



Committee on the Elimination of Discrimination against Women
Human Rights Treaties Division (HRTD)
Office of the United Nations High Commissioner for Human Rights (OHCHR)
Palais Wilson - 52, rue des Pâquis
CH-1201 Geneva
Switzerland
By Email: ohchr-cedaw@un.org

January 30, 2023

Re: Information on Kuwait for Consideration by the Committee on the Elimination of Discrimination against Women at its 86th Session (27 Feb 2023 – 3 March 2023)

Dear Distinguished Committee Members,

We respectfully submit this letter to the Committee on the Elimination of Discrimination against Women (“the Committee”) in advance of its Pre-Sessional Working Group for its 86th Session (27 Feb 2023 – 3 March 2023). Gray Area, the Global Campaign for Equal Nationality Rights, Equality Now and Institute on Statelessness and Inclusion request that this letter be used to inform the Committee’s review of Kuwait. Our joint submission expresses our concerns regarding: gender discrimination in Kuwait’s nationality law, which denies women the equal ability to confer citizenship to their children and spouses as men; Penal Code provisions that promote the impunity of perpetrators of gender-based violence; and failure to take action to address Female Genital Mutilation/Cutting.

Founded by affected children of Kuwaiti women, [Gray Area](#) advocates for the right of children of Kuwaiti women to acquire their mother’s Kuwaiti nationality. The [Global Campaign for Equal Nationality Rights](#) mobilizes international action to end gender discrimination in nationality laws through its coalition of national and international organizations¹. Equality Now is an international human rights organization with ECOSOC status whose mission is to achieve legal and systemic change that addresses violence and discrimination against all women and girls around the world. Equality Now is the author of [The State We’re In: Ending Sexism in Nationality Laws – 2022 Edition – Update for a Disrupted World](#). The [Institute on Statelessness and Inclusion](#) (ISI) is the first and only human rights NGO dedicated to working on statelessness at the global level. ISI’s mission is to promote inclusive societies by realising and protecting everyone’s right to a nationality. The Institute has made more than 130 country specific submissions to UN human rights bodies on the right to a nationality and the rights of stateless persons.

Discriminatory nationality law

The Kuwaiti nationality law of 1959 does not recognize the right of Kuwaiti women to transmit their nationality to non-Kuwaiti spouses and children on equal terms with Kuwaiti men. Article 2 of the law

¹ Steering Committee members include Equal Rights Trust, Equality Now, Family Frontiers, Institute on Statelessness and Inclusion, Nationality For All, Women’s Learning Partnership, and Women’s Refugee Commission.



states that “any person born in, or outside, Kuwait whose father is a Kuwaiti national shall be a Kuwaiti national”. Article 3 states that Kuwaiti nationality may be granted by Decree upon the recommendation of the Minister of the Interior to any person [upon his attaining his majority who was] born in, or outside, Kuwait to a Kuwaiti mother whose father is unknown or whose kinship to his father has not been legally established. The Minister of the Interior may afford to such children, being minors, the same treatment as that afforded to Kuwaiti nationals until they reach their majority. Article 11 provides that the children of a Kuwaiti national man, being minors, shall also lose their Kuwaiti nationality if they themselves acquire ipso facto the nationality of the State according to the law of which their father has become naturalized if that law so provides. Such children shall reacquire Kuwaiti nationality upon their informing the Minister of the Interior within two years following their attaining the age of majority of their wish to do so.

By denying women equal nationality rights with men, the Nationality Law of Kuwait undermines a woman’s status as an equal citizen and contradicts the Kuwaiti Constitution, which stipulates in Article 29 that “all people are equal in human dignity and in public rights and duties before the law...” and in Article 7 that “justice, liberty and equality are the pillars of society...”. Gender discrimination in Kuwait’s nationality law also contributes to the root cause of gender-based violence (GBV) by undermining women’s equal status in society. The nationality law contributes to GBV in other ways, including by increasing obstacles faced by women seeking to leave an abusive relationship, when their children’s nationality is dependent upon an abusive spouse. Stateless girls are at increased risk of child marriage, with some families viewing marriage as the only way to secure citizenship and residency rights for undocumented girls. Stateless women and girls are also at an increased risk of human trafficking.

Discriminatory nationality laws are based on stereotypes, which in turn reinforce stereotypical roles for both women and men, such as the idea that a child “belongs” to a father rather than a mother, in which case the father’s nationality is more likely to attach to them. Gender discrimination in Kuwait’s nationality law also undermines women’s ability to freely choose a spouse and threatens family unity.

Article 9 of the Convention on the Elimination of All Forms of Discrimination against Women recognizes such laws as a form of discrimination and provides that women are to have “equal rights with men to acquire, change or retain their nationality,” and “with respect to the nationality of their children.” In its General Comment No. 32 on the gender-related dimensions of refugee status, asylum, nationality and statelessness of women, the CEDAW Committee confirmed that Article 9 extends an obligation to ensure equality between men and women in the ability to confer their nationality to their spouse.

Inadequate provisions which promote impunity for perpetrators of gender-based violence

Kuwait’s legal provisions on the prevention of violence against women and girls and the protection of survivors of sexual violence remain inadequate and not in line with international human rights standards. Despite equality being ensured under Article 29 of Kuwait’s Constitution, legal provisions remain in place in the Penal Code, which continue to promote the impunity of perpetrators of gender-based violence. Article 186 of the Kuwaiti Penal Code, which provides the definition of rape, is



based on proving the use of force, threats or deception. According to the Committee's jurisprudence and other international human rights standards, States should remove any requirement that sexual assault is committed by violence, force and threats, as well as any requirement of proof of penetration, from the definition of rape. Instead, a definition which minimizes secondary victimization of the complainant/survivor in proceedings by ensuring that the definition of sexual crimes, including marital rape, is based on lack of freely given consent and takes into account coercive circumstances should be enacted. We understand that although the Family Protection Act of 2020 protects from "sexual violence" between all family members and spouses, it does not take into consideration the coercive circumstances that make wives "submit" to rape and thus, according to the existing definition of rape, "no sexual violence" occurred. As such, the Committee's previous recommendation to Kuwait to criminalize all types of gender-based violence against women (which would include marital rape), prosecute and punish perpetrators and provide victims with access to remedies, has been largely ignored.

In addition, Kuwait continues to maintain provisions which provide for the impunity of the perpetrator if he marries his victim of sexual violence. Despite the Committee's recommendation to the State to repeal Article 182 of the Kuwaiti Penal Code (in order to prevent kidnappers and rapists from avoiding criminal prosecution by marrying their victim with the consent of the victim's guardian), this legal provision has not yet been repealed. Article 182 effectively sends the message that rape is not being taken seriously and perpetrators can face impunity for sexual violence. According to information collected by Musawah and Abolish 153, "women who have been kidnapped or raped are often forced into marriage to ward off 'shame' and to save the family 'honor'". The woman's consent is not required for such marriages and Sunni marriage procedure does not even require her to be present during the procedure or to sign the marriage certificate. Women are removed from having any agency or choice and this provision perpetuates the cycle of violence and abuse. Instead of the perpetrator facing shame from the community, the victim instead bears the responsibility.

Failure to take action to address Female Genital Mutilation/Cutting

FGM/C is a human rights violation that affects women and girls globally including in Kuwait. Despite the prevalence of this practice, Kuwait does not have a law that criminalizes or bans FGM/C. Moreover, there is a lack of official or large-scale data on the prevalence of FGM/C in the country.

A 2010 study, one of the only studies carried out on FGM/C in Kuwait, assessed the incidence of FGM/C in pregnant women who frequented an antenatal hospital between 2001-2004. The findings revealed that 38% of the 4,800 women studied have gone through FGM/C and it revealed connections between the practice and its impact on the health, particularly sexual and reproductive health and mental health of women. It also indicated FGM/C as an underlying cause for 'adverse materno-fetal outcome' that includes premature/obstructed labor, fetal distress, delivery by caesarean, post-partum hemorrhage and kidney infections with many women reported to be in need of psychiatric and gynecological care.

Researchers of the 2010 study noted that the prevalence of FGM/C could be much higher than the reported 38%, as it was not possible to include women from all communities to be part of the study. There is thus the need for rigorous data collection and monitoring on FGM/C in multiple countries



including in Kuwait. In the absence of data, anecdotal evidence from various testimonials shared online in blogs provides rare insights into the experiences of women and girls who have survived FGM/C, particularly those belonging to the Kuwaiti Bohra communities. In at least two of these testimonials, the women who went through FGM/C as a child, talk about their experiences and how in one instance, the girl was taken out of Kuwait for the FGM/C to be performed.

The absence of a law that bans/criminalizes FGM/C in Kuwait and the failure of the government to undertake awareness-raising and prevention efforts leaves girls in Kuwait at risk of undergoing FGM. This is also reflected in the Committee on the Rights of Child's Concluding Observations on the combined third to sixth periodic reports of Kuwait. The Committee expressed serious concern about the fact that "female genital mutilation persists, in particular among migrant communities" among girls in Kuwait and urged the State to take measures to raise awareness about the harmful effects of FGM, promote access to services for victims and to build the capacity of education, health and justice professionals working with and for children.

Suggested Questions for the State Party's List of Issues

The co-submitting organizations respectfully urge the Committee to raise with the Kuwaiti government in its State Party's List of Issues the following questions with regard to violations of CEDAW addressed in this letter:

Discriminatory nationality law

1. Can the government provide a detailed assessment of the impact of its sex discriminatory nationality law on *inter alia* statelessness and the right to nationality, access to services and enjoyment of other human rights of affected persons, impact on women's safety and security and gender-based violence, impact on inheritance and property rights of women and the equal protection of Kuwaiti women under the law?
2. What steps is the government taking, and within what timeframe, to amend the nationality law to remove all gender-discriminatory provisions and to ensure the equal right of all citizens to confer nationality on their children and non-national spouses, regardless of gender and marital status?
3. What further proposals are being considered by the government to alleviate the effects of gender-discriminatory nationality law, including violations of economic and social rights, until the law can be fully amended?
4. What support might be needed, if any, to further this process?

Inadequate provisions which promote impunity for perpetrators of gender-based violence

1. What steps is the State undertaking to remove the requirements in the definition of rape (Article 186 of the Kuwaiti Penal Code) that sexual assault must be committed by use of force, threats or deception as these are not the elements of the crime of rape? When will the State



enact a definition of rape which will require the existence of “unequivocal and voluntary agreement” or lack of consent, and recognize a range of coercive circumstances, as applicable to all non-consensual sexual acts irrespective of the relationship between the perpetrator and the victim?

2. What steps are being undertaken to ensure that all forms of non-consensual sexual acts are covered by the definition of sexual violence, as stipulated under international law, in order to ensure greater access to justice and protection for survivors of sexual violence?
3. When will the State repeal Article 182 of the Kuwaiti Penal Code and remove any provisions which enable impunity for the perpetrator of sexual violence?

Failure to take action to address Female Genital Mutilation/Cutting

1. Please provide statistical and other relevant data on the number of women and girls living in Kuwait who have either undergone FGM/C or are at risk of undergoing FGM/C.
2. What measures have been taken by the government to eliminate and address the harmful practice of FGM/C within the country?
3. What plans does the government have to pass a law against FGM/C and within what timeframe?

Thank you very much for your attention, and please do not hesitate to contact us if we can provide further information.

Sincerely,

Catherine Harrington
Global Campaign Manager
Global Campaign for Equal Nationality Rights