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COMMITTEE ON ECONOMIC, SOCIAL
AND CULTURAL RIGHTS
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**CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES
UNDER ARTICLES 16 AND 17 OF THE COVENANT**

**Concluding observations of the Committee on
Economic, Social and Cultural Rights**

KUWAIT

1. The Committee on Economic, Social and Cultural Rights considered the initial report of Kuwait on the implementation of the International Covenant on Economic, Social and Cultural Rights (E/1990/5/Add.57) at its 9th, 10th and 11th meetings, held on 30 April and 3 May 2004 (see E/C.12/2004/SR.9-11), and adopted, at its 29th meeting, held on 14 May 2004, the following concluding observations.

A. Introduction

2. The Committee welcomes the submission of the initial report of the State party, which was in general prepared in conformity with the Committee's guidelines. However, the information provided was not sufficient for the Committee to fully assess developments in the status of implementation of most of the Covenant's provisions. In particular, the Committee regrets the lack of comparative and disaggregated statistical data and the lack of written replies to its list of issues (E/C.12/Q/KUW/1).

3. The Committee welcomes the constructive dialogue with the high-level delegation of the State party, which included experts in the different areas covered by the Covenant. The Committee regrets that a number of questions were not answered to its satisfaction.

B. Positive aspects

4. The Committee notes with appreciation the wide coverage of free health care in the State party.
5. The Committee welcomes the State party's efforts in the field of education, and in particular the high enrolment rates of girls and women at all levels of education.
6. The Committee welcomes and would like to accept the invitation extended to it by the State party's delegation to visit Kuwait with a view to assisting the State party in implementing its obligations under the Covenant, in the light of these concluding observations.

C. Factors and difficulties impeding the implementation of the Covenant

7. The Committee takes note of the consequences of the war with Iraq in 1991 which have affected the full enjoyment of economic, social and cultural rights.

D. Principal subjects of concern

8. The Committee is concerned, as other human rights treaty bodies, about the lack of clarity regarding the primacy of the Covenant over conflicting or contradictory national laws, and its direct applicability and justiciability in national courts. In this regard, the Committee notes that there is no case law in Kuwait on the application of the Covenant.
9. The Committee notes with concern the reservations and declarations that the State party has made in respect of the provisions of articles 2 (2), 3, 8 (1d) and 9 of the Covenant.
10. The Committee notes the absence of a comprehensive national plan of action on human rights in accordance with paragraph 71 of the Vienna Declaration and Programme of Action, adopted in June 1993.
11. While noting the existence, within the National Assembly, of a Standing Committee on Human Rights, the Committee expresses its concern about the lack of an independent national human rights institution in accordance with the Principles relating to the status of national institutions for the promotion and protection of human rights (the Paris Principles, General Assembly resolution 48/134, annex).
12. The Committee is concerned about the continuing discrimination against the "Bedoons" due to the fact that they are denied the possibility of becoming Kuwaiti nationals by the State party.
13. The Committee is concerned about discrimination against migrant workers in the field of economic, social and cultural rights.
14. Despite the various measures taken by the State party to improve the situation of women, the Committee is concerned about the persistence of de jure and de facto discrimination against women, particularly with regard to their participation in the political decision-making process, especially in the Parliament, as well as in their enjoyment of economic, social and cultural rights.

15. The Committee notes with concern the absence of a minimum wage in the private sector. It is also concerned that minimum wage in the public sector is not applicable to non-Kuwaiti citizens.
16. The Committee is deeply concerned about the unfair terms of employment and working conditions of migrant workers.
17. The Committee is also deeply concerned about the situation of domestic workers, in particular migrant workers who are excluded from the application of the Labour Code. These workers are subjected to conditions not dissimilar to forced labour, are insufficiently remunerated and are often unable to benefit from their right to rest. They are also sometimes deprived of their freedom of movement because their passports are held by their employers.
18. The Committee notes with concern the limitations with regard to the right to join trade unions for non-national workers, and about the restrictive legal limitations on the right to strike.
19. While noting that Kuwait has a sound social insurance scheme, the Committee is concerned that it does not cover work accidents and occupational diseases.
20. The Committee is concerned that non-Kuwaiti workers in Kuwait are excluded from the social insurance scheme.
21. The Committee is concerned about the rising incidence of trafficking in persons, especially women and children, including for the purpose of domestic work.
22. The Committee is equally concerned about the insufficient information on children born out of wedlock, submitted by the State party, and remains unclear about their legal status.
23. The Committee takes note with concern of the statement made by the delegation of the State party that abortion is allowed only when the life of the mother is endangered. The Committee is also concerned about the lack of a comprehensive sexual and reproductive health programme in the State party.
24. The Committee is concerned about the lack of statistical information on the incidence of sexually transmitted diseases, such as HIV/AIDS, in the State party.
25. The Committee is concerned that ages for admission and completion of free compulsory primary to intermediate education have not been clearly set.
26. The Committee is concerned that the State party does not provide free compulsory education to non-Kuwaiti children as a right enshrined in the Covenant.

E. Suggestions and recommendations

27. The Committee urges the State party to ensure that economic, social and cultural rights are incorporated into domestic legislation and made justiciable. The Committee points out that, irrespective of the system whereby international law is incorporated in the domestic legal order, following ratification of an international instrument, the State party is under an obligation to

comply with it and to give it full effect in its domestic legal order. In this respect, the Committee draws the attention of the State party to its general comment No. 9 (1998) on the domestic application of the Covenant.

28. The Committee encourages the State party to consider withdrawing reservations and declarations entered upon the ratification of the Covenant in the light of the fact that they negate the core purposes and objectives of the Covenant.

29. The Committee recommends that the State party prepare, in accordance with Part II, paragraph 71, of the Vienna Declaration and Programme of Action, a comprehensive national human rights plan of action, incorporating the Covenant's provisions and taking into account the observations made by the Committee. The Committee requests the State party to annex a copy of the national human rights plan of action to its second periodic report, and to explain how the plan promotes and protects economic, social and cultural rights.

30. The Committee recommends that the State party establish an independent national human rights institution, in conformity with the Paris Principles. It also recommends that the mandate of such institution include economic, social and cultural rights. In this regard, the Committee recommends that the State party seek technical cooperation with the Office of the United Nations High Commissioner for Human Rights.

31. The Committee recommends that the State party ensure that all persons in its territory, including Bedoons, enjoy economic, social and cultural rights enshrined in the Covenant and expedite their acquisition of Kuwaiti nationality when possible. Furthermore, the Committee requests that the State party provide it with detailed information on the situation of the Bedoons in its next periodic report.

32. The Committee recommends that the State party provide the same treatment to migrant workers as to Kuwaiti citizens. It further recommends that the State party consider ratifying the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.

33. The Committee urges the State party to continue to take all necessary measures to grant women the right to vote. The Committee also urges that the State party harmonize its domestic legislation with the principles and provisions of the Covenant with regard to the law on personal status and the Civil Code so as to abolish differences with regard to rights and responsibilities between women and men and to achieve full gender equality.

34. The Committee urges the State party to establish a minimum wage in the private sector that will enable workers and their families, especially non-Kuwaiti citizens, to enjoy a decent standard of living. The Committee also recommends that the minimum wage in the public sector should apply without discrimination to both Kuwaiti and non-Kuwaiti citizens. The Committee recommends that the State party ratify ILO Convention No. 131 (1970) on Minimum Wage Fixing.

35. The Committee urges the State party to take effective measures to improve the terms of employment and the working conditions of migrant workers, inter alia, by strengthening the financial and human resources of the labour inspectorate in order to ensure that employers who

fail to observe the terms of employment and the safety regulations are sanctioned. The Committee recommends that the State party ratify ILO Convention No. 122 (1964) on Employment Policy and ILO Convention No. 174 (1993) on Prevention of Major Industrial Accidents.

36. The Committee urges the State party to take all possible steps to ensure that the Labour Code is adopted and implemented without further delay.

37. The Committee recommends that the State party include the subject of domestic workers in the Labour Code and undertake all the necessary measures to eliminate practices amounting to forced labour. The Committee also recommends that those who violate labour legislation be sanctioned and that the victims of such violations be compensated.

38. The Committee strongly recommends that the State party liberalize the limitations on the right to strike and extend the right to join trade unions to all workers, including migrant workers, in line with article 8 of the Covenant.

39. The Committee encourages the State party to extend social insurance to cover work accidents and occupational diseases.

40. The Committee urges the State party to continue to carry out studies and undertake measures to ensure that social insurance benefits are accorded to non-Kuwaiti workers so that they are put on a fair and equal footing with Kuwaiti national workers with regard to the right to social security. In this regard, the Committee encourages the State party to ratify ILO Convention No. 102 (1952) on Social Security (Minimum Standards).

41. The Committee recommends that the State party take effective measures to combat trafficking in persons, especially in women and children, by ensuring, inter alia, that those responsible for trafficking are prosecuted, and to ratify the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, of 2001. The Committee recommends that the State party establish support services for victims of trafficking and take steps to sensitize law enforcement officials and the general public to the gravity of this issue. The Committee requests the State party in its next periodic report to report on the progress made in this regard.

42. The Committee urges the State party to ensure that all children, including children born out of wedlock, are granted the same rights. The Committee requests the State party to provide in its next periodic report detailed information on the status of children born out of wedlock.

43. The Committee recommends that the State party's legislation on abortion include other motives for performing legal abortion with a view to preventing illegal abortion. The Committee also recommends that the State party develop a comprehensive sexual and reproductive health programme and report back to the Committee on this issue in its next periodic report.

44. The Committee recommends that the State party provide in its next periodic report information on the incidence of sexually transmitted diseases in the State party.

45. The Committee recommends that the State party set ages for admission to, and completion of, free compulsory primary to intermediate education. In this regard, the Committee refers the State party to its general comment No. 11 (1999) on plans of action for primary education and general comment No. 13 (1999) on the right to education.

46. The Committee urges the State party to adopt the necessary measures to ensure that non-Kuwaiti children living in Kuwait have access to free compulsory education as a right enshrined in the Covenant. In this regard, the Committee recommends that the State party provide in its next periodic report disaggregated data.

47. The Committee also recommends that the State party improve human rights education and training programmes in such a way as to ensure better knowledge, awareness and application of the Covenant among the judiciary, the legislature and other actors responsible for the implementation of the Covenant.

48. The Committee requests the State party to disseminate the present concluding observations widely at all levels of the society and, in particular, among State officials, the judiciary and the legislature and to inform the Committee, in its next periodic report, of all steps taken to implement them.

49. The Committee also encourages the State party to engage non-governmental organizations and other members of civil society in the process of discussion at the national level prior to the submission of its second periodic report.

50. Finally, the Committee requests the State party to submit its second periodic report by 30 June 2009.
