized principle that nationality is a legal relationship between the individual and the State that clearly falls within the category of matters affecting the sovereignty of the State and its absolute authority to determine who should hold its nationality, or impose on its nationals whatever obligations and restrictions it deems appropriate, since nationality affects the demographic structure and political and economic life of the State. This principle was reaffirmed in the advisory opinion issued in 1923 by the Permanent Court of International Justice which confirmed that every State retained the right to freely promulgate its own nationality laws. This was further confirmed at the Hague Conference on the Conflict of Nationality Laws in 1930. It is well known that, when a State promulgates legislation regulating its nationality and specifying the conditions and procedures for the attestation or acquisition thereof, its sovereignty is not diminished since such legislation is issued by the State itself and must be respected and implemented by all the bodies concerned.

174. The Kuwaiti Nationality Act No. 15/1959 adopted the principle applied in the majority of such laws throughout the world, namely the granting of nationality on the basis of *jus sanguinis* in the light of the father's nationality. Accordingly, article 2 of the Act stipulated that: "Any person born in or outside Kuwait to a Kuwaiti father is a Kuwaiti".

175. The Nationality Act nevertheless grants Kuwaiti nationality to the children of Kuwaiti women on humanitarian grounds under specific conditions. For example, nationality is granted to the children of Kuwaiti women meeting those conditions, without any time limit being set, in accordance with article 3 of the Act which stipulates that: “Anyone born in or outside Kuwait to a Kuwaiti mother and a father who is unknown or whose paternity has not been legally established shall be a Kuwaiti”.

176. In accordance with paragraph 2 added to article 5 of Act No. 100/1980 amending the Kuwaiti Nationality Act No. 15/1959, Kuwaiti nationality is granted to the children of Kuwaiti women who have been irrevocably divorced or whose husbands are deceased or prisoners of war.

#### **Statistics on the number of children of Kuwaiti women who were naturalized during the period 2010-2014**

##### **Number of persons who acquired Kuwaiti nationality under the terms of article 5, paragraph 2**

<i>Number</i>	<i>Original nationality</i>
2	Eritrea
1	Australia
21	Jordan
5	United Arab Emirates
4	Bahrain
9	Dominican Republic
248	Saudi Arabia
3	Sudan
66	Iraq
4	United States of America
11	Yemen
16	Iran
10	Sultanate of Oman
7	Syria
123	Non-Kuwaiti
2	Palestinian
4	Palestinian holding a Lebanese travel document
3	Qatar
7	Canada
9	Lebanon
1	Liberia
31	Egypt
<b>Total</b>	<b>587</b>

#### **Paragraph 19 of the recommendations**

177. With regard to abolition of the sponsorship system and its replacement with residence permits issued by the Government to domestic workers, the International Labour Organization has already conducted a study on this matter for the Ministry of Social Affairs

and Labour. Although that study recommended numerous reforms to the recruitment and employment system in Kuwait, one of its proposals was that the State should retain its sponsorship system.

178. Since the sponsorship system has therefore been deemed appropriate to the legal environment in the State, it has been retained in its present form for the category of domestic workers with the proviso that the relevant legislation and ministerial decisions regulating the recruitment of domestic workers, as well as the relationship between all the parties concerned, must be applied in an effective manner.

179. A department has been established in the Ministry of the Interior to monitor the extent to which the legislation and regulations concerning domestic workers are applied and respected. Under the terms of Ministerial Decision No. 2411/2008 concerning the organizational structure of the Ministry of the Interior, the Domestic Workers Department was established and assigned certain specific functions, which included:

1. Enforcement of the provisions and rules contained in the legislation regulating domestic labour recruitment agencies.
2. Inspection of agencies and institutions engaged in the recruitment of personal servants or their equivalent, and examination of their registers and records.
3. Investigation, verification and recording of infractions for referral to the competent authorities. In this regard, the Department has recorded numerous infractions by recruitment agencies and reported them to the Directorate General of Investigations for the requisite follow up, as a result of which the licences of 866 agencies have been withdrawn, including the licences of 40 agencies found to be in violation of ministerial decisions, and only 370 agencies are still in business.
4. Reception of complaints by domestic workers against their employers on grounds such as non-payment of salaries or ill-treatment, and taking all the necessary measures in this regard in order to safeguard and enforce the workers' rights.
5. Establishment of a special section to receive domestic labour-related complaints from embassies and endeavour to settle such complaints in an amicable manner, failing which the embassy and the domestic worker should be advised to bring a civil action before the Kuwaiti courts. The worker must not be obliged to leave Kuwait, unless so requested by his or her country's embassy, before all the worker's financial entitlements have been paid. As of 5 May 2013, the Domestic Workers Department had enabled a total of 1,521 domestic workers to leave at their request or at the request of their embassies.

#### **Paragraph 20 of the recommendations**

180. The State of Kuwait is not a party to the Convention relating to the Status of Refugees of 1951 and, consequently, is not obliged to receive refugees in its territory. Although Kuwaiti law does not permit the immigration of foreigners, they are allowed to reside in Kuwait on a temporary basis in accordance with Legislative Decree No. 17 of 1959, concerning the residence of aliens, and the implementing regulations thereof. The foreigner's residence in Kuwait, however long it may be, is temporary and he must return to his country on the expiration of the period of residence granted in the event of it not being renewed.

181. With regard to individuals living in Kuwait who have concealed their original nationalities and official identity documents in the hope of obtaining Kuwaiti nationality, the Central Agency for Regularization of the Status of Illegal Residents, to which reference has already been made above, has been established to safeguard all their basic human rights.

### Paragraph 21 of the recommendations

182. Kuwait is deeply committed to the achievement of equality among students, regardless of whether they are nationals, migrants or illegal residents. The legislation and the administrative decisions and regulations issued by the Ministry of Education on educational matters therefore apply to all students.

183. This principle of equality is respected not only in regard to administrative organization but also in regard to the standard of education provided for the children of illegal residents. Article 1 of the Compulsory Education Act stipulates that the State shall bear the cost of books, teachers and all other human and material resources needed to ensure the success of the education process and, through the Fund for the Education of Needy Children, the Government has allocated financial support to that end, thereby manifesting its concern for the children of illegal residents on an equal footing with Kuwaiti students insofar as such children are taught the same curricula as the children of citizens. Consequently, illegal residents enjoy the same standard of education as citizens since they attend the same schools and are not enrolled in educational institutions established exclusively for them.

184. It is noteworthy that, being aware of the importance of education, Kuwait permits the school enrolment of children of illegal residents on presentation of a birth notice accompanied by a letter from the Genealogical Claims and Rectification of Names Commission stating that an application for attestation of genealogical affiliation is being examined.

185. Far from being confined to preparatory education, equality in the education sector extends to university studies at Kuwait University, the Public Authority for Applied Education and Training or private universities in accordance with the rules and regulations applied at each educational institution. The following table shows the financial support provided by the Fund for the Education of Needy Children and the number of students benefiting therefrom.

Free education	<ul style="list-style-type: none"> <li>• The Charitable Fund for the Education of Needy Children, established pursuant to Council of Ministers Decision No. 855/2003 and subsidized by the Government, covers all types of academic expenses.</li> <li>• Illegally resident students receive the same standard of education and follow the same curricula as Kuwaiti students.</li> <li>• The State gives illegal residents an opportunity to continue their education at university, since their studies are no longer confined to preparatory education and they are allocated places in the various university faculties in accordance with the procedures, rules and conditions for admission to the university faculties.</li> </ul>	<ul style="list-style-type: none"> <li>• In the academic year 2011/12, a total of 13,533 male and female students were receiving education at a cost of KD 3,589,000, equivalent to US\$ 12,409,297.09.</li> <li>• In the academic year 2012/13, a total of 14,250 male and female students were receiving education at a cost of KD 4,137,435, equivalent to US\$ 14,308,674.41.</li> <li>• In the academic year 2013/14, a total of 14,910 male and female students were receiving education at a cost of KD 4,453,566, equivalent to US\$ 15,401,964.22.</li> </ul>
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- A Students' Welfare Programme has been set up to help to ease the burden on needy students by providing them with assistance and covering their academic fees.
  - They have an opportunity to enrol in private universities subject to payment of the academic fees and fulfilment of the requirements laid down in the regulations of those universities.
  - An arrangement has been made with the Public Authority for Applied Education and Training under which certain categories are permitted to study in the Authority's colleges.
  - In accordance with instructions from H.H. the Amir, all talented children of illegal residents were admitted to university in the academic year 2012/13.
  - Male and female students have equal access to preparatory and university education services. The sole requirement for admission to university faculties is fulfilment of the conditions of admission and attainment of the requisite grades.
  - The children of illegal residents receive the full range of education services, all the costs of which (uniforms, books and other educational requisites) are borne by the Charitable Fund for the Education of Needy Children.
  - From the introduction of the students' welfare programme in 2007 up to the academic year 2013/14, a total of 1,063 male and female students have benefited therefrom at a cost of KD 420,278, equivalent to US\$ 1,452,676.80.
  - In the academic year 2013/14, a total of 50 students were admitted to colleges on grants from the Director General of the Public Authority for Applied Education and Training.
  - In the academic year 2014/15, a total of 150,105 male and female students were receiving education at a cost of KD 4,711,093, equivalent to US\$ 16,285,186.59.
  - In the academic year 2014/15, a total of 50 students were admitted to colleges on grants from the Director General of the Public Authority for Applied Education and Training.
  - From the academic year 2011/12 up to the academic year 2014/15, a total of 5,758 male and female students were enrolled in the first, second and summer semesters at Kuwait University.
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### **Paragraph 22 of the recommendations**

186. The Private Sector Employment Act No. 6/2010 is available in the Arabic and English languages and there are numerous ways in which workers can obtain a copy thereof, especially as the Act has been published on Internet sites, in order to familiarize themselves with the rights and obligations of workers and employers.

187. Under the terms of article 28 of the Act, employment contracts must be drawn up in writing and must specify, in particular, the dates of conclusion and entry into force of the contract, the amount of the remuneration, the duration of the contract and the nature of the work.

188. Under article 29, employment contracts in Arabic may be translated into any other languages and the contracting parties may also translate correspondence, notices and circulars issued by the employer.

189. It is noteworthy that the labour market in Kuwait includes foreign workers of more than 150 nationalities and it would therefore be difficult to translate the Labour Code into all their various languages, and particularly local dialects. It is deemed sufficient to translate contracts into English.

190. The Ministry of the Interior, through its Directorate General for Residence Affairs, has placed employers and domestic labour agencies under an obligation to send a copy of the employment contract to the domestic worker and has requested the Ministry of Foreign Affairs to instruct the Kuwaiti missions in domestic labour-exporting countries that, when domestic workers present themselves at the mission to obtain entry visas, they should be enabled to acquaint themselves with the terms of their employment contracts before signing them. The Ministry's purpose in laying down this procedure was to ensure that domestic workers were fully aware of their rights and obligations as well as their working conditions.

### **Paragraph 23 of the recommendations**

191. A passport is a personal document of which the holder must not be deprived since it is an indispensable prerequisite for his movements. This is an established principle that has been emphasized in numerous Kuwaiti court judgments in conformity with article 8, paragraph 1, of Legislative Decree No. 17/1959, concerning the residence of aliens, which stipulated that, during their period of residence, aliens are required to present their passports or equivalent documents whenever so requested. This implies that passports are the property of their holders and cannot be seized or confiscated by third parties. The bipartite or tripartite employment contracts drawn up by the competent department in the Ministry also contain a provision stipulating that the worker's passport is a personal document which he is entitled to keep in his possession.

192. In the event that a domestic worker abandons his work with his employer and applies to his country's embassy to seek assistance in leaving the country on the ground that his passport has been taken from him, if the employer fails to report the worker's absence to the competent authorities within one month from the date on which he abandoned his work, the Domestic Workers Department makes arrangements, in coordination with his embassy, for him to leave the country after the embassy has issued him with a valid travel document.

193. In this connection, at its session on 27 November 1989, the Cassation Division of the High Court of Appeal handed down a ruling on appeals Nos. 16 and 18 of 1989 in both of which a worker was awarded compensation of 1,000 Kuwaiti dinars in respect of seizure of his passport.

## **1. Mechanism for the reception of complaints**

194. Under the terms of articles 31 and 35 of Act No. 68 of 2015, the settlement of disputes arising between the parties to a domestic employment contract fall within the jurisdiction of the Domestic Workers Department and, if a settlement cannot be reached, they are referred to the competent civil court.

195. Accordingly, if a worker files a complaint against his employer with the Domestic Workers Department and the latter is unable to settle the matter in question, the domestic worker is fully entitled to bring a suit against his employer since article 166 of the Kuwaiti Constitution stipulates that everyone has a guaranteed right to seek legal remedy. It should also be noted that article 36 of the new Domestic Labour Act No. 68/2015 exempts domestic labour-related cases from legal fees in respect of proceedings at all levels of jurisdiction.

196. With regard to rehabilitation services for victims of abuse, the Public Manpower Authority has established a shelter to provide them with care and has formulated plans and programmes for their rehabilitation.

## **2. Means of redress**

197. Under the Kuwaiti legal system, anyone who has suffered harm as a result of an offence is entitled to apply to the courts for appropriate redress in accordance with article

11 of the Code of Criminal Procedure (Act No. 17/1960) which stipulates that: “Anyone who has suffered harm as a result of an offence shall be entitled to bring a civil suit before the courts hearing a criminal case at any stage of the proceedings until the final pleadings. A civil claimant may also assert his rights during the preliminary investigation by applying to the investigating judge, in which case he shall be treated as a plaintiff during the investigation.”

• **The shelter for migrant workers:**

198. At its meeting No. 20/2/2007 held on 8 July 2007, the Council of Ministers issued Decision No. 652 approving the establishment of a centre to accommodate migrant workers, and particularly domestic workers, involved in disputes with their employers. The centre, which is supervised by the Public Manpower Authority in collaboration with the Ministry of the Interior, is already in operation and is equipped to provide a full range of care services. It is staffed by male and female social workers and investigators and contains all the requisite facilities, including living, dining and rest rooms, a medical clinic, a psychological counselling unit and offices for some embassies.

199. Under its internal regulations, the centre is required to respect the rights of its inmates, treat them in a manner conducive to the preservation of their human dignity, ensure that they are not subjected to physical or mental harm and provide them with all the requisite services without discrimination based on nationality, religion or confession. They must not be prevented from receiving or making visits in or outside the centre or from enjoying any of the rights guaranteed under the Constitution or the legislation and international treaties in force in the State.

3. **The Ministry of the Interior regularly sends its staff to attend training courses on human rights in order to make them aware of the need to respect rights and freedoms, as well as the consequences that any infringement or violation thereof would entail. The Ministry’s annual training schedule includes a course on human rights in police work, a course on international protection of human rights and a symposium on human rights and their application in the Ministry**

4. **With regard to the worker’s obligation to remain in the employer’s service for a period of three years**

200. This does not apply to domestic workers since, under the terms of article 5 of the Private Sector Employment Act No. 6/2010, the category of domestic workers is not covered by the provisions of the Act.

201. Under article 16 of the Domestic Labour Act No. 68/2015, a domestic worker or an employer not wishing to continue the employment relationship has the right to give a minimum of two months’ advance notice of his or her intention not to renew the contract on its expiration.

202. Accordingly, a domestic worker who comes to the country and finds that the working conditions do not correspond to his or her expectations or entitlements has the right to notify the employer of his or her intention not to renew the contract.

**Paragraph 24 of the recommendations**

203. Kuwait, believing in the importance of the promotion of human rights and the principles of justice and humanitarianism, has studied the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families. However, it prefers to give further consideration to the question of accession thereto.



204. It should be noted that the Kuwaiti legislature is eager to incorporate texts and provisions for the protection of workers into the State's constitutional and legal system, as illustrated by the numerous human rights-related international labour conventions to which Kuwait has acceded.

**Paragraph 25 of the recommendations**

205. It is clearly evident that, under the State's firmly established constitutional principles, racial discrimination is prohibited and constitutes a punishable offence. Moreover, Kuwait has acceded to most of the instruments referred to in paragraph 78 of the Durban Programme of Action, including:

- The Convention on the Prevention and Punishment of the Crime of Genocide of 1948;
- The Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others of 1949;
- International Labour Organization Discrimination (Employment and Occupation) Convention, 1958 (No. 111);
- The Convention on the Rights of the Child of 1989 and its two Optional Protocols;
- International Labour Organization Minimum Age Convention, 1973 (No. 138) and Worst Forms of Child Labour Convention, 1999 (No. 182);

206. Following Kuwait's ratification of these conventions, they became an integral part of its domestic law and must be applied in accordance with article 70 of the Constitution.

207. Other domestic legislative enactments also serve to implement the Durban Programme of Action by promoting human rights and fundamental freedoms and prohibiting all forms of racial discrimination. By way of example:

- Under Kuwaiti law, no association or club is permitted to pursue any unlawful objective, involve itself in politics or religious controversies or incite intercommunal, racial or confessional bigotry.
- Acts that are likely to promote or incite racism are criminalized in various texts, such as:
- Article 111 of the Kuwaiti Criminal Code (Act No. 16 of 1960), which criminalizes any manifestation of religious bigotry by stipulating that: "Anyone who publicly disseminates, in any of the ways specified in article 101, views that constitute derision, disparagement or defamation of a religion or a religious confession or an attack on the doctrines, observances, rites or teachings thereof shall be liable to a penalty not exceeding one year's imprisonment and/or a fine of not more than 1,000 rupees".

208. It is also noteworthy that article 1 of Legislative Decree No. 19 of 2012, concerning the protection of national unity, prohibits:

Advocacy or incitement of hatred or contempt for any social group by any of the means of expression specified in article 29 of Act No. 31 of 1970 amending various provisions of the Criminal Code; provocation of sectarian or tribal factionalism; promotion of ideology based on the superiority of any race, group, colour, national or ethnic origin, religious confession or lineage; encouragement of any act of violence to that end; and dissemination, propagation, printing, broadcasting, retransmission, production or circulation of any concepts, printed or audiovisual material, or spreading or retransmission of false rumours, likely to lead to any of the above.

209. These provisions also apply to anyone outside Kuwaiti territory who commits an act which renders him liable, as principal actor or accomplice, for a criminal offence all or any part of which is perpetrated within Kuwaiti territory.

210. In fulfilment of its international obligations, including those under the Durban Declaration, Kuwait promulgated the Prevention of Trafficking in Persons and Smuggling of Migrants Act No. 91 2013, article 1 of which contained definitions of the terminology used therein, including “transnational organized crime”, “trafficking in persons” and “smuggling of migrants” and the nature of illegal entry. Article 2 prescribed penalties under which traffickers in persons may even be liable to capital punishment.

211. Article 3 prescribed a penalty of up to 15 years’ imprisonment and a fine of 10,000-20,000 dinars for perpetrators of the offence of smuggling migrants.

212. At the political level, the National Assembly (Parliament) is promoting and protecting human rights and combating racism, racial discrimination and xenophobia and, to this end, has established a special parliamentary committee to defend human rights in a manner consistent with the National Assembly’s concern for this important humanitarian aspect which is one of the keystones of a modern State in which justice and the rule of law prevail.

213. In addition to the above, Act No. 67 of 2015 made provision for the establishment of a National Human Rights Office which, as indicated in the explanatory note to the Act, would be of a special nature insofar as, from the legal standpoint, it would constitute an independent official national human rights institution and not an administrative or governmental agency; it would be a permanent mechanism concerned with human rights and freedoms. The preamble to the Act, which comprises 14 articles, stated that its provisions were based on several authoritative constitutional, legal and international instruments, including resolution 48/134 in which the General Assembly of the United Nations adopted the Paris Principles concerning the status of national institutions for the promotion and protection of human rights.

214. Article 2 of the Act stipulated that: “An independent office known as the ‘National Human Rights Office’ shall be established to promote and protect human rights, raise awareness of public and private freedoms and ensure greater respect therefor in the light of the principles enshrined in the Constitution and the international treaties that have been ratified by the State of Kuwait and in a manner consistent with the provisions of article 2 of the Constitution. The Office shall be endowed with legal personality and shall enjoy independence in the performance of its mandated functions and activities as specified herein.”

#### **Paragraph 26 of the recommendations**

215. It is noteworthy that the committee assigned to prepare Kuwait’s reports to international human rights treaty bodies usually holds meetings with civil society organizations during its preparation of the periodic reports due under the provisions of the international human rights instruments to which Kuwait has acceded. The committee also endeavours to organize joint activities and visits to governmental institutions concerned with human rights issues, as illustrated by the organization of a visit to a correctional facility (the Central Prison) by the following civil society organizations:

- The Kuwaiti Association of Social Workers;
- The Kuwaiti Graduates Society;
- The National Child Protection Association;
- The Kuwaiti Social Work Society;

- The Kuwaiti Association for the Basic Essential Human Rights (KABEHR);
- The Kuwaiti Society for Human Rights.

216. A visit to juvenile welfare centres operated by the Ministry of Social Affairs was also organized for the following organizations:

- The Kuwaiti Association of Social Workers;
- The Kuwaiti Graduates Society;
- The National Child Protection Association;
- The National Association for Family Security (RAWASI).

217. The Ministry of Foreign Affairs invited civil society organizations to participate in a symposium on “International Humanitarian Law and the State of Kuwait” which was held in December 2015.

#### **Paragraphs 27 and 28 of the recommendations**

218. Notwithstanding the importance of the work of the Committee on the Elimination of Racial Discrimination and the role that it is playing in its capacity as the treaty body established under the terms of the International Convention on the Elimination of All Forms of Racial Discrimination, the State of Kuwait does not wish to take the measures specified in paragraphs 27 and 28 of its concluding observations.

#### **Paragraph 29 of the recommendations**

219. The home page of the website of the Ministry of Foreign Affairs contains a link to all the reports that the State of Kuwait has submitted to treaty bodies, as well as the observations that the latter have made following their consideration of the reports, in order to keep the public informed. The local information media also cover the consideration of the State’s reports by treaty bodies whenever the State’s representatives participate therein.

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