

2017 Trafficking in Persons Report – Kuwait

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KUWAIT: TIER 2 WATCH LIST

The Government of Kuwait does not fully meet the minimum standards for the elimination of trafficking; however, it is making significant efforts to do so. The government demonstrated significant efforts during the reporting period by passing by-laws to implement the 2015 domestic labor law, and co-sponsoring the future establishment of a centralized recruitment company, that, once operational, will reduce recruitment costs and serve to combat illegal recruiting fees. Officials also referred 39 cases of illegal recruitment for criminal investigation under the 2015 domestic labor law, and prosecuted 15 individuals under the 2013 anti-trafficking law, which resulted in nine convictions. The government also amended the 2010 labor law that increases penalties for employers who engage in unscrupulous recruiting practices. To curb the prevalence of North Korean workers subjected to trafficking, the government halted Air Koryo flights and ceased issuing new work visas to North Koreans. However, the government did not demonstrate increasing efforts compared to the previous reporting period. Many officials continued to use arbitration and administrative penalties as the main avenues of resolving grievances filed by domestic workers, instead of investigating such cases as human trafficking crimes, and protracted litigation and subsequent appeals processes led most workers to decline to file court cases. Corruption at all levels dissuaded workers from reporting trafficking cases to law enforcement. The government did not regularly use formal established procedures for identifying victims, and foreign workers who quit their jobs without permission were often subjected to criminal penalties, detention, and deportation. Therefore, Kuwait remained on Tier 2 Watch List for the second consecutive year.

RECOMMENDATIONS FOR KUWAIT

Increase law enforcement efforts to investigate, prosecute, and convict traffickers, including Kuwaiti citizens, under the 2013 anti-trafficking law, and prosecute and convict sponsors who subject foreign domestic workers to involuntary servitude; stringently enforce the domestic labor law (law68/15) to ensure domestic workers receive appropriate rights and protections; operationalize the centralized recruitment company; uphold laws against sponsors and employers who illegally hold migrant workers' passports; establish standard operating procedures for investigations and prosecutions of trafficking crimes; routinely employ formal established procedures to proactively identify and refer to protection services all victims of human trafficking; continue to train law enforcement officials and social workers to identify trafficking victims among vulnerable populations, and screen for human trafficking victims during migrant round-ups; establish linkages between emerging victim care efforts and law enforcement activities; continue to train shelter staff in providing services to potential trafficking victims; ensure the availability of shelter and services to male victims, sex trafficking victims, and forced labor victims outside of the domestic worker context; finalize and implement a multi-year national anti-trafficking strategy and action plan; and expand efforts to raise awareness and prevent trafficking.

PROSECUTION

The government sustained law enforcement efforts and took steps to strengthen its legal infrastructure. Anti-trafficking legislation enacted in 2013 prohibits all forms of trafficking and prescribes penalties ranging from 15 years to life imprisonment, which are sufficiently stringent and commensurate with those prescribed for other serious crimes, such as rape. The domestic labor law (law68 /15) guarantees domestic workers one day off per week, a maximum 12-hour workday, minimum wage paid per month, paid annual leave, and access to file formal grievances at the Ministry of Interior (MOI), among other protections. In 2016, MOI issued by-laws to commence implementation of the domestic labor law. In June 2016, parliament passed numerous amendments to the 2010 labor law, to increase penalties for non-payment of wages, make mandatory documentation of all paid wages, and require prison time and fines for employers and government officials who fail to adhere to provisions of this law.

In 2016, the government investigated six potential trafficking cases and prosecuted 15 suspects, compared to six cases investigated and 20 suspects prosecuted during the previous reporting period. Seven prosecutions from 2015 remained pending at the close of the reporting year. The government achieved nine convictions including one Kuwaiti citizen under the anti-trafficking law, on par with eight convictions the previous year; five accused traffickers were acquitted. All cases put forth for criminal prosecution under the anti-trafficking law involved sex trafficking. The MOI's anti-trafficking and public morals department continued to investigate suspected trafficking cases and referred an unknown number to the public prosecutor's office in 2016; it referred one forced labor case for prosecution during the previous reporting year. Domestic worker labor authorities from the MOI began investigating domestic worker labor recruitment agencies and residences to ensure compliance with the 2015 domestic labor law. During the reporting period, officials conducted 1,806 such inspections, referred 39 recruiters for criminal investigation under the domestic labor law for illegal practices, and permanently shut down 90 recruitment agencies for domestic labor law contraventions. The MOI's Domestic Labor Department (DLD) investigates employers and recruiting agencies, in addition to grievances filed by employees, NGOs, embassies of labor-sending countries, and private citizens, and subsequently arbitrates such grievances. If a settlement

cannot be agreed upon, DLD officials refer the case to the courts, and if the complaint involves a gross violation, such as assault or domestic abuse, authorities transfer the case directly to the public prosecutor's office. Many Kuwaiti law enforcement officials did not categorize or investigate the exploitation or forced labor of domestic workers as human trafficking and continued to treat such cases as administrative infractions, using official arbitration resulting in monetary compensation and repayment of back-wages to victims, application of administrative fines, and closure of recruitment firms to resolve such cases; such approaches do not provide adequate deterrence to the commission of forced labor crimes. In some cases, characterized by local media as showing indicators of trafficking, the government sought prosecution for abuse or simple assault rather than under anti-trafficking laws. Although the withholding of workers' passports is prohibited under Kuwaiti law, this practice remained common among sponsors and employers of foreign workers; the government demonstrated no efforts to enforce this prohibition. Reports claimed some government officials sold work permits to illegal recruiters or even directly to migrant workers, potentially facilitating trafficking; however, 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 five anti-trafficking training programs during the reporting year, which covered signs of trafficking and a victim-centered approach to law enforcement efforts, and targeted approximately 35 trainees from all MOI departments. In addition, in conjunction with an international organization, it facilitated two training programs for MOI front-line personnel. The DLD developed and launched 12 training programs for MOI investigators and labor inspectors.

PROTECTION

The government maintained efforts to protect trafficking victims. It provided shelter over the course of the reporting period to a total of 5,000 domestic workers, including some potential forced labor victims, in its 500-bed shelter dedicated to runaway domestic workers. The shelter served as a one-stop facility, providing medical and psychological care, repatriation assistance, and access to officials from various ministries to facilitate legal assistance, including filing cases against employers. The government allocated an annual budget of 1.9 million Kuwaiti dinar (\$6.23 million) for shelter operations, an increase from 260,000 Kuwaiti dinar (\$852,460) the prior year. During the reporting period, the government identified 76 female trafficking victims. While victims were permitted to leave the facility unescorted, there continued to be no shelter or other protective services for male trafficking victims. The shelter received referrals from embassies, NGOs, international organizations, churches, private citizens, and migrant workers. An international organization provided assistance to 120 domestic workers, primarily from African countries 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 sought compensation and legal redress for their nationals subjected to exploitative working conditions in Kuwait. During the reporting year, IOM helped the government develop and implement a screening process to identify potential trafficking victims among vulnerable populations, such as foreign migrant workers, domestic workers, and women in prostitution. During the government's migrant round-ups, the extent to which the government employed this proactive screening mechanism was unknown. The MOI provided repatriation and transition assistance to approximately 200 foreign domestic workers during the reporting period; however, it was unclear whether authorities sought a refund of travel costs from the employers who sponsored the workers. To assist embassies in repatriating trafficking victims, the government, in partnership with IOM and in coordination with recruitment agencies, funded airline tickets and repatriation services for 20 victims of trafficking.

The government did not offer foreign trafficking victims legal alternatives to removal to countries where they may face hardship or retribution.

Systemic challenges, including threat of criminalization and limited access to legal support, remained an impediment to the government's protection efforts. The 2013 anti-trafficking law does not stipulate that victims who flee abusive employers should be immune from prosecution. Therefore, workers who fled their employers without permission risked criminal penalties and arrest, detention at police stations, and deportation, even if they were fleeing an abusive sponsor; following round-ups, the government reported deporting 1,118 domestic workers who allegedly violated residency and local laws. The risk of penalization, coupled with protracted litigation processes and expensive legal fees, discouraged workers from appealing to police or other authorities for protection and adequate legal redress for their exploitation. As such, trafficking victims rarely filed cases against their employers. In addition, it was not uncommon for sponsors to file counter-grievances against trafficking victims who reported their own, which often resulted in administrative deportation or detention of the employees. In February 2016, the DLD announced that employers would only be allowed to file desertion charges against workers at the DLD, as opposed to any MOI facility, which is intended to deter employers from filing such initial charges; however, it was unclear how readily the nascent policy was employed during the reporting period. The government reported public prosecutors sometimes 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.

PREVENTION

The government continued efforts to prevent human trafficking. The government began drafting a national action plan to address trafficking. Several ministries, in collaboration with IOM, printed and disseminated anti-trafficking pamphlets and actively participated in public awareness campaigns that warned against using illegal domestic worker recruitment companies. In June 2016, IOM partnered with the MOI to conduct a five-day anti-trafficking awareness campaign, with an emphasis on domestic workers, at three of Kuwait's major retail shopping malls. Various officials also took part in awareness messages on local television outlets and continued to disseminate pamphlets to educate migrant workers on their rights, which were published in multiple languages, in airports, embassies, and labor-recruitment agencies.

As directed by the new domestic worker law, the government sponsored development of a centralized recruitment company that, once operational, will reduce recruitment costs and serve to combat illegal recruiting fees. During the reporting period, the government received approximately 24,200 official grievances from foreign workers, the most common included pay discrepancies, requests for sponsor and employment transfers, and overtime pay disputes; of these, 3,800 of the employment transfer grievances were resolved via arbitration, roughly 2,000 in favor of the employee, and more than 10,800 were sent to the labor courts. The government did not report outcomes of the cases referred for criminal investigation or which, if any, would be considered for prosecution under the anti-trafficking law. In January 2017, authorities investigated a Kuwaiti company on suspicion of labor law violations against its foreign workers; at the close of the reporting year, the government was still negotiating with the company and employees to determine punitive charges or fines to levy on the former and adequate compensation for the latter. To curb exploitation of North Korean laborers, the government halted all Air Koryo flights in August 2016.

In September 2016, the Ministry of Foreign Affairs ceased issuance of work visas for North Koreans. To reduce the demand for commercial sex acts, the government prosecuted and deported individuals guilty of exploiting potential sex trafficking victims in prostitution. The government provided anti-trafficking training for its diplomatic personnel.

TRAFFICKING PROFILE

As reported over the past five years, Kuwait is a destination country for men and women subjected to forced labor and, to a lesser degree, forced prostitution. Men and women migrate from South and Southeast Asia, Egypt, the Middle East, and increasingly throughout Africa to work in Kuwait, predominantly in the domestic service, construction, hospitality, and sanitation sectors. Several labor-sending countries, including India, Nepal, Indonesia, Ethiopia, Zimbabwe, and Bangladesh, restrict their female nationals from domestic employment in Kuwait. Kuwait also banned the issuance of domestic worker visas from Kenya, Uganda, Nigeria, Togo, Ethiopia, Malawi, Tanzania, The Gambia, Ghana, and Zimbabwe, which resulted in additional recruitment of domestic employees from other African labor-sending countries, including Sierra Leone, Cameroon, Niger, Djibouti, and Liberia, among others. The vast majority of migrant workers arrive voluntarily; however, upon arrival some sponsors subject migrants to forced labor, including through non-payment of wages, protracted working hours without rest, deprivation of food, threats, physical or sexual abuse, and restrictions on movement, such as confinement to the workplace and the withholding of passports. Many of the migrant workers arriving in Kuwait have paid exorbitant fees to labor recruiters in their home countries or are coerced into paying labor broker fees in Kuwait which, according to Kuwaiti law, should be paid by the employer a practice making workers highly vulnerable to forced labor, including debt bondage. Some labor recruiting companies have facilitated trafficking through the use of deceptive techniques to bring in migrant workers on the basis of unenforceable contracts and nonexistent positions. Reports allege officials take bribes or overtly sell work permits to illegal labor recruiting companies or directly to migrant workers. Since 2008, reports indicate the Democratic People's Republic of Korea (DPRK or North Korea) has sent over 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 work 14 to 16 hours a day while the company retains 80 to 90 percent of the workers' wages, and monitors and confines the workers, who live in impoverished conditions and are in very poor health due to lack of adequate nutrition and health care.

Kuwait's sponsorship law which ties a migrant worker's legal residence and valid immigration status to an employer restricts workers' movements and penalizes them for leaving abusive workplaces; as a result, domestic workers are particularly vulnerable to forced labor inside private homes. Many workers report experiencing work conditions substantially different from those described in the contract; some workers never see the contract at all and others receive Arabic or English-language contracts they are unable to read. In addition, sources report runaway domestic workers are sometimes exploited in forced prostitution by agents or criminals, who manipulate their illegal status. Albeit illegal, passport confiscation by employers continues to be a common practice in Kuwait.