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2020 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 remained on 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 and convictions under the anti-trafficking law, including of two former Kuwaiti officials. It referred more potential trafficking victims to protective services, convened its anti-trafficking committee for the first time, and aimed to prevent trafficking by referring to the courts hundreds of potential cases in violation of local labor laws and closing down or revoking licenses for companies engaged in improprieties that facilitated trafficking and trafficking-related crimes. However, the government did not meet the minimum standards in several key areas. Some 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; protracted litigation and subsequent appeals processes led most victims to decline to file court cases. 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:

Continue to increase law enforcement efforts to investigate, prosecute, and convict traffickers, including Kuwaiti citizens and allegedly complicit officials, under the 2013 anti-trafficking law rather than treating potential forced labor cases as administrative violations. • Proactively screen for trafficking indicators among vulnerable populations, during migrant roundups, and during 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, ceasing prosecution of workers who flee their employment, and ensuring no recruitment fees are transferred to workers. • In adherence to Kuwaiti labor law, increase investigations and punishment of employers who illegally confiscate migrant workers' passports. • Strengthen efforts to punish potential forced labor crimes criminally instead of administratively. • 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. • 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 increased 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 April 2019, the Constitutional Court annulled an article from the 2013 anti-trafficking law that required judges to issue a verdict in trafficking cases, arguing the stipulation undermined judicial independence and precluded judges from exercising discretion. As a result, judges retained broad discretion to defer and delay issuance of verdicts in trafficking cases, as they did in other cases. The Public Prosecutor's Office (PPO) and the Ministry of Interior (MOI) continued to require 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.

The government's specialized trafficking unit investigated 51 potential trafficking cases during the reporting year, compared with 50 and 60 in the previous two periods. It discovered such cases through tips from foreign embassies, civil society, hotlines, the government-run shelter, the MOI's Residency Affairs Investigation Department, and the Public Authority for Manpower's (PAM) Domestic Workers Employment Department (DWED). In 2019, officials prosecuted 27 cases, of which it filed trafficking charges in 17. The remaining 10 were pending at the close of the

reporting period compared to five cases prosecuted the year prior. The government convicted an unknown number of defendants in seven cases, acquitted an unspecified number in one case, and the remaining six cases remained ongoing; during the previous reporting cycle, it convicted an unknown number of defendants in only one case under the anti-trafficking law. In 2019, the government did not report new sentencing details or disaggregated information on convictions for forced labor versus sex trafficking crimes committed. In a case stemming from the previous reporting period, the Court of Appeals upheld a trafficking conviction and a seven-year prison term for a Kuwaiti man. Some government officials allegedly sold work visas to illegal recruiters or even directly to migrant workers, potentially facilitating trafficking. During the reporting period, the government charged two former Kuwaiti officials for trafficking and trafficking-related crimes, and in June 2019 the Criminal Court sentenced one of these officials to life imprisonment. In the second case, it charged a previous PAM employee for complicity in abetting nefarious visa dealings by an expatriate business owner, which rendered an unknown number of migrant laborers vulnerable to trafficking.

Generally, Kuwaiti authorities did not routinely categorize or investigate labor violations as potential trafficking and typically treated such cases as administrative infractions; however, the PPO and MOI's new aforementioned policy resulted in a slight but noticeable institutional shift away from this practice. Nonetheless, 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. If a settlement could not be agreed upon, officials referred the case to the labor courts. If the complaint involved a gross violation, such as assault or domestic worker abuse, authorities transferred the case directly to the PPO. Some 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 as violations of other criminal 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, PAM received 2,804 complaints of confiscated passports; the government did not report how many employers PAM ordered to return employees' identification documents. The DWED arranged 12 internal training programs on general trafficking topics for 94 of its staff members, and hundreds of PAM and MOI officials participated in a series of targeted training and capacity-building programs conducted by two international organizations and financially supported by the government.

PROTECTION

The government strengthened overall efforts to protect trafficking victims. In 2019, it provided shelter to a total of 2,183 female domestic workers, up from 1,600 domestic workers it protected the previous year. The government referred one of these cases to the MOI's anti-trafficking unit for further investigation. During the same time period, PAM reported it identified and referred approximately 900 vulnerable domestic workers and potential trafficking victims to the primary government-run shelter, compared to 800 during the previous year. In addition, the DWED referred 818 domestic workers to the shelter and provided repatriation assistance for 728 of them; the entity also recouped approximately 21,000 Kuwaiti dinar (\$69,300) in unpaid wages for this vulnerable group. The majority 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. During the reporting period, the government repatriated 1,973 female domestic workers to their respective countries of origin and, in cooperation with an international organization, provided repatriation, reintegration support, and transition assistance to trafficking victims without in-country diplomatic representation. 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, and some labor-sending country representatives reported in some cases MOI or shelter staff turned away workers who were potential trafficking victims. 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. During the reporting period the Permanent National Committee for the Implementation of the National Strategy for the Prevention of Trafficking commenced execution of the aforementioned mechanism to identify and prevent cases of trafficking; it contained six stages ranging from proactive identification of victims to their safe repatriation. 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. In February 2020, shelter management adopted a shift system wherein supervisors, medical staff, and investigators were on duty 24 hours per day. Also during the reporting period, the DWED allocated 5,000 square meters of land to construct a new shelter for female labor trafficking victims. Despite government allocation, budgetary approval, and repeated promises for construction of a male shelter during the previous two reporting periods, 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. 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 or unpaid bills, 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 (most residents chose to be repatriated). In April 2019, MOI’s Residency Affairs Investigations Directorate reported it would not deport 10,000 workers sponsored by fake companies whose Kuwaiti owners were referred to public prosecution over trafficking and trafficking-related charges; the entity permitted these laborers to legalize their stay in Kuwait and transfer their residencies to other companies. In November 2019, in an apparent step to streamline sponsor transfers, the MOI modified its existing regulations to more stringently safeguard the ability of workers to voluntarily and unilaterally change employers.

Authorities continued to arrest, detain, and administratively 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 the government directed settlements in response to individual civil suits against employers, but the government did not report the amount in civil damages paid out during the year. The government did not report how many victims received restitution.

PREVENTION

The government maintained efforts to prevent human trafficking, though it did not take any new steps to reform the problematic sponsorship system. The Permanent National Committee for the Implementation of the National Strategy for the Prevention of Trafficking, established in 2018, officially convened for the first time and met a total of five times during the reporting period. 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. The government 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. In August 2019, the Deputy Prime Minister and Minister of Interior, in collaboration with an international organization, organized a three-day awareness campaign to mark “World Day Against Trafficking in Persons”—approximately 250 civilians visited the trafficking booth and participated in a related online survey. In honor of International Migrants Day and in partnership with an international organization, Kuwaiti officials also hosted a seminar on promoting and protecting the rights of foreign workers in Kuwait; the event reached 130 participants from various ministries and embassies.

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 ministerial resolution of 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. 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). In July 2019, PAM formed specialized administrative and oversight teams within the DWED aimed at safeguarding the rights of domestic workers. The new teams are comprised of 34 employees that will manage arbitration of workplace disputes, inspection of premises, and licensing of firms.

The DWED continued to investigate domestic worker recruitment agencies 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 reported referring an unspecified number of cases for criminal investigation or prosecution. During the reporting period, DWED officials received 2,887 work-related complaints, amicably resolved 2,192 in extrajudicial proceedings, referred 499 to labor and criminal courts for further investigation, and the others remained pending. The DWED also conducted 80 inspections of domestic worker recruitment firms and consequently permanently shut down 18 and suspended 52 for three to six months for violation of the domestic labor law, compared to 30 closures the previous year; officials did not refer any of these for criminal investigation or prosecution. Separately, PAM received 15,982 official grievances from foreign laborers, the most common of which included pay discrepancies, denied requests to transfer employers after the required two years with an initial sponsor, 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 6,060 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 2019, PAM conducted and/or participated in more than 50,300 inspections to ensure labor and residency laws were fully implemented by employers; these inspections resulted in roughly 5,000 citations and fines against violating companies. Additionally, PAM identified hundreds of companies that engaged in fraudulent practices by sponsoring workers yet failing to provide legitimate employment. Accordingly, PAM officials referred 422 labor law violations to MOI’s investigative department, permanently revoked files of 115 companies, and temporarily suspended files of more than 3,400 companies in contravention of local labor laws. Under Kuwaiti law, a blocked file precludes companies from transferring workers to other employers, hiring new employees, and renewing their licenses to operate.

In adherence to the domestic labor law, the government’s centralized recruitment company, *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. However, during the reporting period, *Al-Durra* stopped working with expatriate employers after complaints suggested the mechanism was established to help Kuwaitis and was subsequently made available for Kuwaiti citizens only. The most common nationalities hired previously through *Al-Durra* included those from the Philippines, India, Sri Lanka, and Burkina Faso. 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; however, due to reports of maltreatment and deaths of Filipino domestic workers, in January 2020 the Philippine government reinstated its ban on new recruits to Kuwait. The ban was quickly lifted again in February 2020 after a diplomatic agreement was reached between the two governments. The Commerce Ministry 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. PAM maintained a hotline to receive general workplace grievances and potential trafficking cases, while DWED had an email address for the same purpose; neither entity reported how many trafficking-specific calls they received during the reporting period. 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. In October 2018, Kuwait and India signed an agreement on broader protections for domestic workers that resulted in the end of India’s 2014 ban on Indian female domestic workers. However, as conditions for many remain perilous, numerous labor-sending countries, including Bhutan, Burundi, Burkina Faso, Cameroon, Chad, Cote d’Ivoire, Democratic Republic of the Congo, Djibouti, Ethiopia, Ghana, Guinea, Guinea-Bissau, Indonesia, Kenya, Madagascar, Malawi, Niger, Nigeria, Senegal, Sierra Leone, Tanzania, Togo, Uganda, and Zimbabwe, continue to restrict their female nationals from domestic employment in Kuwait. The Kuwaiti government has continued its recruitment of domestic employees from African labor-sending countries, and many workers continue to defy the respective bans by transiting through third countries before arrival to Kuwait.

Upon arrival, some sponsors subject migrants to forced labor, and to a much lesser extent sex trafficking, 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 plausibly rendering workers vulnerable to forced labor, including debt bondage. Visa trading continues to be a common manifestation of trafficking in Kuwait, and illicit visa trading markets increasingly expanded into social media during the reporting period. In some cases, officials do not provide workers copies of their contracts, or the contracts are not written in a language they can read. 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. The government continued its moratorium on issuing new visas to North Korean workers, and in previous reporting cycles it 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, sources report runaway domestic workers are sometimes exploited in sex trafficking by agents or criminals, who manipulate their illegal status. The use of fraudulently obtained visas and fake work permits remains common. The current reporting period saw an uptick in sit-ins and protests by employees who had been subcontracted to work for Kuwaiti ministries or companies. These employees alleged their wages were withheld for up to several months by contractors and the respective officials and company representatives ignored their grievances.

ecoi.net summary:

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