



## Convention on the Rights of the Child

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### COMMITTEE ON THE RIGHTS OF THE CHILD

#### CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 12 (1) OF THE OPTIONAL PROTOCOL TO THE CONVENTION ON THE RIGHTS OF THE CHILD ON THE SALE OF CHILDREN, CHILD PROSTITUTION AND CHILD PORNOGRAPHY

##### Initial reports of States parties due in 2006

##### KUWAIT\*

[13 April 2007]

**Initial report of the State of Kuwait** on the measures taken by Kuwait to implement the Optional Protocol on the sale of children, child prostitution and child pornography, submitted to the Committee on the Rights of the Child under article 12, paragraph 1, of the Optional Protocol, which provides: "Each State Party shall, within two years following the entry into force of the present Protocol for that State Party, submit a report to the Committee on the Rights of the Child providing comprehensive information on the measures it has taken to implement the provisions of the Protocol."

##### Domestic legislation and laws of relevance to the substance and the purposes of the Protocol

1. Article 1 of the Optional Protocol on the sale of children, child prostitution and child pornography calls on States parties to prohibit the sale of children, child prostitution and child pornography. The importance that Kuwait attaches to children is clearly reflected in article 10 of the Constitution, which provides: "The State cares for the young and protects them from exploitation and from moral, physical and spiritual neglect." Kuwaiti criminal laws deal severely with the perpetrators of offences involving exploitation in all its forms. Some articles of criminal law illustrate the tough stance that the Kuwaiti legislature takes on these matters by imposing unambiguously harsh penalties on perpetrators of these offences against children's rights.

2. Article 2 of the Optional Protocol defines the terms the "sale of children", "child prostitution" and "child pornography", as understood by international law, for the purposes of the Protocol. Here, it must be noted that the provisions and norms of the Kuwaiti Criminal Code are general and abstract and they do not contain any details or specific elements that could be used to define these offences separately. With this in mind, we shall explain below some terms that may be of relevance to the purposes of the Protocol.

According to the commentary on article 159 of the Civil Code, "exploitation" means any "means of controlling, and exploiting a weakness in, another person which vitiates consent".

As explained by Dr. Ghannam Mohammed Ghannam in a special chapter of a commentary on the Kuwaiti Criminal Code, the Code defines "prostitution" as "indiscriminate sexual intercourse with others. If practised by a man, it constitutes debauchery and if practised by a woman, it constitutes prostitution".

3. Under article 3 of the Optional Protocol on the sale of children, child prostitution and child pornography, each State party must ensure that these acts are covered under its criminal or penal law. This requirement is met in all the Kuwaiti legislation and laws that deal with the offences mentioned in the Protocol. Most of these laws prescribe severe penalties for violating children's rights. The Kuwaiti Criminal Code prescribes harsh penalties for engaging in acts that harm children and that are intended to abuse or exploit them. The younger the child, the higher the penalty; in this way, protection is given to this social group, which needs to be cared for and to have its rights defended. Some of these laws of concern are reviewed hereunder.

##### (a) Sale of children

Kuwaiti law makes no explicit reference to the criminal penalty for selling a child, because this type of offence does not occur in the State of Kuwait. The Kuwaiti legislature has included the concept in the offence of human trafficking, however. Thus, article 185 of the Criminal Code No. 16 of 1970 provides: "Anyone who brings a person into or out of Kuwait with a view to selling that person as a slave and anyone who buys, offers to sell, or makes a gift of, a person as a slave shall be subject to a penalty of up to five years' imprisonment and/or a fine of up to 5,000 rupees."

The Kuwaiti legislature therefore makes it an offence to engage in child trafficking by selling, buying, offering for sale, or making a gift of, a child as a slave.

### **(b)Sexual exploitation of children**

Article 186 of the Criminal Code provides: “Anyone who, by means of force, threats or deception, has sexual intercourse with a female against her will shall be liable to a penalty of death or life imprisonment.”

Article 200 of the Code provides: “Anyone who incites a male or female to engage in acts of debauchery or prostitution or who in any way assists him or her therein shall be subject to a penalty of up to one year’s imprisonment and/or a fine of up to 1,000 rupees. If the victim is below 18 years of age, the penalty shall be up to two years’ imprisonment and a fine.”

Here, we can see that the penalty is higher if the victim is under 18 years of age.

Article 187 of the Code, as amended in 1976, states that anyone who, without resorting to coercion, threats or deception, knowingly has intercourse with a female who is insane, disabled, under 15 years of age or otherwise lacking capacity and who does not understand the nature of the act to which she is being subjected or believes it to be legitimate, shall be subject to a penalty of life imprisonment.

This shows that the Kuwaiti legislature imposes extra protection for persons lacking mental capacity in order to prevent their being exploited in any way, because they do not understand the gravity of offences committed against them.

It must be emphasized, here, that the Kuwaiti legislature also imposes severe penalties when this type of exploitation is perpetrated by a close relative or a person responsible for the welfare of the child. Accordingly, under article 187 of the Code, if the perpetrator of the act is an ascendant, a guardian, a tutor, a person with authority over the child or a servant employed in the child’s home or the home of any of the aforementioned persons, then the penalty for the offence is death.

In this way, the Kuwaiti legislature seeks to widen protection for children in what for them should be a safe environment.

### **(c)Transfer of organs of a child for profit**

In the light of the progress made by medicine across the world, Act No. 5 of 1987, concerning kidney transplants, was promulgated to allow the transfer of organs from living or deceased patients pursuant to the provisions that regulate this procedure and stipulate the conditions under which organs may be transferred from living or deceased persons.

Under article 1 of the Act, operations to remove organs from the body of a living or deceased person and to transfer them to the body of another living person may be performed to achieve a therapeutic benefit that is likely to save a person’s life, provided that they are performed according to the conditions and procedures specified in the Act.

Articles 2 to 5 of the same Act, concerning the removal or transfer of organs, set out the conditions and procedures for performing such operations, whether the donor expressed a desire to donate an organ as a living donor or in the event of his death.

Case of a living donor

a. Donors must have full capacity.

b. An organ cannot be transferred from a body, if its removal would result in the donor’s death or a functional disability, even if the donor gives his consent.

c. Donors must be informed of the full consequences for their health of the removal of the donated organ.

Case of a deceased donor

The conditions for transferring organs from deceased persons are making sure that the donor is dead and verifying that the deceased consented to having an organ removed, whether in writing or according to testimony from two witnesses.

The Kuwaiti legislature imposes strict rules on the transfer of organs, creating tough laws to deal with anyone who transfers human organs from a deceased person without obtaining prior consent from that person while he or she was alive, or from his or her relatives after the death. This is intended to increase protection for human rights.

According to article 110 of the Criminal Code No. 31 of 1976, anyone who desecrates a place reserved for burial of the dead, the conservation of mortal remains or the performance of funeral rites, or who causes a disturbance among persons gathered for a funeral or knowingly desecrates the body of a deceased person, shall be subject to a penalty of up to one year’s imprisonment and/or a fine of up to 1,000 rupees.

### **(d)Forced child labour**

The Kuwaiti Labour Code No. 38 of 1964 contains a series of articles on this subject, as listed here below.

Article 18: It is prohibited to employ a boy or girl under the age of 14 years.

Article 19: Minors between 14 and 18 years of age may be employed subject to the following conditions:

1. A permit must be obtained from the Ministry of Social Affairs and Labour;

2. A medical examination must be performed prior to the appointment and at regular intervals thereafter;

3. Minors must be employed in industries and occupations that are not hazardous or harmful to health, as defined in a decision issued by the Ministry of Social Affairs and Labour.

Article 21: Minors may not be employed at night, i.e. from sunset to sunrise.

Article 22: Minors must work not more than six hours a day and not more than four hours in succession without a break of at least one hour.

Here, it is important to stress that child labour is not a widespread phenomenon in Kuwait; indeed, it is virtually non-existent. This is due to several factors, chiefly the material prosperity enjoyed by Kuwaiti society, because the population is small and the State is therefore able to provide all the basic requirements of Kuwaitis. The fact that education is free has also helped to raise the rate of enrolment in all stages of education, while the fact that Kuwait is neither an agricultural nor an industrial State obviates the need to provide assistance to children working in such sectors.

The Public Assistance Act, which has been in force since 1987, helps to obviate the need for families to send children under the age of 18 out to work, because the State pays benefits to citizens with limited financial resources or economic, social or health problems, such as widows, the families of prisoners and disabled persons, divorced and single women and Kuwaiti women married to stateless persons (the *bidoun*).

Under article 3 (c) of the Optional Protocol on the sale of children, child prostitution and child pornography, it is prohibited to produce, distribute, disseminate, import, export, offer, sell or possess child pornography.

Article 204 (2) of the Criminal Code provides: "A term of up to two years' imprisonment or a fine will be imposed on anyone who prints, sells, distributes or displays obscene images, drawings, models or other such items."

The Kuwaiti legislature's rationale for criminalizing these acts is to boost protection for public morals, which must be safeguarded to the fullest extent possible. Here, we can see that there is a need for more specific legislation on the use of pornography and advertising materials that exploit children, especially children in need.

As for article 3 (5) of the Optional Protocol, which refers to adoption, and as for the reservation which the State of Kuwait made to it, because the sharia prohibits adoption - Islam being the country's official religion - we should point out that Islam prohibits adoption in order to avert any problems that it could create, such as confusion over descent and the granting of rights to persons not entitled to them.

Although adoption is prohibited, Islam does provide a different system - *kafalah* - which serves the same purpose as the one which the international community is seeking to achieve by asking for recognition of adoption. The system provides protection, security and a decent life to children whose special circumstances preclude them from living with their natural families (e.g. children of unknown parentage, orphans and children from broken homes).

Indeed, Islam as a religion encourages *kafalah* and proper treatment of such children. There are verses in the Holy Koran and *hadiths* in the *Sunna* - which are precious and sacred texts for Muslims - that encourage *kafalah* and refer to the great rewards awaiting those who care for such children.

The State of Kuwait, through the Ministry of Social Affairs and Labour, devotes considerable attention to children of unknown parentage, endeavouring to provide all kinds of care in keeping with the relevant rules of the Islamic sharia. It does this in a balanced way and strives as far as possible to fulfil these children's emotional, psychological and social needs so that the children learn how to adapt, to give and to be productive.

A children's home was established in 1961 to house and look after boys from the ages of 1 day to 10 years and girls from the ages of 1 day to 14 years who are denied a natural upbringing because their parentage is unknown or they come from a broken home - a broken home being one that is affected by the loss, death, imprisonment or illness of one or both parents or by conflict between the parents.

In 1993, the State established the Department of Family Care as an independent department responsible for placing children with Kuwaiti Muslim families willing to house, care for, and raise them, in conformity with the procedures and conditions set out in the Family Care Act No. 82 of 1977. That Act contains 15 articles defining this type of care (*hadara*), the conditions under which it is provided and the terms of reference of the Family Care Committee. The family care scheme was set up to provide a natural environment that fully meets these children's basic needs and gives the children a sense of security and stability and of being loved.

Ministerial Decision No. 97/1993 established the Department of Family Care as a separate entity from the Department for Minors. The Department of Family Care provides for the social, psychological and educational welfare and health of children of unknown parentage and those in similar circumstances and of children up to the age of 10 years who come from broken homes. Social workers supervise and follow up on the care which these children receive in Kuwaiti families.

The Department of Family Care of the Ministry of Social Affairs and Labour offers many services for children of unknown parentage and children from broken homes, in order to provide a full package of care and to safeguard the rights denied to these children, because they are growing up in a different environment from their natural environment and are not living with their natural family, where they would have been afforded all the rights enjoyed by individuals who live with their families.

The system of *kafalah* or *hadara* for orphans is not an impromptu arrangement but one that is subject to specific legal conditions

which host families must satisfy in order to prevent these children from being exploited in any way that could damage their physical and mental health. The legal conditions which applicants wishing to care for a child must meet, pursuant to Decree Law No. 82 of 1997, are listed hereunder.

Applicants

Must not be below 30 years of age

Must be able to afford to look after the child

Must be a Kuwaiti Muslim

They and the persons living with them must be free from any infectious diseases and from mental illness

They must have a good reputation and record of conduct and must not have any previous convictions, unless they have been rehabilitated

The application must be submitted to the Department on a special form. A thorough economic, social, housing and psychological evaluation will be conducted and a report will be written and submitted to the Ministry of Social Affairs and Labour. Families subsequently receive guidance, advice and assistance through:

1. Weekly visits conducted during the first month of placement;

2. Monthly follow-up visits throughout the first year after the first month;

3. Quarterly visits and follow-up visits during the second year. If the child gets on well with the family, these visits will take place every six months thereafter. Applicants must also satisfy several other criteria, namely:

They must be Kuwaiti Muslims;

They must not be below 30 years of age;

They must be able to afford to care for the child;

They must have a good reputation and must not have a previous conviction for an indecent offence;

They and the persons living with them must be free from any infectious diseases and mental illness.

Applicants have numerous responsibilities as the guardians of such children, since they have to deal with all the child's affairs. Ministerial Decree No. 66 of 1997 enumerates these responsibilities as follows:

Taking care of the child by providing all his or her daily requirements and looking after the child's health and mental and social welfare;

Providing the child with a sound religious and moral education;

Enrolling the child in school and following his or her academic progress;

Notifying those overseeing the care arrangement about any changes in the child's physical and mental health study situation;

Notifying officials of any change in the family's address;

Not leaving the country with the child without the Ministry's permission.

The welfare and rights which the Ministry of Social Affairs and Labour provides, through the Department of Family Care, are described hereunder.

### **Official identity documents**

The Children's Affairs Section of the Department of Family Care issues all identity documents for these children, who acquire Kuwaiti nationality in accordance with article [word missing], paragraph 3, of the Kuwaiti Nationality Act. Children in this category are therefore entitled to all the identity documents that citizens receive, such as nationality papers, a passport, a civil registration document and a birth certificate. In addition, the children have access to all services, including employment, education and other public services that the State provides.

### **Financial welfare services**

A financial regulation was issued defining the amounts and methods of payment of children's allowances. The regulation contains 32 paragraphs, comprising general provisions, provisions on payment methods and final provisions.

These provisions were written to take account of different age groups and stages of education and to cover daily expenses, free trips, extra-curricular activities, prizes for children who do well in end-of-year examinations and prizes for outstanding achievement awarded to children with scores of over 80 per cent. Private remedial courses are also offered and money is allocated for each group depending on the stage of education. One foreign trip is organized each year, with all costs paid. In addition, parties are held for children, including weddings and the presentation of gifts on the occasion of Id al-Fitr and Id al-Adha, depending on the age group.

This practice is customary in Kuwaiti society.

## **Educational welfare**

The Department of Family Care oversees the education of these children in the following ways:

1. The children are enrolled in government schools, colleges and universities.
2. Private means of transport are laid on to take children to school each day.
3. The security and safety of children in children's homes is assured by assigning supervisors to look after them.
4. All the children's basic requirements are supplied all year round.
5. Social workers and supervisors follow up on the children's academic progress.
6. Parents' meetings are held to discuss how the children are doing at school.
7. Remedial classes are offered at school and private teachers are on hand for children attending intermediate and upper intermediate school. Appropriate solutions are devised, in conjunction with teachers, to help children who are academically weak.
8. Incentives such as gifts are given to children who do well.

## **Health care**

The Department of Family Care does everything possible to care for the children's health so as to ensure that they enjoy good health and are protected from various diseases. To that end, it offers services such as medical examinations, diagnosis and appropriate treatment for any illnesses that the children contract, under the supervision of doctors with all different kinds of specialization and under the supervision of the Centre for Rehabilitative Medicine in the social welfare homes' complex. There are dispensaries in every children's home, where doctors and nurses are available around the clock to look after the children. The Department furthermore provides health support services such as laboratories, tests, x-rays and emergency treatment, all under the supervision of competent specialists. Physiotherapy is always available to children who need it and is supervised by highly-skilled practitioners.

## **Religious welfare**

The Department of Family Care accords great importance to religious welfare and to the moral development of children, since the Islamic religion has a profound effect on the redemption and purification of souls, encouraging individuals as it does to be honest and trustworthy, to respect others and to show mercy and compassion.

A preacher from the Department of Enlightenment and Guidance has been appointed to foster children's faith, through regular talks and religious celebrations, and to encourage children to uphold Islamic values and principles and to pray.

## **Social welfare**

Social welfare is one of the most important elements of the social work carried out in welfare homes and facilities. Its purpose is to serve individuals and groups so as to achieve positive results in the delivery of comprehensive services for children. Group services and efforts to satisfy the human needs of individuals and groups, stemming from their social situation, represent a means of providing social welfare that leaves its mark on every individual and group.

Skilled social workers draw up treatment plans for children with behavioural problems who are encountering difficulties at school. They submit case reports to the competent authorities and each case is put on file. Supervisors help social workers to implement children's treatment plans.

## **Psychological care**

The goals of psychological care for children in homes and private houses vary and include:

With regard to the personality and conduct of the individual:

1. Helping children to achieve their goals by recommending appropriate plans;
2. Examining the problems that children encounter in children's homes, at school or in the community;
3. Helping children to adjust psychologically so that they can strike a balance between their impulses, needs and desires and society's values and thus win the acceptance of others.

With regard to educational and vocational goals:

1. Discovering and exploring children's intellectual capacities and aptitudes and guiding them in such a way that they can better adapt to the educational or vocational environment, or identifying suitable programmes based on activities that are beneficial for children;
2. Studying cases of children with mental impairments and learning difficulties and helping them by referring them to suitable organizations such as parallel education providers or private institutes.

Psychological care is provided by skilled psychologists, who carry out evaluations and consultations in order to help children to find psychological equilibrium and to achieve the aims of psychological care.

**Table 1 shows the number of children in social welfare homes in the period from 2002 to 2004**

Institution/gender	2002		2003		2004	
	Male	Female	Male	Female	Male	Female
Children's home	35	28	23	24	24	25
Girls' home	-	35	-	34	-	33
Guest homes	76	9	84	8	86	9
Family care	204	294	204	296	206	300
<b>Total</b>	315	366	311	362	316	367
<b>Grand total</b>	681	673	683			

**Analysis of Table 1, showing the number of children being cared for in social welfare homes from 2002 to 2004**

1. Children's home

In 2002, the number of boys at the children's home was as high as 35, compared with a figure of 23 in 2003. There were 28 girls in the home in 2002, compared with 24 in 2003.

2. The girls' home

In 2002, the number of girls in the girls' home reached its highest level at 35. This number had fallen to 33 by 2004.

3. Guest homes

In 2004, there were 86 boys and 9 girls in guest homes, as compared with a total of 76 boys and 9 girls in 2002.

**Table 2 below shows the age groups of children of unknown parentage in 2004**

Home/gender/age	Children's home		Girls' home		Guest homes		Family care	
	Male	Female	Male	Female	Male	Female	Male	Female
Under 6	9	5	-	-	-	-	21	21
6-12	17	18	-	-	1	-	21	41
12-18	-	-	-	6	42	1	62	43
18 and over	-	-	-	27	53	6	138	195
<b>Total</b>	26	23	-	33	78	7	206	300

**Analysis of Table 2, showing the age groups of children of unknown parentage in 2004**

There were nine boys and five girls under the age of 6. This is the lowest number in any of the age groups for which the Department of Family Care has responsibility. The number of girls in the 6-12 age group rose to 41.

In the 12-18 age group, there were 6 girls living in the girls' home, 1 living in a guest home and 43 in family care. There were 333 children over 18 years of age in family care in 2004.

Institution/gender	No. at end of last year (2003)		New arrivals	Departures		No. at end of current year (2004)			Total	
	Male	Fem.		Male	Fem.	Male	Fem.	Male		
Children's home	23	24	24	5	5	4	4	24	25	49
Girls' home	-	34	34	-	-	-	1	-	33	33
Guest homes (boys/girls)	83	8	8	6	6	4	5	86	9	95
Family care	204	296	296	3	2	1	1	206	300	506
<b>Total</b>	311	362	362	14	16	9	11	316	367	683
<b>Grand total</b>	673	30	30	20	383					

Table 3 shows the changes in the number of children, by gender, for 2004.



Children's home	28	24	5	5	4	4	29	25	54
Girls' home	-	33	-	2	-	2	-	33	33
Guest homes - boys/girls	88	7	5	1	-	1	93	7	100
Family care	206	300	3	3	-	-	209	303	512
Total	322	364	13	11	4	7	331	368	699
Grand total	686	24	11	699					

*NB:*Reference may be made to the summary of activities of the Ministry of Social Affairs and Labour in 2005, as produced by the Department of Research and Statistics.

Article 4 of the Optional Protocol on the sale of children, child prostitution and child pornography calls on States parties to take all necessary steps to establish their jurisdiction over these kinds of offences. In that regard, article 1 of Act No. 5 of 1961, concerning legal relations in which a foreign party is involved, provides that, where the jurisdiction of Kuwait's courts over legal relations involving a foreign party has been established pursuant to the provisions on matters of personal status, civil status, commercial status ordinary law, these courts shall apply Kuwaiti law in proceedings before them.

It is Kuwaiti law then that regulates this matter. It either deals with it as a procedural issue, thus making it subject to its jurisdiction, or as a substantive matter subject to the law identified under the rule on the conflict of laws.

Article 68 of Act No. 5 of 1981 furthermore contains a series of provisions which affirm that the above-mentioned provisions of the Optional Protocol on the sale of children, child prostitution and child pornography apply, unless there is a contrary provision in a special law or international treaty. In such cases, the special law or international treaty will prevail. If there is no such provision in a special law or international treaty, then the principles of international private law shall apply.

4. Articles 5 and 6 of the Optional Protocol emphasize the need for States parties to include the offences referred to in the Protocol as extraditable offences in every extradition treaty subsequently concluded between them, in accordance with the conditions set forth in such treaties.

It is noteworthy that the system for international extradition is based on international cooperation directed at the suppression of crime and delivery of justice to the fullest extent possible. Criminals who are fugitives from justice may be exchanged between States on the basis of reciprocity or bilateral or multilateral treaties that are concluded for the purpose.

According to article 1 of Ministerial Decision No. 49 of 2005, the Attorney-General is empowered to approve all letters rogatory and requests for extradition and all the necessary papers for the implementation of treaties on judicial cooperation in criminal matters concluded between the State of Kuwait and other Arab and foreign States.

5. Article 7 of the Optional Protocol calls on States parties, subject to the provisions of their national law, to take all necessary measures to provide for seizure and confiscation of goods and closure of premises used to commit the offences referred to in the Protocol. The Kuwaiti Criminal Code imposes additional penalties pertaining to the confiscation of goods and property used to commit the offences referred to in the Protocol, in addition to the confiscation of the proceeds from these offences.

## **Confiscation**

In keeping with article 7 (a) of the Protocol, which calls on States parties to take measures to confiscate material, assets and proceeds derived from offences under the Protocol, the penalty of confiscation set out in article 9 of the Kuwaiti Criminal Code of 1970 provides for the confiscation of items from crime scenes and, if they are not found, for the imposition of an additional fine equivalent to the value of such items.

Confiscation is viewed as an additional penalty, which is designed to subtract property from the guilty party and either add it to that in the possession of the State or to destroy it. Here, it must be noted that the Kuwaiti legislature prohibits general confiscation, because of its adverse and inhumane effects, but does allow confiscation of specific objects, provided that this penalty is inflicted pursuant to a court judgement. The offences referred to in the Protocol and relating to the proceeds from child prostitution and child pornography are included in the category of offences for which confiscation of property by the competent State authorities is permitted. Such property includes obscene books and publications, alcohol and pornographic films. These items are confiscated, if they belong to the person caught with them, because they are considered to be dangerous and their confiscation is a way of protecting society from them.

As the above information shows, the State of Kuwait does apply the penalty of confiscation. In addition to the above-mentioned provisions of the Kuwaiti Criminal Code, article 19 of the Kuwaiti Constitution stipulates: "General confiscation of property is prohibited. The penalty of confiscation of specific property can only be inflicted pursuant to a court order and under the circumstances specified by law."

## **Closure of public premises**

In keeping with article 7 (c) of the Optional Protocol, article 203 of the Kuwaiti Criminal Code, as amended in 1994, states that anyone who establishes or keeps a lewd house or a brothel or who in any way assists in the establishment or keeping of such premises shall be liable to a penalty of up to seven years' imprisonment and a fine of up to 7,000 dinars. As this article shows, the Kuwaiti legislature interprets the term "keeping a brothel" widely, so as to include any act involving control of clients or prostitutes or the supply of such necessities as beverages and so on.



As stated above, a review of Kuwaiti laws and legislation pertaining to the subject of the Protocol shows that while the wording may differ, the substance or purpose is the same.

There may be a need to codify and define some rights more effectively and to remedy shortcomings in present laws in order to bring them into line with the Protocol. We hope to enact a law on children in keeping with what has been done in other Arab States, including, for example, the Arab Republic of Egypt.

6. Article 8 of the Optional Protocol calls on States parties to take measures to protect the rights and interests of child victims of practices prohibited under the Protocol during all stages of criminal proceedings.

Kuwaiti criminal laws protect children's rights by establishing appropriate measures to protect the interests of child victims of practices prohibited by the Protocol during all stages of judicial and criminal proceedings, in keeping with several provisions of the Penal Code No. 3 of 1983 which deal with minors.

Article 8 (1) of the Protocol calls on States parties to take appropriate legal measures to protect children. Article 1 of the Kuwaiti Criminal Code contains several paragraphs on this subject, as shown hereunder.

1. Paragraph (d): A competent court shall be established under this Act to hear individual juvenile cases.

2. Paragraph (e): A social control bureau shall be established by the Ministry of Social Affairs and Labour to review cases of juvenile delinquency and report on them to the competent authority.

3. Paragraph (f): A law enforcement mechanism comprising members of the prosecution service shall be established to investigate, process and prosecute serious and lesser offences committed by minors and to perform whatever other functions are stipulated in this Act.

The State provides support services for children during legal proceedings, in conformity with article 30 of the Kuwaiti Penal Code of 1983, which deals with the subject of minors. That article establishes the right of a minor accused of a serious or lesser offence or of the minor's parent to appoint defence counsel. If the minor is accused of a serious offence and neither he nor his parent has appointed defence counsel, then the court must nominate a qualified lawyer to act for the minor. If the minor is accused of a lesser offence, the appointment of defence counsel is at the court's discretion.

In addition to these victims' rights, which the Kuwaiti legislature has established in order to guarantee the proper conduct of court proceedings, article 29 of the Act affirms the necessity and importance of informing child victims of their rights, their role and the results of deliberations on their cases. The article states that: "The juvenile court shall, if necessary, hear the case in the minor's absence, provided that the minor is subsequently briefed about the proceedings conducted in his or her absence."

With regard to the protection of children's privacy and the taking of related measures in accordance with national law, article 29 of the same Act provides: "(a) Trials of minors shall be conducted in camera. They may only be attended by the minor, his relatives, the witnesses, the lawyers, behavioural experts and any other person that the court gives special permission to attend."

Article 8 (2) of the Optional Protocol requires States parties to make certain of the age of the victim prior to the initiation of criminal investigations. Article 2 of the 1983 Penal Code states that an official birth certificate must be used to establish the minor's age. In any event, the court must order the child's referral to the competent medical authority in order to assess his or her age and calculate the date of birth.

Article 8 (3) of the Protocol requires States parties to ensure that the best interests of the child are the primary consideration in the treatment of children by the criminal justice system. The idea that the best interests of the child are the primary consideration in the treatment of children by the criminal justice system is illustrated by article 19 of the Penal Code, which provides: "Where a minor is involved in any of the situations enumerated in article 1 (c) of the present Code, the child welfare authority shall refer the minor to the juvenile prosecution services for onward referral to a court, if such be in the minor's interests. The court may impose any of the following measures:

"1. Placement of the minor with a parent, who must undertake to look after the child properly.

"2. Placement with a trustworthy carer, who must undertake to look after the child properly.

"3. Placement in a social welfare institution for young persons."

Article 8 (4) of the Protocol calls on States parties to take measures to train persons who work with victims. Kuwaiti criminal laws contain several provisions on the criteria to be met by persons who work with children. These criteria are set out hereunder.

1. Paragraph (e) states: "A standing committee shall be set up to consider young persons' problems and to refer young persons to appropriate welfare institutions in order to guarantee them proper care and protect them from delinquency or the risk of delinquency in the future.

2. Paragraph (j) states: "Any social worker or investigator attached to the Office of Social Control and involved in children's welfare shall be appointed by order of the Social [word missing]."

Article 39 of the Penal Code of 1983 states that probation officers shall be appointed by a decision of the Minister of Social Affairs and Labour and shall take an oath before the juvenile judge to perform their duties faithfully and honestly.

Article 8 (5) of the Protocol requires States parties to take measures to protect the safety and security of victims of offences under the Protocol or organizations involved in the prevention, protection and rehabilitation of victims.

The importance which the State of Kuwait attaches to organizations involved in child protection - social organizations - is evident from the binding conditions applied to these institutions under the following provisions of the Kuwaiti Penal Code of 1983, which concern minors:

1. Article 1 (k) provides: "Any governmental or civic organization which the Ministry of Social Affairs and Labour entrusts with the welfare of juvenile delinquents, pursuant to a juvenile court order, shall be deemed a social welfare institution."
2. Article 1 (m) of the Code states: "Any social institution of the Ministry of Social Affairs and Labour responsible for housing and caring for juvenile delinquents who have been detained by order of a juvenile court order shall be deemed a penal institution."
3. Article 18 of the Code states: "Minors at risk of delinquency must be referred directly to the competent services of the Ministry of Social Affairs and Labour so that suitable reception facilities can be found for them."
4. Article 8 (6) of the Protocol calls on States parties not to interpret the Protocol in a manner prejudicial to the right of the accused to a fair and impartial trial.
5. Article 15 of the Kuwaiti Penal Code states that judgements of juvenile courts must not take account of an individual's previous criminal records. The Kuwaiti legislature devotes a special chapter of the 1983 Kuwaiti Penal Code to a series of provisions that demonstrate its concern for children's rights and desire to deliver justice to children to the fullest extent possible, as illustrated by the articles below.
6. Article 25 provides: "One or more juvenile courts, presided over by a single judge, shall be established as part of the court system."
7. Article 26 provides: "The juvenile courts shall have criminal jurisdiction over all cases of juvenile delinquency and shall have the delegated power to review the circumstances of any minors at risk of delinquency whom the social welfare authorities decide to refer to them through the juvenile prosecution service."
8. Article 27 provides: "The juvenile courts have sole competence for hearing such juvenile offence and cases involving the risk of delinquency as are referred to them by the social welfare authorities. The juvenile courts may, if necessary, hold sessions in a social welfare institution."

The above shows that the Kuwaiti legislature has put a series of measures and penalties in place to protect children, especially during criminal proceedings, in conformity with the 1983 Criminal Code. There have been no recorded breaches of these principles embodied in the Optional Protocol, because the phenomena of the sale of children, child prostitution and child pornography do not exist in the country.

In addition, since the State of Kuwait has a small population and a wealth of resources, its population does not need to resort to these kinds of offences, which are normally motivated by poverty, ignorance and widespread unemployment. The penalties that the law prescribes for these offences are designed to serve as a deterrent.

Paragraphs (1) and (2) of article 9 of the Protocol call on States parties to take appropriate measures to strengthen, implement and disseminate administrative measures and policies to prevent the sale of children, child prostitution and child pornography and to strengthen the role of these States in promoting awareness in the public at large.

The State of Kuwait has created numerous mechanisms to ensure that children fully exercise the fundamental rights and freedoms recognized by the Constitution and Kuwaiti law. Thus, the State has established a number of ministerial departments to deal with children's affairs and ensure that children are protected from any violence or exploitation that is or may be perpetrated against them in the spheres for which the respective departments have competence. The functions of each department are described hereunder.

## **1. The Department for Women and Children**

This department was set up as part of the Ministry of Social Affairs and Labour, pursuant to Ministerial Decree No. 65 of 1997. It has responsibility for the following:

- Formulating a comprehensive child-protection plan based on Kuwaiti society's values and the teachings of the noble Islamic religion;
- Designing and following up on family activity programmes that include children;
- Making families aware of children's rights and how to protect them.

### **Main achievements of the Department**

1. Organization of informational seminars on the Convention on the Rights of the Child and its status in domestic laws. The sessions were attended by:

- (a) Kawthar Jaw'an "Historical background to the Convention on the Rights of the Child"
- (b) Dr. Fayiz Zafiri "Children and criminal proceedings"
- (c) Dr. Rashid al-Anzi "Children's rights under international treaties"

### **The Subregional Centre for Children and Mothers**

This centre was established in 1996 with the participation of a select group of local and international experts and educators experienced in designing and running courses, talks and constructive discussions on children's issues. The Centre's aims include sensitizing society, especially parents, to children's rights so as to ensure that children are treated in a manner that respects their essential nature and aptitudes and helps to foster their development.

What follows is a general overview of some of the activities that the child welfare centre runs in the theoretical and practical domain:

1. Training courses and family discussions;
2. A party held on 12 November 1998 to celebrate the programme (and to mark the Declaration of the Rights of the Child);
3. The impact of wars and conflicts on children and adolescents; an event held from 11 to 30 October 1999;
4. A course on Kuwaiti children's health, held from 1 to 9 March 1999;
5. An exploratory course presenting a comprehensive educational advice programme based on modern techniques of shaping a child's personality. The course ran from September 2003 to January 2004.
6. The Gulf discussion circle on abuse ("How to protect our children from abuse") seeks among other things to identify patterns of child abuse (abuse in the family, at school and in society, sexual abuse, psychological abuse and neglect), ways of protecting children from abuse and methods for treating victims.

### **The Kuwaiti Society for the Advancement of Arab Children**

This organization was established as a public charity in 1980 to provide know-how on the development and education of children in the Arab world. Its main objectives are:

- (a) To formulate an Arab strategy for child-rearing in the early years of life;
- (b) To carry out research and studies on children's psychological and social development;
- (c) To gather and collate knowledge and information from specialized Arab and international organizations and make them available to social researchers and relevant specialists;
- (d) To inform parents about children's needs and the duties of fathers and mothers.

The following are the society's most important activities:

- (a) Participation in the conference on protecting children from abuse and neglect, held in Bahrain from 20 to 22 October 2001 under the auspices of the Bahraini Society for Child Development;
- (b) Publication of books on topics such as children's health, children's development in the first five years of life and children's psychomotor skills;
- (c) Production of a bibliography of works on subjects such as methods of helping children and adolescents in crisis; children and the Middle East war; the impact of war on children in Lebanon; children and the war in Lebanon, misery and suffering; motherhood and the development of the mother-child relationship; the science of raising children; and child psychology.

### **National drugs awareness project (Gheras)**

The Gheras project was launched on 25 January 2000 as a long-term information campaign to boost a value system linked to the elimination of drugs. It uses scientifically designed media and advertising campaigns to concentrate and mobilize efforts and resources towards that end. The project offers its services to all members of Kuwaiti families and to opinion leaders, decision makers, charitable associations, the children of today and the youth of tomorrow and to schoolchildren and students at universities and colleges, whose minds are targeted by this abhorrent and destructive scourge. The project relies on innovative, non-traditional methods, tailored to each sector of society and designed to achieve the desired effect at the lowest possible cost. These methods include:

Television output (the news media, television programmes, series, dramas and documentaries)

Radio output (radio news, discussion programmes, radio dramas)

Radio and television broadcasts (Kuwaiti and Arab satellite channels)

Internet (voice messages, videos, discussion programmes, forums, advertising)

Print media (newspapers, magazines, other printed matter)

Post (direct mail and electronic mail)

Street advertisements

Public relations activities (seminars, scientific conferences, fairs, exhibitions, miscellaneous activities)

Studies and research

The Gheras project has adopted a number of slogans to boost its role in eliminating all forms of injustice against children, including:

9. "I am secure, I am not abused"

This phrase comes from a campaign on injustice against children which entails a study of the impact of violence and neglect on children. The campaign is based on messages from children to fathers and mothers and addresses the different forms of child abuse (sexual, physical and psychological), explaining the consequences of abuse, including low self-confidence, depression, anxiety, various kinds of phobias, development of a victim-like personality, aggressiveness and addiction).

Several therapeutic techniques have been developed to prevent these forms of child abuse. The techniques involve stopping people from thinking about and imagining having sex with children, preventing child beating, establishing the principle of dialogue in the home and giving children a sense of security and self-confidence.

This campaign showed that 58 per cent of individuals who are abused during childhood abuse their own children, that eight persons in an addictive family environment were abused because of the addiction and that children suffer most in these situations.

10. "I am a gift - I am not a burden"

This slogan comes from a campaign on child abuse presented as an educational challenge in addition to the many challenges confronting individuals and the family. Teenagers have to contend with the most difficult periods of change and their parents do not realize how far their own actions affect the behaviour of their children. Domestic violence leads to deviancy, culminating in children becoming lost in the world of oblivion. The campaign focuses on adolescents and demonstrates the impact of violence and abuse on their behaviour.

The following are some of the main results of the follow-up study on the "I am a gift - I am not a burden" campaign:

1. It helped to counter the risk of child abuse (as reported by 95 per cent of respondents).
2. It highlighted the direct link between child abuse and the likelihood of a person becoming a criminal or drug addict in the future (64 per cent of respondents fully agreed that there was a strong link; 11 per cent said that there was no link and 15 per cent said that there was some kind of link).

### **Key new ministerial decisions on protecting children from exploitation**

Ministerial Decision No. 125/2004 issued by the Minister of Social Affairs and Labour on the danger of employing children below 18 years of age in camel racing:

Article 1: "Children below 18 years of age, whether boys or girls, shall not be employed in the following activities:

"(a) Economic or industrial activities that are harmful to their health and their physical and mental well-being, unless the purpose is to provide vocational training according to the conditions and criteria for training set out in article 20 of the Civil Sector Labour Code No. 38 of 1963.

"(b) Camel racing or similar activities organized by the Kuwaiti Camel-Racing Club or any other organization."

Article 2: "In addition to the age criteria specified in article 1 of the present decision, the following conditions apply to participants in camel racing:

1. The participating minor (the competitor) must be shown to be healthy and physically fit.
2. The participating minor must not weigh less than 45 kilograms.
3. Written consent must be obtained from a parent of the participating minor.
4. The minor must be insured against any risks which such races entail.

### **Development of complementary health care for children**

The State of Kuwait has set up a healthy child clinic to look after children's health and follow all aspects of children's development (physical, mental and social) from birth up to the age of 15 years. The clinic does outstanding work in fostering and increasing parents' awareness of all the needs of a child, educating mothers about every aspect of proper nutrition for each stage of childhood and helping them to watch over their children. The clinic operates an appointments system and employs doctors and primary care nurses. There are currently a total of six such clinics, broken down as follows:

#### **(a) Capital health region**

Al-Sirrah health centre: established in 1999 and open one day a week

Yarmuk health centre: established in 2000 and open one day a week

#### **(b) Al-Jahra' health region**

The clinic is located in the Al-Ayun Health Centre and is open three days per week. It was established in June 2002.

### **(c) Al-Ahmadi health region**

There is a clinic in Al-Fahihah Specialization Centre. It is open one day a week and was established in 1997.

### **(d) Hawalli health region**

West Salimiyah Centre

This centre is open every day of the week and began operating in February 2001.

Sabah al-Salim al-Shimali Centre

The centre is open one day a week and began operating in 2001.

The number of referrals to each clinic is between 15 and 20 per day.

11. Article 9 (3) of the Protocol calls on States parties to take all measures to provide appropriate assistance to the victims of these offences. We should like to reaffirm that, since the phenomenon of the sale of children, child prostitution and child pornography does not exist in Kuwait, there are no institutions with responsibility for receiving complaints about these offences such as those found in other countries where these offences do occur. Those other countries provide victims with appropriate assistance by facilitating the process for contacting the organization responsible for receiving complaints from children and from affected persons or those responsible for reporting such offences. They do so, because the phenomenon has become so widespread in these countries that it is considered a problem for which suitable solutions aimed at eliminating the problem are difficult to find. This contrasts with the situation in Kuwait, where domestic laws and legislation prescribe strict penalties for these offences against children's rights.

12. Article 9 (4) of the Protocol calls on States parties to adopt appropriate measures to ensure that victims are adequately compensated for injury suffered. The Kuwaiti Civil Code elucidates the meaning of this paragraph in the following articles:

13. Article 227 provides: "Anyone who, by a wrongful action, does damage to another person must pay that person compensation, whether he caused the damage directly or indirectly. The party shall pay compensation for damage arising from his wrongful actions, even if he has not reached the age of discretion. Compensation for the wrongful action shall be paid, even if the damage constitutes moral damage."

14. Article 248: "If the injury is a fatal one, the amount of compensation shall be fixed on the basis of the sharia rules on payment of blood money (*diyah*), without any distinction between persons."

In the last few years, there have been two cases of rape and murder of non-Kuwaiti children in the State of Kuwait. The two crimes triggered a tremendous wave of anger in Kuwaiti society, because of the horrific nature of the offences and the fact that such crimes are alien to a small society like Kuwaiti society. The perpetrators received the maximum sentence, namely, the death penalty. The sentence was executed on the perpetrators of the first offence, while the courts are still considering the second case.

Article 10 of the Protocol calls on all States parties to take steps to strengthen regional and international cooperation in order to prevent and punish those responsible for acts involving the sale of children, child prostitution and child pornography, to aid and assist child victims in their psychological and physical recovery and social reintegration and to address the root causes of the spread of such phenomenon, such as poverty and underdevelopment.

The State of Kuwait has been and continues to be at the forefront of cooperation efforts in all domains. It is known as a State that is a champion in its love for peace, its concern to develop relations with the international community and its charitable stance vis-à-vis poor countries. It has shared the portion of fortune given to it by God with these peoples and countries, setting up many charitable funds worldwide and providing humanitarian assistance to all, regardless of religion, sex or race, even in the furthest outreaches of Africa. It also offers loans on easy terms to States in need and is known for its assiduousness in providing material assistance and setting up social development projects.

The Kuwaiti Fund for Arab Economic Development, which was set up in December 1961, is considered the best example of this humanitarian attitude on the part of the State of Kuwait. The Fund is a public institution, is registered in Kuwait and enjoys autonomous legal personality. Its object is to help Arab States and other developing countries to improve their economies by offering them loans at favourable interest rates and providing development-programme grants.

Between the date of its establishment and the end of the 2004/05 financial year, the Fund issued 675 loans, at a total value of 3,552 million Kuwaiti dinars. A total of 101 countries received these loans, including 16 Arab States, 40 African States, 34 Asian States and 11 States of the Latin American and Caribbean region. Arab States received a total of 53.3 per cent of all loans.

Between the date of its creation and the end of 2005, the Fund provided 177 aid packages in the form of technical assistance and cash grants. The total value of the aid amounted to 86.1 million Kuwaiti dinars and 49.8 per cent of it went to Arab countries.

It must be said that His Royal Highness the late Amir Jabir al-Ahmad al-Jabir al-Sabah - May he rest in peace! - spearheaded the first initiative on a debt write-off for the poorest countries.

Articles 12 to 17 of the Optional Protocol refer to accession to, and ratification of, the Protocol, the time limits for submission of reports, withdrawal of reservations, and other procedural matters.

### **Conclusion**

Although the Constitution and domestic laws promote the human rights of men, women and children, especially in regard to the preservation of human dignity, access to a decent life and the elimination of the spectre of need from human existence, and although children in Kuwait do receive care and attention at all levels and their interests are the primary consideration, specialists and experts have been calling for a review of and amendments to the current laws, especially criminal laws, in order to address the shortcomings that exist in the laws in force, especially since the laws were enacted a long time ago and in different circumstances from those that obtain today. For this task, the following actions need to be taken:

1. The laws need to be revised so that they reflect the realities of contemporary life and are consistent with treaties and modern-day laws.
2. Suitable mechanisms need to be created to deal with children and to refer them to the competent organizations, in the event of their being subjected to any kind of injustice or abuse.
3. Exemplary punishments must be imposed on perpetrators of offences against children and justice must be delivered promptly, if it is to be worthwhile.
4. Victims of violence and exploitation must be compensated.
5. Legislation must be enacted to enable the State to intervene in cases where parents subject their children to violence or physical abuse, in order to guarantee children security and protection.

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