



Walk Free's submission to the Committee on the Elimination of Discrimination Against Women on Kuwait

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Contents

Part A.....	3
Introduction.....	3
Part B	4
Slavery and human trafficking	4
Forced labour	4
Forced sexual exploitation.....	5
Forced and child marriage	6
Part C	8
Recommendations.....	8



Part A

Introduction

1. Walk Free welcomes the opportunity to contribute to the identification of issues and questions by the 86th Pre-sessional Working Group of the Committee on the Elimination of Discrimination against Women (**the Committee**) ahead of its review of Kuwait.
2. Walk Free is an international human rights organisation with a mission to end modern slavery globally. Walk Free approaches this challenge through a combination of direct implementation, grassroots community engagement, and working in partnership with faiths, businesses, academics, NGOs, and governments around the world.
3. Modern slavery covers a set of specific legal concepts including human trafficking, forced labour, debt bondage, forced or servile marriage, slavery and slavery-like practices, and the sale and exploitation of children. Although modern slavery is not defined in law, it is used as an umbrella term that focusses attention on the commonalities across these legal concepts. Essentially, it refers to situations of exploitation that a person cannot refuse or leave because of threats, violence, coercion, deception, and/or abuse of power.
4. Walk Free is the author of the Global Slavery Index (**GSI**), the world's leading dataset on measuring and understanding modern slavery. The GSI assesses country-level prevalence, vulnerability, and government responses to modern slavery. To date, Walk Free have published four editions of the GSI, the most recent in 2018. The 2018 GSI estimated that there were 6,000 people living in situations of modern slavery in Kuwait on any given day in 2016, a prevalence of 1.46 per every thousand people.¹
5. Together with the International Labour Organization (**ILO**) and the International Organization for Migration (**IOM**), Walk Free developed the Global Estimates of Modern Slavery (**GEMS**). The 2022 GEMS found that 49.6 million people were in modern slavery in 2021, and that women and girls were disproportionately affected, accounting for over half of all victims.² While the Arab States region has the lowest population of people living in forced labour (0.9 million) and forced marriage (0.8 million), when population is taken into account the Arab States has the highest prevalence of any region in the world for both forced labour (5.3 per thousand people) and forced marriage (4.8 per thousand people).³
6. Walk Free's 2020 report, *Stacked Odds*, provides the most comprehensive evaluation of the female experience of modern slavery to date. The report found that women and girls are at higher risk of modern slavery and exploitation throughout every stage of their lives, in every region of the world. This heightened vulnerability to modern slavery among women and girls is driven by power imbalances embedded within international and national legal and socio-cultural norms.
7. The purpose of the *Convention on the Elimination of All Forms of Discrimination Against Women* (**CEDAW**), as set out in the preamble, is to affirm the principle of gender



equality, noting that “*all human beings are born free and equal in dignity and rights and that everyone is entitled to all the rights and freedoms set forth therein, without distinction of any kind, including distinction based on sex.*” Gender equality can never be achieved while modern slavery exists, therefore effective implementation of CEDAW must include action to eliminate modern slavery in all its forms. This is also reflected in *General Recommendation No. 38 (2020) on Trafficking in Women and Girls in the Context of Global Migration (R38)*.

8. Kuwait has lodged reservations respect of articles 9(2), 16(1)(f) and 29 of CEDAW with the effect that it is not bound by those provisions to the extent they conflict with provisions in the Kuwaiti Nationality Act and the Islamic *Sharia*, respectively.⁴
9. All international legal references are to CEDAW, unless stated otherwise.
10. Walk Free would welcome any requests from the CEDAW Working Group to discuss and/or provide further detail regarding the submissions contained herein.

Part B

Slavery and human trafficking

11. Slavery is criminalised by article 185 of Penal Code, which stipulates “that anyone bringing in or taking out of Kuwait any individual with the intention of enslaving him/her, buys, sells or gifts another person as a slave” is liable to a term of imprisonment for not more than five years, a fine not exceeding 375 Kuwaiti Dinars, or both.⁵ In line with the *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (the Palermo Protocol)*, human trafficking is criminalised by Law No. 91 of 2013 on Trafficking in Persons and Smuggling of Migrants Act (**Anti-Trafficking Law of 2013**).⁶ However, gaps remain which allow exploitation to continue in Kuwait, in contravention of the government’s obligations under articles 2(a), 2(b), 11(1)(a), and 11(c). Importantly, the exercise of powers attached to a right of ownership over a person, as a distinct crime without a requirement of movement of a person, is not criminalised under the Penal Code. As such, the maintenance of a person in a condition of enslavement falls outside the scope of current legislation in Kuwait.⁷

Forced labour

12. Foreign workers are particularly vulnerable to forced labour in Kuwait.⁸ The legal status of migrant workers in Kuwait is regulated by the *kafala* (sponsorship) system,⁹ which provides Kuwaiti sponsors with extensive control over their employees. Migrant worker visas are tied to their employers meaning that employers control migrant worker’s rights to enter and reside in Kuwait.¹⁰ While most migrant workers are able to change jobs without permission from their employer, they can only do so after working for three years and following 90 days’ notice.¹¹ For domestic workers, who are not governed by the Private Sector Labour Law No. 6 of 2010 but instead are regulated by



Law No. 68 of 2015 on Domestic Workers, further exclusions apply which require they seek permission from the Ministry of Interior and Labour Court to change jobs without their employer's prior approval.¹² Domestic workers who leave their employer's household without permission face criminal penalties or deportation for 'absconding' from the workplace, unless they make official complaints to the police before their employer files an absconding report. However, language barriers, a lack of information regarding their legal rights, among other factors, mean that migrant workers often do not file complaints.¹³ These combined restrictions on migrants' mobility fail to meet the standard of paragraphs 54(a), 60(a, and 60(b) of R38, and are in contravention of Kuwait's obligations under articles 11 and 15(1).

13. In semi-structured interviews conducted by Walk Free in 2020¹⁴ with migrant domestic workers returning from Kuwait (n=10), all respondents reported having their passports seized by the recruitment agency and/or employer and being given no rest periods.¹⁵ The majority reported not being able to leave the employer's home or use their mobile phones (n=8), being tricked about the nature of the work they had to perform (n=7), and having food withheld (n=5).¹⁶ One respondent noted: *"I didn't have access to a phone. And even if I did, I think it would have been seized. They never allowed me to leave the house. ... All my movements were monitored. There were cameras everywhere watching us 24/7 who were maids in house. ... I was not able to cook or worse still buy my own meals. I always ate the leftovers. I had no salary because nothing was given to me."*¹⁷ The results of this field research, which will be released in greater detail in an upcoming report, highlight the power imbalance created by the *kafala* system and gaps in protections for domestic workers, which fails to meet the recommendations in paragraphs 60(a) and (b) contravenes Kuwait's obligations under articles 6, 11(1)(c), and (f). Despite the introduction of an authorisation process for domestic worker recruitment agencies under the *Tamkeen* (fair employment) Initiative in 2021, domestic workers remain the most vulnerable class of migrant workers, and are particularly at risk of forced labour, violence, and sexual exploitation in the homes of their sponsors.¹⁸

Forced sexual exploitation

14. Some reports indicate that migrant domestic workers who have escaped their employers are subsequently vulnerable to sex trafficking, as a result of being coerced via threats of imprisonment or deportation due to their illegal status.¹⁹
15. Although the Anti-Trafficking Law of 2013 criminalised all forms of human trafficking,²⁰ pursuant to articles 200 to 204 of the Penal Code, the sale, inducement, and solicitation of sex, as well as living on the proceeds of sex work, are criminal offences and punishable by terms of imprisonment and monetary fines.²¹ Further, the Kuwaiti government is reportedly increasing the number of raids on premises where commercial sex is allegedly taking place.²² At the time of writing, it is unclear whether all law enforcement participating in the raids have received comprehensive training on the indicators of sex trafficking to ensure that victims are identified and referred to services. The criminalisation of sex work, coupled with increasing raids, increases the risk that



female victims of forced sexual exploitation will be punished as criminals and re-traumatised, rather than receive assistance and support due to victims of human trafficking. As a result, Kuwait is failing to meet its obligations under article 6 and paragraph 98 of R38.

Forced and child marriage

16. While there are no current national estimates of the prevalence of forced and child marriage,²³ surveys conducted by Walk Free in 2021 identified that forced and child marriage remains an issue in the country.²⁴ Other studies further noted that child marriages occur among marginalised groups, such as Bedouin communities.²⁵ Gaps in the legislative framework allow child marriage to occur. In accordance with the Islamic Sharia which does not specify an age of marriage, there is no explicit minimum age of marriage set by the Personal Status Law of 1987 which simply requires both parties to have reached puberty for the marriage to be legally binding.²⁶ While no marriage can be registered unless the bride is over the age of 15 and the groom is over the age of 17,²⁷ younger girls and boys can still marry, and simply wait to register the marriage when the prospective spouses are of legal age.²⁸ However, some Islamic scholars have highlighted that, among other arguments, although the Qur'an does not specify an age of marriage it does stipulate a state of maturity and ability to manage one's affairs, including an intellectual maturity (*rushd*), and ensures that the consent of the betrothed are required for a valid marriage. Children are unable to provide this consent fully and freely as they lack the necessary *rushd*.²⁹ Adopting these interpretations of religious laws will better protect all children – being all those under the age of 18 years as defined by the Convention on the Rights of the Child (CRC)³⁰ – from forced marriages, in a manner that remains consistent with both Islamic law and international recommendations. For example, the idea of *rushd* is also reflected in the joint general recommendations made by the CEDAW Committee together with CRC Committee in 2019, which noted that children are unable to provide full, free, and informed consent to marry as they were too young to be “physically and psychologically ready for adult life.”³¹
17. Sunni Kuwaiti women over the age of 18 continue to be subject to male guardianship, which requires female adults to obtain the permission of a male relative (*wali*) to formally consent to their marriage.³² In most matters related to marriage, brides must consent to be wed, in addition to permission being granted by the *wali*.³³ However, Kuwaiti women or girls who have been abducted or raped can be forced to marry their abuser on the basis of their guardian's consent alone, pursuant to article 182 of the Penal Code which provides an exception to rape and abduction charges if the abuser marries his victim.³⁴ The legislative subjugation of Kuwaiti women to their male relatives increases their risk of forced marriage, and particularly among women who may struggle to assert their right to refuse, such those who have experienced traumatic events such as sexual assaults. Further, this fails to meet the standard in paragraphs 51 and 52 of R38, and contravenes Kuwait's obligations under articles 2(b), 5(a), 15(1), 15(3), and 16(1)(a).



18. Strict honour-based cultural norms and the resultant importance placed on female virginity are encoded into Kuwaiti law, through exceptions to rape or abduction charges if the offender marries the victim with her guardian's consent (article 182 of the Penal Code), and exceptions to murder if a man kills a female relative in 'the act of adultery' (article 153 of the Penal Code).³⁵ As marital rape is not criminalised, the prevalence of rape is likely significantly under-reported in Kuwait.³⁶ In the State Party Report, the government defended the exceptions provided for honour killings within article 153 on the basis that conditions were required to be satisfied in order for a defendant to obtain the protection of the defence. It should be noted that this is not unlike other laws where preconditions must be met to avail oneself of a provision; it is the substance, rather than the form, of article 153 which remains discriminatory. The Committee must note that the core discrimination within this provision is not simply a result of the defence being exclusively available to male offenders, as was noted by the State Party Report,³⁷ but the implicit justification of male violence as a valid response to female sexual activity. When this provision is understood in the context of the wider guardianship system and the criminalisation of all sexual relations outside of marriage,³⁸ it is apparent that the discriminatory legal framework in Kuwait creates extreme vulnerability to forced and child marriages, despite laws which require brides to consent to be wed,³⁹ because – in some instances – the alternative to a forced marriage could be a legislatively justifiable death. In effect, the strict policing of women and girls' bodily autonomy, in addition to the decision-making supremacy legislatively bestowed upon male relatives, undermines the State Party's attempts to instil legal protections against forced marriage through provisions requiring the bride's consent. As a result of the endemic inequality within the legal framework and resulting heightened vulnerability to forced marriage, Kuwait is failing to meet its obligations under articles 2(b), 5(a), 15(1), 15(3), and 16(1)(a).



Part C

Recommendations

19. In acknowledgement of the above, Walk Free recommends that the Committee, in its concluding observations, request the State Party:

- Remove reservations to the CEDAW convention, particularly articles 9(2) and 16(f).
- Reform Law No. 68 of 2015 on Domestic Workers to provide comprehensive protections to migrant domestic workers, including the right to change jobs without the need to seek the permission of the first employer, in line with article 11 and in accordance with the standards outlined in paragraphs 54(a), 60(a, and 60(b) of R38.
- Support migrant domestic workers to make criminal complaints against employers and provide an adequate amnesty period following an 'absconding' report being filed by employers, so that migrant domestic workers can seek assistance from authorities without fear of imprisonment or deportation, in accordance with articles 6, 11(1)(c), and 11(1)(f), and the standards set in paragraphs 59(c), 59(d), and 60(b) of R38.
- Extend the application of article 185 of the Penal Code to include the maintenance of a person in a situation of enslavement, in accordance with article 6.
- Ensure women and girls have access to justice by actively identifying victims of labour trafficking and forced labour, including among migrant worker populations, in line with article 6 and the standards set in paragraphs 54(b), (c), and 56 of R38.
- Ensure victims of forced sexual exploitation are not treated as criminals, including through systematically training all law enforcement and first responders on the indicators of human trafficking, in line with article 6 and paragraph 98 of R38.
- Conduct or facilitate research to understand the prevalence of forced and early marriage in Kuwait.
- Set the minimum age of marriage at 18, without exception, and criminalise all forms of forced and child marriage, pursuant to articles 5(a) and 16(2), and consistent with the standards outlined in paragraph 53 of R38.
- Remove the requirement for guardian consent so that women may freely choose their spouse, in line with articles 15(1), 15(2), 16(1)(a) and (b), and consistent with the standards outlined in paragraphs 50 and 51 of R38.



- Repeal discriminatory laws that increase the risk of exploitation for women and girls in line with articles 2(b), 5(a), 6, 15(1), 15(3), 16(1)(a), 16(1)(b), and 16(2) and in accordance with paragraphs 30, 51, and 52 of R38: in particular, abolish article 154 of the Penal Code which provides an exception for honour-based killings, and article 182 of the Penal Code which provides an exception to rape and abduction if an offender marries his victim.
- Criminalise marital rape in the Penal Code, in line with article 16(1)(c).
- In line with articles 5(a), 6, and 16, and paragraphs 52 and 53 of R38, work with communities to combat cultural norms which normalise the exploitation of women and girls, including honour-based violence.



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- ³ As above.
- ⁴ United Nations 2023, 'Convention on the Elimination of All Forms of Discrimination against Women,' *United Nations Treaty Collection*. Available from: https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg_no=IV-8&chapter=4&lang=en#63. [17 January 2023].
- ⁵ Law *Penal Code of 1960*, article 185. Available from: http://gulfmigration.org/database/legal_module/Kuwait/National%20Legal%20Framework/Anti-trafficking/2.1%20Penal%20Law_AR.pdf. [2 November 2021].
- ⁶ Law No. 91 of 2013 on Trafficking in Persons and Smuggling of Migrants Act, article 1. Available from: <https://gulfmigration.org/kuwait-law-no-91-of-2013-on-trafficking-in-persons-and-smuggling-of-migrants/>. [22 February 2019]; Special Rapporteur on Trafficking in Persons, especially women and children, 2017, *Report of the Special Rapporteur on trafficking in persons, especially women and children, on her mission to Kuwait*, Human Rights Council, p. 8. Available from: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G17/097/94/PDF/G1709794.pdf?OpenElement>. [22 February 2019].
- ⁷ As above.
- ⁸ Office to Monitor and Combat Trafficking in Persons 2022, *Trafficking in Persons Report: Kuwait Country Narrative*, United States Department of State, pp. 337-338. Available from: <https://www.state.gov/wp-content/uploads/2022/04/337308-2022-TIP-REPORT-inaccessible.pdf>. [20 January 2023].
- ⁹ Human Rights Council 2017, *Report of the Special Rapporteur on trafficking in persons, especially women and children, on her mission to Kuwait A/HRC/35/37/Add.1*, United Nations, p. 6. Available from: <https://www.refworld.org/docid/593a9d554.html>. [30 August 2022]; Zahra, M 2019, *The Legal Framework of the Sponsorship Systems of the Gulf Cooperation Council Countries: A Comparative Examination*, Gulf Labour Markets and Migration, p.4 . Available from: https://gulfmigration.grc.net/media/pubs/exno/GLMM_EN_2019_04.pdf. [13 April 2022];
- ¹⁰ As above.
- ¹¹ International Labour Organization 2021, *Regulatory Framework Governing Migrant Workers: Kuwait*, p. 3. Available from: https://www.ilo.org/wcmsp5/groups/public/---arabstates/---ro-beirut/documents/publication/wcms_776524.pdf. [21 February 2022].
- ¹² As above.
- ¹³ Human Rights Council 2017, *Report of the Special Rapporteur on trafficking in persons, especially women and children, on her mission to Kuwait A/HRC/35/37/Add.1*, United Nations, p. 5. Available from: <https://www.refworld.org/docid/593a9d554.html>. [30 August 2022].
- ¹⁴ Walk Free 2023, upcoming report.
- ¹⁵ Field research.
- ¹⁶ Field research.
- ¹⁷ Field research.
- ¹⁸ Office to Monitor and Combat Trafficking in Persons 2022, *Trafficking in Persons Report: Kuwait Country Narrative*, United States Department of State, pp. 337-338. Available from: <https://www.state.gov/wp-content/uploads/2022/04/337308-2022-TIP-REPORT-inaccessible.pdf>. [20 January 2023].
- ¹⁹ As above.
- ²⁰ As above; Kingdom of Kuwait, *Law No. 91 of 2013 Combatting Trafficking in Persons and Smuggling of Migrants*, Gulf Research Centre. Available from: <https://gulfmigration.grc.net/kuwait-law-no-91-of-2013-on-trafficking-in-persons-and-smuggling-of-migrants/>. [23 January 2023].
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- ³⁹ Personal Status Code (No. 51 of 1984), articles 7, 28-29 as cited Musawah 2022, *Kuwait: Overview of Muslim Family Laws and Practices*, p. 5. Available from: <https://www.musawah.org/wp-content/uploads/2019/03/Kuwait-Overview-Table-2022.pdf>. [23 January 2023].; and Government of Kuwait 2021, *Sixth periodic report submitted by Kuwait under article 18 of the Convention, due in 2021*, Committee on the Elimination of Discrimination Against Women, p. 4. Available from: <https://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2FPPRiCAqhKb7yhsglff%2FiazrVw%2BcyfdY9GxZ6n%2FuVfDi9VwyDCa0wl2sERPkeSPICOdKsiyx81mvmmaiwu%2FevYEVMMIG30dFWWv%2BpjmnxV0UpKhPkxmxeOxR4K>. [23 January 2023].