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2019 Trafficking in Persons Report: Kuwait

KUWAIT: Tier 2

The Government of Kuwait does not fully meet the minimum standards for the elimination of trafficking but is making significant efforts to do so. The government demonstrated overall increasing efforts compared to the previous reporting period; therefore Kuwait was upgraded to Tier 2. The government demonstrated overall increasing efforts by deploying its specialized trafficking unit to initiate more criminal investigations of potential trafficking crimes and more prosecutions under the anti-trafficking law. It referred significantly more potential trafficking victims for protective services, operationalized its central recruitment agency in an attempt to hire and better safeguard the rights of hundreds of domestic workers, and increased enforcement of its domestic worker law. However, the government did not meet the minimum standards in several key areas. Rather than prosecuting potential criminals for human trafficking, officials continued to routinely use arbitration and administrative penalties to resolve grievances filed by domestic and other migrant workers instead of investigating such cases as human trafficking crimes, and protracted litigation and subsequent appeals processes led most victims to decline to file court cases. By not holding traffickers criminally accountable with stringent sentences, the government perpetuated a climate of impunity that failed to deter future crimes. The government did not regularly use standard procedures for proactively identifying victims and continued to detain, prosecute, and deport trafficking victims, including those fleeing forced labor.

PRIORITIZED RECOMMENDATIONS

Increase law enforcement efforts to investigate, prosecute, and convict traffickers, including Kuwaiti citizens, under the 2013 anti-trafficking law rather than treating potential forced labor cases as administrative violations. • Proactively screen for trafficking indicators among vulnerable populations, and during migrant round-ups and amnesty periods to ensure victims are not wrongfully penalized or deported for unlawful acts traffickers compelled them to commit. • Institute reforms to the sponsorship-based employment system, including by allowing all workers to change employers without necessitated employer approval and ceasing prosecution of workers who flee their employment. • In adherence to Kuwaiti labor law, increase investigations and punishment of employers who illegally confiscate migrant workers' passports. • Institute trainings for all relevant officials on mechanisms to proactively identify and refer to protection services all victims of human trafficking and routinely employ these procedures. • Continue to strengthen enforcement of the domestic labor law to ensure

domestic workers' rights are protected. • Eliminate worker-paid recruitment fees. • Commence construction on or allocate existing facility space for a shelter to accommodate male victims. • Continue to convene the official governmental committee and strengthen implementation of the national anti-trafficking strategy. • Expand efforts to raise anti-trafficking awareness, particularly among vulnerable populations, including migrant workers.

PROSECUTION

The government maintained law enforcement efforts. The 2013 anti-trafficking law criminalized sex trafficking and labor trafficking and prescribed penalties of up to 15 years' imprisonment for offenses involving an adult male victim and up to life imprisonment for those involving an adult female or child victim. These penalties were sufficiently stringent and, with regard to sex trafficking, commensurate with those prescribed for other serious crimes, such as rape. In addition, the Public Prosecutor's Office (PPO) and the Ministry of Interior (MOI) launched a new policy in January 2019 requiring all cases of buying and trading of fraudulent visas, withholding of salaries and passports in excess of three months, or forcing individuals into jobs different from those contractually agreed upon be prosecuted under the anti-trafficking law rather than the labor law; this accounted for 21 of the reported investigations during the period.

The government's specialized trafficking unit investigated 50 potential trafficking cases during the reporting year, compared to 60 investigations in the previous reporting period; 21 of the 50 investigations were the result of the new PPO/MOI policy guidance on the anti-trafficking law. It discovered such cases through tips from foreign embassies, civil society, hotlines, the government-run shelter, and the MOI's Domestic Labor Department (DLD). In 2018, officials prosecuted eight cases—four for forced labor and four for sex trafficking—compared to five cases in 2017. The government convicted an unknown number of defendants in one case under the anti-trafficking law, and seven additional trafficking cases awaited sentencing at the close of the current reporting period; during the previous reporting period, it convicted six sex traffickers in one case and sentenced them to between 15 years and life imprisonment. In 2018, the government did not report sentencing details or disaggregated information on convictions for forced labor versus sex trafficking crimes committed. However, in April 2018, the Criminal Court sentenced a Kuwaiti national and three stateless Arabs to life imprisonment for forcing 32 male workers into prostitution.

Generally, Kuwaiti authorities did not categorize or investigate labor violations of domestic workers as human trafficking and continued to typically treat such cases as administrative infractions. Officials commonly used arbitration, which resulted in monetary compensation and repayment of back-wages to victims, administrative fines, and closure of recruitment firms to resolve such cases. Such resolution neither enforces stringent punishment to deter future crimes, nor provides victims care to heal from the trauma of the trafficking experience. If a settlement could not be agreed upon, DLD officials referred the case to the labor courts, and if the complaint involved a gross violation, such as assault or domestic worker abuse, authorities transferred the case

directly to the public prosecutor’s office. Many domestic worker abuse cases were not prosecuted due to lack of evidence or witnesses. As a result, only severe cases of domestic worker abuse—usually involving significant bodily injury or death—were prosecuted, and typically as violations of other criminal laws instead of trafficking. In some cases, media reported the government sought prosecution of potential trafficking cases for abuse or simple assault rather than as violations of anti-trafficking laws.

Although the withholding of workers’ passports is prohibited under Kuwaiti law, this practice remained commonplace among sponsors and employers of foreign workers. During the reporting period, the Public Authority for Manpower (PAM) received 2,489 complaints of confiscated passports; the government did not report how many employers PAM ordered to return employees’ identification documents. Some government officials allegedly sold work permits to illegal recruiters or even directly to migrant workers, potentially facilitating trafficking; the government did not report efforts to prosecute and convict officials complicit in trafficking or trafficking-related offenses. The MOI’s anti-trafficking unit conducted two training sessions, on trafficking indicators and a victim-centered approach to law enforcement efforts, for 37 trainees drawn from all MOI departments; in the prior year, there were four such training sessions. The government also participated in and provided in-kind support for three international organization-sponsored trainings and capacity-building programs for law enforcement sectors of the MOI, including the specialized anti-trafficking unit and DLD. Throughout the reporting period, more than 110 employees from PAM, MOI, and the Ministry of Justice attended two anti-trafficking seminars on how to identify victims. The DLD continued its production of internal training programs on a weekly basis targeting investigators and labor inspectors.

PROTECTION

The government demonstrated increased efforts to protect trafficking victims. In 2018, an international organization reported that the government had identified and referred approximately 800 vulnerable domestic workers and potential trafficking victims to its shelter, substantially up from the 48 potential victims it referred during the previous year. Of these, the MOI and PAM, in cooperation with an international organization, identified and provided voluntary repatriation and transition assistance for more than 300 identified trafficking victims during the reporting period. It provided shelter to a total of 1,600 domestic workers, of whom an international organization reported roughly 20-30 percent were likely trafficking victims; this is compared to 3,000 in 2017. Many of those admitted to the shelter had fled poor working conditions, including excessive hours and delayed payment of wages, or desired to return to their respective countries of origin. The government also used the facility to host domestic workers awaiting repatriation, or deportation if facing criminal charges. Additionally, of the total number of domestic worker complaints the DLD received, it referred 40 domestic workers to the government-run shelter during the year. Although the government had in place since 2015 a screening process to proactively identify potential trafficking victims among vulnerable populations, the extent to which the government employed this proactive screening mechanism was unknown. During the year, the government-run shelter received referrals from embassies, NGOs, international organizations,

churches, private citizens, and other migrant workers. Officials ratified a national referral mechanism in 2018 that aimed to improve intergovernmental coordination, provide training for judicial and prosecutorial personnel, and expedite criminal charges in forced labor cases; however, the government did not implement this revised mechanism during the reporting period. The shelter served as a one-stop facility, providing medical and psychological care, food, rehabilitation support, and access to officials from various ministries to facilitate legal and repatriation assistance. Residents at the shelter had access to cell phones and freedom of movement to leave on supervised regular outings. Despite government allocation and budgetary approval for construction of a male shelter during the previous reporting period, Kuwait did not commence construction of such a shelter during the current reporting period.

The government provided an annual budget of two million Kuwaiti *dinar* (\$6.6 million) for domestic worker shelter operations and protection programs for trafficking victims. Some international organizations, in conjunction with foreign affairs officials, provided assistance to an unknown number of domestic workers from nations without diplomatic representation in Kuwait who needed to procure travel documentation. Embassies of the Philippines, India, and Sri Lanka maintained their own domestic worker shelters and worked closely with the Kuwaiti government to seek compensation and legal redress for their nationals subjected to exploitative working conditions in the country. In cooperation with international organizations and foreign embassies, the government assisted victims in retrieving documentation and funding for repatriation; and in the case of administrative deportation officials provided airline tickets and worked to recoup associated costs from the accused employers. Beyond the repatriation and transition assistance, MOI and PAM provided for more than 300 foreign domestic workers who were trafficking victims during the reporting period, the DLD provided repatriation assistance for 120 female domestic workers who fled exploitative employers. The government allowed victims residing in its shelter to either change sponsors or be repatriated to their country of origin once their residency status was resolved or pending the resolution of a legal case, without respective sponsor approval. It did not report deporting those who faced retaliation or retribution in their respective home countries. Rather, the government allowed all trafficking victims to change employers and maintain residence in Kuwait or otherwise be repatriated to a third country at the victims' request. In May 2018, the government allowed foreign nationals present in Kuwait in violation of their residency status, reported to have absconded from their employers during the period from January 2016 to April 2018, to seek amnesty and legalize their status or depart the country without penalty. The government did not report how many trafficking victims it identified from this offer of amnesty or if it proactively screened for trafficking indicators among applicants and subsequent deportees.

Authorities continued to arrest, prosecute, and deport some workers who fled their sponsors without permission or recourse to the judicial system. The risk of penalization, coupled with protracted litigation processes and exorbitantly high legal fees, discouraged workers from appealing to police or other authorities for protection and adequate legal redress for their exploitation. In addition, it was not uncommon for sponsors to file counter-grievances against their employees, including trafficking victims who reported abuse. This sometimes resulted in administrative deportation or

detention of the employees and victims. Within worker communities, there existed a persistent fear that confiding in authorities would result in deportation, imprisonment, or return to the employer in question. The government reported public prosecutors willingly tried cases on victims' behalf using their oral and written statements; however, it lacked privacy laws to protect victims against potential retribution and often was unable to provide adequate care for victims throughout the duration of legal proceedings. Media reported that the government directed settlements in response to individual civil suits against employers, but the government did not report how many victims received restitution during the year.

PREVENTION

The government continued robust efforts to prevent human trafficking. In November 2018, the Minister of Justice issued a ministerial decree on the formation of the Permanent National Committee for the Implementation of the National Strategy for the Prevention of Trafficking that was approved and funded by the Council of Ministers during the previous reporting year. The Committee did not officially convene during the reporting period; nonetheless, relevant government entities commenced implementation of several action items in the national anti-trafficking strategy. Key ministries, in collaboration with an international organization, financially supported and conducted numerous public awareness campaigns at shopping malls and the international airport to raise awareness of trafficking and warned against using illegal domestic labor recruitment companies. Various officials also took part in anti-trafficking awareness messaging on local television, radio, and social media platforms. It continued to disseminate pamphlets to educate migrant workers on their rights, which were published in multiple languages and disseminated in airports, embassies, and labor-recruitment agencies.

The domestic labor law (Law 68/15) guaranteed domestic workers one day off per week, a maximum 12-hour workday, minimum wages paid per month, paid annual leave, and access to file formal grievances at the MOI, among other protections. The 2016 by-laws regulated implementation of this law. Amendments to the 2010 labor law, passed in 2016, increased penalties for non-payment of wages, made mandatory documentation of all paid wages, and required prison time and fines for employers and government officials who failed to adhere to provisions of this law. During the reporting period, the government transferred the DLD from the MOI to PAM, based upon recommendations that having the DLD under the MOI deterred workers from seeking assistance. In adherence to the domestic labor law, the DLD received 433 complaints directly from domestic workers during the year, 1,835 from employers, and 60 from recruitment offices and companies. Of these, it referred 448 cases to the labor courts, collected 14,440 Kuwaiti *dinar* (\$47,650) in unpaid wages for domestic workers, and referred 40 of these domestic workers to the government-run shelter during the reporting period. In addition, PAM shut down 72 companies and suspended 1,510 companies for being in violation of Kuwaiti labor laws. Authorities continued to apply the amended provisions of the domestic labor law by building a monetary reserve to adjudicate cases of labor law violations to pay unpaid wages and cover the costs of repatriation. For issuance or renewal of a license for a domestic labor recruitment firm, it enforced the rule that

single offices must submit financial deposits of 40,000 Kuwaiti *dinar* (\$132,010) with a two-year validity and larger companies to present a letter of guarantee worth 100,000 Kuwaiti *dinar* (\$330,030).

The DLD continued to investigate domestic worker recruitment agencies and inspect residences to ensure compliance with the 2015 domestic labor law. In addition, it initiated investigations based on grievances filed by domestic workers, employers, and embassies of labor-sending countries. The government arbitrated such grievances and did not report referring any for criminal investigation or prosecution. During the reporting period, DLD officials received 1,328 work-related complaints, amicably resolved 579 in extrajudicial proceedings, referred 333 to labor courts for further investigation, and the others remained pending. The DLD also conducted 404 inspections of domestic worker recruitment firms and consequently permanently shut down 30 and suspended 11 such agencies for three to six months for violation of the domestic labor law, compared to 82 closures the previous year; officials did not refer any of these for criminal investigation or prosecution. Separately, the PAM received 16,626 official grievances from foreign laborers, the most common of which included pay discrepancies, denied requests to transfer employers, and disputes regarding overtime pay issuances. Authorities reported resolving 90 percent of the employment transfer grievances in favor of the employees, to include transference of employer or receipt of unpaid wages; it referred the remaining 5,805 unresolved cases via arbitration to the labor courts. At the close of the reporting period, the outcomes of these cases were unknown, and the government did not report referring any of these cases for criminal investigation or prosecution under the anti-trafficking law. In 2018, PAM investigated 248 companies engaged in fraudulent visa practices and referred all of them to the PPO or the MOI's trafficking-specific investigative unit.

In February 2019, media reported the government's centralized recruitment company—named Al Durra—recruited nearly 900 male and female domestic workers since its launch in late 2017. In adherence to the domestic labor law, Al Durra worked to reduce recruitment costs, curb illegal recruitment fees, provide greater oversight of recruiting practices, hire male domestic workers, and secure labor agreements for female employees. According to press reports, new workers from Sri Lanka, India, the Philippines, and Burkina Faso arrived to Kuwait via Al Durra, and 150 additional contracts remained in process at the conclusion of the reporting period. In May 2018, Kuwaiti officials signed an agreement with the Philippine government to regulate the recruitment and employment of Filipino domestic workers in Kuwait to better safeguard their legal protections. Based on this treaty, which entered into force in January 2019, the Philippine government lifted its February 2018-imposed travel ban on sending Filipino workers to Kuwait. Similarly, in October 2018, Kuwait and India signed an MOU on broader protections for domestic workers, and ratified it in January 2019. This resulted in the end of India's 2014 ban on sending Indian female domestic workers to Kuwait. The agreement with India guaranteed registration of the employee-sponsor contact information with the Indian Embassy, an established monthly minimum wage for Indian laborers, and all employers would use the government's centralized recruitment company with Indian government-authorized recruitment agencies. In April 2018, the Commerce Ministry revoked the licenses of 116 domestic labor recruitment agencies for contravening Kuwaiti labor laws and exploiting an unspecified number of

domestic workers during the course of their employment. This ministry also capped at 990 Kuwaiti *dinar* (\$3,270) the ceiling for mandatory recruitment fees employers pay to agencies to recruit domestic employees; in actuality, a portion of these fees were transferred to the domestic employees. During the reporting period, authorities employed the services of the Mobile Labor Disputes Office to help workers in remote areas of the country file complaints against employers for labor law violations. The mobile unit was run by an emergency team of investigators, inspectors, translators, lawyers, and lay volunteers. Officials also advertised to migrant laborers online services that allowed workers and employers to dock and track workplace issues electronically, receive alerts if an employer filed an absconding charge, notify the respective source country embassy, and challenge legal settlements incurred. Both the DLD and the MOI's anti-trafficking department operated hotlines to assist vulnerable migrant workers, to include potential trafficking victims, but neither entity reported how many trafficking-specific calls they received during the reporting period. The government made efforts to reduce the demand for commercial sex. The government provided annual anti-trafficking training for its diplomatic personnel.

TRAFFICKING PROFILE

As reported over the past five years, human traffickers exploit foreign victims in Kuwait. Men and women migrate primarily from South and Southeast Asia, Egypt, and the Middle East, to work predominantly in the domestic service, construction, hospitality, and sanitation sectors, and the vast majority arrive voluntarily. Unskilled laborers and female domestic workers are especially vulnerable to forced labor, as they often have limited access to assistance due to the absence of diplomatic representation in Kuwait. As conditions for many remain perilous, numerous labor-sending countries, including Bangladesh, Bhutan, Chad, Ethiopia, Ghana, Guinea, Indonesia, Kenya, Madagascar, Malawi, Nepal, Niger, Nigeria, Senegal, Sierra Leone, Tanzania, Togo, Uganda, and Zimbabwe, continue to restrict their female nationals from domestic employment in Kuwait. In January 2019, the Philippine government lifted the February 2018-imposed travel ban on Filipino workers to Kuwait due to strengthened regulatory oversight of recruitment and employment of Filipino domestic workers. Similarly, in October 2018, Kuwait and India signed an agreement on broader protections for domestic workers, which resulted in the end of India's 2014 ban on Indian female domestic workers. As more countries restrict labor movement to Kuwait, however, the government has continued its recruitment of domestic employees from African labor-sending countries including most recently from Cote d'Ivoire and Liberia.

Upon arrival, some sponsors subject migrants to forced labor through the following: non-payment of wages, protracted working hours contrary to contractual agreements, deprivation of food, substandard housing, threats or harassment, physical or sexual abuse, and restrictions on movement, such as confinement to the workplace and passport confiscation. Although unlawful, passport withholding by employers is ubiquitous in Kuwait. Furthermore, many migrant workers pay exorbitant fees to recruiting agents in their countries of origin and/or are coerced into paying labor broker fees in Kuwait, which, according to Kuwaiti law should be paid by the employer, thereby rendering workers vulnerable to forced labor, including debt bondage. In some cases,

officials do not provide workers copies of their contracts, or the contracts are not written in a language they can read. Additionally, many sponsors pay high fees to agencies for migrant workers. Some illegal labor recruiting companies facilitate trafficking through the use of deceptive techniques to bring in migrant workers on the basis of unenforceable contracts, fraudulent visas, and nonexistent positions. Some officials allegedly take bribes or overtly sell work permits to illegal labor recruiting companies or directly to migrant workers. For more than a decade, press reports indicated that the Democratic People’s Republic of Korea (DPRK or North Korea) sent more than 4,000 North Korean laborers to Kuwait for forced labor on construction projects, sourced by a North Korean company operated by the Workers’ Party of Korea and the North Korean military. According to these reports, employees worked 14 to 16 hours a day while the company retained 80 to 90 percent of their wages. The company also monitored and confined workers, who lived in impoverished conditions and were in very poor health due to lack of adequate nutrition and health care. In previous reporting periods, the government ceased issuing new visas to North Korean workers, discontinued all residency permit renewals, and repatriated virtually all of them.

Kuwait’s sponsorship law—which ties a migrant worker’s legal residence and valid immigration status to their employer—restricts workers’ movements and penalizes them for leaving abusive workplaces. Domestic workers are particularly vulnerable to forced labor inside private homes, as endemic cultural attitudes—particularly regarding the sanctity of the private household—sometimes enabled the exploitation of expatriate workers. Many workers report experiencing work conditions substantially different from those described in the contract. In addition, previous sources report runaway domestic workers are sometimes exploited in sex trafficking by agents or criminals, who manipulate their illegal status.

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