

INHUMAN SENTENCING OF CHILDREN IN KUWAIT

Summary

The death penalty, life imprisonment and corporal punishment are unlawful for offences committed while under the age of 18 in Kuwait. On 31 December 2016, Kuwait reintroduced the death penalty and life imprisonment for offences committed while aged over 16, but repealed the reforms in March 2017. This report details the current law as well as that in force prior to March 2017.

This report was prepared by the Child Rights International Network in January 2017. For more information about CRIN's inhuman sentencing campaign, visit: www.crin.org/home/campaigns/inhuman-sentencing or contact us at info@crin.org.

Introduction

In December 2015, Kuwait enacted Law No. 111 issuing the Juvenile Law.¹ The law reformed the juvenile justice system, providing for juvenile courts and reduced sentencing for people under the age of 16 who commit criminal offences. The legislation excludes children aged 16 or older from juvenile courts and juvenile sentencing provisions, allowing older children to be sentenced as adults. In effect, this has reintroduced the death penalty and life imprisonment for a large number of offences committed by children while they are aged 16 or older. The law entered into force on 31 December 2016² and the relevant provisions were repealed in March 2017.³

Children can be held criminally responsible from the age of seven.⁴

The legality of inhuman sentencing

The death penalty

Kuwait abolished the death penalty for all offences committed while under the age of 18 in March 2017.⁵

Between 31 December 2016 and March 2017, the death penalty was explicitly prohibited for any offence committed while under the age of 16.⁶ Children aged 16 or older were not tried by juvenile courts and did not receive the protections of the Juvenile Law. As such, they were tried as adults and could be subject to the same criminal penalties as adults.

Several offences carry the death penalty for adults under Kuwaiti criminal law, including murder, aggravated murder, other homicide offences, terrorism offences, rape,



1 Law No. 111 of 2015, issuing the Juvenile Law. Available at: <https://www.moi.gov.kw/portal/varabic/hamaya/law111.html>.

2 Council of Ministers Law No. 111 of 2015, issuing the juvenile law, Article 4.

3 Zawya, "Kuwait amends juvenile law", 9 March 2017. Available at: https://www.zawya.com/mena/en/story/Kuwait_amends_juvenile_law-ZAWYA20170309054114/.

4 The Juvenile Law, Article 1(2).

5 The Juvenile Law, Article 15 (as amended in March 2017).

6 The Juvenile Law, Article 15 (as originally enacted).

kidnapping, drug trafficking, treason, espionage, military offences, human trafficking, kidnapping for sexual assault or to force the victim into prostitution.⁷ Between 31 December 2016 and March 2017, these sentences were applicable to children who commit offences from the age of 16.

Life imprisonment

Life imprisonment was explicitly prohibited for offences committed while under the age of 18 in March 2017.⁸

Between 31 December 2016 and March 2017 life imprisonment was explicitly prohibited for any offence committed while under the age of 16. Where a child under this age committed an offence punishable by life imprisonment or the death penalty, the maximum sentence was 15 years' imprisonment.⁹

Children aged 16 or older, however, were sentenced under the Penal Code, under which life imprisonment is lawful for a number of offences, including homicide offences, kidnapping, sexual offences and a small number of property offences.¹⁰ A person serving a sentence of life imprisonment must serve a minimum term of 20 years in detention before being considered for conditional release.¹¹

Inhuman sentencing in practice

Kuwait is not known to have carried out any death sentences for an offence committed while under the age of 18. Executions of adults in the State have been sporadic, with none carried out between 2007 and 2013 and another gap of executions between 2014 and 2017. In January 2017, however, the State broke its de facto moratorium when seven prisoners were hanged.¹²

Progress towards prohibition and elimination

Law reform needed

In March 2017, Kuwait abolished life imprisonment and the death penalty for offences committed while under the age of 18.

National and international law conflicting with inhuman sentencing

The Constitution

Article 31(2) of the Kuwaiti constitution provides that “[n]o person shall be subjected to torture or to ignominious treatment.”¹³

International human rights treaties

Kuwait has ratified or acceded to the following international human rights treaties:

- Convention on the Rights of the Child (in 1991) *Reservations*. Kuwait has entered a reservation “on all provisions of the Convention that are incompatible with the laws of Islamic Shari’a and the local statutes in effect.”
- Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography (in 2004) *Reservations*. Kuwait has entered a reservation to article 5(3), with regards to extradition.
- Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict (in 2004)
- Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (in 1996) *Reservations*. Kuwait has entered reservations against the inquiry procedure under the CAT and inter-State complaints.
- International Covenant on Civil and Political Rights (in 1996)
- Convention on the Elimination of All Forms of Discrimination Against Women (in 1994) *Reservations*. Kuwait has entered reservations on articles 9(2) and 16(f), neither of which address criminal sentencing.
- International Convention on the Elimination of All Forms of Racial Discrimination (in 1968) *Reservations and declarations*. Kuwait has entered a

7 Law No. 16 of 1960, the Penal Code, Articles 83, 137, 149(2)(1)-151, 170-171, 180, 186-187, 252. Law No 35 of 1985 Regarding Explosives Offences, Art. 1; Decree No. 48 of 1987 on the Control of Psychotropic Substances and Regulation of Use and Trafficking, Art. 50; Law No. 74 of 1983 concerning the Fight Against Drugs and Regulating Use and Trafficking, Art. 31, 32, 50; Decree No. 136 of 1992 on Military Trials and Sanctions, Arts. 41-44, 46, 56, 63. See also Law No. 31 of 1970 amending the provisions of the Penal Code and Law No. 136.

8 The Juvenile Law, Article 15 (as amended in March 2017).

9 Law No. 21 of 2015, on the Rights of the Child, Article 15.

10 Penal Code, Article 3, 149, 170, 171, 178, 179, 186, 187, 188, 189, 181, 227, 228, 247, 250, 251, 252.

11 Penal Code, Article 87.

12 The Guardian, “Kuwait hangs seven prisoners, including royal family member”, 25 January 2017. Available at: <https://www.theguardian.com/world/2017/jan/25/kuwait-hangs-seven-prisoners-including-royal-family-member>.

13 English translation available at: https://www.constituteproject.org/constitution/Kuwait_1992.pdf?lang=en.

reservation with regards to the inter-State complaint procedure under CERD.

- International Covenant on Economic, Social and Cultural Rights (in 1996)
Reservations and declarations. Kuwait has entered a number of declarations and reservations to provisions of ICESCR, but not relevant to criminal sentencing.
- Convention on the Rights of Persons with Disabilities
Declarations and reservations. Kuwait has entered declarations and reservations to the CRPD, but none that address criminal sentencing.

International complaints mechanisms

Kuwait has not ratified any international communication or complaint procedures.

Status of treaties

Treaties must be signed and ratified by the National Assembly and be published in the Official Gazette in order to have legal effect in Kuwait.¹⁴ Any treaty regarding the public or private rights of citizens that would require the amendment of national laws, can only come into force through national law.¹⁵ There is some evidence that treaties have been used in Kuwaiti courts,¹⁶ but it is unlikely that they would be enforced where they contradict domestic legislation.

Recommendations from human rights treaty bodies

Committee Against Torture

(CAT/C/KWT/CO/3, 5 September 2016, Concluding Observations on the third periodic report of Kuwait, paras. 26 and 27)

“The Committee is concerned at the interruption of the de facto moratorium on the application of the death penalty that was in force since 2007, and at the execution of nine persons since 2011. It remains concerned at the exceedingly large number of offences for which the death penalty is imposed, such as those relating to perjury or “forced perjury” and drug-related crimes, which do not meet the threshold of most serious crimes (arts. 2 and 16).”

“The State party should:

- (a) As a matter of urgency, reinstate a de facto moratorium on the application of the death penalty;
- (b) Follow the current international trend and consider revising its legislation with a view to abolishing the death penalty and commuting death sentences to prison sentences. The Committee reiterates its recommendation (see CAT/C/KWT/CO/2, para. 17) that the State party consider ratifying the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty.”

(CAT/C/KWT/CO/2, 28 June 2011, Concluding observations the second periodic report of Kuwait, para. 17)

“While noting the information provided by the delegation that the death penalty has not been applied in the State party since 2006, the Committee is concerned at the lack of information provided on the number of persons executed before 2006. It is also concerned at the wide number of offences for which death penalty is imposed, as well as the lack of information on the number of persons currently on death row. The Committee is further concerned at the provisions of article 49 of the Code of Criminal Procedure which allows for the use of excessive force on death row detainees (arts. 2 and 16).”

“The Committee recommends that the State party consider ratifying the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty. In the meantime, the State party should review its policy with a view to restricting to the most serious crimes the imposition of the death penalty. The State party should ensure that all persons on death row are afforded the protection provided by the Convention against Torture and treated humanely and that no discriminatory measures and ill-treatment are applied to these persons. The Committee requests the State party to provide information on the precise number of persons executed since the consideration of the previous report in 1998 and for which offences. The State party should also indicate the current number of persons on death row, disaggregated by sex, age, ethnicity and offence.”

Human Rights Committee

(CCPR/C/KWT/CO/3, 11 August 2016, Concluding observations on the third periodic report of Kuwait, paras. 22 and 23)

“The Committee is concerned about:

- (a) The fact that Kuwait carried out several executions in 2013, ending the de facto moratorium on executions that had been in force since 2007;
- (b) The large and increasing number of offences for which

¹⁴ Constitution of the State of Kuwait, Article 70.

¹⁵ Ibid.

¹⁶ See Kuwait Times, “Court upholds expatriate’s right for free treatment - Top priority for children’s rights”, 9 March 2014. Available at: <http://news.kuwaittimes.net/court-upholds-expatriates-right-free-treatment-top-priority-childrens-rights/>.

the death penalty can be imposed, including vague offences relating to internal and external security, and the fact that the legislation maintains the death penalty for offences that do not meet the threshold of the “most serious crimes” within the meaning of the Covenant, such as offences relating to drug-related crimes;

(c) Information indicating that the imposition of the death penalty is mandatory for certain crimes (arts. 6 and 7).”

“The State party should give due consideration to abolishing the death penalty and acceding to the Second Optional Protocol to the Covenant, aiming at the abolition of the death penalty. If the death penalty is maintained, the State party should take all measures necessary, including legislative action, to ensure that the death penalty is handed down only for the most serious crimes and not for offences that are overly broad or vague, and ensure that it is never mandatory.”

(CCPR/C/KWT/CO/2, 18 November 2011, Concluding observations on Kuwait’s second periodic report, para. 14)

“The Committee notes the implementation of the de facto moratorium on executions in the State party since 2007. However, it is concerned about:

- (a) The high number of persons remaining on death row;
- (b) The large number of offences for which the death penalty can be imposed, including vague offences relating to internal and external security and drug-related crimes. (art. 6)”

“The State party should eliminate the violations of article 6, paragraph 2 involved in maintaining in its legislation the death penalty for offences that cannot be considered the most serious crimes within the meaning of the Covenant. The State party should also formalise the current de facto moratorium on the death penalty, and accede to the Second Optional Protocol to the Covenant.”

(CCPR/CO/69/KWT, 27 July 2000, Concluding observations on Kuwait’s initial report, para. 8)

“The Committee expresses serious concern over the large number of offences for which the death penalty can be imposed, including very vague categories of offences relating to internal and external security as well as drug related crimes. It also regrets that, according to the Delegation, there are 28 persons currently on death row and that death sentences have continued to be carried out since the Covenant entered into force in Kuwait.”

“The State party should ensure that the provisions of article 6 of the Covenant are strictly observed, and that the death penalty is not imposed except for crimes that can be seen to be the most serious crimes, following proceedings in

which all the guarantees for a fair trial under article 14 of the Covenant are observed. The State party is invited to consider the abolition of the death penalty, in the spirit of article 6, paragraph 6 of the Covenant.”

Committee on the Rights of the Child

(CRC/C/KWT/CO/2, 29 October 2013, Concluding observations on the second periodic report of Kuwait, paras. 76 and 77)

“The Committee commends the State party for the significant improvement in detention conditions of juveniles over the reporting period. The Committee is however concerned that:

- (a) The age of criminal responsibility remains 7 years, which is well below internationally accepted standards;”

“In the light of its previous recommendation (CRC/C/15/Add.96, para. 32), the Committee recommends that the State party strengthen its efforts to build a system of restorative and rehabilitative juvenile justice fully in line with the Convention, in particular articles 37, 39 and 40, and with other relevant standards, including the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules), the United Nations Guidelines for the Prevention of Juvenile Delinquency (the Riyadh Guidelines), the United Nations Rules for the Protection of Juveniles Deprived of their Liberty (the Havana Rules), the Guidelines for Action on Children in the Criminal Justice System and the Committee’s general comment No. 10 (2007) on children’s rights in juvenile justice. In particular, the Committee urges the State party to:

- (a) Raise the minimum age of criminal responsibility to an internationally accepted level;”

(CRC/C/15/Add.96, 26 October 1998, Concluding observations on the initial report of Kuwait, para. 15)

“The Committee notes with concern that the legal age of criminal responsibility, at seven, is very low... The Committee recommends raising the minimum legal age for criminal responsibility, in the light of the provisions and principles of the Convention and other relevant United Nations standards.”

Universal Periodic Review

Third cycle

Kuwait is due to be reviewed under the third cycle of the Universal Periodic Review in January 2020.

Second cycle

During the second cycle of the Universal Periodic Review, 18 States made recommendations for Kuwait to abolish the death penalty or institute a moratorium.¹⁷ The State did not accept any of these recommendations. At the time, of the review, the new Juvenile Law had not entered into force.

Sierra Leone and Poland both recommended that Kuwait raise the minimum age of criminal responsibility, but these recommendations were not accepted.¹⁸

First cycle

During the first cycle of the Universal Periodic Review, nine States made recommendations for Kuwait to abolish the death penalty or institute a moratorium. None of these recommendations was accepted, but Kuwait did accept a recommendation from Belgium to: “Respect, as long as it maintains the death penalty, at least minimum standards related to the death penalty, in particular ensuring that the death penalty is only imposed for the most serious offences.”¹⁹

¹⁷ Slovenia, Spain, Rwanda, Italy, Uruguay, Togo, Belgium, France, Sweden, Greece, Montenegro, Bulgaria, Namibia, Portugal, Chile, Germany, Switzerland, Ukraine. Report of the Working Group on the Universal Periodic Review: Kuwait, A/HRC/29/17, 13 April 2015; Report of the Working Group on the Universal Periodic Review: Kuwait (Addendum), A/HRC/29/17/Add.1, 4 June 2015.

¹⁸ Ibid.

¹⁹ Report of the Working Group on the Universal Periodic Review: Kuwait, A/HRC/15/15, 16 June 2010; Report of the Working Group on the Universal Periodic Review: Kuwait (Addendum), A/HRC/15/15/Add.1.

About CRIN (www.crin.org)

Our goal: A world where children's rights are recognised, respected and enforced, and where every rights violation has a remedy.

Our organisation: CRIN is a global research, policy and advocacy organisation. Our work is grounded in the United Nations Convention on the Rights of the Child.

Our work is based on five core values:

- We believe in rights, not charity
- We are stronger when we work together
- Information is power and it should be free and accessible
- Societies, organisations and institutions should be open, transparent and accountable
- We believe in promoting children's rights, not ourselves.

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